

January 1949

## Equity: Unreasonableness of Master's Fee

J. Thomas Gurney

Follow this and additional works at: <https://scholarship.law.ufl.edu/flr>



Part of the [Law Commons](#)

---

### Recommended Citation

J. Thomas Gurney, *Equity: Unreasonableness of Master's Fee*, 2 Fla. L. Rev. 293 (1949).

Available at: <https://scholarship.law.ufl.edu/flr/vol2/iss2/12>

This Case Comment is brought to you for free and open access by UF Law Scholarship Repository. It has been accepted for inclusion in Florida Law Review by an authorized editor of UF Law Scholarship Repository. For more information, please contact [kaleita@law.ufl.edu](mailto:kaleita@law.ufl.edu).

than Democrats and Republicans was more than a mere procedural defect, in that on its face it violated the substantive requirements of the election.

While mere formal irregularities not affecting the result will not invalidate an election, the Court correctly held that the action of the county commissioners in this case was a denial of a substantive right to independent voters and therefore was sufficiently serious to invalidate the election.

JOHN E. STRAUGHN

### EQUITY: UNREASONABLENESS OF MASTER'S FEE

*Garlick v. Garlick*, 38 So.2d 222 (Fla. 1949)

A suit for divorce was instituted by the wife, alleging habitual intemperance and extreme cruelty. The husband denied her allegation and filed a cross-bill, praying for divorce and charging extreme cruelty and ungovernable temper. The facts were referred to a master; and upon his findings the court decreed a divorce in favor of the plaintiff, awarding to her the custody of the two children, half of the couple's assets, and \$40 a week for the support of herself and the children. The defendant was assessed court costs totaling over \$5,000, which included \$1,000 for master's fee, \$750 for the court reporter, and over \$3,000 for attorneys' fees. The defendant was employed at \$50 a week; and after the home was sold and court costs paid, he was left with total assets of less than \$2,000 with which to settle his affairs. Defendant appealed solely on the question of alimony. HELD, under the circumstances the award of alimony was exorbitant, as was the allowance of master's fee, reporter's fee, and attorneys' fees. Decree reversed for review and reduction.

The method of determination of the compensation for the services of masters in chancery is covered in the majority of states by statute. These laws fall into two general categories: those setting up a schedule of fees for the various functions of the master,<sup>1</sup> and those providing for a fee governed entirely by the discretion of the court from which the reference to the master was made,<sup>2</sup> subject to appeal. Florida has a statute strictly

---

<sup>1</sup>ALA. CODE, tit. 7, §298 (1940).

<sup>2</sup>ARIZ. CODE, tit. 21, §1101 (1939).

in the first category;<sup>3</sup> but, like other states with similar provisions, it allows greater awards in the case of necessary extra services.<sup>4</sup> In the federal district courts the discretionary method is provided for by rule.<sup>5</sup>

In the jurisdictions depending solely upon the discretion of the court the factors considered in determining the award are: the amount of work expended,<sup>6</sup> the time consumed,<sup>7</sup> the ability and experience of the master,<sup>8</sup> the difficulty of the problem,<sup>9</sup> the amount of money or value of property concerned,<sup>10</sup> and the degree of responsibility on the master.<sup>11</sup> In schedule states, such as Florida, these same factors if sufficiently persuasive allow awards for extra service.<sup>12</sup> The Florida law is well settled that primary emphasis will be laid on the degree of difficulty and labor involved.<sup>13</sup> Not all extra work, however, constitutes grounds for extra service; and, if the master performs work that is considered useless or unnecessary, the court will disregard it in making the fee allowance.<sup>14</sup>

In our court system the position of a master in chancery is a responsible one, requiring considerable time and ability; and, in order to insure a high standard of astuteness and efficiency in the men holding this office,

<sup>3</sup>FLA. STAT. §62.07 (1941).

<sup>4</sup>Rainey v. Rainey, 38 So.2d 60 (Fla. 1948); Marion Mtg. Co. v. Moorman, 100 Fla. 1522, 131 So. 650 (1930).

<sup>5</sup>FED. RULES CIV. PROC. 53 (1938).

<sup>6</sup>Stahl v. Stahl, 166 Ill. App. 236 (1911); Livingston County v. Dunn, 244 Ky. 460, 51 S. W.2d 450 (1932); Claflin v. Celley, 48 Vt. 3 (1875); Eppes v. Eppes, 181 Va. 970, 27 S. E.2d 164 (1943).

<sup>7</sup>In re Gilbert, 276 U. S. 6 (1928); Newton v. Consolidated Gas Co. of N. Y., 259 U. S. 101 (1922); Herpich v. Williams, 300 Ill. 540, 133 N. E. 220 (1921).

<sup>8</sup>Van Kannel Revolving Door Co. v. Ulrich, 297 Fed. 363 (C. C. A. 8th 1924); Brown v. King, 62 Fed. 529 (C. C. A. 5th 1894).

<sup>9</sup>Stahl v. Stahl, 166 Ill. App. 236 (1911); Gottschalk v. Noyes, 225 Ill. 94, 80 N. E. 72 (1906); Livingston County v. Dunn, 244 Ky. 460, 51 S. W.2d 450 (1933); Claflin v. Celley, 48 Vt. 3 (1875).

<sup>10</sup>Pacific Gas & Electric Co. v. Railroad Comm'n of Cal., 14 F. Supp. 134 (N. D. Cal. 1936); City Bldg. & Loan Ass'n v. Adler, 117 N. J. Eq. 399, 176 Atl. 175 (1935).

<sup>11</sup>In re Gilbert, 276 U. S. 6 (1928); Newton v. Consolidated Gas Co. of N. Y., 259 U. S. 101 (1922); Finance Committee of Pa. v. Warren, 82 Fed. 525 (C. C. A. 7th 1897); Whittall v. Murray Furniture Co., 41 F.2d 277 (M. D. Pa. 1930).

<sup>12</sup>See notes 6-11 *supra*.

<sup>13</sup>Rainey v. Rainey, 38 So.2d 60 (Fla. 1948); Marion Mtg. Co. v. Moorman, 100 Fla. 1522, 131 So. 650 (1930).

<sup>14</sup>Marion Mtg. Co. v. Moorman, 100 Fla. 1522, 131 So. 650 (1930); Manowsky v. Stephen, 233 Ill. 409, 84 N. E. 365 (1908); Gottschalk v. Noyes, 225 Ill. 94, 80 N. E. 72 (1906); *In re Hemiup*, 3 Paige 304 (N. Y. 1832); Special Bank Comm'rs v. Grantston Savings Bank, 12 R. I. 497 (1880).