IN THE CIRCUIT COURT NO. 2 OF BALTIMORE CITY

PREDERICK W. FOOTE 532 W. Franklin Street

vs.

EMMA D. FOOTE 1810 N. Caroline Street

Bill of Complaint

No 46889 B.
Mr. Clerk:

Please file, etc.

Benjam LA och BENJAMIN L. WOLFSON
Solicitor for Complainant

BENJAMIN L. WOLFSON

Attorney at Law 907-908 COURT SQUARE BLDG.

BALTIMORE, MD.

31 4- February 1942

FREDERICK W. FOOTE 532 W. Franklin Street Baltimore, Maryland IN THE

CIRCUIT COURT NO. 2

VS.

*

OF

EMMA D. FOOTE 1810 N. Caroline Street Baltimore, Maryland BALTIMORE CITY

* * * * * * * * * * * * * * *

TO THE HONORABLE. THE JUDGE OF THE SAID COURT:

Your Orator for Bill of Complaint respectfully says:

- 1. That he and the Defendant were married on December 28, 1915, in Baltimore City by a religious ceremony.
- 2. That both parties hereto reside in the City of Baltimore and the State of Maryland, and have thus resided thereat and therein for a period of more than one year prior to the filing of the herein Bill of Complaint.
- Edith Selckman, married and supported by her husband; Iris Anne Foote, over the age of 21 and self-supporting; Charles Foote, over the age of 21 and now in the service of the United States Navy and self-supporting; Bernice Henderson, married and legally supported by her husband; and, Robert Foote, over the age of 17, who has discontinued going to school and is working and earning an income sufficient to take care of his support, and is living with the Defendant.
- 4. That the Defendant, EMMA D. FOOTE, heretofore, and without just cause or reason therefore, has conducted herself in such a way as to amount to a desertion and abandonment of your Orator; that she has declared her intentions to no longer live with your Orator as husband and wife, and that her desertion and abandonment has been continuous and uninterrupted for a period of more than eighteen months prior to the filing of the herein Bill of Complaint, is deliberate and final, and there is no reasonable hope or expectation of a reconciliation between the parties.

WHEREFORE, YOUR ORATOR PRAYS:

- (a) That he be divorced A VINCULO MATRIMONII from the Defendant, EMMA D. FOOTE.
- (b) That the custody of the infant child of the parties hereto, to wit, Robert Foote, be awarded to his mother, the Defendant herein, the said EMMA D. FOOTE.
- (c) And for such other and further relief as this cause may require.

MAY IT PLEASE YOUR HONOR to grant unto your Orator the State's Writ of Subpoena directed to and against EMMA D. FOOTE residing at 1810 North Caroline Street, Baltimore, Maryland, commanding her to be and appear in this Honorable Court on some day certain to be named therein, and to show cause, if any she may have, why a Decree should not be passed as prayed.

And as in duty bound, etc.

OZenjamus LWolfen BENJAMIN L. WOLFSON

Solicitor for Complainant

Frederick W. Foote, Complainant

STATE OF MARYLAND, CITY OF BALTIMORE, to wit:

I HEREBY CERTIFY, That on this 3 day of January, 1942, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City aforesaid, personally appeared FREDERICK W. FOOTE, Complainant, and he made oath, in due form of law, that the matters and facts set forth in the aforegoing Bill of Complaint are true to the best of his information, knowledge and belief.

As Witness my hand and Notarial Seal.

Elizabeth a. Hebler Notary Public

With leave of the court first had, Your Orator, for amendment and addition to his Bill of Complaint, respectfully says, for an amended paragraph thereto, numbered "5:"--

Amended Paragraph 5. That the husband and wife herein have voluntarily lived separate and apart, with any cohabitation, for five consecutive years prior to the filing of the Bill of Complaint, and such separation is beyond any reasonable expectation of reconciliation.

And now comes the defendant, Emma D. Foote, by John R. Elly, her solicitor, and for answer to the Amended Bill of Complaint and paragraph numbered 5 thereof, and neither admits nor denies the allegations thereof, and puts the complainant

upon strict proof thereof.

Emma D. Foote Defendant

SHERIFE'S OFFICE FEB 5 1942 3 55 PM

Circuit Court No. 2

1942 B DOCKET NO. 51

1

Summoned Emma D. Foote and a copy of the Process with a copy of the Bill of Complaint left with the Defendant on the 5th. day of February 1942 in the presence of Barry Hennegan.

Jes 1/20

Sheriff.

white the

EQUITY SUBPOENA

The State of Maryland

E 1 T L
1810 N learoline St
of Baltimore City, Greeting:
WE COMMAND AND ENJOIN YOU, That all excuses set aside, you do within the time
limited by law, beginning on the second Monday of Sermany, next, cause
an appearance to be entered for you, and your Answer to be filed to the Complaint of
Frederick W Foote
Spelleners DV 0 oou
against you exhibited in the CIRCUIT COURT No. 2 of BALTIMORE CITY.
HEREOF fail not, as you will answer the contrary at your peril:
WITNESS, the Honorable SAMUEL K. DENNIS, Chief Judge of the Supreme Bench of Balti-
more City, the 12- day of January, 1942 Issued the 4- day of Jeruary, in the year 1942
Issued the 4- day of Jehuany, in the year 1942
John D. Dlanke Clerk.
John & Clarke

MEMORANDUM:

You are required to file your Answer or other defense in the Clerk's Office, Room No. 235, in the Courthouse, Baltimore City, within fifteen days after the return day. (General Equity Rule 11).

CIRCUIT COURT NO.2.

FREDERICK W. FOOTE,

VS.

EMMA D. FOOTE.

- ANSWER-

Mr. Clerk:

Please file, etc.

John Sandolph Econ. Defendant's Atty.

No 46889 B.

Fd 9- February 1942

FREDERICK W. FOOTE,

IN THE CIRCUIT COURT

VS.

NO.2,

EMMA D. FOOTE.

OF BALTIMORE CITY.

To the Honorable, the Judge of said court:

Emma D.Foote, the defendant in the above case, for an answer to the bill of complaint filed against her, says:

-1-

That she admits the allegation in paragraphs one and two of said bill of complaint.

-2-

That she admits the allegation contained in paragraph three of the said bill is so far as they pertain to the children Edith Selckman, Iris Anne Foote, Charles Foote and Bernice Henderson; but as to Robert Foote she denies that he is self sustaining and is earning an income sufficient for his maintenance.

-3-

That she denies any and all parts contained in the allegations of paragraph four and avers that the complainant has desserted her and refuses to live with her although she has made many importunities for him to so do; - she further avers that the complainant is regularly employed at a salary in excess of Eighty-dollars per week, is the owner of valuable leasehold property and that she has no estate and the only income that she is receiving is the sum of Twenty-Five dollars per week, which is received from the complainant under an order of this Honorable Court, dated April 10th.1933. (See docket No.41B, folio 282) and that she is unable to pay counsel for defending this suit.

To the end therefor:

-A
That the bill of complaint filed against her,
be dismissed with proper costs.

-B-

That Frederick W.Foote be directed to pay the counsel of record in this case, for this respondent a certain sum of money for his services in defending this case.

-C-

That the respondent be given such other and further relief as her cause may require.

As in duty bound, etc.,

Emma D. Foots

EMMA D. FOOTE, Defendant.

JOHN RANDOLPH ELIX, Defendant's Counsel.

1

Sawa on Frederick W. Foote

M SE S 2461 6 81:

SHERIFF'S OFFICE RECEIVED AT 99 B DOCKET 51

Circuit Court No. 2

Foote

vs.

Late

Order Counsel Fee and Alimony
Pendente Lite
Husband Plaintiff

ORDER

No. 46889 B

(4)

Copiel

Filed 9. Telemany 19442

IN THE Circuit Court No. 2 BALTIMORE CITY aug TERM, 192/2 ORDERED BY THE COURT, This 9- day of Jebruary 1942 that the Plaintiff Frederich W. Forte pay to the Defendant One A Tool Dollars as Counsel Fee for the Solicitor of the Defendant, and that he further Pollars per week, during the continuance of this suit, to the said Defendant as Alimony, pendento lite, unless cause to the contrary be shown on or before the 25exebuary 1922, provided a copy of this Order be served on the said Plaintiff on or before the..... TRUE COPY—TEST

Clerk.

51B/99 - No. 46889-B

IN THE CIRCUIT COURT NO. 2 OF BALTIMORE CITY

FREDERICK W. FOOTE

VS.

EMMA D. FOOTE

Answer to Order Nisi for Counsel Fee

Mr. Clerk:

Please file, etc

No.4688

L. Wolfson BENJAMIN L. WOLFSON Solicitor for Complainant

BENJAMIN L. WOLFSON

Attorney at Law 907-908 COURT SQUARE BLDG.

BALTIMORE, MD.

LUCAS BROS., INC., BALTIMORE, FORM L 133

20 telua

IN THE

FREDERICK W. FOOTE

vs.

EMMA D. FOOTE

CIRCUIT COURT NO. 2

OF BALTIMORE CITY 51B/99 - 1942

* * * * * * * * * * * * * *

TO THE HONORABLE. THE JUDGE OF SAID COURT:

The answer of FREDERICK W. FOOTE to the Order of this Honorable Court, dated February 9, 1942, directing him to pay to the Defendant the sum of Seventy-five Dollars (\$75.00) as counsel fee for her solicitor, unless cause to the contrary be shown on or before the 25th day of February, 1942, respectfully says:

- 1. That the sum of Seventy-five Dollars (\$75.00) is a grossly exaggerated sum to be paid to her counsel for the services rendered or to be rendered until a determination of the rights, equities and liabilities of the parties hereto.
- 2. That the sum ordered to be paid as counsel fee is excessive for a party earning the income and salary which the Plaintiff herein does and is not in keeping with the station in life of the said parties.
- 3. That the sum set forth by the Defendant under oath as being earned by the Plaintiff is grossly in error, exaggerated and untrue.
- 4. That the Defendant, EMMA D. FOOTE, has been paid various sums of money of a sizeable character, and has ample means of income and funds of her own out of which to pay said fee.
- 5. That although legally the Plaintiff herein was not bound to pay a sum of Twenty-five Dollars (\$25.00) over a period of years, due to the fact that the children set forth in his Bill of Complaint have long since married or have been self-supporting for a long period of time, yet the said EMMA D. FOOTE has accepted a sum of money for their support and for her own support under a previous order of court, and has failed, neglected and refused to account to him for any over-payments or a reduction due to the fact that she has accepted money

fraudulently, even though under a Court order and not in good faith with the intentions thereof.

- 6. That the Order of the Circuit Court No. 2 in case No. 41B/282 - 1932 - No. 34895-B, is without authority or jurisdiction therefore to direct the payment of support or alimony for her maintenance upon the dismissal of the then Plaintiff's bill therein, although the Court had authority as to the minor children .-- without awarding a decree .-- to provide for their own maintenance; and insofar as said decree was without legal force, equity or effect, the orders of that Court, insofar as it bound your then Plaintiff to provide for her support, was nugatory and void and for this reason she wwes an accounting to your Plaintiff and can well and fully provide for the payment of her own counsel fee.
- 7. And for such other and further reasons as will be shown at a hearing of this cause.

Wherefore your Respondent prays that the Order of February 9, 1942, be dismissed, with his reasonable costs.

And as in duty bound, etc.

Frederick W. Foote, Plaintiff

BENJAMIN L. WOLFS Attorney for Plaintiff

STATE OF MARYLAND, CITY OF BALTIMORE, to wit:-

I HEREBY CERTIFY, that on this 19 day of February, 1942, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City aforesaid, personally appeared FREDERICK W. FOOTE, Plaintiff, and he made oath, in due form of law, that the matters and facts set forth in the foregoing Answer are true to the best of his information, knowledge and belief.

As Witness my hand and Notarial seal.

Elizabeth a. Heebler Notary Public

John R. Elly, Esquire
Attorney for Emma D. Foote
513 American Building
Baltimore, Maryland

FEBELLES OFFICE

90

Circuit Court No. 2

99

Docket No. 51B

FREDERICK W. FOOTE

228

EMMA D. FOOTE

Petition and Order to Take Testimony Under 30th Rule.

No. 46889-B

Filed 20 Jely 1942

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FREDERICK W. FOOTE	IN THE
vs.	Circuit Court No. 2.
EMMA D. FOOTE	—OF—
	BALTIMORE CITY. 51B/99 - 1942 No. 46889-B
To the Honorable the Judge of the	
Circuit Court No. 2 of Baltimore City: The Plaintiff in this case respectfully shows unto	art and in the presence of your Honor, certain
plaint filed in this case.	
Your Petitioner therefore prays your Honor t	to pass an order, according to the Statutes for
such cases made and provided.	
And as in duty bound will ever pray.	Benjamin I. Wolfson' BENDAMIN L. WOLFSON Solicitor for Plaintiff.
Upon the foregoing Petition and Application i	t is this 20th day of February,

A. D. 19 42, Ordered that the Petitioner have leave to take testimony as prayed and that the testi-

mony to be offered be taken as required by the 30th Rule of this Court. And it is further Ordered

that a copy of this Petition and Order be served on the Defendant, EMMA D. FOOTE,

or her Solicitor, on or before the day of February 1942.

CIRCUIT COURT NO. 2.

FREDERICK W. FOOTE,

VS.

EMMA D. FOOTE.

Defendant's Exceptions to Plaintiff's order nisi.

Mr. Clerk:

Please file, etc.,

Defendant's Attorney.

Jel 21 February 1842

IN THE

FREDERICK W. FOOTE, : CIRCUIT COURT NO. 2 ,

VS. : OF

EMMA D. FOOTE . : BALTIMORE CITY.

To the Honorable, the Judge of said court:

EMMA D. FOOTE, the defendant in the above case excepts to the answer of the plaintiff, filed in this case to the order of nisipassed by this Honorable Court on February 9th.1942, directing the said plaintiff to pay her counsel of record the sum of Seventy five dollars on account of a fee for defending this suit against her; and for reasons for said exceptions, say:

-1-

That the Plaintiff, Frederick W.Foote, is now and has been for several years past been in contempt of this honorable court in not paying the amount of money directed by this court to be paid this defendant under its order of April 10th.1933.

-2-

That the answer filed to the order of nisi passed by this court on February 9th.1942; is not responsive nor does it show why this order should not be made absolute,; but only gives argumentry conclusions of law on the plaintiff's behalf.

JOHN RANDOLPH LILY, Attorney for

EMMA D. FOOTE.

Denjamind - Wolfso Circuit Court No. 2 198/ A DOCKET No. 5-1 Frederick W. Foole Erumas. Foote Motion for Hearing No.46889B John Randolft Elly Filed I day of Jely, 19342

51 B / 99

IN THE

Circuit Court No. 2

-of-

BALTIMORE CITY

EMMA	D.	FOOTE	1
\$10, \$10, \$10, \$10, \$10, \$10, \$10, \$10,			

vs.

FREDERICK W. FOOTE

The Defendant	by John Randolph Elly,
her	Solicitor, applies to have the above entitled cause placed in the
Trial Calendar for a hearing on C	ounsel fee and exceptions to Plaintiff's answer
to order nisi passed t	hereon

In conformity with the First Equity Rule.

Solicitor for Defendant.

Circuit Court No. 2 SERVE ON Benjamin Z. Wolfson 77 1942 B. DOCKET NO. 51 Frederick W. Foole NOTICE AS TO HEARING FEB 21 1912 12 45 PM Filed 24 February

Frederick W. Footex	IN THE
vs.	Circuit Court No. 2
Enima D. Firster	—OF—
	BALTIMORE CITY
the First Equity Rule, and the same will stan	d for hearing on
the First Equity Rule, and the same will stan	the Trial Calendar in accordance with the provision
Coursel fre andexcep	stais to Plainty B' Ausur
to order mai	
to order jusi	

when reached in due course on the said calendar.

JOHN S. CLARKE, Clerk Circuit Court No. 2.

Circuit Court No. 2

99 1942 B DOCKET NO. 51

Footo

vs.

Tooto

SUMMONS FOR WITNESS

No. 46889B.

Filed 27 day of Jely , 1942

RECEIVED AT SHERIFF'S OFFICE

Ir	the Circuit Court No. 2 of Baltimore City
	The Sheriff will please summon the following witnesses,
returnable on_	
Jerus	19 2 at 10 o'clock A. M.
	and the second of the second o
0	Mr. Clerk:
1/0	Please issue summons duces tecum directed to the
11	Treasurer of the Fidelity & Deposit Co. of Warvland.

Fidelity Building, Charles and Lexington Streets, to appear before His Honor, Judge Solter in the Circuit Court No. 2. of Baltimore City at ten o'clock a.m.; Friday, February 27th.1942 and bring with him a record of all of the earnings of Frederick W. Foote, including any bonuses that may have been paid to the said Frederick W. Foote from January 1st.1941 to February 1st.1942.

JOHN RANDOLPH ELLY,

Attorney for Emma D. Foote.

estify for Defendant	
ne case of	
berick W-Toote	vs. Eruma D- Foote

Clerk of Circuit Court No. 2 of Baltimore City

Ct. Ct. Ao. 2 57 B. 9

Final Order, Counsel Fee and Alimony Pendente Lite

No. 46889B.

Filed 27 March 19 4

Frederic	k₩.	Foote	
		vs.	
amma D. F	oote		

IN THE

Circuit Court No. 2

 \mathbf{OF}

BALTIMORE CITY

entitled cause coming on for	final hearing and th		and the answer thereto in ties having been heard:	
It is Ordered by the O	Circuit Court No. 2	ofBaltimore Cit	y this 27th.	day
f March	1942 , that t	the Plaintiff	, Frederick W.Foote	
ay to the Defendant's	counsel, John F	R.Elly,	2	- 4
ne sum of Fifty		-	Dollars, as	Counsel Fee
or the Solicitor of the Defe	endant		a	nd that he
urther pay the sum of Seven	teen dollars an	d fifty cen	tsDollars	s per week,
Reginating xon xthex 2 kst uring the continuance of thi	ExxdayxofxRebxo is suit, to the said	ta ry, 1942 Emm	a D. Foote,	
a Alimony pendente lite acc	ounting from the 23	at. day	of February	, 1942

CIRCUIT COURT NO. 2.

FREDERICK W. FOOTE,

VS.

EMMA D. FOOTE

CROSS BILL FOR PERMANENT ALIMONY of Emma D. Foote.

Mr. Clerk:

Please file, etc.,

JOHN RANDOLPH ELLY. Atty for Emma D. Foote.

No 46889 B.

FJ 4 - April 1942

Service admitted this 4th day of april, 1742.

Other day of april, 1742.

Policitar for plantiff.

1942-51B/99 No. 46889B

FREDERICK W. FOOTE, 532 W.Franklin street, Baltimore City.

In the Circuit Court

No. 2, of

VS.

EMMA D. FOOTE, 1810 N.Caroline street, Baltimore City. Baltimore City.

CROSS BILL OF EMMA D. FOOTE FOR PERMANENT ALIMONY, Etc.

To the Honorable, the Judge of said court:

The cross bill of complaint of Emma D. Foote, the respondent in the above case, most respectfully represents unto Your Honor the follows:

-1-

That the parties here to were intermarried by a religious ceremony in Baltimore City on or about the 28th. day of December, 1915.

-2-

That both parties are now and have been for several years past residents of Baltimore City, Maryland.

That there were five children born as a result of said marriage, viz; - Edith, - Iris Anne, -Charles, - Bernice and Robert; - all of which have reached the age of majority and/or otherwise become emancipated.

-4-

That on or about February 4th.1942, the above compleinant filed a bill for a divorce a vinculo-matrimonii against this respendent, which she has fully enswered and is now pending in this Honorable Court.

-5-

That the complainant, without just cause, has desserted this respondent and refuses to live with her; that said dessertion has been continuous and was a deliberate act on the part of the above complainant, Frederick W.Foote.

-6-

That the respondent is without estate or income, save the sum of \$17.50 per week, which was directed to be paid her by this Honorable Court as alimony pendente-lite in this case and that the complainant, Frederick W.Foote is earnings at least seventy dollars per week.

To the end therefor:

-A-

That this Honorable Court pass an order directing the said Frederick W. Foote to pay this respondent a certain sum weekly, compatible with his earnings and her needs, as permanant alimony.

That the said Frederick W. Foote be directed and ordered to pay a certain sum to this respondent's attorney as counsel fee for the prosecution of this bill of complaint and the costs of this suit.

-C-

That she be given such other and further relief as her cause may require.

May it please your honor to grant unto this respondent a writ of subpoena directing the said Frederick W. Foote, residing at 532 W. Franklin street, Baltimore City commanding him therein to appear in this Honorable Court, and show cause if any he has, why a decree should not be passed as prayed.

As in duty bound, etc.,

EMMA D. FOOTE.

JOHN RANDOLPH ELLY. Attorney for Emma D. Foote.

Emma D. Foote

Circuit Court No. 2

799 1942 B. DOCKET NO. 57 Frederick W. Foote

vs.

Emina D. Foote and bross Bill

SUMMONS FOR WITNESS

No. 46 889 B

Filed 15 day of April, 1945

Docket 5/-B Folio 99

	Term, 19 42 The Sheriff will please summon the following witnesses,
	1 Machanda
return	
	19 42 at 10 o'clock A. M
	* * * * * * * * *
	Mr. Clerk:
	Please issue the Writ of Subpoena Duces Tecum to and
	against Phipps Clinic, Broadway and Monument Street, Baltimore,
	Maryland, to testify under oath for the Plaintiff and Cross
	Defendant, and to bring with them all records on anything
	having to do with EMMA D. FOOTE, including examinations, visits,
	statements, history, treatment, reports, whether at residence,
9	1818 Rutland Avenue, Baltimore, Maryland, or any other address,
)	or at the clinic, and names of the doctors who treated her or
	who interviewed her, and also names of the social workers or
	other employees of Phipps Clinic who interviewed or contacted
	her from December 28, 1915, to the present time; and also to
	bring with them duces tecum the entrance papers, records, files,
	charts, graphs and other data on the case of EMMA D. FOOTE, and
	make same returnable in the Circuit Court No. 2 of Baltimore
	City, Room 241, Court House, Baltimore, Maryland, before the
	Honorable George A. Solter, on Wednesday, April 15, 1942, at
	10:00 o'clock A.M.
,	
	Benjamin L. Wolfson
	Solicitor for Plaintiff and
	Two as Dofondant
	10 1/1.
to test	ify for flaming en original
in the	case of whote vs. Emma D- Foote and

Clerk of Circuit Court No. 2 of Baltimore City

MR. CLERK:

Please issue the Writ of Summons to and against:

24

Mrs. Edith Selckman 2137 Cliftwood Avenue Baltimore, Maryland nd

Landrogram

1743 North Bond Street Baltimore, Maryland M

and the

Miss Iris anne Foote 1810 North Caroline Street

Ballhore, Maryland

Mr. Edward H. Yingling 1221 East North Avenue Baltimore, Maryland

M

To testify under outh for the Plaintiff and Cross Defendant, and make same returnable in the Circuit Court No. 2 of Baltimore City, Room 241, Court House, Baltimore, Maryland, before the Honorable George A. Solter, on Wednesday, April 15, 1942, at 10:00 o'clock A.M.

Benjamin L. Wolfson BENJAMIN L. WOLFSON

Solicitor for Plaintiff and Cross Defendant

IN THE CIRCUIT COURT NO. 2 OF BALTIMORE CITY 51B/99 - 1942

FREDERICK W. FOOTE

VS.

EMMA D. FOOTE

and

Cross Bill of Complaint

No 46889B

Mr. Clerk: (17)

Please file, etc.

Benjamin Molfar

BENJAMIN L. WOLFSON Solicitor for Plaintiff

and Cross Defendant

JOHN R. ELLY

Solicitor for Defendant and Cross Complainant

BENJAMIN L. WOLFSON

Attorney at Law

907-908 COURT SQUARE BLDG.

BALTIMORE, MD.

LUCAS BROS., INC., BALTIMORE, FORM L 133

F1 18 - April 1942

FREDERICK W. FOOTE IN THE CIRCUIT COURT NO. 2 VS. OF EMMA D. FOOTE BALTIMORE CITY and 51B/99 - 1942 Cross Bill of Complaint No. 46889-B

MR. CLERK:

Please enter the order upon the Docket entries in this proceeding that the respective parties hereto waive their right of appeal.

udk W. Toote Benjamin Molfeon BENJAMIN L. WOLFSON

Fredk. W. Foote, Plaintiff and Cross Defendant

Solicitor for Plaintiff and Cross Defendant

Emma D. Foote,

Defendant and Cross Complainant

Solicitor for Defendant and

Cross Complainant

IN THE CIRCUIT COURT NO. 2 OF BALTIMORE CITY 51B/99 - 1942

FREDERICK W. FOOTE

VS.

EMMA D. FOOTE

and

Cross Bill of Complaint

ORDER OF SATISFACTION

No 46889 W

Mr. Clerk:

Please file, etc.

JOHN R. ELLY

Solicitor for Defendant and Cross Complainant

BENJAMIN L. WOLFSON

Attorney at Law 907-908 COURT SQUARE BLDG.

BALTIMORE, MD.

LUCAS BROS., INC., BALTIMORE, FORM L 133

3d 18 - April 1942

FREDERICK W. FOOTE	*	IN THE
Vs.	*	CIRCUIT COURT NO. 2
EMMA D. FOOTE	*	OF
and	¥	BALTIMORE CITY
Cross Bill of Complaint.	*	51B/99 - 1942 No. 46,889-B

MR. CLERK:

Please enter the Decree in the within cause as to the counsel fee of Fifty Dollars (\$50.00) payable to John R. Elly, marked "Settled, Satisfied and Paid."

JOHN R. ELLY

Solicitor for Defendant and Cross Complainant

STENOGRAPHIC TRANSCRIPT

IN THE CASE OF

51 B99.1942

FREDERICK W. FOOTH.

Complainant,

VS.

EMMA D. FOOTE.

Meansandont's

In the

Circuit Court No. 2 of

Baltimore City.

Balore Judge Joseph N. Ulman.

April 15th, 1942.

J-68894

EQUITABLE BUILDING

BALTIMORE, MD.

No. 21. 899 B.



Jd 15 - April 1 142

TRANSCRIPT FROM NOTES OF

EDWARD L. KOONTZ

OFFICIAL SHORTHAND REPORTER

OFFICE AND HOME

OF BALTIMORE CITY.

* * *

FREDERICK W. FOOTE,) Complainant, (
)	Before Judge Joseph N. Ulman	1 .
vs. (
)	No. 46889-B.	
EMMA D. FOOTE,		
Respondent.)		

Wednesday, April 15th, 1942.

The above-entitled matter came on to be heard before Judge Joseph N. Ulman on Wednesday, April 15th, 1942.

 $M_{\mathbf{r}}$. Benjamin L. Wolfson appeared on behalf of the Complainant.

Mr. John Randolph Elly appeared on behalf of the Respondent.

The COURT: Mr. Wolfson, I understand you wish to make an amendment.

Mr. WOLFSON: Yes, if your Honor please. We move, sir, to amend the original Bill of Complaint by

interlineation and amend Paragraph 5 to read, "That the husband and wife herein have voluntarily lived separate and apart without any cohabitation for five consecutive years prior to the filing of the Bill of Complaint, and such separation is beyond any reasonable expectation of reconciliation."

The COURT: Leave is granted to amend.

Mr. ELLY: And, your Honor, answer is filed to that.

The COURT: Very well. I think the practical plan is to take testimony on the amended Bill of Complaint of the husband and, at present, limit the testimony to that.

Thereupon ---

FREDERICK W. FOOTE,

the Complainant, of lawful, age, produced on his own behalf, having been first duly sworn according to law, was examined, and testified as follows:

DIRECT EXAMINATION:

Questions By the REPORTER:

- Q. State your full name, please?
- A. Frederick W. Foote.
- Q. Where do you live?
- A. 532 West Franklin Street.

 Questions By Mr. WOLFSON:
- Q. Mr. Foote, when were you and your wife married?
- A. In December, 1915.
- Q. And you are both residents of the City of Baltimore and the State of Maryland?
 - A. Yes, sir.
- Q. You have had how many children born as a result of this marriage?
 - A. Five.
- Q. What are their ages and names beginning with the oldest?
- A. Well, Edith, the oldest, is twenty-five; Iris is twenty-three; Charles is twenty-two; Bernice is twenty, and Robert is seventeen, going on eighteen.
- Q. Bernice, one of the younger girls, and Edith, the oldest, are married?
- A. Edith, the oldest, and Bernice, the third or twenty-year old girl, are both married.

- Q. And they are living with their husbands and being supported by them?
 - A. Yes, sir.
- Q. This younger boy, Robert, I understand, is in the Navy?
 - A. He has been in there for the past eight weeks.
 - Q. Charles is self-supporting?
 - A. Yes.
- Q. And the other daughter, Iris, is self-supporting and her age is twenty-three?
 - A. That's true.
- Q. In 1932 I believe you filed a Bill of Complaint which was dismissed after a hearing in open court?
 - A. Yes, sir.
- Q. After 1932 and until what time didn't you and your wife live together?
- A. Well, we really haven't lived together as man and wife since August, 1930.
- Q. After that date did you go to live at her house for some short time?
- A. We were living in 1932 up until November and Mrs. Foote left and she remained away for six months.

Q. What happened in 1936? Did you go back to the house?

The COURT: Mr. Wolfson, under the circumstances you may ask leading questions.

Mr. WOLFSON: Very well, your Honor.

- Q. (By Mr. Wolfson): In 1936 didn't you, regardless of the reasons for it, go back and live at your wife's house?
- A. Well, I asked her to come back and she said she would take it under consideration and after asking her a number of times she finally consented.

The COURT: Mr. Foote, Mr. Wolfson is going to ask you questions of such a nature that you can probably answer most of them by saying yes or no, and, if he does, if you can answer yes or no, do so and, if necessary, you will be given an opportunity to explain later. But there is no need to go into a lot of details and just prolong the record. Everything that is said has to be taken down by the Stenegrapher and written by him and that has to be paid for and there is no need to make it longer than need be.

The WITNESS: All right, sir.

- Q. (By Mr. Wolfson): In 1936, when you and your wife lived together, how long did that reconciliation last?
 - A. Two weeks.
- Q. At the end of the two weeks were your clothes packed up?
 - A. Yes.
 - Q. And you were told to leave?
 - A. Yes.
- Q. Did you and your wife have a discussion as to the fact that she didn't feel that she could get used to married life and the duties of married life, and that she had gotten used to your being away from her? And that she would prefer that you separate?
 - A. Yes.

Mr. ELLY: Objected to as to form.

The COURT: I don't think that particular question is leading.

Mr. ELLY: We are coming to the very things that were discussed.

The COURT: I don't think we will go into that.

- Q. (By Mr. Wolfson): Since that date have you and your wife lived voluntarily separate and apart?
 - A. Yes.
- Q. And has this voluntary living separate and apart between you and your wife been continuous and uninterrupted since September, 1936?
 - A. Yes.
- Q. And has there in the meantime been any sexual cohabitation or relationship between you and your wife?
 - A. None whatever.
- Q. Is this separation between you and your wife beyond any reasonable expectation of reconciliation?
 - A. Yes.

 The COURT: Mr. Elly, do you wish to cross examine?

 Mr. ELLY: No, sir.

The COURT: Note that fact in the record.

- Q. (By Mr. Wolfson): How much do you earn?
- A. Well, my base pay is \$62.00 a week.
- Q. Less what for social security?
- A. Less sixty cents.
- Q. What emergency or temporary bonus are you getting now per week?

- A. Well, it amounts to about \$4.65 a week, depending upon the length of the month. We are receiving a monthly bonus based on the operation of the business or the emergency now.
- Q. About ten per cent. of what your weekly rate of pay is?
 - A. Yes.
- Q. That amounts to about \$6.20 per week, on the average?
 - A. Roughly.

The COURT: Note the fact that Mr. Elly and the defendant are in court and that Mr. Elly representing the defendant declines to cross examine.

(Testimony of the witness concluded).

Thereupon ---

Mrs. ANNA A. FOOTE,

a witness of lawful age, produced on behalf of the Complainant, having been first duly sworn according to law, was examined, and testified as follows:

DIRECT EXAMINATION:

Questions By the REPORTER:

- Q. State your name and address?
- A. Anna A. Foote; at the present time I am down in the country with my son. My husband is dead.

Questions By Mr. WOLFSON:

- Q. You are the mother of Mr. Foote, the plaintiff in this case?
 - A. Yes, sir.
- Q. And have Mr. Foote, your son, and Mrs. Foote, your daughter-in-law, lived separate, that is, they have not lived as husband and wife since September, 1936?
 - A. Yes, sir, that is the truth.
- And have they lived voluntarily separate in that way?
 - A. It always seemed that way to me.
- Q. They haven't had any relationship sexually as husband and wife?
 - A. No, sir.
 - Q. That is, they have not maintained a home since?
 - A. No.
- Q. Do you think there is any hope of reconciliation between those two?

A. I asked her and she said she would never live with him; that's all I can tell you.

CROSS EXAMINATION:

Questions By Mr. ELLY:

- Q. Do you know when Mr. and Mrs. Foote were married?
- $A \cdot \frac{1}{4}$ He told you.
- Q. I beg your pardon?
- A. My son told you.
- Q. I know. I want it from you?
- A. I couldn't go back that far.
- Q. Was it about twenty-seven years ago?
- A. I guess it is.
- Q. And there were five children born of that marriage?
 - A. Yes, sir.
- Q. And they both have been residents of Baltimore City for the past two years or more?
 - A. Yes, sir.

Mr. WOLFSON: The residence is admitted in the papers, and the marriage and the children are admitted in the papers, anyhow.

The COURT: Is there any further testimony you wish to offer?

Mr. WOLFSON: No, sir.

Mr. ELLY: No, sir.

The COURT: There has been a cross-bill filed.

Do you wish to offer any testimony on that?

Mr. ELLY: We will dismiss it in open court.

Counsel have conferred with the Court relative to the alimony, and, subject, of course, to the further Order of the Court--- it may go up or it may go down depending on future conditions--- if Mr. Foote earns more money or if his wife gets sick and is in need of temperary help, it may go up; if his wife remarries, it may stop altogether; if Mr. Foote earns less money or his wife obtains a position from which she earns something, the amount may go down; those are things I can not forecast--- but, subject to the further Order of the Court, and, as I understand it, with the approval of counsel on both sides, alimony will be allowed and fixed now at seventeen dollars a week.

Mr. ELLY: Payable through the Probation Department.

The COURT: Payable through the Probation Department, if you so wish it.

Mr. ELLY: Yes, sir.

The COURT: And the wife's counsel is entitled to a reasonable fee which, I think, should be fifty dollars.

A Decree will be signed embodying those terms, a Decree of absolute divorce. There has been some suggestion that I might sign that Decree immediately instead of waiting the prescribed period, if counsel on both sides will sign a waiver of appeal.

Mr. ELLY: That is agreeable to me.

Mr. WOLFSON: I will prepare that paper.

There is only one other thing that may be a technical question: This boy, Robert, is eighteen, and his father could consent for him to sign up for the Navy. Technically, should there be custody of that boy with the mother or leave that out?

The COURT: Technically he is a minor, of course.

Mr. WOLFSON: Put him in the custody of the

mother?

The COURT: I was about to say that I think,

according to his behavior, he is not only a man but a patriotic man and I would very much prefer to leave out any reference to him. That matter may be taken up later after the Decree is signed.

P3931 - J. Calvin Carney P1499 - John Randreps Elly

IN THE CIRCUIT COURT NO. 2 OF BALTIMORE CITY 51B/99 - 1942

FREDERICK W. FOOTE

VS.

EMMA D. FOOTE

and

Cross Bill of Complaint

DECREE OF DIVORCE

- K

No. 46889-B

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BENJAMIN L. WOLFSON

Attorney at Law 907-908 COURT SQUARE BLDG.

BALTIMORE, MD.

LUCAS BROS., INC., BALTIMORE, FORM L 138

318. april 1942

THIS JOHNDAY OF GENERAL WILLIAM L. STUCKERT,

DECREE OF DIVORCE

FREDERICK W. FOOTE

VS.

EMMA D. FOOTE

and

Cross Bill of Complaint

IN THE

CIRCUIT COURT NO. 2

OF

BALTIMORE CITY 51B/99 - 1942 No. 46889-B

TARCH Term, 1942

* * * * * * * * * * * * *

This cause being heard in Open Court on Amended Bill of Complaint and Answer thereto, the parties, their witnesses and their respective solicitors being present and the proceedings by the Court considered; and the Cross Bill of Complaint having been dismissed in Open Court by the solicitor for the Cross Complainant:

It is Thereupon, This & day of April, A.D. 1942, by the CIRCUIT COURT NO. 2 OF BALTIMORE CITY, ADJUDGED, ORDERED and DECREED, that the said FREDERICK W. FOOTE, the above named Complainant, be and he is hereby DIVORCED A VINCULO MATRIMONII from the Defendant, EMMA D. FOOTE.

And the said Complainant, FREDERICK W. FOOTE, shall be chargeable with the payment of Seventeen Dollars (\$17.00) weekly as and for permanent alimony for the support of the Defendant, EMMA D. FOOTE, payable through the Probation Department of the Supreme Bench of Baltimore City, subject to the further order of the Court.

And it is Further Ordered that the Plaintiff, FREDERICK W.

FOOTE, pay the costs of this proceeding, including therein the
sum of Eight Dollars (\$8.00) taxed for the taking and transcription of the testimony in this cause by the Court Stenographer
in attendance.

And it is Further Ordered that the Plaintiff, FREDERICK W. FOOTE, pay to John R. Elly, solicitor for the Defendant and Cross Complainant, the sum of Fifty Dollars (\$50.00) as and for counsel fee.

Joseph N. Ulman, Judge

proper remain

51B 1165 Frederick W. Toote Emma A Foots Mandales 1046789B 36

fd 19 april 1948

468,89B

51 60 15

MANDATE

Court of Appeals of Maryland

No. 107..., OCTOBER TERM, 19.47.

Frederick W. Foote

VS.

Emma D. Foote

Appeals in one record from the Circuit
Court No. 2 of Baltimore City
Filed: Oct. 2, 1947
Mar. 18, 1948, Orders affirmed, with costs.
Opinion filed. Op. Collins, J.
Apr. 2, 1948, Decree filed.

Appellant's Cost in the Court of Appeals of Maryland,

Clerk's Cost . . . \$ 10.00

Brief \$ 114.73

Appearance Fee . . . \$ 10.00

Reply brief & Supp. \$ 29.56 Appendix

\$164.29

Appellee's Cost in the Court of Appeals of Maryland,

Brief \$ 52.51

Appearance Fee . . . \$ 10.00

. \$ xdx

62.51

\$226.80

STATE OF MARYLAND. Sct:

I, Maurice Ogle, Clerk of the Court of Appeals of Maryland, do hereby certify that the foregoing is truly taken from the record and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Appeals, this seventeenth

day of April

A. D. 19 48

Clerk

of the Court of Appeals of Maryland.

No. 107 Oclober TERM, 1947

Decree

Filed: april 2 , 1948

Frederick W. Foote	IN THE	
	COURT OF APPEALS	
vs.	OF MARYLAND	
Emma D. Foote	October Term, 19.47.	
	No. 107	

THE APPEAL in this case, standing ready for hearing, was argued by counsel for the respective parties, and the proceedings have since been considered by the Court.

It is thereupon, this first day of April , 19 48, by the COURT OF APPEALS OF MARYLAND, and by the authority thereof, adjudged, ordered and decreent that the orders of the Circuit Court No. 2 of Baltimore City, dated the 11th day of July 1947, be and the same are hereby affirmed, with costs.

OGLE MARBURY
Chief Judge for the Court.

Filed: april 2, 1948

IN THE

CIRCUIT COURT NO. 2

OF BALTIMORE CITY Case No. 46880-B

FREDERICK W. FOOTE

VS.

EMMA D. FOOTE

1700 1901 M. Carolino

PETITION and ORDER thereon.

Mr. Clerk: (19) 220)

Propage file, etc.

J. Calvin Carney

leofy:

Capiel

LAW OFFICES

J. CALVIN CARNEY

5TH FLOOR CENTRAL SAVINGS BANK BUILDING
CHARLES & LEXINGTON STS.
BALTIMORE, MD.

FILED 23. april 1946 Pd. 39

Serve on Emma D. Foote 1700 Wis of subjective notified by Red VenrottA address given, Derendant is not Nou Est. . Henneyan

Joseph G. Desgan

Copy of the Within Petition and Order of Court served on Emma D. Foote on the 2nd. day of May 1946 in the presence of Barry Hennegan.

8es p.75

Joseph G. Deegan Sheriff. FREDERICK W. FOOTE

IN THE

VS.

CIRCUIT COURT NO. 2

EMMA D. FOOTE

OF BALTIMORE CITY 51B, folio 99, Case No.46889-B

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The Petition of Frederick W. Foote, Plaintiff, by J. Calvin Carney, his Solicitor, respectfully shows:

1. That on April 18, 1942, this Court passed the following Decree in the above entitled case:

"This cause being heard in Open Court on Amended Bill of Complaint and Answer thereto, the parties, their witnesses and their respective solicitors being present and the proceedings by the Court considered; and the Cross Bill of Complaint having been dismissed in Open Court by the solicitor for the Cross Complainant:

"It is Thereupon, This 18th day of April, A.D. 1942, by the Circuit Court No. 2 of Baltimore City, Adjudged, Ordered and Decreed, that the said Frederick W. Foote, the above named Complainant, be and he is hereby DIVORCED A VINCULO MATRIMONII from the Defendant, Emma D. Foote.

"And the said Complainant, Frederick W. Foote, shall be chargeable with the payment of Seventeen Dollars (\$17.00) weekly as and for permanent alimony for the support of the Defendant, Emma D. Foote, payable through the Probation Department of the Supreme Bench of Baltimore City, subject to the further order of the Court.

"And it is further Ordered that the Plaintiff, Frederick W. Foote, pay the costs of this proceeding, including therein the sum of Eight Dollars (\$8.00) taxed for the taking and transcription of the testimony in this cause by the Court Stenographer in attendance.

"And it is further Ordered that the Plaintiff, Frederick W. Foote, pay to John R. Elly, solicitor for the Defendant and Cross Complainant, the sum of Fifty Dollars (\$50.00) as and for counsel fee.

/s/ Joseph N. Ulman Joseph N. Ulman, Judge."

2. That as appears by reference to said Decree, your Petitioner was granted an absolute divorce from said Emma D. Foote;

yet, despite this fact, the Decree required your Petitioner to pay to said Emma D. Foote, the Defendant and unsuccessful litigant in this case, the sum of \$17.00 per week as permanent alimony, subject to the further Order of this Court.

- 3. That your Petitioner has paid said sum regularly since said Decree, but that payment of the same has how become very burdensome due to income taxes, increased cost of living and the remarriage of your Petitioner.
- 4. That your Petitioner is advised that said provision of said Decree awarding Emma D. Foote, Defendant and unsuccessful litigant in this case, the sum of \$17.00 per week as permanent alimony to be paid by your Petitioner is improper, illegal, invalid and inequitable, and said Decree of April 18, 1942 should not have contained any provision for alimony in favor of said Emma D. Foote against your Petitioner, and said Decree should be amended and modified by eliminating all provision for alimony to and for said Emma D. Foote to be paid by your Petitioner.

WHEREFORE your Petitioner prays:

- (1) That the provision for the payment of alimony of \$17.00 per week by your Petitioner to said Emma D. Foote be eliminated from the provisions of said Decree, dated April 18, 1942.
- (2) That said Decree of April 18, 1942 be amended and modified by striking out all provision for payment of alimony by your Petitioner to said Emma D. Foote.
- (3) That said Emma D. Foote be required to account to your Petitioner for all moneys received by her under said Decree dated April 18, 1942, and that a judgment be rendered in favor of your Petitioner against the said Emma D. Foote for all sums so received by her under said Decree.

(4) And for such other and further relief as the nature of his case may require.

And as in duty bound, etc.

win Carney,

Solicitor for Plaintiff

STATE OF MARYLAND, CITY OF BALTIMORE, to wit:

I HEREBY CERTIFY, That on this Daday of April, 1946, before me, the Subscriber, a Notary Public of the State of Maryland in and for the City of Baltimore aforesaid, personally appeared Frederick W. Foote, the Plaintiff herein, and he made oath in due form of law that the matters and facts set forth in the foregoing Petition are true to the best of his knowledge, information and belief.

AS WITNESS my hand and Notarial Seal.

Notary Public

UPON the aforegoing Petition and affidavit, it is this			
day of April, 1946, by the Circuit Court No. 2			
of Baltimore City, in the above entitled matter,			
ORDERED that Emma D. Foote, Defendant, show cause on or			
before the, l946, why relief			
should not be granted as prayed in the aforegoing Petition, pro-			
vided a copy of this Petition and Order be served on said Emma			
D. Foote, residing at 1701 North Caroline Street, Baltimore,			
Maryland, on or before the 29 day of While			
1946.			
Michael Manley			
JUDGE			

The aforegoing Order having been returned "Non Est" as appears by the Sheriff's re-day of 1946, that the time for showing cause under said Order be extended to the 16- day of May 1946, and the time for service of a copy of the same be extended to the day of May 1946.

Michael Mauly,

IN THE CIRCUIT COURT

NO. 2 .

OF BALTINORE CITY.

FREDERICK W.FOOTE,

VS.

EMMA D. FOOTE .

RESPONDENT'S ANSWER

No 46 889 B Mr. Clerk: 2217

Please file, etc

JOHN R.ELLY, Respondent 's

Fd 11- May 1946

FREDERICK W.FOOTE,
(Petitioner)

IN THE

VS.
CIRCUIT COURT NO. 2,
OF

EMMA D. FOOTE,
(Respondent)

BALTIMORE CITY.

(51B/99) Case # 46889 -B.

To the Honorable, the Judge of said Court:

The answer of Emma D.Foote to the petition of Frederick W.Foote, filed in the above case, most respectfully says;-

-1-

She admits the allegations in paragraph one of the petition.

-2-

Answering paragraph two of the petition, she says, - that the aforementioned decree of April 18th.1942, passed by this Honorable Court in this case was passed upon the following facts and conditions which were then fully before the Court and with its full knowledge and accord; -

(a)

That at the time Frederick W.Foote was unable to sustain the allegations of desertion in his bill of complaint for an absolute divorce against this respondent and that this respondent was then ready and able to prove all of the allegations in her bill of complaint against the said Frederick W.Foote for permanent alimony.

(b)

That the parties had been living in a very unhappy state of domestic life over a period of years and there seemed no reasonable hope of any improvements therein in the future.

(c)

It was then agreed between the parties hereto, with all of the facts before it and with the full knowledge and accord of the Court that the said Frederick W. Foote would be allowed to amend his bill of complaint against this respondent to that of five years separation, under Code Article 16, section 38, as amended by the Acts of 1937, ch. 396; which involved no question of moral turpitude against either party and that this respondent would not contest it under this amendment and that no other testimony, other than that pertinent to this amendement would be offered, and that a transcript of the testimony offered to support this amendement would be had to evidence in the future that the decree was granted solely upon such testimony of the amendment to preserve the fact that this respondent was without fault in the premises and never guilty of any act or omission that would give to the said Frederick W.Foote any cause or excuse for the non-payment of alimony that the Court was to pass in the case or any alimony that it might pass in the future.

The transcript of the testimony is filed herewith and marked (Respondent's Exhibit "A") and prayed to be made a part of this answer.

(d)
It was further agreed that both parties would waive their right to appeal any decree that the Court might pass in the premises.

That the amount of Seventeen dollars per week was agreed upon, with the Court's concurrence, as a fit and proper amount to be paid this respondent by the petitioner as alimony, predicated upon his then earnings of Sixty two dollars per week, and would be subject to further orders of this Court, if these earnings were substantially reduced or increased or the respondents needs required additional sums.

(f)

That in reliance upon the aforementioned facts and agreements. between the parties hereto, which were concurred in by the Court, and for the then and future payments by the petitioner to this respondent of alimony as was then and there decreed to be paid her by the Court, this respondent did not contest the amendment to the bill of complaint filed against her under the aforementioned Act and diddismiss her cause against the petitioner for permanent alimony, and did then and there waive her right to an appeal.

(g)
That the petition is without merit in law or in equity.

-3-

Answering paragraph three of the petition, this respondent says, that the petitioner has paid thru the Probation Department of the Supreme Bench with reasonable promptness the amount designated in the decree passed April 18th.1942, since its passage, and is not now entitled to any relief therefrom as this respondent might not now be able to prove the facts which she could have proven at the time of the passage of the decree and he is guilty of laches in applying for any relief under the decree. Further answering paragraph three of the petition, she says;that she does not know if these payments have become burdensome to the petitioner on account of increased expenses, but she does know that the amount of Seventeen dollars that he is now paying does not fully provide for her maintenance and support and she verily believes that if the petitioner's income has increased substantially since the passing of the aforementioned decree, that she should be allowed and additional sum comparable with the amount of petitioner's increased income for her maintenance and support.

-4-

Answering paragraph four of the petition this respondent says; that the allegations therein are mere conclusions of the petitioner and are without foundation of fact or law applicable to the case.

Having fully answered the petition, this respondent asks that if it be proven that the petitioner's income has increased substantially since 1942, that she be allowed such further increase in the weekly payments to her by the petitioner that are comparable with his increased income and that his petition be dismissed with proper costs. As in duty bound, etc.,

N R. ELLY.

Respondent's Atty.

IN THE

CIRCUIT COURT NO. 2,

OF

BALTIMORE CITY.

Docket 51 B. folio 99.

Case No. 46889 B.

FREDERICK W. FOOTE, Petitioner

VS.

EMMA D. FOOTE, Respondent.

RESPONDENT'S EXHIBIT " A ".

No 46889 D. Mr. Clerks (22)

Please file, etc.

John R. Elly, Respondent's Att

\$11. May , 946

IN THE CIRCUIT COURT No. 2

OF BALTIMORE CITY.

* * *

FREDERICK W. FOOTE,
Complainant,
Before Judge Joseph N. Ulman.
vs.

No. 46889-B.
EMMA D. FOOTE,
Respondent.

Wednesday, April 15th, 1942.

The above-entitled matter came on to be heard before Judge Joseph N. Ulman on Wednesday, April 15th, 1942.

Mr. Benjamin L. Wolfson appeared on behalf of the Complainant.

Mr. John Randolph Elly appeared on behalf of the Respondent.

The COURT: Mr. Wolfson, I understand you wish to make an amendment.

Mr. WOLFSON: Yes, if your Honor please. Wes, sir, to amend the original Bill of Complaint by

interlineation and amend Paragraph 5 to read, "That the husband and wife herein have voluntarily lived separate and apart without any cohabitation for five consecutive years prior to the filing of the Bill of Complaint, and such separation is beyond any reasonable expectation of reconciliation."

The COURT: Leave is granted to amend.

Mr. ELLY: And, your Honor, answer is filed to

The COURT: Very well. I think the practical plan is to take testimony on the amended Bill of Complaint of the husband and, at present, limit the testimony to that.

Thereupon ---

FREDERICK W. FOOTE.

the Complainant, of lawful, age, produced on his own behalf, having been first duly sworn according to law, was examined, and testified as follows:

DIRECT EXAMINATION:

Questions By the REPORTER:

- Q. State your full name, please?
- A. Frederick W. Foote.
- Q. Where do you live?
- A. 532 West Franklin Street.

 Questions By Mr. WOLFSON:
- Q. Mr. Foote, when were you and your wife married?
- A. In December, 1915.
- Q. And you are both residents of the City of Baltimore and the State of Maryland?
 - A. Yes, sir.
- Q. You have had how many children bern as a result of this marriage?
 - A. Five.
- Q. What are their ages and names beginning with the oldest?
- A. Well, Edith, the oldest, is twenty-five; Iris is twenty-three; Charles is twenty-two; Bernice is twenty, and Robert is seventeen, going on eighteen.
- Q. Bernice, one of the younger girls, and Edith, the oldest, are married?
- A. Edith, the oldest, and Bernice, the third or twenty-year old girl, are both married.

Q. What happened in 1936? Did you go back to the house?

The COURT: Mr. Wolfson, under the circumstances you may ask leading questions.

Mr. WOLFSON: Very well, your Honor.

- Q. (By Mr. Wolfson): In 1936 didn't you, regardless of the reasons for it, go back and live at your wife's house?
- A. Well, I asked her to come back and she said she would take it under consideration and after asking her a number of times she finally consented.

The COURT: Mr. Foote, Mr. Wolfson is going to ask you questions of such a nature that you can probably answer most of them by saying yes or no, and, if he does, if you can answer yes or no, do so and, if necessary, you will be given an opportunity to explain later. But there is no need to go into a lot of details and just prolong the record. Everything that is said has to be taken down by the Stenographer and written by him and that has to be paid for and there is no need to make it longer than need be.

The WITNESS: All right, sir.

- Q. (By Mr. Wolfson): In 1936, when you and your wife lived together, how long did that reconciliation last?
 - A. Two weeks.
- Q. At the end of the two weeks were your clothes packed up?
 - A. Yes.
 - Q. And you were told to leave?
 - A. Yes.
- Q. Did you and your wife have a discussion as to the fact that she didn't feel that she could get used to married life and the duties of married life, and that she had gotten used to your being away from her? And that she would prefer that you separate?

A. Yes.

Mr. ELLY: Objected to as to form.

The COURT: I don't think that particular question is leading.

Mr. ELLY: We are coming to the very things that were discussed.

The COURT: I don't think we will go into that.

- Q. (By Mr. Welfson): Since that date have you and your wife lived voluntarily separate and apart?
 - A. Yes.
- And has this voluntary living separate and apart between you and your wife been continuous and uninterrupted since September, 1936?
 - A. Yes.
- Q. And has there in the meantime been any sexual cohabitation or relationship between you and your wife?
 - A. None whatever.
- Q. Is this separation between you and your wife beyond any reasonable expectation of reconciliation?
 - A. Yes.
 The COURT: Mr. Elly, do you wish to cross examine?
 Mr. ELLY: No, sir.

The COURT: Note that fact in the record.

- Q. (By Mr. Welfson): How much do you earn?
- A. Well, my base pay is \$62.00 a week.
- Q. Less what for social security?
- A. Less sixty cents.
- Q. What emergency or temporary bonus are you getting now per week?

- A. Well, it amounts to about \$4.65 a week, depending upon the length of the month. We are receiving a monthly benus based on the operation of the business or the emergency new.
- Q. About ten per cent. of what your weekly rate of pay is?
 - A. Yes.
- Q. That amounts to about \$6.20 per week, on the average?
 - A. Roughly.

The COURT: Note the fact that Mr. Elly and the defendant are in court and that Mr. Elly representing the defendant declines to cross examine.

(Testimony of the witness concluded).

Thereupon ---

Mrs. ANNA A. FOOTE,

a witness of lawful age, produced on behalf of the Complainant, having been first duly sworn according to law, was examined, and testified as follows:

DIRECT EXAMINATION:

Questions By the REPORTER:

- Q. State your name and address?
- A. Anna A. Foote; at the present time I am down in the country with my son. My husband is dead.

Questions By Mr. WOLFSON:

- Q. You are the mother of Mr. Foote, the plaintiff in this case?
 - A. Yes, sir.
- Q. And have Mr. Foote, your son, and Mrs. Foote, your daughter-in-law, lived separate, that is, they have not lived as husband and wife since September. 1936?
 - A. Yes, sir, that is the truth.
- Q. And have they lived voluntarily separate in that way?
 - A. It always seemed that way to me.
- Q. They haven't had any relationship sexually as husband and wife?
 - A. No, sir.
 - Q. That is, they have not maintained a home since?
 - A. No.
- Q. Do you think there is any hope of reconciliation between those two?

A. I asked her and she said she would never live with him; that's all I can tell you.

CROSS EXAMINATION:

Questions By Mr. ELLY:

- Q. Do you know when Mr. and Mrs. Foote were married?
- A. 4 He told you.
- Q. I beg your pardon?
- A. My son told you.
- Q. I know. I want it from you?
- A. I couldn't go back that far.
- Q. Was it about twenty-seven years ago?
- A. I guess it is.
- Q. And there were five children born of that marriage?
 - A. Yes, sir.
- Q. And they both have been residents of Baltimore City for the past two years or more?
 - A. Yes, sir.

Mr. WOLFSON: The residence is admitted in the papers, and the marriage and the children are admitted in the papers, anyhow.

The COURT: Is there any further testimony you wish to offer?

Mr. WOLFSON: No, sir.

Mr. ELLY: No. sir.

The COURT: There has been a cross-bill filed.

Do you wish to offer any testimony on that?

Mr. ELLY: We will dismiss it in open court.

The COURT: Well, that concludes the testimony. Counsel have conferred with the Court relative to the alimony, and, subject, of course, to the further Order of the Court --- it may go up or it may go down depending on future conditions --- if Mr. Foote earns more money or if his wife gets sick and is in need of temporary help, it may go up; if his wife remarries, it may stop altogether; if Mr. Foote earns less money or his wife obtains a position from which she earns something, the amount may go down: those are things I can not forecast --- but, subject to the further Order of the Court, and, as I understand it, with the approval of counsel on both sides, alimony will be allowed and fixed now at seventeen dollars a week.

Mr. ELLY: Payable through the Probation Depart-

The COURT: Payable through the Probation Department, if you so wish it.

Mr. ELLY: Yes, sir.

The COURT: And the wife's counsel is entitled to a reasonable fee which, I think, should be fifty dollars.

A Decree will be signed embodying those terms, a Decree of absolute divorce. There has been some suggestion that I might sign that Decree immediately instead of waiting the prescribed period, if counsel on both sides will sign a waiver of appeal.

Mr. ELLY: That is agreeable to me.

Mr. WOLFSON: I will prepare that paper.

There is only one other thing that may be a technical question: This boy, Robert, is eighteen, and his father could consent for him to sign up for the Navy. Technically, should there be custody of that boy with the mother or leave that out?

The COURT: Technically he is a minor, of course.

Mr. WOLFSON: Put him in the custody of the

mother?

The COURT: I was about to say that I think,

according to his behavior, he is not only a man but a patriotic man and I would very much prefer to leave out any reference to him. That matter may be taken up later after the Decree is signed.

We defree

In the Circuit Court No. 2

of

Baltimore City
1942 518/99

FREDERICK W. FOOTE 532 W. Franklin Street

VS

EMMA D. FOOTE, 1810 N. Caroline Street

and Cross Bill

A NSWER TO THE CROSS BILL OF COMPLAINT

Mr. Clerk:
No 46 889 B

2/37

Please file, etc.

BENJAMIN L. WOLFSON
Solicitor for the Cross
defendant.

BENJAMIN L. WOLFSON

Attorney at Law 99J-908 COURT SQUARE BLDG.

BALTIMORE, MD.

LUCAS BROS., INC., BALTIMORE, FORM L 133

3d 4. April 1942

FREDERICK W. FOOTE, 532 W. Franklin Street,

IN THE

VS

CIRCUIT COURT NO. 2

EMMA D. FOOTE, 1810 N. Caroline Street. OF

BALTIMORE CITY

and

and *

CROSSBILL OF COMPLAINT * docket No. 518/99 46889-B

TO THE HONORABLE, THE JUDGE OF THE SAID COURT:-

The Answer of Frederick W. Foote to the Cross Bill of Complaint filed heretofore against him, respectfully says:-

- That he admits the allegations of paragraphs 1, 2 and
 of the said Cross Bill of Complaint.
- 2. That as to paragraph 4, he admits that an answer has been filed to the original bill of complaint herein, but he denies that has any probative force or effect on the facts to be presented in open court under oath.
- 3. That he emphatically denies the allegations of paragraph 5 of the said Cross Bill of Complaint, and puts the Cross Complainant upon strict proof thereof.
- 4. That he admits the existence of the pendente lite order in this cause, but he emphatically denies he earns \$70 per week,— his actually earnings being \$61.38 weekly (taking into account a 62% weekly social security deduction), plus a weekly \$6.20 emergency payment which is not binding upon his employer, and which is a contingent weekly income which may be abrogated and curtailed at the will of his employer.

And, having fully answered any and all the material allegations of the said Cross Bill of Complaint, your cross respondent begs to be hence dismissed, and with his reasonable and proper costs.

And as in duty bound, etc. Benjamin Molfson

BENJAMIN L. WOLFSON

Solicitor for Cross Complainant

Cross Complainant.

1088 COMPT

25% Circuit Court No. 2 Docket No. 51,6 Forte Food May 1 1 Vot Petition and Order to Take Testimony Under 30th Rule. Copy-enpuel No. 46889-12 1237 Filed of april 1977 on John R. Elly solicitor on the 28 th day of april 1947 in the puseuse of Joseph Nalmowski The p. W. Han K. Ella 63 4 Equitable.

SERVE ON

Jernis asumed 4/20/47

SHERIFFIS OFFICE BPR 26 12 18 PM '47 BALTIMORE CITY, MD.

IN THE

Circuit Court No. 2

OF—

BALTIMORE CITY. 51 B/99-1171

Frederick W. Foote

vs.

Emma D. Foote

To the Honorable the Judge of the Circuit Court No. 2 of Baltimore City:

The Plaintiff in this case respectfully shows unto your Honor

That he desires to examine orally, in open Court and in the presence of your Honor, certain witnesses who can testify to the facts and matters relevant to the allegations in thexalilxxxxxxxxx petition filed herein on May 1st, 1946.

Your Petitioner therefore prays your Honor to pass an order, according to the Statutes for such cases made and provided.

And as in duty bound will ever pray.

vin Carney
Solicitor for Plaintiff.

Upon the foregoing Petition and Application it is this W day of April ,

A. D. 19 47, Ordered that the Petitioner have leave to take testimony as prayed and that the testimony to be offered be taken as required by the 30th Rule of this Court. And it is further Ordered that a copy of this Petition and Order be served on the Emma D. Foote

or her Solicitor, on or before the 20 day of 47.

Circuit Court No. 2

Name and Address of the Owner, when the Owner, which the Ow	OCKET NO
19 · I	OOCKET NO.
20.	×

Summons for Witnesses

No. 46889-B

Filed

....., day of, 19......

In the Circuit Court No. 2 of Baltimore City

			uch		-7-
	Th.	e Sheriff will pleas			,
returnable on	mond	my page	the	12	day of
may		0 o'clock A. M			
				-	No. of the last

Mr. Clerks

Please issue subpoena duces tecum directed te
the Treasurer nad/or the Paymster of the Fidelity and
Deposit Company of Maryland, Fidelity Building, Raixim
Charles & Lexington streets, Baltimore Md. to appear before
His Honor, Judge Dickerson, in the Circuit Court No. 2. of
Baltimore City, Room No. 241 Court House, at 10 o'clock A.M.,
Monday, May 12th.1947, and bring with him all of the records
of the Fidelity and Deposit Company of Maruland, showing the
weekly payments and/or any other payments made by it to
Frederick W.Foote as salary, bonus or in any other manner
from May 1st.1946 to May 1st.1947.

John R.ELLY,

Attorney for Emma D. Foote.

to testify for	Defen	dant	
in the case of	/	7	
3	atce	vs. Jose	

Clerk of Circuit Court No. 2 of Baltimore City.



RECEIVED SHERIFF'S OFFICE

MAY 9 12 34 PM '47
BALTIMORE CITY, MD.

IN CLEOUIT COURT WG. 3 OF BALTIMORE GITY Toste Forte 2.46889 Id 15 May 1947 THE SHOWITHER NO.

This Court is of the opinion that the decree in the instant case may not be challenged by petition but by a bill of review, if so desired, and the Court is further of the opinion that if upon a hearing on the merits it should appear that the allowance to the wife of \$17.00 a week "as permanent alimony" was pursuant to and in accordance with an agreement between the parties, that this Court will in that event be without power or authority to vacate that portion of the decree which provides for the payment of "permanent alimony" to the wife.

An order will be signed dismissing the petition without prejudice to the right to file a bill of review.

Edin Meuron

"If, however, the allowance to the wife in the decree is the result of a previous agreement between the spouses and does not fall within the accepted definition of alimony, so that it would have been impossible for the chancellor to have allowed permanent alimony as the decree provides, then, notwithst anding the parties and even the Court called it alimony, the allowance for the wife in the decree was not alimony and the court of equity has no power to modify the decree as in the case of an award of alimony."

The Court further said that the decision of
the chancellor was a "construction of the decree by the tribunal
of its origin and neither of the parties was in a position
to complain since both were estopped by their agreement from
asserting that the scope given the decree was not as they
had stipulated it should be when passed by the Court * * *
nor does this tribunal find there was any error under all the
circums tames in the chancellor's denying relief and dismissing
the petition of the husband in conformity with the ruling
on the demurrer."

agreement should be filed in the cause. Pursuant to this agreement, the decree contained a provision "that said defendant shall pay said complainant as permanent alimony the sum of \$25.00 per week, accounting from the date of this decree until her death or remarriage or until the further order of this Court." More than two years after the passage of the decree the husband filed a petiton asking that the amount of the weekly payments be reduced, on the assumption that the decree was for alimony. The wife demurred to the petition and her demurrer was sustained, the chancellor holding the nature of the decree prevented it from being alimony and that its provisions as to the obligations of the husband were not subject to alterations by the chancellor.

Subsequent to the ruling on the demurrer to
the husband's petition, the wife petitioned the Court for an
attachment of the husband for contempt in not paying according
to the terms of the decree. To this petition a demurrer was
filed by the husband and the demurrer was sustained on the
ground that the Court would not issue an attachment for contempt
because the decree was not for the payment of alimony, and
this ruling was affirmed on appeal.

Court as to alimony is continuing whether reserved or not, and so much of the decree as relates to the allowance of alimony may be from time to time changed, and the allowance increased or decreased or otherwise modified so as to conform to changed conditions."

The Court also approved and followed the decision in the case of Braecklein v. Braecklein, supra, and said: "The power to rescind, after enrollment, the right to be paid in installments of alimony would necessarily include the power to modify the allowance by a fractional reduction. So, that the decision cited affirmed the rule that the power to modify by rescission or reduction was inherent in a court of equity, and did not exist by reason of an express reservation in the decree."

In Dickey v. Dickey, 154 Md. 675, while the proceedings for divorce were pending, the parties executed a paper writing whereby they agreed that in the event of the passage of a decree therein in favor of the plaintiff, a proper allowance to the plaintiff as and for permanent alimony should be in the sum of \$25.00 per week and that said sum should be payable unto her until her death or remarriage, and that the

with respect to the payment of alimony. It was urged that as the decree had become enrolled that "the Courts have no power to change those rights except in cases not heard upon the merits, where it is alleged that the decree has been entered by mistake or surprise, or under such circumstances as shall satisfy the court, in the exercise of a sound discretion, that the enrollment should be discharged."

The Court, quoting from the opinion in Emerson v. Emerson, 120 Md. 584, said:

"We are of the opinion that the better reasoning leads, irresistibly, to the conclusion that in States where (as in Maryland) alimony is regarded as a maintenance for the wife's support out of the income of the husband and not a division of property, the jurisdiction exists in the courts of equity to modify that part of the decree providing for alimony whether the decree grants divorce a vinculo or a mensa."

In Winkel v. Winkel, 178 Md. 489, at 500, 501, the Court quoted from Knabe v. Knabe, 176 Md. 606, where it was said: "So that the law of this State now is that where alimony is allowed in a decree awarding a divorce a mensa or a vinculo, or in a decree awarding alimony alone, the jurisdiction of the

United Lines Tel Co. v. Stevens, 67 Md. 156; Long Contracting Co. v. Albert, 116 Md. 114.

"In the recent case of Primrose v. Wright, 102
Md. 109, we said, 'but there are certain well defined exceptions
to this general rule which are equally well established, where
the procedure may be by petition. These are in cases not heard
on their merits, and in which it is alleged that the decree was
entered by mistake or surprise or under such circumstances as
shall satisfy the Court in the exercise of a sound discretion
that the enrollment ought to be discharged and the decree set
aside.' Fox v. Reynolds, 50 Md. 573; Herbert v. Rowles, 30
Md. 278; Pfaff v. Jones, 50 Md. 263."

It does not seem to the Court that the instant case falls within any of the exceptions, and that a bill for review and not a petition is the proper method for challenging the enrolled decree in this case.

In Braecklein v. Braecklein, 136 Md. 32, 36, on March 10th, 1919, a decree was passed awarding the plaintiff a decree of divorce a vinculo matrimonii and \$18.00 per week permanent alimony. On August 1st, 1919, the Court passed an order rescinding and vacating the provision of the decree

formal manner than can be done on petition * * * But the
general rule has three exceptions where the procedure may be
by petition: (1) Where the case was not heard on its merits,
(2) where the decree was entered by mistake or surprise, and
(3) where the circumstances satisfy the court in the exercise
of a sound discretion that the enrollment ought to be discharged
and the decree set aside."

In Foxwell v. Foxwell, 118 Md. 471, a petition was filed to vacate a decree of absolute divorce after its enrollment, on the ground that the petitioner had previously been granted a divorce a mensa et thoro, and that the previous case was not called to the attention of the Court. The petition was dismissed and the ruling was affirmed by the Court of Appeals, which said:

"The general rule of practice is well settled in this State that final decrees or orders in the nature of final decrees, after enrollment cannot be called in question, by mere petition, but must stand for what they purport to be, unless revised, annulled or reversed by a bill of review or by an original bill for fraud. Rice v. Donald, 97 Md. 396; Thruston v. Devecmon, 30 Md. 210; Straus v. Rost, 67 Md. 479;

injured wife. In the instant case the decree was based on consensual separation, and neither the plaintiff nor the defendant is an injured party. So far as the decree recognizes the right to alimony in principle, it has become enrolled. It would seem that it may be questioned or vacated only on grounds of mistake, fraud or surprise. While there is no direct evidence that the limiting of testimony to the question of voluntary separation, the failure to contest the plaintiff's claim to a divorce on this ground and the allowance of alimony to the wife was by consent, an inference to this effect may be drawn from the proceedings heretofore had in the instant case.

In Bailey v. Bailey, 181 Md. 385, 388, Judge Delaplaine said: "It is a general rule that a court of equity cannot revise or revoke a decree after it is enrolled, except upon a bill of review for error apparent on the face of the decree or for newly discovered evidence, or upon original bill for fraud. After a decree is clothed with the solemnity of enrollment, it must be allowed to stand for what it purports to be on its face, except for merely clerical or accidental errors, until it is revised or revoked in a more solemn and

should be amended to a charge of voluntary separation for five years, and that the defendent would not contest the amendment but that no testimony except such as would be pertinent to the amendment would be offered; that the transcript of the testimony in support of the amendment would be evidence of the fact that the decree was granted solely on that ground; that both parties would waive their right of appeal, and that the amount of alimony was agreed upon with the Court's concurrence, and that the plaintiff has paid all alimony to date, with reasonable promptness, and prayed for a dismissal of the petition.

The plaintiff, by petition, has attacked the allowance of alimony in principle but not with respect to the amount. There is no question but that the allowance of alimony is never res adjudicata as to the amount and that it may be increased or reduced according to the financial circumstances of the parties, or terminated in event of the remarriage of the wife, but that is not the question in the instant case.

The plaintiff prays the Court to eliminate alimony in toto on the ground that no alimony should ever have been allowed, on the theory that alimony may never be allowed except to an

On the same day Judge Ulman signed a decree awarding a divorce a vinculo matrimonii to the plaintiff and permanent alimony of \$17.00 a week to the defendant, subject to the further order of the Court. On the same day the plaintiff and defendant, through their respective counsel, waived their right of appeal.

on April 23rd, 1946, the plaintiff filed a petition in this cause in which the previous proceedings were cited, and prayed that the provision for alimony of \$17.00 a week be eliminated from said decree of divorce, that said decree be amended by striking out the provision for the payment of alimony, and that the defendant be required to account for all monies received by her from the plaintiff under said decree, and that a decree therefor be mendered in his favor on the ground that the provision for alimony was improvident and should never have been incorporated in said decree.

This petition was an swered on May 11th, 1946, by the defendant, in which she averred that the parties, with all the facts before them and with the full knowledge and accord of the Court, had agreed that the bill of complaint

Ulman on April 18th, 1942, pursuant to an order authorizing the taking of testimony under the 30th Rule. The Judge noted in the course of the trial that the solicitor for the plaintiff desired to amend his bill of complaint, leave was granted to do so, and the following paragraph was added to the bill of complaint:

"That the husband and wife herein have voluntarily lived separate and apart without any cohebitation for five consecutive years prior to the filing of the bill of complaint, and such separation is beyond any reasonable expectation of reconciliation."

A. Foote, his mother, was taken in open court in support of the paragraph added to the bill of complaint. Neither witness was cross-examined and the Court directed the stenographer to "note the fact that Mr. Elly and the defendant are in Court and that Mr. Elly, representing the defendant, declines to cross-examine."

The plaintiff testified that his base pay was then \$62.00 a week, and that he was receiving a weekly bonus of \$6.20, less a Social Security tax of sixty cents a week.

IN THE CIRCUIT COURT NO. 2 OF BALTIMORE CITY

Docket B-99, 1942.

FREDERICK W. FOOTE

VS.

EMMA D. FOOTE

MEMORANDUM

plaintiff filed a bill for a decree of divorce a mensa et thoro against the defendant on the ground of desertion, and on February 9th, 1942, the defendant answered the bill and denied the charge of desertion. On March 29th, 1942, a final order was passed, awarding the defendant alimony pendente lite at the rate of \$17.50 a week. On April 4th, 1942, the defendant filed a cross bill of complaint, in which she charged the plaintiff with having deserted her and prayed for permanent alimony; on the same date the plaintiff answered the cross bill and denied that he had deserted the defendant.

The case was heard before the late Judge

51B116 OLBURIT WOORT BALTOLORE CLEY toole Jorte arder (rs) 2046889-1 7d 23 may 1947 FREDERICK W. FOOTE

Complainant

IN THE

The second second

CIRCUIT COURT NO. 2

VS

:

OF

EMMA D. FOOTE

Respondent

BALTIMORE CITY

ORDER

The Petition of Frederick W. Foote, filed herein on April 23, 1946, and the Answer of Emma D. Foote coming on for hearing in Open Court and being submitted with said Petition and Answer thereto and exhibits filed in said Petition and Answer, the Court being of the opinion that the relief sought by said Petition may only be accomplished by way of Bill of Review, it is this 23 day of May, 1947, by the Circuit Court No. 2 of Baltimore City in the above entitled matter, ADJUDGED, ORDERED and DECREED

That said Petition be and the same is hereby dismissed, expressly without prejudice; with the right to file an amended Petition, a Bill of Review or a Petition for Declaratory Decree.

JUDGE

Estrin Deckusor

CT. CT. No. 2.

51- B<u>-99/</u> 19 42 46889-B

Fred W. Foote

VS.

Emma D. Foote

ORDER OF COURT NISI For Contempt

Order:

No. 46889-B.
Copy = Copied

Filed 23 June

19

SERVE ON

Fred W. Foote

3321 Park Lawn Avenue.

RECEIVED JUN 24 3 35 PM '47 BALTIMORE CITY, MO.

Mon Est Haare

Frederick W. Foote	IN THE
3321 Park Lawn Avenue	Circuit Court No. 2
vs.	>
Emma D. Foote	OF
1670 Yakona Road	BALTIMORE CITY
	232
Ordered by the Circuit Court No. 2 of Balti	more City this day of June 19 47.
that when Frederick W. Foote	appear before this Court in person,
on the 27th day of June , 19	47, at 10 o'clock A. M., and then and there show cause,
if any he may have, why he should not be pu	unished for contempt of this Honorable Court in not
Permanent	18th day of April , 1942,, by him to the Emma D. Foote ; provided, a
100kg (1985) 100kg (1985) 110kg	ick W. Foote on or before the 25th day
of June , 19 47.	
	John 1. Trucker
	Judge.
-Solieitor	
Arrears due 6-21-47 \$262.00	
Probation Department	
-True-Copy:Test-	4004
-Elerk.	

HEREBE COLLEGE THAT OF MAY OF CHILD 12, before me, the sufficience, a Notary Public of the State of Hardiand, in and for the Color of Baltigre aloresaid, personally ear of FRESHRICK F. FOUT and made ofth is due form of law et the matters and facts set forth to the aforegoing Demurrer and true told bus not smround edge Information and belief and esoque Ton behneini to belil ton al retrumed blaz Jadt redich of delay.

DAL WATER STATE STATE STATE STATE

28

FREDERICK W. FOOTE

a

IN THE

Plaintiff

:

CIRCUIT COURT NO. 2

VS

:

OF

S

BALTIMORE CITY

EMMA D. FOOTE

Defendant

Docket: 51/B Folio 99

: : : : : : : : : :

DEMURRER TO ATTACHMENT NISI

TO THE HONORABLE, THE JUDGE OF SAID COURT:

Frederick W. Foote, Plaintiff, demurs to the attachment nisi issued herein under date of the v3ml 1947, for the following reasons:

1: That the provision of the Decree herein, dated April 18, 1942, directing the payment by said Frederick W. Foote to said Emma D. Foote of the sum of Seventeen Dollars (\$17.00) per week is not alimony.

2: That the provision in said Decree for the payment of the sum of Seventeen Dollars per week by the said Frederick W. Foote to said Emma D. Foote was incorporated in said Decree pursuant to the agreement of the parties as disclosed by the opinion of the trial Judge and the answer of Emma D. Foote to the Petition of said Frederick W. Foote filed herein on April 23, 1946.

3: And for other reasons to be assigned upon the hearing of this demurrer.

Frederick W. Foote - Plaintiff

J. Calvin Garney

y - Solicitor for

CITY OF BALTIMORE:

TO WIT

STATE OF MARYLAND:

I HEREBY CERTIFY, That on this the day of 1947, before me, the subscriber, a Notary Public of the state of Maryland, in and for the City of Baltimore aforesaid, personally appeared FREDERICK W. FOOTE and made oath in due form of law that the matters and facts set forth in the aforegoing Demurrer are true to the best of his knowledge, information and belief and further that said Demurrer is not filed or intended for purpose of delay.

AS WITNESS my hand and Notarial Seal.

Elizabeth Motary Public

5/B 1161/1942 Frederick W. Footo Emma Doote Mohor to Mohor Motor No 46889 B 27 July 1947

FREDERICK W. FOOTE

IN THE

:

CIRCUIT COURT NO. 2

VS

:

OF

EMMA D. FOOTE

Defendant

BALTIMORE CITY

Docket: 51/B Folio 99

::::::

MOTION TO RESCIND ATTACHMENT NISI

TO THE HONORABLE, THE JUDGE OF SAID COURT:

Frederick W. Foote, Plaintiff herein, moves that the attachment nisi issued him under date of June v3 d, 1947 be rescinded and said attachment quashed for the following reasons:

- 1: That the provision of the Decree herein, dated April 18,1942, directing the payment by said Frederick W. Foote to said Emma D. Foote of the sum of Seventeen Dollars (\$17.00) per week is not alimony.
- 2: That the provision in said Decree for the payment of the sum of Seventeen Dollars per week by the said Frederick W. Foote to said Emma D. Foote was incorporated in said Decree pursuant to the agreement of the parties as disclosed by the opinion of the trial Judge and the answer of Emma D. Foote to the Petition of said Frederick W. Foote filed herein on April 23, 1946.
- 3: And for other reasons to be assigned upon the hearing of this motion.

. Calvin Carney - Solicitor for Plaintiff CITY OF BALTIMORE:

TO WIT

STATE OF MARYLAND:

I HEREBY CERTIFY, That on this the day of the State of 1947, bwfore me, the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore aforesaid, personally appeared FREDERICK W. FOOTE and made oath in due form of law that the matters and facts set forth in the aforegoing Motion are true to the best of his knowledge, information and belief.

AS WITNESS my hand and Notarial Seal.

Elmalith he Cohoo Notary Public

5/13.11 Fredrick W Jootu C. Kilfeely.

FREDERICK W. FOOTE
Plaintiff

IN THE

CIRCUIT COURT NO. 2

VS

OF

4

EMMA D. FOOTE

Defendant

BALTIMORE CITY

Docket: 51/B Folio 99

ORDER OVERRULING MOTION TO RESCIND ATTACHMENT NISI AND REFUSING TO QUASH ATTACHMENT

Court on motion of Frederick W. Foote to rescind Order of this Court, dated June 23, 1947, directing that the said Frederick W. Foote appear in this Court and show cause why he should not be punished for contempt of this Court in not obeying the Order of this Court passed on the 18th day of April, 1942, directing the payment of permanent alimony by him to the said Emma D. Foote, and to quash said attachment, testimony has been taken on behalf of the respective parties, counsel for the respective parties having been heard, and the entire proceedings read and considered, it is thereupon this ______ day of July, 1947, ADJUDGED, ORDERED and DECREED as follows:

- 1: That the motion of the said Frederick W. Foote to rescind said Order, dated June 23, 1947, hereinbefore recited, be and the same is hereby refused and denied.
- 2: That the motion of the said Frederick W. Foote to quash the attachment nisi herein, dated June 23, 1947, for failure to comply with the Order of this Court, dated April 18, 1942, be and the same is hereby refused and denied.
 - 3: That the said Frederick W. Foote shall continue to

pay to the said Emma D. Foote the sum of Seventeen Dollars (\$17.00) per week as permanent alimony in accordance with Decree of this Court, dated April 18, 1942.

4: That said Frederick W. Foote pay at once to the said Emma D. Foote the sum of One Hundred Nineteen Dollars (\$119.00), being seven (7) weeks payments at Seventeen Dollars (\$17.00) per week accounting from the date of the last payment made by said Frederick W. Foote on May 22, 1947, being the amount said Frederick W. Foote admits to be owing under the said Order, if the same is valid; that in addition thereto, Frederick W. Foote shall pay to Emma D. Foote all arrearages, if any, under the aforesaid Decree, dated April 18, 1942, as may be determined by this Court after the parties have had a reasonable opportunity to verify the amount due through their receipts and the records of the Probation Department of Baltimore City.

5: That payments by said Frederick W. Foote to said

Emma D. Foote in compliance with this Order and said Decree, dated

April 18, 1942, shall be without projudice, to the right of said

Frederick W. Foote to prosecute an appeal to the Court of Appeals

of Maryland from Order of this Court bearing even date herewith

and passed prior hereto overruling demurrer filed by said Frederick W. Foote to Order of this Court, dated June23, 1947, and also

appeal by said Frederick W. Foote to said Court of Appeals of

Maryland from this Order.

JUDGE

Georgian Con

ORDER GVERRETTEG DEMURREN

Tols Satter coming on for hearing upon demurrer of Frederick W. Fote to order of Cals Court, dated June 23, 1947

directing the faid Frederick W Poote to appear in this Court and show Soud why he should for punished for contempt of this Monoral Court for not proving the Order of this Court passed on Ayri 18, 1942 taxed in the payment of permanent

on by him to the said inna D. Foote, counsel for the respective parties having been heard, and the entire proceedings The same have the tell the manual to be hard to have have FREDERICK W. FOOTE
Plaintiff

IN THE

CIRCUIT COURT NO. 2

VS

OF

EMMA D. FOOTE

BALTIMORE CITY

Defendant

Docket: 51/B Folio 99

.

ORDER OVERRULING DEMURRER

This matter coming on for hearing upon demurrer of Frederick W. Foote to Order of this Court, dated June 23, 1947, directing the said Frederick W. Foote to appear in this Court and show cause why he should not be punished for contempt of this Honorable Court for not obeying the Order of this Court passed on April 18, 1942 directing the payment of permanent alimony by him to the said Emma D. Foote, counsel for the respective parties having been heard, and the entire proceedings read and considered, it is thereupon this day of July, 1947, by the Circuit Court No. 2 of Baltimore City in the above matter ORDERED that the said demurrer be and the same is hereby overruled.

JUDGE

Hear of Such

Circuit Court No. 2

51/3/164

Frote

ORDER FOR APPEAL

No. 46889- /3 (33)

71 6 august 1947

FREDERICK W. FOOTE

Plaintiff

VS

EMMA D. FOOTE

Defendant

IN THE

Circuit Court No. 2

OF

BALTIMORE CITY

Docket: 51/B Folio 1164

Mr. Clerk: Please enter an appe	eal on behalf of Fre c	lerick W. Fo	ote - Pl	aintiff	
		<u> </u>			
from the Order	passed on the	llth	day of	July	19. 47
Overruling Motion to the Court of Appeals of	to Rescind Atta	chment Nisi	and Refu	using to (Quash Attachmen
	f X				
Frederick W. Foote	stoole.	Walne	Janen		4
	J. (Calvin Carne	y - Se	dicitor for A_I	opellant,

State of Maryland, Baltimore City, to wit:

I HEREBY CERTIFY, that on this	31 st. d	ay of July	19 47, before me,
a Notary Public of the			
the Subscriber/Klenk Kker Klenk Cana	XXXXXX Baltimore	City, personally ap	peared Frederick

W. Foote

and made oath in due form of law that this appeal is not made for the purpose of delay.

As Witness my hand and Notarial Seal.

Shakai Da Kirrix Karrix Vox x & Raisan X & KARRIX Notary Public

Circuit Court No. 2

5-1/3 1164 1942 Foste Froste

ORDER FOR APPEAL

No. 46889-18

78 6 august 1947

FREDERICK W. FOOTE

Plaintiff

VS

EMMA D. FOOTE

Defendant

IN THE

Circuit Court No. 2

OF

BALTIMORE CITY

Docket: 51/B Folio 1164

Mr. Clerk:

Please enter an appeal on behalf of Frederick W Foote - Plaintiff

from the Order passed on the 11th day of July 19 47

Overruling Demurrer

to the Court of Appeals of Maryland.

J. Calvin Carney

Solicitor for Appellant,

State of Maryland, Baltimore City, to wit:

I HEREBY CERTIFY, that on this day of July 1947, before me, a Notary Public of the State of Maryland, in and for the Subscriber/Eleck Electric Electric Baltimore City, personally appeared

FREDERICK W. FOOTE

and made oath in due form of law that this appeal is not made for the purpose of delay.

As Witness my hand and Notarial Seal.

KRIK KOMEKKANIK KANIKANA KANIKANAN KANIKA

Notary Public

55- 81165

Frederick W. Foote Emma D. Forte

Plaintiff Surgintion of Record exc

No 46 889-B

H 26 august, 1947

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FREDERICK W. FOOTE

IN THE

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CIRCUIT COURT NO. 2

VS

OF

EMMA D. FOOTE

BALTIMORE CITY

Docket: 51/B

Folio 99 - 1161-1164

.

PLAINTIFF'S-PETITIONER'S-APPELLANT'S DESIGNATION OF RECORD ON APPEAL

The Plaintiff-Petitioner-Appellant, Frederick W. Foote, by J. Calvin Carney, his attorney, designates the following to be included in the Record on Appeal in the above entitled case.

1: Docket entries

2: Bill of Complaint filed February 4,1942

3 3: Answer to Bill of Complaint filed February X, 1942

4: Cross Bill for permanent alimony filed April 4, 1942

/3 5: Answer to Cross Bill filed April 4, 1942

/5 6: Testimony filed April 15, 1942

7: Decree of April 18, 1942

19/20 8: Petition of Frederick W. Foote filed April 23, 1946

9: Answer of Emma D. Foote to said petition filed 5/11/46

10: Order dated May 23, 1947

27 11; Opinion of Judge Edwin T. Dickerson

27 12: Order of June 23, 1947

13: Demurrer to attachment nisi filed July X, 1947

14: Motion to rescind attachment nisi filed July 8, 1947

30 15: Order of July 11, 1947 overruling demurrer

3/ 16: Order of July 11,1947 denying motion to rescind Order of June 23, 1947 and refusing to quash attachment nisi thereon

√√ 37√33 17: Notices of appeal from two decrees or orders dated July 11, 1947.

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J. Calvin Carney - Attorney for Frederick W. Foote - Plaintiff -

Petitioner-Appellant

SERVE ON

Frederick W. Forte

SHERIFF'S OFFICE SEPTIMORE CITY, MD.

ORDER OF COURT NISI
for Contempt

Order:

Capy = Copul

No.46889-B.

Filed Bulkept.,

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51/3 99

Treduces he -t- add.	
y Janu	IN THE
vs.	Circuit Court No. 2
Emma D. Fools	OF
	BALTIMORE CITY
ORDER OF CO	OURT NISI
FOR CONT	TEMPT
Ordered by the Circuit Court No. 2 of Bal	timore City this 3 day of 6 19
that the Cauchy	appear before this Court in person
att Collows	9.4, at 10 o'clock A. M., and then and the
on the day of the 1	9.4, at 10 o'clock A. M., and then and the
show cause, if any he may have, why he should not b	
in not obeying the Order of this Court passed on the	day of July , 19 4
directing the payment of Alimony, pendente lite, h	
copy of this Order be served on the said	anity on or before the 8
of Sept , 19 47.	
	A hulling
	- Mullimaxon
A DS	Judge.
1. A. Gely	
Solicitor	
True Copy: Test	
Clerk.	

Foote VS. ORDER OF COURT NISI for Contempt Order: сору No. В.

SERVE ON

 Frederick	W.	Foote	

FREDERICK W. FOOTE	IN THE		
vs.	Circuit Court No. 2		
EMMA D. FOCTE	OF		
	BALTIMORE CITY		
ORDER OF CO	OURT NISI		
FOR CON	TEMPT		
	be punished for contempt of this Honorable Councille. Llthday of July , 19 47. by him to the Defendant ; provided,		
Solicitor			

True Copy: Test

ohn S. Clarke
Clerk.