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Paul Ritter

A CRITICISM OF THE ESTATE BY THE ENTIRETY

PAUL RITTER

"It is one of the misfortunes of the law that ideas become encysted in phrases and thereafter for a long time cease to provoke further analysis."[1] When Mr. Justice Holmes made this observation he undoubtedly had in mind the tendency of lawyers to take abstract words, raise them into artificial dogma, and apply that dogma with inexorably mechanical logic wholly without regard to relevant considerations of history or social policy.[2] One example of such unrealistic logomachy is the judicial acceptance into Florida law of the anachronistic English doctrine of estates by the entirety.[3] The Florida Supreme Court not only has accepted the doctrine but has added to it various attributes which no doubt would shock the subtle imaginations of the early English conveyancers to whom we owe its origin. To use the language of a learned commentator on the like failing of the Michigan court, the Florida decisions are "a quagmire of inconsistent state-

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[1]Hyde v. United States, 225 U.S. 347, 391 (1912) (Holmes, J., dissenting); Holmes, *Law in Science and Science in Law,* 12 HARV. L. REV. 443, 455 (1899).

[2]Jerome Frank discusses this foible under the heading Verbalism and Scholasticism in LAW AND THE MODERN MIND c. VII (1930). It is probably an outgrowth of what one of James Thurber's teachers called "the infinite capacity of the human mind to resist the introduction of knowledge"; see Thurber, *Photograph Album,* The New Yorker, Dec. 1, 1951, p. 45.

[3]It is not the purpose of this paper to deal with the various details incident to the doctrine in Florida, since they are known to most lawyers and are competently stated elsewhere: Crosby and Miller, *Our Legal Chameleon, The Florida Homestead Exemption,* 2 U. OF FLA. L. REV. 12, 32-35 (1949); Legis., *Estates by the Entirety: Creation between Husband and Wife,* 1 U. OF FLA. L. REV. 433 (1948); Note, *The Status of Entireties in Florida,* 5 MIAMI L.Q. 592 (1951). The estate is defined in Bailey v. Smith, 89 Fla. 303, 305, 103 So. 833, 834 (1925): "An estate by the entireties is an estate held by husband and wife together so long as both live, and after the death of either, by the survivor so long as the estate lasts. . . . It is an estate held by husband and wife by virtue of title acquired by them jointly after marriage. . . . The essential characteristic of an estate by the entirety is that each spouse is seized of the whole or the entirety and not of a share, moiety, or divisible part. Each is seized *per tout et non per my.* There is but one estate, and, in contemplation of law, it is held by but one person."

ments and contradictory results" and ". . . make grotesque, a doctrine already completely anomalous."[4]

Arrival at a proper understanding of the present nature of estates by the entireties entails the delineation of the English common law doctrine[5] and the development of the concept in Florida.

THE ENGLISH DOCTRINE

The basic characteristics of the modern tenancy by the entirety were established and known as early as Edward III, whose long reign stretched through the middle of the fourteenth century. There seems to be no plausible or identifiable theory of the origin of this estate.[6] It was a rarity[7] and was of slight importance in the common law scheme of things.[8] It was in that period confined to land and never existed in personalty.[9] Its genesis, however, was part and parcel of the quaint and perplexing views of our ancestors on the relation of husband and wife.[10] Comprehension of the doctrine of entireties thus presupposes knowledge of the peculiar status of married women in the setting in which this estate existed.

The wife at common law was not a legal person in the present connotation of that term. Blackstone tells us that ". . . the very being or legal existence of the woman is suspended during the marriage . . . ."[11] She was totally incapable of owning or having any in-

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[4]Honigman, *Tenancy by Entirety in Michigan,* 5 MICH. STATE BAR J. 196, 249, at 219 and 284 respectively (1926). In fairness to the present members of the Florida Supreme Court the writer wishes to state that practically all of the Florida doctrine hereinafter criticized owes its origin to judges no longer on the Court.

[5]As it existed in England down to July 4, 1776; see FLA. STAT. §2.01 (1951).

[6]See Honigman, *supra* note 4, at 198: "It was at an early day regarded as a 'nice distinction,' without any attempt to justify it as based upon sound reason or good public policy. What was in truth the ovum of this estate, will probably ever remain a mystery." In Clark v. Clark, 56 N.H. 105, 110 (1875), the estate is referred to as "That mysterious joint tenancy in which the subtle genius of the English real law so much delighted itself . . . ." *Cf.* 3 HOLDSWORTH, HISTORY OF ENGLISH LAW 128 (5th ed. 1942).

[7]CHALLIS, *Law of Real Property* 364 (3d ed. 1911).

[8]The estate is given only slight mention in Digby's well-known treatise, INTRODUCTION TO THE HISTORY OF THE LAW OF REAL PROPERTY 278 (5th ed. 1897).

[9]2 WALSH, COMMENTARIES ON THE LAW OF REAL PROPERTY 31 (1947); Note, 33 HARV. L. REV. 983 (1920); see also note 53 *infra.*

[10]CHALLIS, *op cit. supra* note 7, at 376; 2 POLLOCK AND MAITLAND, HISTORY OF ENGLISH LAW 246 (2d ed. 1905).

[11]1 BL. COMM. *442.

terest in personal property.[12] Indeed, she was not even entitled to earnings derived from her personal labor.[13] For all practical purposes she could not own or have any present interest in land. The husband had a freehold estate for the duration of the marriage in all land either owned by the wife at the time of the marriage or conveyed or devised to her during the marriage. He had the exclusive right of possession, as well as ownership of the rents and profits of such land. He could convey this estate of his without the wife's consent, and his creditors could levy on it. So complete was his dominion that upon his death his personal representative, and not the wife, was entitled to the crops growing on her land.[14] Furthermore, when issue was born to the marriage the husband became vested with a life estate in the wife's land.[15] The necessity of confining land tenure to those capable of performing feudal duties accounts for these disabilities of the wife.[16]

Because such disabilities attended the wife the common law jurists could not think in terms of capacity on her part to bear the relation to her husband of joint tenant or tenant in common, especially in view of the various mutual rights and duties incident to those tenancies between persons sui juris. Consequently, whenever land was conveyed or devised to a husband and wife, they did not take separate moities, as did the other species of cotenants, but rather took by the entirety. The whole title was vested in both with an indestructible right of survivorship.[17] The right of survivorship in joint tenancy could be destroyed through conveyance by one of the joint tenants;[18] and this characteristic, plus the disability of one of the entirety tenants, was the only essential difference between the two tenancies. As Honigman picturesquely puts it, ". . . the estate by the entirety was in

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[12]2 BL. COMM. *433; 3 HOLDSWORTH, *op cit. supra* note 6, at 532; POLLOCK AND MAITLAND, *op. cit. supra* note 10, at 404.

[13]DICEY, LAW AND PUBLIC OPINION IN ENGLAND 373 (2d ed. 1914); 3 HOLDSWORTH, *op. cit. supra* note 6, at 526, 528.

[14]DIGBY, *op. cit. supra* note 8, at 403; 3 HOLDSWORTH, *op. cit. supra* note 6, at 525; 2 POLLOCK AND MAITLAND, *op. cit. supra* note 10, at 403; 1 WALSH, COMMENTARIES OF THE LAW OF REAL PROPERTY 703-705 (1947); WALSH, HISTORY OF ANGLO-AMERICAN LAW 148 (2d ed. 1932); 1 WASHBURN, TREATISE ON THE AMERICAN LAW OF REAL PROPERTY 292 (6th ed. 1902).

[15]DIGBY, *op. cit. supra* note 8, at 174; see also authorities cited in note 14 *supra*.

[16]See Phipps, *Tenancy by Entireties,* 25 TEMP. L.Q. 24 (1951).

[17]2 BL. COMM. *182. Curiously, if a man and woman were co-owners of land and subsequently married each other, no tenancy by the entirety resulted, Honigman, *supra* note 4, at 200.

[18]2 BL. COMM. *185.

its origin a mere joint tenancy, adorned with the disabilities of coverture and a fortuitously conceived notion of an indestructible survivorship."[19]

For a long time it has been fashionable to attribute the origin of the tenancy by the entirety to the theory that husband and wife are one person, and to deem this a sufficient explanation;[20] and some have called this estate a joint tenancy modified by the doctrine of unity of husband and wife.[21] Such attempts at exposition are nothing but a play on words, seized upon in order to avoid analysis, or are at most a mere metaphorical way of saying that the wife is under disability. Pollock and Maitland have aptly exposed this delusive generality:[22]

> "In particular we must be on our guard against the common belief that the ruling principle is that which sees an 'unity of person' between husband and wife. This is a principle which suggests itself from time to time; it has the warrant of holy writ; it will serve to round a paragraph, and may now and again lead us out of or into a difficulty; but a consistently operative principle it cannot be."

Another writer speaks of the fallacy as follows:[23]

> "Were numerical repetition by courts and text writers the sole criterion of historical truth, we would have no alternative but to accept the doctrine that the existence of the tenancy by entirety is directly attributable to the common law notion of the unity of husband and wife. An inquiry into the nature of the common law conception of the identity of the spouses leaves, however, little doubt as to the fallacy of such doctrine.
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> "In legal contemplation, as in any other sense, there never has been an absolute unity of husband and wife."

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[19]*Supra* note 4, at 199.

[20]See, *e.g.*, 2 BL. COMM. *182.

[21]See, *e.g.*, Bailey v. Smith, 89 Fla. 303, 103 So. 833 (1925).

[22]*Op. cit. supra* note 10, at 405-406.

[23]Honigman, *supra* note 4, at 196; *see also* Whittlesey v. Fuller, 11 Conn. 337, 339 (1836): "And the reason given is, that husband and wife are one. If that were the real reason, it is very difficult to see why a deed to the wife would not be, in effect, a deed to the husband and wife, and *vice versa*."

Instead of saying that the common law regarded husband and wife as one person, it is more nearly correct to say that the wife was regarded as no person. For those content to explain the origin of entireties by a mere turn of words, the latter phrase is closer to the truth.

In view of the above peculiarities with reference to married women, the existence in the common law of such an anomaly as the entirety is plausible and understandable, but it does not seem subject to logical explanation.[24]

Notwithstanding the peculiar nature of the entirety doctrine, its limits and features seem to have been clearly established and understood in relation to the pre-nineteenth century common law. As in the case of the wife's land,[25] the husband had complete control of the entirety land. He owned all the rents and profits and could, without the wife's consent, convey the title and ownership, subject only to the possibility that she might outlive him and come into the property by way of survivorship. His creditors could levy on his interest in the entirety property.[26]

Excepting only her right of survivorship, which was merely a future interest, the wife's interest in the entirety land was no greater than her interest in her husband's individual land.[27] And, with the same exception, the husband had as great an interest in the wife's land as he had in land held by the entireties.[28]

Thus the English common law doctrine of tenancy by the entirety can be fairly restated for all practical purposes as amounting to no more than this: The husband becomes the individual owner of land conveyed to him and his wife; and his ownership is subject to termination in the sole event of her surviving him, whereupon she becomes the individual owner.[29]

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[24]See note 6 *supra.*

[25]See note 14 *supra.*

[26]2 WALSH, COMMENTARIES ON THE LAW OF REAL PROPERTY 31-34 (1947); 1 WASHBURN, *op. cit. supra* note 14, at 563 *et seq.*; Honigman, *supra* note 4, at 282; Note, 29 MICH. L. REV. 788 (1931).

[27]See note 26 *supra.*

[28]See notes 14 and 26 *supra.*

[29]We realize that this statement is lacking in the precision necessary for technically correct definition of real property concepts, but believe it serves the purpose of showing roughly the net practical effect of the English entirety doctrine as it originally existed. See Note, 23 HARV. L. REV. 405 (1910): "But since at common law the husband during his life had absolute control over his wife's separate estate,

THE FLORIDA DEVELOPMENT

The tenancy by the entirety which existed in the English common law down to the fourth day of July, 1776,[30] although somewhat anomalous, was not out of harmony with the archaic system of which it formed a part. The Florida cases present a different picture.

Until as late as 1913 estates by the entirety did not exist in the law of Florida. Co-ownership of property by husband and wife existed by virtue of the same forms of co-ownership that applied to parties not married to each other. At least, nothing in the Florida Constitution, statutes, or reports indicated the existence of estates by the entireties, and there was in 1913 affirmative evidence in the Florida sources of law that such estates could not exist here. At that time our legislative policy against the common law doctrine of survivorship had long been in force and was clearly expressed.[31] Florida had abolished the disability of married women to own separate interests in property,[32] yet this was the very disability which had been the foundation of the doctrine of entirety at the common law.[33] Furthermore, the courts of the country in which the doctrine of entirety had originated had two decades before held that the doctrine could not exist in view of statutes enabling married women to hold separate property.[34] There was also a respectable array of well-reasoned American decisions showing clearly that the entirety doctrine had no place in a legal system recognizing separate property of married women.[35] One very able de-

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it would seem to follow that the wife's interest in an estate by entirety would become vested in the husband for that period; so that having the entire interest in the estate, he could make a conveyance or mortgage, valid until his death."

[30]FLA. STAT. §2.01 (1951).

[31]FLA. STAT. §689.15 (1951), enacted originally in 1829. Estates by the entirety were later, by Fla. Laws 1941, c. 20954, excepted from the operation of the statute.

[32]FLA. CONST. Art. XI, §1, provides: "All property . . . of a wife . . . shall be her separate property . . . ." See also FLA. STAT. §708.02 (1951), enacted originally in 1845. The term "all property" seems explicit enough to include the wife's interest in property co-owned with her husband.

[33]See note 10 *supra*.

[34]Thornley v. Thornley, [1893] 2 Ch. 229. See also Chitty, J., in Mander v. Harriss, 24 Ch. D. 222, 229 (1883).

[35]*E.g.*, Walthall v. Goree, 36 Ala. 728, 735 (1860): "Since the Code, therefore, a devise to husband and wife is not a grant to a single person, but to two persons, each of whom is capable of taking a separate estate. Both of the grantees being capable of taking separately, it is impossible that they should take by entireties,

cision rejected the doctrine on the broader ground that it ". . . is repugnant to our institutions, and to the American sense of justice . . . ."[36]

With the relevant authorities so strongly against the doctrine of entireties in Florida, as above shown, *English v. English*[37] came to the Florida Supreme Court in 1913. It involved the single question of the right of the widow of a deceased to take by survivorship all of the land of which they were co-owners. The Court, in a brief opinion which relied largely on a quotation from a then popular encyclopedia,[38] answered this question in the affirmative.[39] The opinion rejected without discussion the suggestion that the legislation referred to above abrogated the doctrine of entireties. Such failure by courts to take legislative policy into account has been the source of frequent

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as if they constituted a single person. Of necessity, they take by moieties. Being thus invested with the capacity of taking by moieties, the reasons on which the rule of the common law was founded has [*sic*] ceased to exist . . . ."; Whittlesey v. Fuller, 11 Conn. 337 (1836); Cooper v. Cooper, 76 Ill. 57 (1875); Hoffman v. Stigers, 28 Iowa 302 (1869); Robinson, Appellant, 88 Me. 17, 22, 33 Atl. 652, 654 (1895): "The rule of the common law creating estates by entirety is irreconcilable with both the letter and the spirit of these statutes. It never rested upon a rational or substantial groundwork. It had its origin in feudal insitutions and social conditions which were superseded centuries ago by the more enlightened principles of a progressive civilization. It is now repugnant to the American idea of the enjoyment and devolution of property and to the true theory of the marriage relation. . . . The fictitious basis of this rule having been removed the rule itself must fail." See also Note, *Effect of the Married Women's Property Acts upon Estates by the Entirety*, 37 HARV. L. REV. 616 (1924).

[36]Kerner v. McDonald, 60 Neb. 663, 671, 84 N.W. 92 (1900); see Niles, *Abolish Tenancy by the Entirety*, 79 TRUSTS AND ESTATES 366 (1944).

[37]66 Fla. 427, 63 So. 822 (1913).

[38]15 AM. & ENG. ENCY. LAW 847 (2d ed. 1900). Wigmore has deplored this practice in 1 EVIDENCE 243 (3d ed. 1940): "There is no *discrimination* in the use of expository authorities. Such a discrimination is the mark of a sound legal education and a correct scholarly standard. But, in the judicial opinions, the superficial products of hasty hack-writers, callow compilers, and anonymous editors, are given equal consideration with the weightiest names of true science. The reliance upon anonymity is always a mark of literary and juristic crudity. Almost any printed pages, bound in law-buckram and well advertised or gratuitously presented, constitute authority fit to guide the Courts."

[39]The Court concluded this decision with the following statement: "There would seem to be no occasion for further discussion or citations." For an estimate of the justice who wrote the opinion in the English case see 1 Holmes-Pollock Letters 168-169 (Howe ed. 1941).

criticism[40] and was condemned by the late Harlan F. Stone as follows:[41]

> "It is difficult to appraise the consequences of the perpetuation of incongruities and injustices in the law by this habit of narrow construction of statutes and by the failure to recognize that, as recognitions of social policy, they are as significant and rightly as much a part of the law, as the rules declared by judges. A generation ago no feature of our law administration tended quite so much to discredit law and lawyers in the lay mind. A narrow literalism too often defeated the purpose of remedial legislation, while a seeming contest went on with the apparent purpose of ascertaining whether the legislatures would ultimately secure a desired reform or the courts would succeed in resisting it."

In *English v. English* the Court assumed that the adoption of the entirety doctrine was compelled by the statute incorporating the pre-1776 English common law into our law.[42] Roscoe Pound, speaking for the Nebraska Supreme Court, had already laid bare the fallacy of such reasoning:[43]

> "We can not think, and we do not believe this court has ever understood, that the legislature intended to petrify the common law, as embodied in judicial decisions at any one time, and set it up in such inflexible form as a rule of decision. The theory of our system is that the law consists, not in the actual rules enforced by decisions of the courts at any one time, but the principles from which those rules flow; that old principles are applied to new cases, and the rules resulting from such ap-

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[40]See, *e.g.*, Landis, *Statutes and the Sources of Law* in HARVARD LEGAL ESSAYS 213, 223, 239 (1934); Pound, *Common Law and Legislation*, 21 HARV. L. REV. 383 (1908).

[41]*The Common Law in the United States*, 50 HARV. L. REV. 4, 14 (1936).

[42]FLA. STAT. §2.01 (1951).

[43]Williams v. Miles, 68 Neb. 463, 470, 94 N.W. 705, 708 (1903); see also Day, *Extent to which the English Common Law and Statutes are in Effect*, 3 U. OF FLA. L. REV. 303 (1950), especially 315 *et seq.*; Pope, *The English Common Law in the United States*, 24 HARV. L. REV. 6, 19 (1910).

plication are modified from time to time as changed conditions and new states of fact require. . . . The term 'common law of England,' as used in the statute, refers to that general system of law which prevails in England, and in most of the United States by derivation from England, as distinguished from the Roman or Civil Law system, which was in force in this territory prior to the Louisiana purchase. Hence the statute does not require adherence to the decisions of the English common-law courts prior to the Revolution, in case this court considers subsequent decisions, either in England or America, better expositions of the general principles of that system."

The next episode in this segment of Florida legal history was the *Ohio Butterine* case,[44] holding that the judgment creditor of a husband cannot reach his interest in the entirety real estate. The Court relied on the doctrine of inseverability, a doctrine that has correctly been said to be "based on a misconception of the common law."[45] The common law did not immunize the husband's interest from his creditors but on the contrary made it subject to levy.[46] The Florida Court recognized that some decisions follow the common law view, but thought them inapplicable because of the married women's legislation abrogating the common law control of the husband over the wife's property. Thus the Court held applicable to the entirety property the very legislation which, in the *English* case, had been held not applicable to it.

Quotations from decisions in two subsequent cases illustrate this same inconsistency, which runs throughout this segment of the law. *Allardice & Allardice, Inc. v. Weatherlow* summarized the basis of the decision thus: "But, as above pointed out, the wife's interest in an estate by entireties does not constitute a part of her separate estate."[47]

In *Newman v. The Equitable Life Assurance Society of the United States,* however, the Court said:[48]

". . . but the *interest* or property rights which a married woman

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[44]Ohio Butterine Co. v. Hargrave, 79 Fla. 458, 84 So. 376 (1920).
[45]Honigman, *supra* note 4, at 284.
[46]See note 26 *supra.*
[47]98 Fla. 475, 479, 124 So. 38, 40 (1929).
[48]119 Fla. 641, 648, 160 So. 745, 748 (1935).

> has in an estate by the entireties held by her and her husband during his life, *is* [*sic*] *her separate property,* under the comprehensive provisions of Section 1, Article XI of the Constitution.

The holding in the *Ohio Butterine* case[49] constitutes the most unjust feature of the Florida entirety doctrine. Of the forty-nine jurisdictions in the United States only twenty recognize the entirety doctrine, and of this latter group seven states permit levy on the husband's interest; in fact six permit levy on the interest of either spouse.[50] Thus Florida is one of a minority of thirteen jurisdictions.

Bailey v. Smith[51] extended the entirety doctrine to personal property. Although the opinion in the *Bailey* case cites two English decisions as authority for the assumption that the common law recognized the doctrine as to personalty, this assumption is unwarranted.[52] Nor do the cited cases support the Court's position; indeed, the plain implication of one is directly contrary.[53] Florida is among a minority of ten American states recognizing the entirety doctrine in personal property.[54]

The three Florida cases discussed, which embody fallacies already mentioned, constitute the foundation for the superstructure embodied in a congeries of some fifty-odd subsequent cases of diverse and bewildering implications. Even a few of these later paradoxes illustrate adequately the illogical nature of the whole situation.

The Court has held that the husband has the right of possession and control of personal property owned by the entireties,[55] and that

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[49]See note 44 *supra;* Niles, *supra* note 36; Note, 29 MICH. L. REV. 788 (1931).

[50]Phipps, *supra* note 16, at 46-57 (1951).

[51]89 Fla. 303, 103 So. 833 (1925).

[52]See note 9 *supra.*

[53]In Christ's Hospital v. Budgin, 2 Vern. 683, 23 Eng. Rep. 1043 (1712), the court ". . . looked upon the wife to be in the nature of a joint purchaser . . . ." It nevertheless stated by way of dictum that on the death of the husband his creditors should take priority over his wife in the distribution of personalty owned jointly by the spouses. Coppin v. ..... [*sic*], 2 P. Wms. 497, 24 Eng. Rep. 832 (1728), dealt only with the taxation of costs in a suit by husband and wife to redeem their land from a mortgage, and neither said nor implied anything with reference to the possibility of tenancy by the entirety in personalty.

[54]Phipps, *supra* note 16, at 46-57.

[55]Mann v. Etchells, 132 Fla. 409, 182 So. 198 (1938); Merrell v. Adkins, 131 Fla. 478, 180 So. 41 (1938).

the husband alone can effectively transfer the title to such property.[56] Exactly the reverse has been held with reference to real property;[57] and this unexplained difference raises some odd problems. The *Ohio Butterine* opinion[58] assigned the husband's lack of control over the entirety realty as the reason for his lack of any interest upon which levy might be made. Since the husband does have control over the entirety personalty, it would seem to follow that the *Ohio Butterine* case is inapplicable and that entirety personalty can be levied upon by his creditors. There is no assurance that our bench will so hold, however.[59]

So strong is the Court's position on the husband's lack of control over the entirety realty that in *Richart v. Roper,*[60] even though the husband had been exercising de facto control over the entirety realty, an agreement executed by him for a short-term lease was held void. If, instead of such a freehold estate, however, the husband and wife have a leasehold estate in land it is an open question whether the Court will hold valid a lease, assignment or sublease by the husband alone on the authority of the doctrine that he may transfer entirety personalty.[61]

The element of unity of title seems to be the very touchstone of the estate by entireties. Nevertheless the Supreme Court of Florida has gone so far as to hold that, even though the instrument under which husband and wife hold property expressly provides for severability of their interests, an estate by the entirety results.[62]

CONCLUSION

We believe it almost futile to try to administer justice by maintaining and extending obsolete and grossly inconsistent abstract con-

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[56]American Cent. Ins. Co. v. Whitlock, 122 Fla. 363, 165 So. 380 (1935).

[57]Allardice & Allardice, Inc. v. Weatherlow, 98 Fla. 475, 124 So. 38 (1929); Ferdon v. Hendry Lumber Co., 97 Fla. 283, 120 So. 335 (1929); Ohio Butterine Co. v. Hargrave, 79 Fla. 458, 84 So. 376 (1920).

[58]*Supra* note 57.

[59]Apparently no argument was made in Lindsley v. Phare, 115 Fla. 454, 155 So. 812 (1934), as to a distinction between realty and personalty; this case predated the decisions cited in note 55 *supra,* giving the husband control of personal property.

[60]156 Fla. 822, 25 So.2d 80 (1946).

[61]See cases cited in notes 55 and 56 *supra.*

[62]Hagerty v. Hagerty, 52 So.2d 432 (Fla. 1951).

cepts in a legal system functioning in an entirely changed social environment. The inconvenience to the bar in the unproductive labor of manipulating such a crazy-quilt patchwork of incongruous rules is enough in itself to condemn the doctrine of entireties as it exists in Florida. It is furthermore unjust and socially undesirable for our law to foster a contrivance so easily adapted to rendering each spouse "judgment-proof" against all debts not joint. The entirety device is also used as a means of thwarting the present Florida policy with reference to the descent of homestead realty.[63]

Justice, enlightened social policy, and common sense demand that the Legislature pass an act completely abrogating the doctrine of entireties.[64] There is no reason at all why modern man and wife should be in a different position from that of other cotenants.

[63]Crosby and Miller, *supra* note 3, at 67-77, especially at 73.

[64]Doubt may be raised as whether abrogation of the present law could be constitutionally applied to presently existing estates by the entireties, but we believe that this question is answered by the authorities holding valid the abolition of existing incidents of a no less justiafiable anachronism, the doctrine of contingent remainders; see 1 SIMES, THE LAW OF FUTURE INTERESTS 99, 194 (1935). Of course such legislation would not affect the rights of spouses who had already acquired the complete ownership by survivorship.

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