University of Miami Law Review

Volume 9
Number 3 *Miami Law Quarterly*

Article 13

5-1-1955

Equity -- Masters -- Objection to Reference

Donald Stuart Zuckerman

whether his right existed, either before, at the time of, or after rendition of the decree. The reason such attack is permitted is not because interested persons were injured in any property rights at the time the decree was rendered; it is simply because, if the decree is void, they are not bound by it and someone is attempting to use it against their present interests.[38]

There is a vast difference between the available remedies against invalid decrees, depending upon who the parties are that desire to attack the decree. The mode of procedure in such cases and circumstances under which the exercise of such power can be invoked successfully, varies in the different jurisdictions. For these reasons the decisions in one state afford but little aid in determining matters of this kind in another jurisdiction.

Since in a great majority of divorces neither party wishes to disturb the decree, if their acquiescence should be allowed to have the effect supposed, third persons may be affected in their property and in their sacred personal rights without ever having had an opportunity to be heard. Therefore, although "all the world is not a party to a divorce proceeding,"[39] those whose interests may be affected thereby should be allowed their day in court.

MEYER M. BRILLIANT

EQUITY—MASTERS—OBJECTION TO REFERENCE

Over objection, a chancellor ordered a reference to a master to report findings of fact and conclusions relative to applicable law. On petition for writ of certiorari to quash the reference, *held*, the chancellor was in effect delegating the *decision* of the case to the master, and this could not be done over the objection of a party. Slatcoff v. Dezen, 74 So.2d 59 (Fla. 1954).

A reference to a master is an equity proceeding which has for its purpose the determination of disputed issues.[1] An order of reference may be made at any stage of a suit,[2] and all persons in interest are entitled to attend and be notified thereof.[3] A master is an assistant of the chancellor;[4] his function is the performance of acts, either judicial or ministerial in nature, which the chancellor, in accordance with equity practice, may require of him.[5] Reference is to be distinguished from arbitration in that the latter allows the substitution of a decision by an

38. *Ibid.*
39. Williams v. State of North Carolina, 325 U.S. 226 at 231 (1945).
1. 19 AM. JUR., *Equity* § 364 (1952); 23 R. C. L. 284 (1929).
2. Field v. Holland, 6 Cranch 8 (U.S. 1810); *accord*, Pepper v. Addicks, 153 Fed. 383 (E.D. Pa. 1907); Briggs v. Neal, 120 Fed. 224 (4th Cir. 1903).
3. Williams v. Morgan, 111 U.S. 684 (1884); Eslava v. Lepretre, 21 Ala. 504, 56 Am. Dec. 266 (1852).
4. Richardson v. Frazier, 247 Litt. (Ky.) 59, 56 S.W.2d 708 (1933).
5. Schuchardt v. People, 99 Ill. 501, 39 Am. Rep. 34 (1881).

arbitrator in extra-judicial proceedings, for the judgment of a court.[6] A master acts as a representative of the chancery court, and his official conduct and report is subject to the court's control and supervision.[7] He derives his power from the court and is governed by the rules of court which specifically prescribe his duties and the manner of their performance.[8] The usefulness of reference procedure is that it relieves the court of work by pre-determining complex issues.[9]

A distinction is made between *involuntary* and *consent* references, it being held that where a reference is ordered *without* the consent of all the parties the report is advisory only, and the court must act ultimately on its own judgment.[10] Where the reference is by consent the findings are presumed correct and are reviewable only, by reservation in the consent and order entered thereon, for manifest error in the consideration given to evidence or in the application of the law.[11] In *Burns v. Burns*,[12] the court said of cases lacking consent to the reference that the ". . . report of the special master was only advisory to the chancellor who was, of course, not bound to follow the conclusions of law or fact of the special master or his recommendations."[13] There are authorities holding that it is not competent for a court of chancery to refer the entire decision of *all* issues, both of fact and of law, to a master without the consent of the parties.[14] However, it is generally held that where a reference *is* made, without the consent of the parties, to find the facts and conclusions of law, the report is to be regarded as advisory only.[15]

In this case, the Florida Court based its decision mainly upon a specific point raised in *Harmon v. Harmon*,[16] wherein it was held that a

---

6. 3 AM. JUR., *Arbitration and Award* § 3 (1952).
7. Richardson v. Frazier, 247 Ky. 59, 56 S.W.2d 708 (1933).
8. Carr v. Fair, 92 Ark. 359, 122 S.W. 659 (1909); Farmer & Arnold v. Samuel, 4 Litt. (Ky.) 187, 14 Am. Dec. 106 (1823); Rice v. Rice, 47 N.J. Eq. 559 (1891).
9. 23 R.C.L. 284 (1929); HENDERSON, CHANCERY PRACTICE 34, *et seq.* § 26.
10. Lone Star Gas Co. v. City of Fort Worth, 93 F.2d 584 (5th Cir. 1938); 19 AM. JUR., Equity § 255 (1952).
11. Harris v. First State Bank of Dawson, Ga., 260 Fed. 685 (N.D. Ga. 1919); Harmon v. Harmon, 40 So.2d 209 (Fla. 1949); McAdow v. Smith, 127 Fla. 29, 172 So. 448 (1937); Kent v. Knowles, 101 Fla. 1375, 133 So. 315 (1931); Croom v. Ocala Plumbing and Electric Co., 62 Fla. 460, 57 So. 243 (1911).
12. 153 Fla. 73, 13 So.2d 599 (1943).
13. 153 Fla. 73, 76, 13 So.2d 599 at 601 (1943).
14. Goldsmith Silver Co. v. Savage, 229 Fed. 623 (1st Cir. 1915); Stokes v. Williams, 226 Fed. 148 (3d Cir. 1915); Hattiesburg Lumber Co. v. Herrick, 212 Fed. 834 (5th Cir. 1914); WHITEHOUSE, EQUITY PRACTICE 583 (1st ed. 1915); BEACH, MODERN EQUITY PRACTICE 666; VANZILE, EQUITY PLEADING AND PRACTICE 435; FLETCHER, EQUITY PLEADING AND PRACTICE 595 (1st ed. 1902).
15. Oteri v. Scalzo, 145 U.S. 578 (1892); Kimberly v. Arms, 129 U.S. 512, 523 (1888); Bliss v. Anaconda Copper Mining Co., 156 Fed. 309 (D. Mont. 1907); Mastin v. Noble, 157 Fed. 506, 508 (8th Cir. 1907); Garinger v. Palmer, 126 Fed. 906, 911 (6th Cir. 1904); Blythe v. Thomas, 45 Fed. 784 (D.S.C. 1891).
But cf. FED. R. CIV. P. 53 (e) (2):
> . . . . In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous.

16. 40 So.2d 209 (Fla. 1949).

master's recommendations should be set aside only upon good cause, even though the findings were advisory. The court, in the instant case, interpreted this decision to mean that the reference which instructed the master to make findings of fact as well as conclusions of law, in effect, usurped the court's function. The court held that this was tantamount to permitting the master to render the final decision in the case, since it left the chancellor powerless to act where there is *ample* evidence to sustain the findings of a master. This, the court concluded, could not be done over the objection of one of the parties.

Perhaps the court erred in its decision through a misinterpretation of the holding in *Harmon v. Harmon*. The weight of authority is that a reference by a court of chancery to a master may be made over the objection of the parties, but where a party objects to such a reference, the master's report is to be considered as advisory rather than conclusive. It is the opinion of the writer that the *Harmon* case is not in opposition to the weight of authority. Therefore, there is no apparent precedent for the decision of this court in quashing the order of reference on the grounds stated.

DONALD STUART ZUCKERMAN

EVIDENCE—FEDERAL WAGERING TAX STAMP—ABATEMENT OF GAMBLING NUISANCE

The state sought to enjoin, as a nuisance, an alleged lottery and bookmaking business. The state's only evidence was the fact that the defendants had purchased a Federal Wagering Occupational Tax Stamp and had paid the tax of 10% on their gross income from gambling. *Held*: Mere purchase and possession of a gambling tax stamp is not sufficient evidence to establish the maintenance of a gambling house. *Boynton v. State*, 75 So.2d 211 (Fla. 1954).

A Florida statute[1] makes any place or building wherein gambling is engaged a nuisance and subject to abatement.[2] Even the early common law held that keeping a gambling house was a public nuisance.[3] The effect of the statute is that it makes this conduct a nuisance *per se*,[4] to enjoin which it is only necessary to prove commission of the act.[5] As a

1. FLA. STAT. § 823.05 (1953).
2. FLA. STAT. § 64.11 (1953).
3. Bowden v. Nugent, 26 Ariz. 485, 226 Pac. 549 (1924); State v. Vaughan, 81 Ark. 117, 98 S.W. 685 (1906); Ehrlick v. Comm., 125 Ky. 742, 102 S.W. 289 (1907); Roberts v. Reille, 50 N.Y.S.2d 196 (N.Y. Munic. Ct. 1944); People v. Langan, 196 N.Y. 260, 89 N.E. 921 (1909); *Ex Parte* Allison, 99 Tex. 455, 90 S.W. 870 (1906).
4. Pompano Horse Club v. State, 93 Fla. 415, 111 So. 801 (1927); State v. 30 Club, 124 Mont. 91, 219 P.2d 307 (1950).
5. Engle v. Scott, 57 Ariz. 383, 114 U.2d 236 (1941); People v. Lim, 18 Cal. 2d 872, 118 P.2d 472 (1941); Robinson v. Westman, 224 Minn. 105, 29 N.W.2d 1 (1947).