Recent Cases

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Recent Cases

PROPERTY—ESTATES BY THE ENTIRETY IN JOINT BANK ACCOUNT

Collum v. Rice1

Plaintiff, judgment creditor of H, brought a garnishment action to reach the undivided interest of H in a deposit, standing in the name of H and W, with garnishee bank. From judgment of the trial court discharging garnishee, plaintiff appealed. Held: Affirmed. The Married Woman’s Property Act does not prevent the creation of a tenancy by the entirety, which arises wherever a joint estate is created in husband and wife. An estate by the entirety may not be reached by the individual creditors of either spouse.

At common law a married woman could under no circumstances establish a separate legal domicile. She was subject to reasonable control over her person and restraints on her liberty, probably to moderate chastisement, by her husband. He was absolutely entitled to her services and her earnings. She could not sue or be sued separately, no matter how personal to her the cause of action, but her husband must be joined as co-plaintiff or defendant, as the case might be. Her attempts at contract were altogether void. With the exception of wearing apparel and articles of personal adornment, her chattels in possession—whether owned by her before marriage or acquired during coverture—became the absolute property of her husband immediately. Her choses in action became his when reduced to possession. The system of tenures intervened to prevent the complete destruction of the wife’s interest in freehold estates and her husband was only entitled to the usufruct and management during coverture, and to a life estate by curtesy, there having been born alive issue capable of inheriting the estate. There was no possibility of terminating the marital relationship by judicial divorce.

It is usually said that the rules just stated were founded on the ecclesiastical concept of the merger of personalities in the marriage sacrament, and reflect the influence of the Church of England, which was accorded exclusive jurisdiction in matters matrimonial as well as testamentary. It should not be overlooked, however, that concentration in a single person of authority over, and correlative

1. 162 S. W. (2d) 342 (Mo. App. 1942).
2. See Beale, The Domicil of a Married Woman (1917) 2 So. L. Q. 93.
3. 2 KENT, COMMENTARIES *181.
4. 1 BLACKSTONE, COMMENTARIES *445.
5. See Warren, Husband’s Right to Wife’s Services (1925) 38 HARV. L. REV. 421, 622.
6. MADDEN, DOMESTIC RELATIONS (1931) § 54.
9. MADDEN, DOMESTIC RELATIONS (1931) § 81.

(213)
responsibility for, all the members of the family unit was really an extension of the principles of social organization upon which the entire feudal society was based.

It is immediately apparent that there was limited opportunity for co-tenancy in any kind of property between husband and wife. Co-tenancy requires a continuing legal interest in both tenants, impossible where the husband had exclusive title to chattels. Tenancies in common in real property were possible, as the wife's undivided half interest remained her property, though subject to the husband's control and enjoyment. But where it was attempted to create a joint estate in husband and wife—and the common law favored the interpretation of a conveyance to co-tenants as creating a joint tenancy where possible, so that the characteristic right of survivorship might minimize disturbance of the existing feudal relation—additional problems were encountered. Single persons who hold in joint tenancy may destroy the character of their ownership by agreement, or by the conveyance to a third person of the interest of any co-tenant (destroying the essential unities of time and title), but this was obviously impossible for a married woman to do and undesirable for her husband to be able to do, as it would affect the character of her interest which she was powerless to protect. So a conveyance which would, as between single "grantors," create a joint tenancy, was held to create a tenancy by the entirety in husband and wife, but it is noteworthy that neither Littleton, Coke nor Blackstone refer to a tenancy by the entirety in those words. The only substantial difference was (and is) that the latter could not be altered by conveyance of either party, and as the creditors of one spouse could exercise no greater right than their debtor, they could not force a sale of an undivided half interest to satisfy their claims. The traditional rationalization of tenancies by the entitites, that husband and wife are seised per tout et non per my because they are in legal contemplation but one person and there can be but one estate, must have been unsatisfying even when religious metaphysics was accepted legal doctrine, for the merger of personalities did not prevent tenancies in common nor affect the character of a joint estate created in a man and woman before their marriage. With the enactment of the Married Women's Property Acts there is no longer any obstacle to co-tenancy in personal property by husband and wife. Neither, however, is there any reason for changing a joint tenancy, either in personal or real property, into a tenancy by the entirety; i.e., for denying its destructibility as between husband and wife. But by the great weight of authority the statutes have not prevented estates by the entitites in real or personal

12. Cases are collected in Notes (1920) 8 A. L. R. 1017 and (1938) 117 A. L. R. 915.
13. In Bains v. Bullock, 129 Mo. 117, 31 S. W. 342 (1895), the court said, "the statute abolishes the legal unity between husband and wife, which gave rise to estates by the entirety, but the estate itself has not been abolished." Ratio est legis anima; mutata legis rationale mutatur et lex!

For other cases, see 2 TIFFANY, REAL PROPERTY (3d ed. 1939) § 433.
property. There is substantial dissent. In the principal case the court, without extended discussion of the fundamental questions involved, relied entirely on distinguishable precedent relating to real property. To hold that a statute does not by implication destroy a settled common law doctrine is one thing; to extend that doctrine to situations which prior to the very statute could not have been embraced within it is quite another. Moreover, the possibility of estates by the entitiey in real estate is expressly recognised by one Missouri statute\textsuperscript{15} and the exception in favor of husband and wife in the statute\textsuperscript{16} abolishing the common law presumption of joint tenancy in conveyances of real estate perhaps inferentially suggests the same recognition.

The court could have cited a respectable group of Missouri cases asserting the existence of a tenancy by the entirety in chattels and choses in action.\textsuperscript{17} However, the issue in every case was that of survivorship, so that a holding of joint tenancy would have reached the same result. Of these authorities the only one\textsuperscript{18} containing any analytical consideration of the question directed inquiry solely to the issue of whether co-tenancy, and specifically joint tenancy, in chattels was possible between husband and wife, and having rightly concluded joint tenancy could exist, thereafter gratuitously spoke the language of tenancies by the entireties. Reliance was placed in part upon \textit{Shields v. Stillman},\textsuperscript{19} where the court merely held that a promissory note payable to husband and wife became the exclusive property of the survivor, without considering or mentioning an estate by the entirety.

In the principal case the court cavalierly passed over such vexing factors as the original ownership of the money deposited or of the right of withdrawal by either party. If the husband made a joint deposit of his wife's money, without her written agreement, there is neither joint estate nor estate by the entirety but a resulting trust in her favor.\textsuperscript{20} By Missouri statute a deposit in the name of the

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\item[14.] See cases collected in Notes (1920) 8 A. L. R. 1017 and (1938) 117 A. L. R. 915.
\item[16.] Mo. Rev. Stat. (1939) § 3504. The statute is noted in (1940) 5 Mo. L. Rev. 114.
\item[17.] Johnston v. Johnston, 173 Mo. 91, 73 S. W. 202 (1903); Frost v. Frost, 200 Mo. 474, 98 S. W. 527 (1906); Ryan v. Ford, 151 Mo. App. 689, 132 S. W. 610 (1910); Craig v. Bradley, 153 Mo. App. 586, 134 S. W. 1081 (1911); Rezabek v. Rezabek, 196 Mo. App. 673, 192 S. W. 107 (1917); \textit{In re} Estate of Greenwood, 201 Mo. App. 39, 203 S. W. 635 (1919); Lomax v. Cramer, 216 S. W. 575 (1919); Yates v. Richmond Trust Co., 220 S. W. 692 (1920); Zahner v. Voelker, 11 S. W. (2d) 63 (1928).
\item[18.] Johnston v. Johnston, 173 Mo. 91, 73 S. W. 202 (1903).
\item[19.] 48 Mo. 82 (1871). So, in Murphy v. Wolfe, 329 Mo. 545, 45 S. W. (2d) 1079 (1932) the court sustained the right of the surviving husband to the joint bank deposit on the ground of joint estate, without the unnecessary mention of an estate by the entirety.
\item[20.] This is the consequence of the peculiar wording of the Missouri version of the Married Woman's Property Act (Mo. Rev. Stat. (1939) § 3390) whereby personal property reduced by the husband to his possession with her written consent becomes his absolute property (so that he can thereafter use it as consideration
“depositor and another person and in form to be paid to either, or the survivor of them” becomes “the property of such persons as joint tenants,” but to come within its scope the deposit must be explicitly “in form to be paid to either or the survivor of them.” Apart from the statute grave doubt may be expressed as to whether a true joint tenancy may exist if the account is payable to either depositor alone. It has been sustained as a form of mutual agency without surrender of right of possession. Certainly it is highly inconsistent with the fundamental concept of the indestructibility of a tenancy by the entirety and to recognize in one spouse the power to withdraw any or all of the deposit, spend it in his discretion and hold the proceeds free from any claim of undivided interest in the other spouse, which our supreme court will sanction upon adequate proof, and yet to hold, as was done in the principal case, that the creditors of the husband might not reach the deposit in the bank, is to perpetrate a virtual fraud on creditors.

The whole doctrine of “untouchability” of estates by the entireties is a form of judicial exemption, without limit in amount. Statutory exemptions protect the public from the burden of supporting debtors stripped of their means of livelihood, and are limited to assets sufficient to the purpose. Under Collum v. Rice a husband and wife could maintain an account of $100,000 free from their creditors, so long as it was not established by fraudulent conveyance. The argument applies equally to estates by the entireties in real property, but there was surely little justification in extending the concept to chattels in an age where every incident of the marital disability has been removed from the wife, either absolutely or as far as consonant with preservation of the family as a going concern.

O. B. E.

TORTS—NEGLIGENCE—VIOLATION OF ADMINISTRATIVE ORDER

Rodenkirch v. Nemnich

This was an action for personal injuries sustained by plaintiff in an automobile accident. The collision resulted directly from the defendant's failure to stop

for a promise to pay jointly to himself and his wife) but not otherwise. The statute does not prevent a married woman from making an outright gift to her husband by simple delivery, or from contributing part or all of the money deposited in their joint names. Murphy v. Wolfe, 329 Mo. 545, 45 S. W. (2d) 1079 (1932).

26. See Note (1941) 6 Mo. L. Rev. 207.
27. The principal case.
in obedience to a stop sign located at the intersection where the accident occurred. The Missouri State Highway Department erected this sign prior to the accident in question, but there was no statute which requires persons to stop at this point in obedience to the sign. Defendant's testimony tended to show that he had used due care. But the court instructed the jury to the effect that a failure to observe the stop sign in question was negligence as a matter of law. A verdict was returned for the plaintiff, but the trial court sustained defendant's motion for a new trial. The St. Louis Court of Appeals affirmed the order sustaining the defendant's motion for a new trial on the ground that the above instruction was erroneous. The State Highway Department, by erecting such signs, cannot create a standard of conduct the violation of which is negligence per se. Such violation is nothing more than evidence of negligence.

The majority of our courts hold that if the injuries to a plaintiff in a civil proceeding were proximately caused by the defendant's doing a prohibited act in violation of an ordinance or statute designed to prevent injuries of the type contemplated by the statute, and if the plaintiff was a member of that group which the statute was designed to protect, then the defendant will be deemed to have been negligent as a matter of law—that is, negligent per se. Few cases, however, have given such effect to the violation of administrative orders, some cases even going to the extent of holding that the violation of some such rules is not admissible as evidence. But the weight of authority is that the violation of a rule or regulation of a governmental commission or board, while not constituting negligence per se may afford some evidence of negligence. This apparent conflict of opinion among some of our jurisdictions may be largely explained by considering the statutory authorization of the board which issued the order, and the binding effect which is given that order.

The cases which hold that the violation of an administrative regulation may constitute negligence per se are cases which involve some unusual or special power granted to that board by statute. The case of Pennsylvania Railroad Co. v. Moses, Adm'r., held that the violation of an Interstate Commerce Commission rule concerning headlights on trains was negligence per se. This holding was explained on the ground that said rule of the Interstate Commerce Commission has an even greater binding force and effect than an act of a state legislature. However, the rules of governmental commissions do not generally have such significance.

The usual situation and the one on which the previously stated majority rule is based, is that situation in which the legislature has conferred upon an administrative board the general powers to make regulations concerning a certain field.

2. Restatement, Torts (1934) § 286; Note (1928) 15 Va. L. Rev. 166.
4. 45 C. J. 732.
The violation of such rules is generally held not to constitute negligence per se, but may be admitted as evidence of negligence. This has been held to be the case even where the legislature has declared that the administrative rules made under such general authorization shall have the force and effect of law. Those states which hold that the violation of a statute or ordinance does not constitute negligence per se but is merely evidence of negligence give the same effect to the violation of a governmental regulation.

Where a government department or commission issues a regulation, such as a safety code, merely for the informative value and not as a regulation having the binding force of law, the courts usually have held that the violation of such regulation is not admissible as evidence of negligence. The states that take a different view on these informative regulations hold that such violations may be admitted as expert opinion evidence of negligence.

In the reported case the Missouri State Highway Department erected the stop sign in accordance with a general authorization by the state legislature. The court in the principal case, in holding that the failure to obey this stop sign had the weight only of evidence of negligence, was acting in accordance with prevailing authority.

**Herbert Cain Castell, Jr.**

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7. Schumer v. Caplin, 241 N. Y. 346, 150 N. E. 139 (1925). A legislative declaration that a rule has the force and effect of law does not make it so, if by that is meant that it is the equivalent of or equal to a legislative enactment. Thus the correct charge would have been that the violation of this rule did not establish negligence per se, but was simply some evidence of negligence.

8. Beauvais v. Springfield Institute for Savings, 303 Mass. 136, 20 N. E. (2d) 957, 124 A. L. R. 611 (1939); Guinan v. Famous Players-Lasky Corp., 167 N. E. 235 (Mass. 1929). A violation of a statute, ordinance or regulation, although not conclusive, is evidence of negligence on the part of a violator as to all consequences that the statute, ordinance or regulation was intended to prevent.

9. Note (1939) 122 A. L. R. 644. Two reasons given for such exclusion are 1) that although safety codes may represent expert opinion, such opinions are not given under oath, with an opportunity for cross-examination, and 2) that they do not deal with an exact science in which opinions may change. It has been held that the objection to the admission in evidence of safety rules promulgated by a department of government was of the same nature as the objection to the admission of scientific treatises which may be obviated by the evidence of an expert witness that such treatise or rules are esteemed by authority on the subject. Dothan v. Hardy, 188 So. 264 (Ala. 1939).


11. Mo. Rev. Stat. (1939) § 8755. The Commission is authorized to erect, or cause to be erected, danger signals or warning signs at railroad crossings, highway intersections or other places along the state highways which the commission deem to be dangerous.