

(African Americans – Virginia) Gunter, Benjamin Thomas, Sr., (1831 – 1898) **Manuscript Account Books and Papers of Virginia Lawyer Benjamin Thomas Gunter, of Accomack County, entries dated 1851 -1872, including Many Entries Involving Free African American Clients**

Collection of materials consisting of two folio ledger; the first covering the years 1851-1872,15-page name index, 305 manuscript pages, plus blanks, bound in contemporary sheep, black leather spine label, entries in very good, clean and legible condition, the second, contains a 13-page name index, 180 manuscript pages of entries, bound in ¼ sheep and marbled boards, very good. This account book covers the post-Civil War years, 1865-1871; 12mo Account book for Gunter's farm 1876-1877, 50 pages; 71 documents, papers, bills and receipts, totaling 87 pages.

Gunter lists accounts for legal representation for white clients; Gunter also represented many free African Americans and there are over 100 entries related to slavery or free African Americans. He represented free African Americans in cases proving their will, their freedom, or granting their freedom, apprenticeships, as well as in a variety criminal cases, petty crimes and felonies, including a trial involving a group of free African Americans who aided slaves in their escape. In addition to his individual Black clients Gunter did legal work in Commonwealth Court many cases involved work for the Overseers of the Poor, an organ of local government in every county. Apprenticeships always involved Free Black people, all of whom were children.

The second ledger covering 1865-1871, his African American clients are identified in the index as either "negro" or "colored." Gunter's legal work for these clients consisted of routine civil and criminal work after the end of the Civil War and the end of slavery.

Accomack County had the largest free Black population in Virginia in 1860. The 4,380 Black residents in the county formed 7.5 percent of the free Black population in the state. It was also the Commonwealth's oldest free Black enclave.

Gunter also lists personal accounts, including entries for renting out his own slaves, both male and female, share-cropping agreements with Free Blacks, land rental, crop sales, and other expenditures.

Benjamin T. Gunter was an attorney and later a Judge on the 8th Judicial Circuit, in Accomac, Accomack County, Virginia. He served as a Major of the local militia during the Civil War[1] and was arrested by the Union Army and held as a political prisoner first in Accomack County and later at Fort McHenry in Maryland. Gunter recorded his experiences in a detailed manuscript journal entitled: "A Journal of My Captivity."[2] Gunter was married twice, first to Frances Ellen Fuisher Gunter (1831-1878), and second to Sallie Lacy Gunter (1836 – 1910), he had seven children. His son Ben T. Gunter Jr., (1865 – 1939) became active in Virginia politics and served in the Virginia Senate.

The Civil Liberties that distinguished free people of color from their enslaved brethren were defined by government statutes. And no part of the United States exhibited a greater interest in regulating free people of color than did the state of Virginia. Virginia had the largest population of free blacks in the south. And Accomack County on the Eastern Shore, free Black people long made up a larger fraction of the population than any other county in the state. Relations between the white population and free Blacks had a fraught history in Accomack County. In 1825 the overseers of the poor – an organ of local government – decided to sell into slavery a man of color who had remained in residence longer than one year after his manumission. As the overseers intended this threat apparently produced an exodus of "several hundred" free Black people. The overseers then threatened to sell all Black people who had violated the expulsion law of 1806; eight were actually sold, though one of them was allowed to sue (successfully) to recover his freedom. There was clearly a desire on the part of some, perhaps many, white residents in Accomack to push Black people out, but differences emerged about how far to pursue this project of ethnic cleansing: Accomack remained at or near the top of the list of Virginia counties in free Black population throughout the antebellum period.

Virginia's legal system, despite its ban on Black testimony against whites, allowed free Black people to file civil lawsuits just as white people did, even if the defendant was white. The significance of law lies in its application, and the law of nineteenth-century Virginia mattered to free blacks to the degree that it was applied by neighbors and local courts or by themselves to advance their interests. For some, it dictated the limits and possibilities of freedom. For others, it seems not to have mattered much at all, until a white acquaintance decided to use his position on a grand jury to label them or other black neighbors as illegals. In these cases, many free African Americans employed attorneys to prevent, slow, stop, or undo the actions of such whites and the legal processes they initiated to a far greater extent than scholars and historians have assumed.

Sporadic roundups of illegal free black residents demonstrated just how much race could matter in the nineteenth century Upper South. Some free blacks were targeted by their local court because they were successful property holders or business people. Jealous white neighbors For others, an illicit interracial affair or desperate economic circumstances had the same effect. were often the ones who directed authorities to apply the expulsion law to those next door or down the road. African Americans knew that the enforcement of the expulsion law was neither consistent nor predictable. They also knew that not all freedoms were equal. If legal freedom ultimately required their removal from home and separation from loved ones, then for some African Americans, legal enslavement became preferable. Following this logic, free blacks helped create what has been considered to be the most restrictive race-based Southern law of the antebellum period, Virginia's "voluntary enslavement" law of 1856, used by those who faced the reality of removal and separation from their families.

The South's legal system before 1865 kept millions of Americans unfree and treated them unequally, many black Virginians who achieved liberty faced a threat to one of the most important liberties of all – freedom to remain in one's lifetime home among family and friends. Free African Americans could petition for a right to residency, even self-enslavement, to protect themselves and those liberties they held most dear. In the process, these everyday men and women used the law and the services of white lawyers to claim certain basic rights they believed were due all free Americans.

In 1782 the Virginia legislature restored to slaveholders the legal means to liberate their slaves. By 1800 the number of free black Virginians had grown to more than twenty thousand. This larger population gave some slaves a chance to pass as free, especially in cities, causing legislators to again restrict free black liberties. Rebellions planned by the slave Gabriel in Virginia in 1800, free carpenter Denmark Vesey in South Carolina in 1822, and Nat Turner in Virginia in 1831 prompted additional restrictions. By the end of the antebellum period, various laws affected nearly every aspect of life, from basic rights such as where a person could live to trivial matters such as smoking on a public street. Black freedom was burdened with legal constraints that would have been unthinkable if they had been applied to white Americans.

Manumission had been a rare occurrence until 1782, when a new law provided for manumission through private will or deed. By the close of the eighteenth century, race no longer coincided so completely with legal status. People of African descent could no longer assumed to be slaves. The ambiguity was compounded by masters who, facing a severely disrupted tobacco market, encouraged their slaves to find their own employment and living arrangements. Slaves "going at large" soon posed a public problem, especially in urban settings. Gabriel's rebellion in 1800 drove the danger home to white Virginians. But even before that crisis, the Virginia legislature sought to address the perceived problem, enacting new regulations for slave oversight and placing penalties on negligent slave owners. The legislature also placed several other restrictions on the liberty of free blacks, including limits on the fundamental right to reside where they wished. Over time, many of these restrictions were reiterated and refined. Nearly every free black person in the state eventually became subject to one or another residency law.

The statutes governing free black residency in Virginia can be grouped into three basic categories. Beginning in 1793, free blacks from other states were no longer allowed to enter Virginia and become residents. Also beginning in 1793, free black adults were required to register with local authorities, keep a copy of the registration, and renew it every three years (more frequently in cities), and re-register if they moved to a new jurisdiction. These "free papers" were at one and the same time an emblem of oppression, a symbol of freedom and a practical safeguard against being apprehended as a fugitive from slavery. These certificates carried day in and day out often became worn and tattered, and new copies were routinely made by court clerks, often for a fee. Thirdly, after Gabriel's rebellion, the Virginia legislature made manumission more difficult in 1806 by requiring that all former slaves leave within one year, a condition that often separated families and required funds for long distance relocation.

Among the first residency restrictions enacted in late 1793, was a statute that sought to prevent free blacks from immigrating to Virginia from other states. Violators did not jeopardize their free status, but they could be taken before a local magistrate and expelled. A revision in 1834 added a punishment of thirty-nine lashes. The Virginia prohibition was reiterated in 1841 and 1848 with minor changes. Local courts, however, had authority to grant exemptions. Black Virginians also faced restrictions on interstate travel. In 1837 a new law directed that former slaves who had been granted permission to remain in Virginia lost that privilege when they traveled out of state. This stipulation was followed a

year later by a law prohibiting return after a temporary absence out of state for educational purposes. After 1848, even freeborn blacks who traveled to a free state could not return. A most basic right had been revoked.

Laws in the second and most important category of residency restriction, in terms of the number of people affected, were enacted in the wake of Gabriel's rebellion of 1800 and marked the first attempt to actually expel free Virginians of color. All slaves manumitted after May 1, 1806, and their descendants were required to leave the commonwealth within twelve months of attaining freedom, or in the case of descendants, reaching adulthood, except in cases of extraordinary merit and good character. Violators risked being sold back into slavery. The new law preserved the rights of those who wished to manumit their slaves but also deterred such action by burdening manumission with additional obligations. Owners who failed to ensure that their former slaves departed in accordance with the law risked not only prosecution but also loss of community esteem, many former slaves were forced to choose between freedom and family. The law had an immediate effect, halting manumissions throughout Virginia. It took over a decade before the number of manumissions reached pre-1806 levels.

The 1806 law, with several subsequent administrative changes, operated throughout the antebellum period. In the early years individuals could petition the legislature for an exemption, but each successful case required a condition of "extraordinary merit" and a specific new legislative act. The petition had to establish the applicant's worthy character and self-sufficiency, which usually meant some sort of supporting endorsement from the master or heirs. Enough additional signatures were needed to demonstrate community cooperation. These petitions show that many free Black people saw the law as an actual threat, but they also demonstrate that Black petitioners could win support from large numbers of influential white people who wrote testimonials on their behalf. The petitions illustrate how free Black Virginians influenced white public opinion. The standing of these petitioners and of other free Black Virginians rested on what they achieved economically and morally in their communities. The respect that many Black people won helps explain the frequent lax enforcement of anti-free Black laws. When local courts gained the power to grant exemptions in 1815, fewer petitions went to Richmond, but exemptions did not necessarily become easier to obtain. Applications required a hearing before a majority of the jurisdiction's magistrates, rather than a simple quorum as for most other court business, and the approval had to be unanimous. The former slave's application had to be posted on the courthouse door for the preceding five weeks and also have assent from the commonwealth's attorney. The exemption, if granted, could be extended to immediate family members. However, departure from the granting jurisdiction, to another location, nullified the exemption. Overseers of the poor performed most aspects of enforcement until 1827, when grand jurors also became responsible for reporting violators. In 1831 the re-enslavement of convicted individuals required a public auction. In 1835 the General Assembly allowed formerly enslaved men to remain for as long as five years in order to earn relocation expenses and purchase enslaved family members. And in 1837 the assembly finally expanded the qualifications from "extraordinary merit" to include people of "good character, peaceable, orderly and industrious, and not addicted to drunkenness, gaming or any other vice." The period for which notice of an application had to be posted was extended from five weeks to two months, and approval required assent from three quarters of all magistrates. In 1848 the process was revised so that defendants could not be tried in absentia. As these revisions show, the expulsion law did not retire into obscurity, and it was not merely a cathartic reaction to periodic insurrection scares.

The 1850s saw another rise in white anxiety about free Black people. Suspicion centered on those individuals who had left the state and spent time in the North, and then returned to Virginia. It was

thought that they might have been exposed to abolitionist ideas which they would disseminate in Virginia. The threat or reality of legal action induced some of these Black people to leave the state once again. Some free Black Virginians began to worry that the expulsion law of 1806 would now be more rigorously enforced. In Richmond, for example, more Black individuals applied for waivers of the expulsion requirement in the 1850s, and a higher percentage of those petitions were denied than in earlier years. Some of the few free Black people in certain localities who faced an imminent threat of expulsion requested permission to enslave themselves to white people; the General Assembly passed a law in 1856 that permitted them to do so. The fact that even a few free Blacks felt the need to protect themselves against possible expulsion from the state, away from friends and family, attests to rising pressure on free Black people as tensions over slavery roiled the nation.

In the 1850s, as after the Turner rebellion, additional laws aimed at free Black people were adopted in Virginia. The 1850s also brought renewed talk of ridding Virginia of its free Black population, but such proposals drew spirited and successful white opposition. One such bill introduced in the General Assembly in 1853 that would have hired out free Black people to involuntary labor, used the proceeds to remove them from the state, and sold into slavery any who remained after five years. Three Richmond newspapers opposed this bill.

Gunter also had cases involving the apprentice ship of free Black people. Created by the Virginia General Assembly in 1780, the post of overseer of the poor began as an effort to shift the responsibility of social welfare (proving food, clothing, shelter, and medical welfare) from the traditional Anglican vestries to an elected body of officers for each county. With this new responsibility, overseers of the poor could bind out children as apprentices through an order of the county court, assigning boys to learn a trade until age 21 and girls to generally acquire domestic skills until age 18.

Prior to 1866, African American children bound out in these apprenticeships were almost always free. Free African American families, subject to the same taxes and social responsibilities as whites, were at greater risk of poverty in both the north and south due to the availability of cheaper slave labor in manual and skilled trades, competition with white professionals for similar jobs, and the constant navigation of discriminatory laws and practices.

Although in need of relief and resources similar to poor whites, free African Americans were in many cases dismissed or ignored by overseers of the poor due in part to the racial and economic hierarchies of the period.

These inequalities continued after the Civil War, when the overseers of the poor and Freedmen’s Bureau shared the responsibility of binding out newly freed African American children as apprentices. While in some counties the Bureau practiced due diligence in securing positive placements for African American children, others allowed conditions similar to those experienced by slaves. Some Bureau officials and overseers of the poor even ignored claims of parents or relatives separated from children due to the war or slavery, binding out children without consent.

Free Black Virginians were relegated to second- or third-class citizenship. Their experience in the white dominated slave system involved a different set of struggles against the oppression of that system than those of their enslaved brethren and family members. One of their means of struggle against it was their ability to use the legal system of their oppressors to ameliorate their lives and those of their families. This account book provides additional evidence of this struggle.

References:

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2. https://virginiahistory.org/research/research-resources/guides-researchers/gallagher-charles-h-gwathmey-family-papers

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Sample Entries:

"Octbr 27th 1851 Richard Drummond For motion to court for an allowance for service rendered Commonwlth in suppressing unlawful assembly of free negroes on Island $ 2.50 …"

"April 28th [1851-52?] William Laws For appearing as counsel when indicted for bringing a free negro into this state $ 10.00 …"

"Nov 29th 1854 John L Ward Bringing suit in chancery to divide slaves of Charles W. Taylor deceased $ 25.00 tax on same. 50…"

"Novr 1853 George & Jim Scarborough (Free negro) For bringing suit for freedom $ 131.50

January 16th 1857 Received the above & settled with sheriff $ 131.50"

"1855 Polly Wisher (Free negro) For defending her in a prosecution for petit Larceny for receiving stolen goods $ 10.00

Received on the above $ 5.00

May 28th 1857 By cash $ 2.00"

1855 Margaret Wisher (Free negro) Polly responsible for same For Defending her in a prosecution for petit larceny – for receiving stolen goods $ 10.00

May 26th 1856 Received on the above $ 3.00

May 24th 1859 By cash of Isaac Purnell 3.00

October 1859 By cash paid Wm. L. Parker & charged in his account 2.00

Nov 1860 26th By cash of Wm. L Parker in full for Marg. Wisher 2.00”

“1857 July Estate of John R. Fisher Amt paid for apprehending & placing in Jail Negro man Jim $ 10.00. To auctioneer for crying him $ 1.00 …”

“Commonwealth Business …

1857 October Court For a court of Oyer & Terminer for the trial of [left blank] a free negro charged with the larceny of goods from Matthews & Bird Sentenced to the penitentiary 25”

1858

“January Court For a court of Oyer & Terminer for the trial of Poolman alias Beavans a free negro for feloniously entering in the night time the dwelling house of Mical Lilliston $ 25 Found guilty & sentenced to the penitentiary for four years”

“June 28th Court of Oyer & Terminer for the trial of George slave of N. B. Le Cato sentenced for transportation $ 25.00”

“1859 Jany 31st For attending court of Oyer & Terminer to try slave Oris belonging to Mrs. Matthews $ 25.00

1860

“April Court Court of Oyer & Terminer for trial of George Poulson (f.n.) for entering in night time dwelling of Geo. Clavill to commit larceny & sent to penitentiary 3 years $ 25.00”

“1858 May Circuit Court Levi J. Northam Presenting petition of Levin Crippin (F. N.) to choose L. J. Northam as his owner $ 15.00 Feby 1863 8th Received the above 15.00”

“1858 Decr. 1st Mrs Sally Bayly Attorney’s fee in suit of Elijah Kellam & wife & others vs Wm. P. Bayly & Josiah L. Bayly exc of John J. Bayly In Chancery to assign dower & divide negroes &c $ 25.00…”

“1859 Jany Elijah Kelland Wm H. White & others To my fee as Comr. To divide negroes of Jno. J. Bayly under decree of suit of Wm. Wm. H. White & wife & others vs John J. Bayly’s Exrs & others $ 10.00…”

“1859 June 28th Saml. Taylor (Guilford) For motion to bind as an apprentice a free negro $ 2.50”

“Commonwealth fees continued from page 67

1860

“July 30th For attending Court of Oyer & Terminer to try Ben Kean F. N., sent to Penitentiary for 57 years for aiding slaves to escape 25.00

31 Same for service in Commth vs Gutta George F. N. (Acquitted) $ 25.00

Aug 1st Same for Same Comwth vs Albert Selby (F.N.) acquitted $ 25.00

2d Same for same Cmwth vs Sam Brittingham F.N. for same offence convicted 10 years in Pent. 25.00”

“October 31st For attending Court of Oyr & Terminer for trial of Tully Jubilee (f.n.) for felony (convicted) 25.00

“Decr 31st To fee in Comwth vs Saml Taylor (negro going at large) 5.00”

1861

"March 30th Comwth vs Boston & others free negroes non residents for collecting oysters 5.00"

"May Circuit Court Fee in Comwth vs Williams (F.N.) Assault & Battery 5.00"

"1860 May 31st Thos. E. Marshall Attorney's fee for motion to rescind order binding free negro to Rd Stuart & fr motion to bind to Marshall 5.00…"

"1861 January 28th William R. Drummond Motion to bind Gillet Dennis f.n. as an apprentice 5.00"

"1861 March 18th Asa Rayfield (f.n.) Advice in regard to property belonging to Sally Broadwater married by Asa Rayfield during the lifetime of another wife. $ 5.00

"1861 Feby. Sally Rayfield alias Broadwater (f.n.) Advice in regard to her land which she heired from her father & in possession of pretended husband Asa Rayfield % 5.00"

"1861 January 1st Jacobs James (Free negro) 7/15 of rent of Hopkins farm for 1860 whole rent

$ 250.00 $ 116. 66 ⅔ Tax on above farm for 1860 has been paid

1861 January 1st 7/15 of rent of same for 1861 whole rent $ 275.00 $ 128.33 ⅓

1863 January 1st 7/15 of rent of same for 1862 rented at 2/5 of corn, one third of oats or wheat, ⅓ of potatoes except those made for family use & ⅓ of all other crops made for sale. I authorized James to do some little repairs & I am t give him credit for my share or 7/15 of same…"

$ 7,500.00