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Effect of Husband's Indorsement of His Wife's Signature upon a Joint Check

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EFFECT OF HUSBAND'S INDORSEMENT OF HIS WIFE'S SIGNATURE UPON A JOINT CHECK

In *Bello v. Union Trust Co.*,[1] a check was made payable to husband and wife representing payment of the purchase price of Florida realty owned by them as tenants by the entirety. The husband, after the wife had refused to indorse the check, presented it for payment to the collecting bank with the name of the wife indorsed thereon by him, and received payment. The collecting bank thereupon collected that amount from the drawee bank. Both banks having refused the demand of the wife for payment, she commenced an action against them sounding in tort for conversion. In the United States District Court for the Southern District of Florida the motions of the defendants for summary judgment were granted. On appeal; affirmed. The Fifth Circuit recognized that, as a general principle, a drawee bank is liable to a payee or co-payee for payment on a forged indorsement.[2] However, no such liability existed here since the husband and wife owned the check as tenants by the entirety[3] and, therefore, under Florida law,[4] payment to the husband was payment to the 'unity,' and not merely payment to the one who actually received the proceeds. Possession by one was possession by both.[5] The result, therefore, is apparently based upon a finding that no forgery exists here.

The court recognized that in other jurisdictions the husband's affixing of the wife's name on a check payable to them as co-payees is a forgery. Thus in *Elwert v. Pacific First Fed. Sav. Ass'n*,[6] a husband forged his wife's indorsement and collected the proceeds and the United States Court for the District of Oregon, applying Oregon law, held that a bank is liable to a co-owner of a check upon that bank's payment to an unauthorized person of the proceeds of a check

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1 267 F.2d 190 (5th Cir. 1959). The court applied Florida law since case concerned Florida land and all parties domiciled in Florida.

2 NIL § 23; Blacker & Shepard Co. v. Granite Trust Co., 284 Mass. 9, 187 N.E. 53 (1933); Spaulding v. First Nat'l Bank, 210 App. Div. 216, 205 N.Y. Supp. 492 (4th Dept. 1929), aff'd by memo. 239 N.Y. 586, 147 N.E. 206 (1924); Clarke & Co. v. Warren Sav. Bank, 31 Pa. Super. 647 (1906); Lewis State Bank v. Raker, 138 Fla. 227, 189 So. 227 (1939); Louisville & Nashville R.R. Co. v. Citizens and Peoples Nat'l Bank, 74 Fla. 385, 77 So. 104 (1917); Bentley, Murray & Co. v. LaSalle St. Trust & Sav. Bank, 197 Ill. App. 322 (1st Dist. 1916). In a suit by a co-payee, the payee bank was held liable in Crahe v. Mercantile Trust & Sav. Bank, 295 Ill. 395, 129 N.E. 120 (1920); Elwert v. Pacific First Fed. Sav. & Loan Ass'n, 138 F. Supp. 395 (D.C. Ore. 1956); Hoffman v. First Nat'l Bank, 299 Ill. App. 290, 20 N.E.2d 121, (1st Dist. 1939). And see UCC §3-404 designed to remove the uncertainties arising under NIL § 23.

3 Dodson v. Title Insurance Co., 159 Fla. 371, 31 So. 2d 402 (1947).

4 The court relied heavily upon Merrill v. Adkins, 131 Fla. 478, 180 So. 41 (1938).

5 267 F.2d at 194.

6 138 F. Supp. 395 (D. Ore. 1956).

upon such co-owner's forged indorsement, the bank's payment amounting to a conversion of the co-owner's undivided one-half interest.[7] The same result was reached in *Hoffman v. First Nat'l Bank*,[8] the Illinois court holding that when a wife's indorsement was forged on a check payable to herself and husband jointly, she could maintain an action against the bank. However, the *Bello* court found these cases unpersuasive because in each instance the wife had a "severable joint interest" in the proceeds, each named payee owning an undivided one-half interest. Under Oregon law no tenancy by the entirety can be created in personal property, and in Illinois no tenancy by the entirety can be created in real or personal property. Therefore, in both cases, each payee had an undivided one-half interest and neither could appropriate the interest of the other. In such circumstances, the *Bello* court reasoned, any payment on a forged indorsement would amount to a conversion of the nonsigning payee's distinct interest insofar as the liability of the bank is concerned.

As the holding of *Bello* was that as a matter of law there was no forgery, a discussion of the effects of honoring a forged check would seem to be superfluous. However, as is evident from the *Elwert* and *Hoffman* cases, not all jurisdiction will accept the principle that when a check is made payable to husband and wife it is held by the entirety. Therefore a disussion of the rights of the payee against the bank honoring a check on a forged indorsement of the payee is pertinent.

Absent any negligence on the part of the bank, there are only three possible theories on which a payee can proceed against a drawee and collecting bank, either or both, the liability of the collecting bank being dependent upon the liability of the drawee bank. He can proceed against the drawee (1) as an acceptor in an action sounding in contract; (2) as the assignee of an assigned claim; or (3) for conversion in an action sounding in tort.

Prior to the adoption of the NIL, it had been held that when a drawee receives a check drawn by one of its depositors, the bank is thereby deemed to have accepted the check and to have agreed to pay the named payee.[9] A payment to an impersonator upon a forged indorsement does not satisfy this obligation and pre-NIL cases allowed

[7] 267 F.2d at 192-193.

[8] Supra note 2.

[9] Vanbibler v. Bank of Louisiana, 14 La. Ann. 486 (1859); Seventh Nat'l Bank v. Cook, 73 Pa. 483 (1873); Pickle v. Muse, 88 Tenn. 380 (1890). However there are other jurisdictions that hold that such does not constitute an acceptance, First Nat'l Bank v. Whittman, 94 U.S. 343 (1876); Sims v. American Nat'l Bank, 98 Ark. 1, 135 S.W. 356 (1911); Elyria Sav. & Banking Co. v. Walker Bin Co., 92 Ohio St. 406, 111 N.E. 147 (1915).

the payee to sue the drawee bank in an action of quasi-contract.[10] With the adoption of the NIL, the check itself does not operate as an assignment to the payee of any part of the funds of the drawer and the bank is not liable to the named payee unless and until it accepts the check;[11] and for an acceptance to be binding it must be in writing.[12] Consequently, in the absence of the required writing such quasi-contractual actions cannot be maintained by the named payee.[13]

There is no authority for the proposition that a payment by a drawee on a forged indorsement gives rise to an assignment of the drawer's funds.[14] There is, however, authority recognizing a right in the payee to recover from the drawee in an action sounding in tort for conversion.[15] The essence of the action is that the drawee bank's taking of the check from one who has no authority to negotiate it and the ultimate return of the check to the maker is a dealing with the check as owner and constitutes an interference with the possession of the rightful owner.[16] The act of the drawee which is wrongful as to the payee is not the payment of the money to the forger, but rather, the bank's assumption of dominion and control over the check which is the property of the payee.[17] Under this theory a drawee bank has been liable to a co-payee where the check has been paid upon the co-payee's unauthorized indorsement.[18]

As the holding of *Bello* was that since the husband and wife owned the check as tenants by the entirety, payment to the husband was payment to the unity and not merely to him, it is apparent that

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10 NIL § 23, and see cases supra note 9.

11 NIL § 189. Accord UCC § 3-409.

12 NIL § 132; UCC § 3-410.

13 First Nat'l Bank v. Whittman, supra note 9; Sims v. American Nat'l Bank, supra note 9; State Bank v. Mid City Trust & Savings Bank, 295 Ill. 599, 129 N.E. 498 (1920); Blacker & Shepard Co. v. Granite Trust Co., supra note 2; Howard H. Clark & Co. v. Warren Sav. Bank, 31 Pa. Super. 647 (1906).

14 See statement to this effect in Britton, Bills and Notes 648 (1943).

15 Though this comment is limited to the liability of a drawee bank it should be noted that the same liability will attach to a collecting bank. See Atlantic Trust Co. v. Subscribers to Automobile Ins. Exchange, 150 Md. 470, 133 Atl. 319 (1926). None of the above cases make reference to the NIL. In Merchant Bank v. National Capital Press, 288 Fed. 265 (1923), it was held that the decision of the U.S. Supreme Court in First Nat'l Bank v. Whittman, supra note 9, barring suit by a payee against a drawee bank does not apply in a suit against a collecting bank. For further discussion of this point see Brannan, Negotiable Instruments Law, § 23 (Beutel, 7th ed. 1948). And see Universal Carloading & Distributing Co. v. South Side Bank, 224 Mo. App. 876, 27 S.W.2d 768 (1930) allowing payee a recovery on the ground of money had and received even though his petition was insufficient to state a cause of action in conversion.

16 The leading case for this proposition is Blacker & Shepherd Co. v. Granite Trust Co., supra note 2.

17 State v. First Nat'l Bank, 38 N.M. 225, 230, 30 P.2d 728, 732 (1936).

18 Crahe v. Mercantile Trust & Sav. Bank, supra note 2. People ex rel. P. Koenig Coal Co. v. Davis, 237 Mich. 165, 211 N.W. 36 (1926).

liability of a drawee to co-payees who are husband and wife may well depend upon whether they hold as joint tenants or as tenants by the entirety. This in turn depends upon whether an estate by the entirety can exist in personal property[19] and, if so, in what manner it is created. The authorities are split on whether at common law there could exist a tenancy by the entirety in personal property.[20] In the majority of the jurisdictions where the question has arisen the rule consistently adhered to is that personal property may be held by the entirety,[21] and the Married Women's Property Acts, which, in general have put an end to the husband's common law ownership and control of personalty owned by her at the time of marriage or coverture, have been construed as not constituting any impediment to entirety ownership.[22] In at least seven jurisdictions the rule is that a tenancy by

[19] The phrase "estates by the entirety in personal property" has been considered by a few courts a misnomer because there is doubt whether, correctly speaking, there can be an "estate" or "tenancy" in personalty, Ciconte v. Barba, 19 Del. Ch. 6, 161 Atl. 925 (1932); Overheiser v. Lackey, 207 N.Y. 229, 100 N.E. 738 (1912); Scholze v. Scholze, 2 Tenn. App. 80 (1920); In re Albrecht, 136 N.Y. 91, 32 N.E. 632 (1892). However, since the word "estate" or "tenancy" has gained an acceptance of convenience in the law of personal property, it will herein be used as descriptive of the manner in which such property may be acquired or held.

[20] Some cases have taken the position that at common law there was no such tenancy. Cases illustrative of this proposition are the following: Polk v. Allen, 19 Mo. 467 (1854), (but for confusion in Missouri see cases in note 21 infra); Gooch v. Weldon Bank and Trust Co., 176 N.C. 213 97 S.E. 53 (1918); Turlington v. Lucas, 186 N.C. 283, 119 S.E. 366 (1923); Stout v. Van Zante, 109 Ore. 430, 219 Pac. 804 (1923); Scholze v. Scholze, supra note 19. (But for confusion in Tennessee see cases in note 21 infra.) For cases asserting that personal property could be and was held by the entirety at common law see: Union & Mercantile Trust Co. v. Hudson, 147 Ark. 7, 227 S.W. 1 (1921); Bailey v. Smith, 89 Fla. 303, 103 So. 833 (1925); Merrill v. Adkins, supra note 4; Boland v. McKowen, 189 Mass. 563, 76 N.E. 206 (1905); Woodard v. Woodard, 216 Mass. 1, 102 N.E. 921 (1913); Cullum v. Rice, 236 Mo. App. 1113, 162 S.W.2d 342 (1942); State Bank of Poplar Bluff v. Coleman, 241 Mo. App. 600, 240 S.W.2d 188 (1951); United States Nat'l Bank v. Penrod, 354 Pa. 170, 47 A.2d 249 (1946).

[21] Union & Mercantile Trust Co. v. Hudson, supra note 20; Cooper v. Cooper, 225 Ark. 626, 284 S.W.2d 617 (1955); Carlisle v. Parker, 38 Del. 83, 188 Atl. 67 (1936); Bailey v. Smith, supra note 20; Dodson v. National Title Ins. Co., supra note 3; Boland v. McKowen, supra note 20; Campagna v. Campagna, 337 Mass. 599, 150 N.E.2d 699 (1958); Frost v. Frost, 200 Mo. 474, 98 S.W. 527 (1906); Allen v. Kelso, 266 S.W.2d 696 (Mo. Sup. Ct. 1954); Gillan v. Gillan, 65 Pa. 395, (1870); DeLuca v. DeLuca, 388 Pa. 167, 130 A.2d 179 (1957); Campbell v. Campbell, 167 Tenn. 77, 66 S.W.2d 990 (1934); Oliphant v. McAmis, 197 Tenn. 367, 273 S.W.2d 151 (1954). For confusion in Missouri and Tennessee see cases in note 20 supra.

[22] Carlisle v. Parker, supra note 21; Phelps v. Simons, 159 Mass. 415, 34 N.E. 657 (1893); Frost v. Frost, supra note 21. Generally, as to whether estates by the entirety are abolished by the Married Women's Property Acts see Note, Effect of the Married Women's Property Acts Upon Estates by the Entirety, 37 Harv. L. Rev. 616 (1924) and Annotation, 141 A.L.R. 179 (1942). It should be noted, however, that statutes other than the Married Women's Property Acts affect this question. See, for example, Michigan and Oregon statutes [Compiled Laws of Michigan 557-151 (1948) and Oregon

the entirety cannot exist in personal property though it may in real property.[23] In a few additional jurisdictions no entirety ownership is recognized in either real or personal property.[24]

In states that recognize tenancy by the entirety in personalty, the ultimate inquiry in the determination of the existence of such tenancy in personalty is the ascertainment of the intent of the parties.[25] Though an express agreement for entirety ownership is not neces-

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Code of 1933, § 22-1407] discussed in Annotation 64 A.L.R.2d at 27 (1959), and see Annotation, 43 A.L.R. 1081 (1926).

The early cases dealing with choses in action made payable to the husband and wife illustrate the fact that, under the early law, the position of a wife with respect to real property was that she would become the owner of it if she survived her husband and it happened that he had not in the meantime reduced the chose to his possession or made any disposal of it. These cases do not, however, purport to deal with ownership of personalty held by the entirety, and since the only question before the court was the proper disposition of the chose in action upon the death of her husband, the courts were able to dispose of the issue on "jus disponendi" principles alone.

[23] Koehring v. Bowman, 194 Ind. 433, 142 N.E. 117 (1924); Waite v. Bovee, 35 Mich. 425 (1877); Able-Old Hickory Bldg. & Loan Ass'n. v. Polansky, 138 N.J. Eq. 232, 47 A.2d 730 (1936); In re Albrecht, supra note 19; In re Blumenthal, 236 N.Y. 448, 141 N.E. 911 (1923); Gooch v. Weldon Bank & Trust Co., supra note 20; Bowling v. Bowling, 243 N.C. 515, 91 S.E.2d 176, (1956); Stout v. Van Zante, supra note 20. But for confusion in Tennessee and Missouri see cases in notes 20 & 21 supra.

[24] For example see Appeal of Garland, 126 Me. 84, 136 Atl. 459, (1927), cert. denied, 274 U.S. 759 (1926); Semper v. Coates, 93 Minn. 76, 100 N.W. 662 (1904).

In some of these jurisdictions the Married Women's Property Acts have been construed to abolish or preclude tenancy by the entirety in personal property, if not in all property whatsoever. Poulson v. Poulson, 145 Me. 15, 70 A.2d 868 (1950); Aby v. Kaupanger, 197 Wis. 56, 221 N.W. 417 (1928). Nevertheless the minority jurisdictions have departed from the negative rule in certain situations involving the proceeds or derivatives of the sale of land held by the entirety, Koehring v. Bowman, supra note 23; Servis v. Dorn, 76 N.J. Eq. 241, 76 Atl. 246 (1909); In re Maguire's Estate, 251 App. Div. 337, 296 N.Y. Supp. 528 (2d Dept. 1937), aff'd without opinion, 277 N.Y. 527, 13 N.E. 2d 458 (1938); Jones v. W. A. Smith & Co., 149 N.C. 318, 62 S.E. 1092 (1908); but have adhered to it in others. Fogleman v. Shirely, 4 Ind. App. 197, 30 N.E. 909 (1892); Central Trust Co. v. Street, 95 N.J. Eq. 278, 127 Atl. 82 (1923); In re Blumenthal, supra note 23; Wilson v. Ervin, 227 N.C. 396, 42 S.E.2d 468 (1947); Stout v. Van Zante, supra note 20. Certain cases stress the proposition that the question whether personalty standing in the name of persons who are in fact husband and wife is entirety property is one of intent to be determined from the nature and terms of the transaction; see Bailey v. Smith, supra note 20; In re Lyon's Estate, 90 So. 2d 39 (Fla. 1955), and from the accompanying facts and circumstances; Winters v. Parks, 91 So. 2d 649 (Fla. 1956). And see Temple v. Bradley, 119 Md. 602, 87 Atl. 394 (1913); and Woodard v. Woodard, supra note 20.

No tenancy by the entirety will, of course, result from an instrument which specifies a taking in some other mode. See In re Young's Estate, 166 Pa. 645, 31 Atl. 373 (1895); Ryan v. Ford, 151 Mo. App. 689, 132 S.W. 610 (1910); Cross v. Pharr, 215 Ark. 463, 221 S.W.2d 24 (1949).

[25] In White v. White, 42 So. 2d 710, 711 (Fla. 1949) the court said that the "predominant" factor in determining whether a tenancy by the entirety exists in personal property "is the intention of the husband and wife at the time it is supposed to have been created."

sary,[26] the absence of proof of such agreement is pertinent in resolving the above inquiry.[27] The fact that the consideration given came from only one spouse or from both unequally is ordinarily not of much significance[28] except as it may bear on the question of intent.[29] However, personal property purchased with joint or entirety funds, though taken in the name of one spouse only, is almost always held to be owned by the entirety[30] and, so it is that money withdrawn by a husband from a joint bank account and wrongfully deposited by him in his individual account has been held to retain its entirety character.[31]

If an instrument is involved, the wording of the document may well be conclusive on the question of intent. Some jurisdictions hold that a tenancy by the entirety does not arise upon the taking of personal property in the disjunctive form,[32] whereas others consider such

[26] In re McEwen's Estate, 347 Pa. 23, 33 A.2d 14 (1943); Ryan v. Ford, supra note 24.

[27] See Rigby v. Rigby, 32 Del. Ch. 381, 88 A.2d 126 (1952). A tenancy of personal property may result from an inter se agreement between husband and wife that they will so own property thereafter acquired or contemporaneously acquired [Rigby v. Rigby, supra this note; Oliphant v. McAmis, supra note 21], but such ownership will not result in reference to property then in the ownership of one of them unless there is a transfer inter se because the required unities of interest (title, time, possession and person) essential to a tenancy by the entirety cannot be present. Stewart v. Stewart, 208 Ark. 612, 188 S.W.2d 125 (1945).

[28] In Jordan v. Jordan, 217 Ark. 30, 228 S.W.2d 636 (1950), the promissory note payable to husband "and" wife, on the sale of the husband's land was held entirety property by reason of its being made payable to the two persons. However, it should be noted that the statutes of a particular jurisdiction may affect this problem. See, for example, Messenbaugh v. Goll, 198 Mo. App. 698, 202, S.W. 265 (1918); Aubry v. Schneider, 69 N.J. Eq. 629, 60 Atl. 929 (1905) aff'd 70 N.J. Eq. 809, 67 Atl. 1102 (1905).

[29] See for example In re Lyon's Estate, supra note 24; Rigby v. Rigby, supra note 27.

[30] Oliphant v. McAmis, supra note 21; Frost v. Frost, supra note 21. But in Dickenson v. Jonesboro Trust Co., 154 Ark. 155, 242 S.W. 57 (1922), personal property purchased in the name of the husband alone was held his separate property, though purchased with money from an entirety back account, where the withdrawal and separate use of the money took place with the wife's knowledge and consent.

[31] Union & Mercantile Trust Co. v. Hudson, 147 Ark. 7, 227 S.W. 1 (1921); accord Johnson v. Johnson, 268 S.W.2d 439 (Mo. Ct. App. 1954) (involving proceeds of sale of entirety land); Beard v. Beard, 185 Md. 178, 44 A.2d 469 (1954) (involving proceeds of the sale of corporate stock owned by the entirety).

Furthermore property purchased with the funds or avails of prior sales of entirety property are impressed with the entirety character [Tait v. Safe Deposit & Trust Co., 70 F.2d 79 (4th Cir. 1934) (Interpreting Florida law); Frost v. Frost, supra note 21; Schwind v. O'Halloran, 346 Mo. 486, 142 S.W.2d 55 (1940); Oliphant v. McAmis, supra note 21; George v. Dutton's Estate, 94 Vt. 76, 108 Atl. 515 (1920); Corey v. McLean, 100 Vt. 90, 135 Atl. 10 (1926)], unless an agreement or understanding to the contrary appears. Dickson v. Jonesboro Trust Co., 154 Ark. 155, 242 S.W. 57 (1922); Roder v. First Nat'l Bank, 42 So. 2d 1 (Fla. 1949).

[32] Marble v. Treasure & Receiver General, 245 Mass. 504, 139 N.E. 442 (1923);

a taking at least prima facie or presumptively a taking by the entirety where the persons are husband and wife.[33] An intermediate position had been adopted by Florida which holds that where the instrument runs to husband or wife entirety ownership does not arise in the absence of further evidence of intent to create an estate of this character.[34] Where however, the instrument runs to the husband and wife in the conjunctive form, a tenancy by the entirety is generally created though there is no specification of the manner in which they take.[35] This is so even if no limitations or conditions are attached,[36] and even though the instrument does not refer to their marital status.[37]

In *Bello,* the check made payable to husband and wife was taken in consideration for the sale of land which they held as tenants by the entirety. Under such circumstances, the proceeds of the voluntary sale of entirety land whether consisting of notes, mortgages, cash or otherwise, are impressed with the entirety character[38] unless an intent to the contrary sufficiently appears.[39] This is true even in most

Milan v. Boucher, 285 Mass. 590, 189 N.E. 576 (1934); In Re March's Estate, 125 Mont. 239, 234 P.2d 459 (1951).

[33] Cross v. Pharr, supra note 24; Glynn v. Glynn, 291 S.W.2d 190 (Mo. Ct. App. 1956); Alcorn v. Alcorn, 364 Pa. 375, 72 A.2d 96 (1950); Sloan v. Jones, 192 Tenn. 400, 241 S.W.2d 506 (1951).

[34] In re Lyon's Estate, supra note 24; Winters v. Parks, supra note 24.

[35] Terrall v. Terrall, 212 Ark. 221, 205 S.W.2d 198 (1947); In re Giant Portland Cement Co., 26 Del. Ch. 32, 21 A.2d 697 (1941); Bailey v. Smith, supra note 20; Merrill v. Adkins, supra note 4; Hammond v. Dugan, 166 Md. 402, 170 Atl. 757 (1934); Phelps v. Simons, supra note 22; Simon v. St. Louis Union Trust Co., 346 Mo. 146, 139 S.W.2d 1002 (1940); Ryan v. Ford, supra note 24; Glynn v. Glynn, supra note 33; Heatter v. Lucas, 367 Pa. 296, 80 A.2d 749 (1951); Alcorn v. Alcorn, supra note 33; U.S. National Bank v. Penrod, supra note 20.

[36] Jordan v. Jordan, supra note 28; Ciconte v. Barba, supra note 19; American Central Ins. Co. v. Whitlock, 122 Fla. 363, 165 So. 380 (1936); Hammond v. Dugan, supra note 35; Boland v. McKowen, supra note 20; Smith v. Smith, 300 S.W.2d 275 (Mo. Ct. App. 1957); Ryan v. Ford, supra note 24; Heatter v. Lucas, supra note 35; U.S. National Bank v. Penrod, supra note 20.

[37] In re Giant Portland Cement Co., supra note 36; Bailey v. Smith, supra note 20; Merrill v. Adkins, supra note 4; Glynn v. Glynn, supra note 33; Penn. Trust Co. v. Mischik, 96 Pa. Super, 255, (1930).

[38] Ciconte v. Barba, supra note 19; Dodson v. National Title Ins. Co. supra note 3; Koehring v. Bowman, supra note 23; Childs v. Childs, 293 Mass. 67, 199 N.E. 383 (1935); Campagna v. Campagna, supra note 21; and see Detroit & Trust Co. v. Kramer, 247 Mich. 468, 226 N.W. 234 (1929); McElroy v. Lynch, 232 S.W.2d 507 (Mo. Sup. Ct. 1950); In re Maguire's Estate, supra note 24; In re Bramberry's Estate, 156 Pa. 628, 27 Atl. 405 (1893). And the same rule seems applicable to the proceeds derived from the sale of personalty owned by the entirety. Brell v. Brell, 143 Md. 443, 122 Atl. 635 (1923). (Procceds of the sale of a mortgage owned by the entirety held to be entirety funds), Beard v. Beard, supra note 31; George v. Dutton's Estate, supra note 31; Campagna v. Campagna, supra note 21.

[39] See statements to that effect in Ciconte v. Barba, supra note 19; Dodson v. National Title Ins. Co., supra note 3; Allan v. Tate, 58 Miss. 585 (1881); Schwind

jurisdictions which do not generally recognize entirety ownership of personalty.[40] However, the holding of *Bello* that the signing of the wife's name by the husband cut off the wife's rights against the banks may not be followed everywhere. The cases dealing with the power of one tenant by the entirety to cut off the rights of the other by a unilateral act are chiefly concerned with realty and take one of three positions.[41] In Massachusetts, under the Married Women's Property Act, the common law rule of possession and control by the husband is unaffected and consequently any unilateral conveyance by him during his lifetime cuts off the interest of the wife unless she survives him.[42] In other jurisdictions, including New York and New Jersey, it has been held that as a result of the Married Women's Property Act each spouse has a one-half interest which he or she may convey, the conveyance of which does not deprive the other spouse of either his right to possession or his contingent right of survivorship.[43] A third position is taken by a great majority of jurisdictions which hold that the Married Women's Property Act entitles the wife as well as the husband to the possession and enjoyment of the whole of the property while both live. Therefore, a grantee from one is unable to take any separate interest during the joint lives of both, even though the grantor spouse should thereafter be the survivor.[44] In one of the few cases, however, where the court has been presented with the question of the rights

v. O'Halloran, supra note 31; Moore v. Greenville Banking & Trust Co., 178 N.C. 118, 100 S.E. 269 (1919); In re Bramberry's Estate, supra note 38; Sheldon v. Watters, 168 F.2d (5th Cir. 1948) (interpreting Florida law). For the character of the interests of the husband and wife in purchase money mortgages on the sale of an estate owned by the entirety, see Annotation, 30 A.L.R. 905 (1924).

[40] See note 24 supra.

[41] 2 American Law of Property § 66 (Casner ed. 1952).

[42] Pineo v. White, 320 Mass. 487, 70 N.E.2d 294 (1946); Licker v. Gluskin, 265 Mass. 403, 164 N.E. 613 (1929); Raptes v. Pappas, 259 Mass. 37, 155 N.E. 787 (1927); Pray v. Stebbins, 141 Mass. 219, 4 N.E. 824 (1886).

[43] Schwind v. O'Halloran, supra note 31; Stifels Union Brewery Co. v. Savoy, 273 Mo. 159, 201 S.W. 67 (1918); Zanzonico v. Zanzonico, 24 N.J. Misc. 153, 46 A.2d 565 (Sup. Ct. 1946); Grimminger v. Alderton, 85 N.J. Eq. 425, 96 Atl. 80 (1915); Buttlar v. Rosenbluth, 42 N.J. Eq. 651, 9 Atl. 695 (1889); Kawalis v. Kawalis, 183 Misc. 896, 53 N.Y.S.2d 162 (Sup. Ct. 1915); Goodrich v. Otego, 216 N.Y. 112, 110 N.E. 162 (1915); Hiles v. Fisher, 144 N.Y. 306, 39 N.E. 337 (1895); Bertles v. Nunan, 92 N.Y. 152 (1883).

[44] Carlisle v. Parker, supra note 21; Hunt v. Couington, 145 Fla. 706, 200 So. 76 (1941); Ohio Butterine Co. v. Hargrave, 79 Fla. 458, 84 So. 367 (1920); Cilts v. Moore, 117 Ind. App. 27, 68 N.E.2d 795 (1946); Thornburg v. Wiggins, 135 Ind. 178, 34 N.E. 999 (1893); Elko v. Elko, 187 Md. 161, 49 A.2d 441 (1946); Annapolis Banking & Trust Co. v. Neilson, 164 Md. 8, 169 Atl. 157 (1933); Farrell v. Palus, 309 Mich. 441, 15 N.W.2d 700 (1944); Winchester—Simmons Co. v. Cutler 199 N.C. 709, 155 S.E. 611 (1930); Bruce v. Nicholson, 109 N.C. 202, 13 S.E. 790 (1891); Bloomfield v. Brown, 67 R.I. 452, 25 A.2d 354 (1942); Ames v. Norman, 4 Sneed 683 (Tenn. 1857); Corey v. McLean, 100 Vt. 90, 135 Atl. 10 (1926).

of the wife in personalty owned by the entirety, the Supreme Judicial Court of Massachusetts has held them to be the same as in realty so owned.[45] However, the Supreme Court of Florida has held that the husband has the right of possession and control of personal property owned by the entirety,[46] and that the husband alone can effectively transfer the title to such property,[47] while the reverse has been held with reference to real property.[48]

As the Fifth Circuit in *Bello* is merely applying Florida law, it cannot be criticized. The decision follows from the often criticized view taken by the Florida courts in their interpretation of and effect to be given to a tenancy by the entirety.[49] Probably a Massachusetts court would reach the same result. But it does not appear likely that the same result would be reached in those jurisdictions in which the wife is not put in a subordinate position in respect to property held by the entirety. Inasmuch as the form of the check does not indicate in what capacity the parties take, the holding in *Bello* may introduce an element of uncertainty as to the rights and liabilities of drawee and collecting banks. As a result of this decision, if a check is held by the entirety, a Florida bank need be concerned only with the genuineness of the husband's signature whereas, if the spouses held as joint tenants, the bank must be concerned with the genuineness of both signatures.

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[45] Campagna v. Campagna, supra note 21.

[46] Mann v. Etchells, 132 Fla. 409, 182 So. 198 (1938); Merrill v. Adkins, supra note 4.

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

[48] 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, supra note 44.

[49] See for example Ritter, A Criticism Of The Estate By The Entirety, 5 U. Fla. L. Rev. 153 (1956).