CHAPTER 11

Masters and Referees

Editor’s Note

1976 Act No. 690, Article VII, Section 5, provides:

“County courts and other similar courts with jurisdiction inferior to the circuit court and the offices of master‑in‑equity, standing master and special referee shall be abolished on July 1, 1979, and the jurisdiction of such courts devolved upon the unified court system; provided, however, that such county courts, other courts of similar jurisdiction, and the offices of master‑in‑equity, standing master and special referee shall be continued pursuant to Section 22 of Article V of the Constitution until July 1, 1979, subject, however, to the provisions of Article XI, Section 2 of this act; provided, further, that the General Assembly prior to July 1, 1979, shall provide sufficient judicial manpower to assure adequate staffing for the unified court system as provided by this act.”

1976 Act No. 690, Article VIII, Section 4, provides:

“A judge or master whose judicial office is eliminated by the provisions of this act shall be given credit for state retirement purposes for the time in which he served as judge or master under a formula to be determined by rule and regulation of the State Budget and Control Board.”

ARTICLE 1

General Provisions

**SECTION 14‑11‑10.** Establishment of master‑in‑equity court.

As a part of the unified judicial system, there is established in each of the counties of this State having a population of at least one hundred thirty thousand, according to the latest official United States Decennial Census, a master‑in‑equity court. The master‑in‑equity for the court must be appointed pursuant to the provisions of Section 14‑11‑20. Nothing in this section prohibits a county or area with a population of less than one hundred thirty thousand, according to the latest official United States Decennial Census, from having a part‑time master‑in‑equity. The governing bodies of any two or more counties may join together to fund the office of master‑in‑equity to serve two or more counties. Funding of this master‑in‑equity must be borne by each county included on a per capita population basis.

HISTORY: 1962 Code Section 15‑1802; 1952 Code Section 15‑1802; 1942 Code Section 3678; 1932 Code Section 3678; Civ. C. ‘22 Section 2219; Civ. C. ‘12 Section 1373; Civ. C. ‘02 Section 966; G. S. 782; 1910 (16) 609; 1914 (29) 26; 1916 (29) 805; 1920 (31) 764; 1921 (32) 139; 1923 (33) 131, 193; 1924 (33) 948; 1935 (39) 458; 1936 (39) 1531; 1939 (41) 230; 1979 Act No. 164 Part II Section 2, eff July 1, 1979; 1988 Act No. 678, Part II, Section 1, eff July 1, 1989.

Library References

Equity 393.

Westlaw Topic No. 150.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 19, Structure of the Judicial System.

S.C. Jur. Equity Section 27, Master‑In‑Equity Courts and Referees.

S.C. Jur. Reference Section 3, Chancery Courts.

S.C. Jur. Reference Section 4, Current Operation and Effect of Reference.

Attorney General’s Opinions

Determination whether master‑in‑equity serves in full or part time status is not dependent on appointment by governor but rather is based on population of county where master‑in‑equity serves. 1991 Op.Atty.Gen. No. 91‑15 p 56 (February 28, 1991) 1991 WL 474745.

The Sumter County Master‑in‑Equity is appointed by the Governor with the advice and consent of the Senate. 1976‑77 Op.Atty.Gen. No 77‑76, p 70 (March 9, 1977) 1977 WL 24418.

The powers of a temporarily appointed Master in Equity continue until the newly confirmed Master executes his oath of office and furnishes bond as required by statute. 1975‑76 Op.Atty.Gen. No 4243, p 34 (February 5, 1976) 1976 WL 22863.

NOTES OF DECISIONS

In general 1

Review 2

1. In general

The master’s term runs from the date of appointment. Verner v. Seibels (S.C. 1901) 60 S.C. 572, 39 S.E. 274.

2. Review

A direct appeal may be taken to the Supreme Court or the Court of Appeals from decisions of special referees as well as decisions of masters; there is no distinction between them. Boardman v. Lovett Enterprises, Inc. (S.C. 1985) 287 S.C. 303, 338 S.E.2d 323, on remand 288 S.C. 387, 342 S.E.2d 634.

**SECTION 14‑11‑15.** Equity courts.

The equity court is considered a division of the circuit court, and the master‑in‑equity, as judge of the equity court, is entitled to all the benefits and subject to all the requirements of the South Carolina Bar and the rules of the Supreme Court in the same respect as circuit court and family court judges. This section may not be construed as providing retirement for masters‑in‑equity under the provisions of Chapter 8 of Title 9.

HISTORY: 1988 Act No. 678, Part II, Section 3, eff January 1, 1989.

Library References

Equity 393.

Westlaw Topic No. 150.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 19, Structure of the Judicial System.

S.C. Jur. Equity Section 27, Master‑In‑Equity Courts and Referees.

S.C. Jur. Reference Section 4, Current Operation and Effect of Reference.

NOTES OF DECISIONS

Actions in equity 1

Forfeitures 2

Review 3

1. Actions in equity

Actions to foreclose or cancel instrument are actions in equity. Cody Discount, Inc. v. Merritt (S.C.App. 2006) 368 S.C. 570, 629 S.E.2d 697, rehearing denied, certiorari denied. Cancellation Of Instruments 32

2. Forfeitures

In certain contractual instances where stipulated sum in event of default constitutes penalty, it would be inequitable to enforce forfeiture provision in installment land contract without first allowing purchaser opportunity to redeem installment contract by paying entire purchase price. Cody Discount, Inc. v. Merritt (S.C.App. 2006) 368 S.C. 570, 629 S.E.2d 697, rehearing denied, certiorari denied. Vendor And Purchaser 93

Forfeiture of purchaser’s interest in real property under installment land contract would amount to penalty that could not be enforced in equity, and thus vendor’s right to forfeiture was to be relieved; although purchaser had made late payments on and off since inception of installment land contract, vendors continued to accept late payments without declaring purchaser in default, it was only when purchaser was within approximately $1,000 of paying off original contract price of $44,500 that vendor brought action to evict purchaser, and there was no evidence as to extent that granting purchaser easement across preexisting road, as purchaser’s only means of access to property, would affect value of property. Cody Discount, Inc. v. Merritt (S.C.App. 2006) 368 S.C. 570, 629 S.E.2d 697, rehearing denied, certiorari denied. Vendor And Purchaser 93; Vendor And Purchaser 95(2)

3. Review

On appeal in action in equity, while Court of Appeals is free to take its own view of preponderance of evidence, this does not require Court of Appeals to disregard findings of trial judge who saw and heard witnesses and, accordingly, was in better position to judge their credibility. Cody Discount, Inc. v. Merritt (S.C.App. 2006) 368 S.C. 570, 629 S.E.2d 697, rehearing denied, certiorari denied. Appeal And Error 1009(4)

Since action to quiet title is an action in equity, Supreme Court, on appeal, is free to find facts according to Court’s own view of preponderance of the evidence. Johnson v. Arbabi (S.C. 2003) 355 S.C. 64, 584 S.E.2d 113. Appeal And Error 1122(2)

**SECTION 14‑11‑20.** Appointment of master‑in‑equity; term.

Pursuant to the provisions of Section 2‑19‑110, masters‑in‑equity must be appointed by the Governor with the advice and consent of the General Assembly for a term of six years and until their successors are appointed and qualify. No person is eligible to hold the office of master‑in‑equity who is not at the time of his appointment a citizen of the United States and of this State, has not attained the age of thirty‑two years upon his appointment, has not been a licensed attorney for at least eight years upon his appointment, has not been a resident of this State for five years immediately preceding his appointment, and has not been found qualified by the Judicial Merit Selection Commission.

Each master‑in‑equity of this State qualifies by taking the oath required by the Constitution of this State before a justice of the Supreme Court, a judge of the Court of Appeals, the President of the Senate, the Speaker of the House of Representatives, a circuit judge, the Clerk of the Supreme Court, a clerk of the court of common pleas, or a probate judge of the county and immediately enters upon his duties. The oath must be filed in the office of the Secretary of State.

A full‑time master‑in‑equity is prohibited from engaging in the practice of law. A part‑time master‑in‑equity may practice law but is prohibited from appearing before another master‑in‑equity. A standing master‑in‑equity may not serve as the probate judge of any county.

HISTORY: 1962 Code Section 15‑1808; 1952 Code Section 15‑1808; 1942 Code Section 3680; 1932 Code Section 3687; Civ. C. ‘22 Section 2224; Civ. C. ‘12 Section 1375; Civ. C. ‘02 Section 968; G. S. 784; R. S. 838; 1898 (22) 694; 1899 (33) 85; 1901 (26) 675; 1979 Act No. 164, Part II Section 3, eff July 1, 1979; 1988 Act No. 678, Part II, Section 4, eff January 1, 1989; 1996 Act No. 391, Part V, Section 5, eff June 4, 1996; 1997 Act No. 35, Section 5, eff May 21, 1997.

CROSS REFERENCES

Establishment of master‑in‑equity courts, see Section 14‑11‑10.

Library References

Equity 393.

Westlaw Topic No. 150.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 21, Constitutional Control of Judicial Operations.

S.C. Jur. Equity Section 27, Master‑In‑Equity Courts and Referees.

S.C. Jur. Reference Section 8, Master‑In‑Equity.

Attorney General’s Opinions

Master‑in‑equity whose term expired before or after January 1, 1989 but who has not been reappointed would continue to serve as master‑in‑equity until successor is appointed and qualified. 1991 Op.Atty.Gen. No. 91‑15 p 56 (February 28, 1991) 1991 WL 474745.

The governor may make an appointment to fill the vacancy in the Office of the Probate Judge during a legislative recess. Such appointment, however, is subject to approval by the Senate at its next session. 1975‑76 Op.Atty.Gen. No 4542, p 410 (December 13, 1976) 1976 WL 23159.

**SECTION 14‑11‑30.** Compensation of master‑in‑equity.

The governing body of the county or counties in which a master‑in‑equity serves shall provide the salary, equipment, facilities, and supplies of the master‑in‑equity, together with the salaries of support personnel and all other costs for the necessary and proper operation of the master‑in‑equity’s office. The salaries of the masters‑in‑equity are as follows:

(1) Where the area served has a population of up to thirty‑four thousand, nine hundred ninety‑nine, according to the latest official United States Decennial Census, the master‑in‑equity serving that area is part time and must be paid a salary equal to ten percent of that of a circuit judge.

(2) Where the area served has a population of between thirty‑five thousand and forty‑nine thousand, nine hundred ninety‑nine, according to the latest official United States Decennial Census, the master‑in‑equity serving that area is part time and must be paid a salary equal to fifteen percent of that of a circuit judge.

(3) Where the area served has a population of between fifty thousand and seventy‑nine thousand, nine hundred ninety‑nine, according to the latest official United States Decennial Census, the master‑in‑equity serving that area is part time and must be paid a salary equal to twenty‑five percent of that of a circuit judge.

(4) Where the area served has a population of between eighty thousand and ninety‑nine thousand, nine hundred ninety‑nine, according to the latest official United States Decennial Census, the master‑in‑equity serving that area is part time and must be paid a salary equal to forty‑five percent of that of a circuit judge.

(5) Where the area served has a population of between one hundred thousand and one hundred twenty‑nine thousand, nine hundred ninety‑nine, according to the latest official United States Decennial Census, the master‑in‑equity serving that area is part time and must be paid a salary equal to fifty‑five percent of that of a circuit judge.

(6) Where the area served has a population of between one hundred thirty thousand and one hundred forty‑nine thousand, nine hundred ninety‑nine, according to the latest official United States Decennial Census, the master‑in‑equity serving that area is full time and must be paid a salary equal to seventy‑five percent of that of a circuit judge.

(7) Where the area served has a population of between one hundred fifty thousand and one hundred ninety‑nine thousand, nine hundred ninety‑nine, according to the latest official United States Decennial Census, the master‑in‑equity serving that area is full time and must be paid a salary equal to eighty percent of that of a circuit judge.

(8) Where the area served has a population of between two hundred thousand and two hundred forty‑nine thousand, nine hundred ninety‑nine, according to the latest official United States Decennial Census, the master‑in‑equity serving that area is full time and must be paid a salary equal to eighty‑five percent of that of a circuit judge.

(9) Where the area served has a population of over two hundred fifty thousand, according to the latest official United States Decennial Census, or where the area served is located in a county which generates four million dollars or more in accommodations tax revenue, the master‑in‑equity serving that area is full time and must be paid a salary equal to ninety percent of that of a circuit judge.

No sitting master‑in‑equity, whether full time or part time, may have his salary reduced during his tenure in office. Tenure in office continues at the expiration of a term if the incumbent master‑in‑equity is reappointed.

HISTORY: 1962 Code Section 15‑1809; 1952 Code Section 15‑1809; 1942 Code Section 3681; 1932 Code Section 3688; Civ. C. ‘22 Section 2225; Civ. C. ‘12 Section 1376; Civ. C. ‘02 Section 969; G. S. 785; R. S. 839; 1898 (22) 694; 1899 (23) 85; 1901 (24) 675; 1979 Act No. 164 Part II Section 4, eff July 1, 1979; 1988 Act No. 678, Part II, Section 5, eff January 1, 1989.

Editor’s Note

1979 Act No. 164, Part II , Section 22, provides as follows:

“Notwithstanding the provisions of this PART the salaries of masters‑in‑equity serving on the effective date of this act shall not be reduced during their current terms.”

CROSS REFERENCES

Fees for services of masters, see Section 14‑11‑310.

Library References

Equity 398.

Westlaw Topic No. 150.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Reference Section 8, Master‑In‑Equity.

Attorney General’s Opinions

Determination whether master‑in‑equity serves in full or part time status is not dependent on appointment by governor but rather is based on population of county where master‑in‑equity serves. 1991 Op.Atty.Gen. No. 91‑15 p 56 (February 28, 1991) 1991 WL 474745.

A county cannot arbitrarily fail to fund the office of Master‑in‑equity for that county but must join with one or more counties to make provisions for servicing the needs of those counties by a Master‑in‑equity. Subsequent approval of such procedures must be obtained from the General Assembly. 1980 Op.Atty.Gen. No 80‑85, p 134 (August 5, 1980) 1980 WL 81967.

NOTES OF DECISIONS

Constitutional issues 1

1. Constitutional issues

Section 14‑11‑30 is unconstitutional insofar as it empowers several counties to establish amount of compensation for masters‑in‑equity, since such office is part of unified judiciary and it is not possible for General Assembly to delegate to counties power to fix compensation of those holding judicial office within state judicial system. Kramer v. County Council for Dorchester County (S.C. 1981) 277 S.C. 71, 282 S.E.2d 850. Constitutional Law 2438; Reference 76(1)

**SECTION 14‑11‑40.** Accounting for fees and costs received.

All fees and costs received and recovered by any master‑in‑equity shall be accounted for and paid into the general fund of the county as directed by the governing body thereof.

HISTORY: 1975 (59) 173; 1979 Act No. 164 Part II Section 5, eff July 1, 1979.

Library References

Equity 394.

Westlaw Topic No. 150.

**SECTION 14‑11‑50.** Vacancies.

All vacancies in the office of master from death, resignation, removal from the State or any cause whatsoever shall be filled in the manner of original appointment for the unexpired term.

HISTORY: 1962 Code Section 15‑1810; 1952 Code Section 15‑1810; 1942 Code Section 3682; 1932 Code Section 3689; Civ. C. ‘22 Section 2226; Civ. C. ‘12 Section 1377; Civ. C. ‘02 Section 970; G. S. 786; R. S. 840; 1840 (11) 154 Section 2; 1878 (16) 609 Section 7; 1882 (17) 1126; 1911 (27) 85; 1961 (52) 41; 1979 Act No. 164 Part II Section 6, eff July 1, 1979.

Library References

Equity 393.

Westlaw Topic No. 150.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Reference Section 8, Master‑In‑Equity.

Attorney General’s Opinions

The powers of a temporarily appointed Master in Equity continue until the newly confirmed Master executes his oath of office and furnishes bond as required by statute. 1975‑76 Op.Atty.Gen. No 4243, p 34 (February 5, 1976) 1976 WL 22863.

**SECTION 14‑11‑60.** Appointment of special referee.

In case of a vacancy in the office of master‑in‑equity or in case of the disqualification or disability of the master‑in‑equity from interest or any other reason for which cause can be shown the presiding circuit court judge, upon agreement of the parties, may appoint a special referee in any case who as to the case has all the powers of a master‑in‑equity. The special referee must be compensated by the parties involved in the action.

HISTORY: 1962 Code Section 15‑1811; 1952 Code Section 15‑1811; 1942 Code Section 3684; 1932 Code Section 3691; Civ. C. ‘22 Section 2228; Civ. C. ‘12 Section 1379; Civ. C. ‘02 Section 972; G. S. 789; R. S. 843; 1840 (11) 154 Section 2; 1885 (19) 89; 1979 Act No. 164 Part II Section 7, eff July 1, 1979; 1988 Act No. 678, Part II, Section 6, eff January 1, 1989.

Library References

Equity 393.

Westlaw Topic No. 150.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Equity Section 27, Master‑In‑Equity Courts and Referees.

S.C. Jur. Reference Section 6, Nature and Scope of Authority.

S.C. Jur. Reference Section 9, Special Referee.

S.C. Jur. Reference Section 10, Process.

S.C. Jur. Reference Section 11, Fees.

NOTES OF DECISIONS

In general 1

1. In general

This section [Code 1962 Section 15‑1811] authorizes the court or a judge thereof to appoint the special master in the exercise of a sound discretion and in so doing such discretion will not be interfered with, unless it be shown that there was an abuse of discretion. Kirk v Douglass, 192 SC 359, 6 SE2d 757 (1939). Verner v Davis, 26 SC 609, 2 SE 114 (1886).

When there is a defaulting party who has made appearance before court, reference of matter to special referee requires agreement between parties as to identify of referee. Roche v. Young Bros., Inc. of Florence (S.C.App. 1997) 326 S.C. 488, 485 S.E.2d 110, rehearing denied, certiorari granted, reversed 332 S.C. 75, 504 S.E.2d 311. Reference 40

Order of reference appointing special referee to govern over damages hearing, in personal injury action in which defendant was found in default, was void, where defendant had made appearance before court, and in fact, had already appealed case once to appellate courts, and referee was not someone agreed upon by the parties. Roche v. Young Bros., Inc. of Florence (S.C.App. 1997) 326 S.C. 488, 485 S.E.2d 110, rehearing denied, certiorari granted, reversed 332 S.C. 75, 504 S.E.2d 311. Reference 40

In a mortgage foreclosure action, the special referee did not have a pecuniary interest in the outcome because he received as compensation master’s fees in the amount of $500 and a one percent sales commission of $550.10 where he would have been entitled to compensation regardless of how he ruled in the matter in that Section 14‑11‑60 provides that the special referee must be compensated by the parties involved in the action, and Section 14‑11‑310 provides that the master‑in equity shall collect fees on the sale of land to be deposited in the county’s general fund. First Sav. Bank v. McLean (S.C. 1994) 314 S.C. 361, 444 S.E.2d 513, rehearing denied. Judges 42

A disqualifying interest need not be of a pecuniary nature, but it must be of a character calculated to impair the master’s impartiality and sway his judgment. Kirk v. Douglass (S.C. 1940) 192 S.C. 359, 6 S.E.2d 757.

In view of Civ.Code 1912, Sections 1379 and 1380 (See Code 1942, Sections 3684, 3685), in proceeding by creditors of estate of intestate to have deed executed to wife declared fraudulent, held, that appointment of special master clothed him with powers of regular master until conclusion of case. Barrett & Co. v. Still (S.C. 1917) 106 S.C. 449, 91 S.E. 735.

Where a special master is appointed to take and report to the court certain testimony in a case pending, the master being adjudged disqualified, and a sale is afterwards ordered under the report of the special master, it is within the power of a succeeding judge to declare the master qualified to make such sale, and that the authority of the special master ended with the taking and reporting the testimony. New England Mortg. Security Co. v. Kinard (S.C. 1895) 43 S.C. 311, 21 S.E. 113.

**SECTION 14‑11‑70.** Limitation on practice of law.

No person while he holds the office of full time master shall practice or be a partner with anyone engaged in the practice of law in this State.

HISTORY: 1962 Code Section 15‑1812; 1952 Code Section 15‑1812; 1942 Code Section 3683; 1932 Code Section 3690; Civ. C. ‘22 Section 2227; Civ. C. ‘12 Section 1378; Civ. C. ‘02 Section 971; G. S. 783; R. S. 842; 1840 (11) 171 Section 30; 1878 (16) 609 Section 5; 1909 (26) 179; 1910 (26) 642; 1911 (27) 84; 1912 (27) 554; 1914 (28) 510; 1916 (29) 796, 798; 1920 (31) 964; 1925 (34) 97; 1926 (34) 1014; 1927 (35) 280; 1928 (35) 1162; 1979 Act No. 164 Part II Section 8, eff July 1, 1979.

Library References

Equity 393.

Westlaw Topic No. 150.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Equity Section 27, Master‑In‑Equity Courts and Referees.

S.C. Jur. Reference Section 8, Master‑In‑Equity.

**SECTION 14‑11‑80.** General duties.

The master shall make all such sales as the circumstances may require or as the court may order him to make in granting equitable relief and shall execute all proper conveyances thereof. Such sales shall be conducted at the county courthouse or at such other public places in the county designated in the notice of sale. He shall execute and perform all orders of the court upon references to him conformably to the practice of the court.

HISTORY: 1962 Code Section 15‑1814; 1952 Code Section 15‑1814; 1942 Code Section 3685; 1932 Code Section 3692; Civ. C. ‘22 Section 2229; Civ. C. ‘12 Section 1380; Civ. C. ‘02 Section 973; G. S. 790; R. S. 844; 1840 (11) 156; 1979 Act No. 164 Part II Section 9, eff July 1, 1979.

Editor’s Note

1988 Act No. 678, Part II, Section 2, effective January 1, 1989, provides as follows:

“The master‑in‑equity for each county presently holding office continues to serve as master‑in‑equity until the expiration of his term of office at which time his successor may be selected as provided by law.”

Library References

Equity 395.

Westlaw Topic No. 150.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Reference Section 5, Types of Issues.

S.C. Jur. Reference Section 6, Nature and Scope of Authority.

S.C. Jur. Reference Section 12, General Procedure.

Attorney General’s Opinions

Master‑in‑equity whose term expired before or after January 1, 1989 but who has not been reappointed would continue to serve as master‑in‑equity until successor is appointed and qualified. 1991 Op.Atty.Gen. No. 91‑15 p 56 (February 28, 1991) 1991 WL 474745.

Special referee may be appointed to preside over public sale of property; such sale is legal if special referee is properly appointed. 1984 Op.Atty.Gen. No. 84‑52, p. 129 (May 9, 1984) 1984 WL 159859.

NOTES OF DECISIONS

In general 1

1. In general

Generally as to sales. See Tunno v Fludd, 1 McC (12 SCL) 121. Baily v Baily, 9 Rich (30 SC Eq) 392. Miller v Law, 10 Rich (31 SC Eq) 320. Meng v Houser, 13 Rich (34 SC Eq) 210. Bulow v Witte, 3 SC 308 (1870). DuPont v Collins, 3 SC 329 (1871). Ostendorff v Brown, 15 SC 616 (1881). Paulk v Paulk, 28 SC 481, 6 SE 330 (1887). Alexander v Messervey, 35 SC 409, 14 SE 854 (1891).

Liability for neglect of duty. See Fenwicke v Gibbes, 2 Desaus (2 SC Eq) 629. Thompson v Wagner, 3 Desaus (3 SC Eq) 94. Somerall v Gibbes, 4 McC (15 SCL) 547. Ex parte Stanyarne, Harp (5 SC Eq) 20. Arthur v Master, Harp (5 SC Eq) 41. Ex parte Perry, Harp (5 SC Eq) 50. Houseal v Gibbes, Bail (8 SC Eq) 482. Spencer v Gibbes, Dud (13 SC Eq) 174. McCall v Elliot, Dud (23 SCL) 250. Lowndes v Pinckney, 1 Rich (18 SC Eq) 155. Street v Laurens, 5 Rich (26 SC Eq) 227. Ex parte Boyd, 8 Rich (29 SC Eq) 166. Wrightman v Gray, 10 Rich (31 SC Eq) 518. McPherson v Lynah, 14 Rich (35 SC Eq) 121. Pickens v Dwight, 4 SC 360 (1872).

Power of amendment. The provision that the master shall “execute and perform all orders of the court, etc.,” and the terms of order, referring issues under pleadings to the master, do not in any wise abridge the power of amendment conferred upon him by Code 1962 Section 15‑1815. E.A. Beall Co. v. Weston (S.C. 1909) 83 S.C. 491, 65 S.E. 823.

**SECTION 14‑11‑85.** Appeal from final judgment of master‑in‑equity.

When some or all of the causes of action in a case are referred to a master‑in‑equity or special referee, the master or referee shall enter final judgment as to those causes of action, and an appeal from an order or judgment of the master or referee must be to the Supreme Court or the court of appeals as provided by the South Carolina Appellate Court Rules. A matter may not be referred to a master or referee for the purpose of making a report to the circuit court.

HISTORY: 1989 Act No. 36, Section 1, eff April 3, 1989. and applicable to all appeals from final judgment entered by master after July 25, 1988; 1999 Act No. 55, Section 17, eff June 1, 1999.

Editor’s Note

1989 Act No. 36, Section 2, effective April 3, 1989, provides as follows:

“This act takes effect upon approval by the Governor and is effective with respect to all appeals from final judgments entered by a master after July 25, 1988.”

Library References

Equity 410.

Westlaw Topic No. 150.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 13, Appellate Jurisdiction of Circuit Courts.

S.C. Jur. Appeal and Error Section 76, Historical Notes: Exceptions and Additional Sustaining Grounds; in Favorem Vitae Review of Death Penalty Cases.

S.C. Jur. Appeal and Error Section 120, Presumptions.

S.C. Jur. Appeal and Error App I, South Carolina Appellate Court Rules Parts I and II Only General Provisions of and Practice and Procedure in Appellate Courts.

S.C. Jur. Constitutional Law Section 19, Structure of the Judicial System.

S.C. Jur. Declaratory Judgments Section 12, Procedure.

S.C. Jur. Equity Section 27, Master‑In‑Equity Courts and Referees.

S.C. Jur. Equity Section 28, Statutory Considerations and Rules of Civil Procedure.

S.C. Jur. Reference Section 16, Circuit Court or Supreme Court.

S.C. Jur. South Carolina Rules of Civil Procedure Section 54.2, Discussion.

NOTES OF DECISIONS

In general 1

1. In general

Since action to quiet title is an action in equity, Supreme Court, on appeal, is free to find facts according to Court’s own view of preponderance of the evidence. Johnson v. Arbabi (S.C. 2003) 355 S.C. 64, 584 S.E.2d 113. Appeal And Error 1122(2)

Master‑in‑Equity had subject‑matter jurisdiction to rule on mortgagor’s motion to set aside default judgment in foreclosure action on ground that court lacked personal jurisdiction over him because service had been improper; order of reference gave master jurisdiction over case and all matters arising from it until master had performed all duties assigned to him, which included conducting sale and disposing of surplus fund, and language in order of reference authorizing master to enter final judgment was not limitation on his jurisdiction, but rather was descriptive of nature of his order. Wachovia Bank of South Carolina, N.A. v. Player (S.C. 2000) 341 S.C. 424, 535 S.E.2d 128, rehearing denied. Equity 403

In an action for waste, the circuit judge did not properly consider the exceptions made to the special master’s finding of fact where he repeatedly viewed himself as constituting “an appellate court” and as not having “the right” to determine issues of credibility, since the circuit judge in such a case sits as a trial judge with the power to adopt a report, modify it, or reject it. GHMSW Partnership v. Logan (S.C.App. 1992) 310 S.C. 555, 426 S.E.2d 332. Reference 100(6)

The circuit court was not deprived of the jurisdiction to find a debtor in contempt where (1) a judgment creditor’s supplemental proceeding had been referred to a master‑in‑equity with authority to enter a final order with direct appeal to the Supreme Court, (2) the master issued a report and recommendation that the debtor be held in contempt, and (3) the matter was returned to the circuit court for an independent finding; the report was not a final judgment from which appeal to the Supreme Court would lie. Milgroom v. McDaniel (S.C. 1992) 308 S.C. 5, 416 S.E.2d 626, rehearing denied. Appeal And Error 78(5)

A reference to a master‑in‑equity was correctly returned to the circuit court where (1) a judgment creditor’s supplemental proceeding was referred to the master with authority to enter final judgment with direct appeal to the Supreme Court, (2) in an effort to secure the production of certain of the debtor’s property, the master engaged in direct communication with an associate of the debtor who advised him that the property was in the associate’s possession and that the associate would not turn it over to the court as the debtor had promised, and (3) the master issued a report and recommendation that the debtor be held in contempt and returned the matter to the circuit court for an independent finding. Milgroom v. McDaniel (S.C. 1992) 308 S.C. 5, 416 S.E.2d 626, rehearing denied.

**SECTION 14‑11‑100.** Authority to administer oaths, and to take testimony, depositions, renunciations of dower, affidavits, and other instruments; fees.

The masters in this State, while in office, may administer oaths, take depositions, affidavits and renunciation of dower, probate deeds and other instruments and take testimony by commission as fully and effectually as the clerks of courts and notaries public. Their fees therefor shall be the same as allowed by law to other officers for similar services.

HISTORY: 1962 Code Section 15‑1816; 1952 Code Section 15‑1816; 1942 Code Section 3689; 1932 Code Section 3697; Civ. C. ‘22 Section 2234; Civ. C. ‘12 Section 1385; 1909 (26) 90.

Library References

Equity 395.

Westlaw Topic No. 150.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Reference Section 12, General Procedure.

**SECTION 14‑11‑110.** Master shall take testimony on application of party; procedure.

The master shall, upon the application of either party to any cause or proceedings in which equitable relief is demanded pending and at issue in his county, take in writing the testimony of any witness who may be produced before him by any party to the cause, ten days’ notice of such application having been given to the opposite party. Such witness shall be subject to the same examination, cross‑examination and reply and the same exceptions as to the admissibility of testimony may be taken as are allowed by law upon examination before the court except that in case any testimony be objected to the master shall receive the same subject to the exceptions, reporting the exceptions and his ruling thereon.

HISTORY: 1962 Code Section 15‑1819; 1952 Code Section 15‑1819; 1942 Code Section 3691; 1932 Code Section 3699; Civ. C. ‘22 Section 2236; Civ. C. ‘12 Section 1387; Civ. C. ‘02 Section 978; G. S. 793; R. S. 849; 1840 (11) 157, 158 Sections 10, 11, 12; 1878 (16) 609.

Library References

Equity 404.

Westlaw Topic No. 150.

NOTES OF DECISIONS

In general 1

1. In general

Authority to take testimony in actions for foreclosure. Bank of Camden v. Thompson (S.C. 1896) 46 S.C. 499, 24 S.E. 332.

**SECTION 14‑11‑120.** Admission of deposition in evidence.

The deposition so taken may be read in evidence at the hearing, subject to the right of either party upon good cause shown to require the personal attendance and viva voce examination of the witness at the hearing.

HISTORY: 1962 Code Section 15‑1820; 1952 Code Section 15‑1820; 1942 Code Section 3691; 1932 Code Section 3699; Civ. C. ‘22 Section 2236; Civ. C. ‘12 Section 1387; Civ. C. ‘02 Section 978; G. S. 793; R. S. 849; 1840 (11) 157, 158 Sections 10, 11, 12; 1878 (16) 609.

Library References

Equity 404.

Westlaw Topic No. 150.

**SECTION 14‑11‑130.** Power to compel attendance of witnesses and to punish for contempt.

The master may compel the attendance of witnesses before him and punish for any contempt.

HISTORY: 1962 Code Section 15‑1821; 1952 Code Section 15‑1821; 1942 Code Section 3691; 1932 Code Section 3699; Civ. C. ‘22 Section 2236; Civ. C. ‘12 Section 1387; Civ. C. ‘02 Section 978; G. S. 793; R. S. 849; 1878 (16) 609; 1840 (11) 157, 158 Sections 10, 11, 12.

Library References

Equity 395.

Westlaw Topic No. 150.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Reference Section 12, General Procedure.

**SECTION 14‑11‑150.** Master may sell lands in another county.

Whenever the court of common pleas in any county shall have acquired jurisdiction over real estate lying in another county the master for the county in which the action is brought may sell such real estate in the county in which the land is situated and all such sales heretofore made, otherwise valid and not appealed from, are hereby confirmed.

HISTORY: 1962 Code Section 15‑1823; 1952 Code Section 15‑1823; 1942 Code Section 3686; 1932 Code Section 3693; Civ. C. ‘22 Section 2230; Civ. C. ‘12 Section 1381; Civ. C. ‘02 Section 974; R. S. 845; 1884 (18) 708.

Library References

Equity 395.

Westlaw Topic No. 150.

**SECTION 14‑11‑160.** Master may sell real estate in any county under order by consent.

Whenever real estate is adjudged to be sold by a master such sale may take place by consent of the parties to the cause or their attorneys or, when infants are parties, by the consent of the guardians ad litem of such infants or their attorneys in any county which the court may direct. All such sales heretofore made and otherwise valid are hereby confirmed.

HISTORY: 1962 Code Section 15‑1824; 1952 Code Section 15‑1824; 1942 Code Section 3687; 1932 Code Section 3694; Civ. C. ‘22 Section 2231; Civ. C. ‘12 Section 1382; Civ. C. ‘02 Section 975; R. S. 846; 1885 (19) 7.

Library References

Equity 395.

Westlaw Topic No. 150.

NOTES OF DECISIONS

In general 1

1. In general

Collateral attack. A recital in the record of partition proceedings that the decree of sale of lands in another county was by consent, as provided by this section [Code 1962 Section 15‑1824], is not open to collateral attack. Connor v. McCoy (S.C. 1909) 83 S.C. 165, 65 S.E. 257. Partition 108

**SECTION 14‑11‑170.** Deposit of funds.

The master shall deposit all funds in his hands in some bank located in the county.

HISTORY: 1962 Code Section 15‑1826; 1952 Code Section 15‑1826; 1942 Code Section 3692; 1932 Code Section 3700; Civ. C. ‘22 Section 2237; Civ. C. ‘12 Section 1388; Civ. C. ‘02 Section 979; G. S. 794; R. S. 850; 1840 (11) 161 Section 16; 1868 (14) 16 Section 10; 1909 (26) 48; 1925 (34) 96; 1930 (36) 1233.

Library References

Equity 395.

Westlaw Topic No. 150.

**SECTION 14‑11‑190.** Books of office.

The master shall keep a reference book in which he shall record all references held by him and the proceedings therein and a ledger in which shall be kept the account of all cases in his hands to the credit of which he may receive funds. When he shall cease to be master these books shall be deposited in the office of the clerk of the court of common pleas of his county.

HISTORY: 1962 Code Section 15‑1828; 1952 Code Section 15‑1828; 1942 Code Section 3694; 1932 Code Section 3702; Civ. C. ‘22 Section 2239; Civ. C. ‘12 Section 1390; Civ. C. ‘02 Section 981; G. S. 796; R. S. 852.

Library References

Equity 395.

Westlaw Topic No. 150.

ARTICLE 3

Fees

**SECTION 14‑11‑310.** Masters‑in‑equity to collect certain fees.

Masters‑in‑equity shall collect the following fees which must be deposited in the general fund of the county:

(1) in actions for partitions, foreclosure of liens upon real property, or sales of real property, either in private or by auction, a fee of one hundred dollars. If the matter requires more than one day of hearing, there is a thirty‑five dollar charge for each additional day or portion of the day until the matter is concluded;

(2) for the preparation of a deed, a fee of twenty‑five dollars;

(3) on sales of land, a fee equal to one percent of the bid or of the funds passing through the court, whichever is greater. The minimum commission collectible under this item is twenty‑five dollars, and the maximum commission is two thousand, five hundred dollars;

(4) for a supplemental proceeding, a fee of twenty‑five dollars;

(5) in all other cases, fifty dollars for the first day’s hearing or any portion of the day and for each day after the first day, thirty‑five dollars. The fees must be assessed at the time of the order or report of the master‑in‑equity.

The fees provided for in this section, including the first day’s fee provided for in item (5) and excluding the commission on sale, must be paid at the time the order of reference is signed and is nonrefundable unless so ordered by the master‑in‑equity on proper cause being shown. The cost of transcribing the record is in addition to the fees provided for in this section and must be assessed at the rate prescribed for circuit courts.

HISTORY: 1962 Code Section 27‑201; 1952 Code Section 27‑201; 1942 Code Section 4941; 1932 Code Section 4941; Civ. C. ‘22 Section 5746; Civ. C. ‘12 Section 4224; Civ. C. ‘02 Section 3113; 1894 (21) 933; 1911 (27) 85; 1921 (32) 123; 1925 (34) 76, 112; 1926 (34) 1037; 1939 (41) 173; 1948 (45) 1626; 1979 Act No. 164 Part II Section 11, eff July 1, 1979; 1988 Act No. 678, Part II, Section 7, eff July 25, 1988.

CROSS REFERENCES

Costs for proving uncontested claims, see Section 15‑37‑160.

Costs for references, see Sections 15‑37‑130, 15‑37‑140.

Provision regarding compensation of master‑in‑equity, see Section 14‑11‑30.

Provision requiring the masters‑in‑equity account for fees received and pay them over to the county, see Section 14‑11‑40.

Library References

Equity 395.

Westlaw Topic No. 150.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Reference Section 8, Master‑In‑Equity.

S.C. Jur. Reference Section 11, Fees.

Attorney General’s Opinions

Fee of $5.00 should be charged when Master in Equity issues an order dismissing a supplemental proceeding referred to it. 1983 Op.Atty.Gen. No. 83‑26, p. 44 (June 27, 1983) 1983 WL 142697.

A Master may collect no fee when a mortgagee buys in the property at a foreclosure sale. 1975‑76 Op.Atty.Gen. No 4516, p 378 (November 8, 1976) 1976 WL 23133.

NOTES OF DECISIONS

In general 1

1. In general

South Carolina Judicial Department (SCJD) did not require Master‑In‑Equity to hold lenders’ foreclosure proceeds, and therefore SCJD did not owe lenders a fiduciary duty to protect proceeds in action by lenders against SCJD arising from loss of proceeds due to embezzlement by Master’s employee; authority for Master to hold these proceeds was found in statutes and a rule which implemented the statutes, and did not come from SCJD. Bank of New York v. Sumter County (S.C. 2010) 387 S.C. 147, 691 S.E.2d 473. Equity 395; Equity 397

In a mortgage foreclosure action, the special referee did not have a pecuniary interest in the outcome because he received as compensation master’s fees in the amount of $500 and a one percent sales commission of $550.10 where he would have been entitled to compensation regardless of how he ruled in the matter in that Section 14‑11‑60 provides that the special referee must be compensated by the parties involved in the action, and Section 14‑11‑310 provides that the master‑in equity shall collect fees on the sale of land to be deposited in the county’s general fund. First Sav. Bank v. McLean (S.C. 1994) 314 S.C. 361, 444 S.E.2d 513, rehearing denied. Judges 42

That master was allowed compensation in excess of statutory commission held error where statute afforded master sufficient compensation, and parties had not agreed for additional compensation. Stewart & Kernaghan v. Fidelity & Deposit Co. of Maryland (S.C. 1933) 169 S.C. 516, 169 S.E. 434.

Counsel’s agreement that amount of master’s and stenographer’s costs should be fixed by judge constituted agreement only that court should fix costs provided by law and not that judge should allow master extra compensation. Stewart & Kernaghan v. Fidelity & Deposit Co. of Maryland (S.C. 1933) 169 S.C. 516, 169 S.E. 434.

Under Civ.Code 1902, Sections 3113, 3118 (See Code 1942, Sections 3702‑5, 4941, 4950), master is allowed one‑half of 1 per cent. as for transferring money to a party but not as for money passing through his hands and disbursed by him. Barr v. Barr (S.C. 1909) 82 S.C. 573, 64 S.E. 858.

Civ.Code 1902, Section 3113 (See Code 1942, Sections 3702‑5, 4941), allows masters the same commissions for moneys passing through their hands as are allowed by law to sheriffs. Section 3118 (See Code 1942, Section 4950), allows sheriffs 2 per cent. commissions on all moneys collected by them if under $300, and, if over that sum, 2 per cent. of the first $300, and “one‑half of one per cent. on all sums paid to plaintiff” on execution lodged with the sheriff, and also allows them commissions of one‑half of 1 per cent. for transferring money to a party. Held, that a master was not entitled to a commission of one‑half of 1 per cent. on money passing through his hands and disbursed by him, in addition to the 2 per cent. allowed on the first $300 under the part of section 3118 quoted, that applying to money which has not passed through the sheriff’s hands, but which is paid directly to plaintiff by the judgment debtor, but was entitled to such commissions thereon under the provision relating to transferring money. Barr v. Barr (S.C. 1909) 82 S.C. 573, 64 S.E. 858.

The term “all costs,” used in Rev.St.1893, Section 2548, as amended by the act of 1897 (See Code 1942, Section 757), providing that, when the property sought to be partitioned does not exceed $1,000 in value, the costs shall be one‑half of the costs allowed when the value exceeds that sum, and declaring that this provision shall apply to “all costs” in the cause, includes fees allowed to officers, including the commission allowed to the master by section 2557 (See Code 1942, Sections 3702‑5, 4941), for making the sale. Bryan v. Reams (S.C. 1901) 59 S.C. 340, 37 S.E. 921.