Estates by Entirety -- Bank Deposit by Wife and Husband

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todian of the child in an equity proceeding, seeks thereafter to exert illegal detention or retention over the child. It becomes incumbent upon the court to determine its future custody while keeping paramount the welfare of the minor. 38 The court in using the writ for this purpose endeavors to adhere to modern equitable principles. 39

Applications and proceedings of the writ are regulated by statute. 40 A judgment is res judicata in a subsequent proceeding regarding the same issues and parties. 41

In conclusion, the writ of habeas corpus is designed for the purpose of effecting a speedy release of persons who are illegally deprived of their liberty or illegally detained from the control of those who are entitled to their custody. 42

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38 State ex rel. Weaver v. Hamans, 118 Fla. 230, 159 So. 31 (1935).
39 See note 20 supra.
40 F.S.A. 79.01.
41 State ex rel. Williams v. Prescott, 110 Fla. 261, 148 So. 533 (1933).

ESTATES BY THE ENTIRETY: BANK DEPOSIT
BY HUSBAND AND WIFE

Florida recognizes in the surviving spouse the right of survivorship to the balance of a joint bank deposit in the names of husband and wife. 1 Under the pertinent Florida statute, an estate by the entirety is a specific exception to the rule that the right of survivorship in cases of real estate and personal property held by joint tenants shall not prevail in Florida. 2

The rights of each spouse are determined as of the date of the joint deposit; thus, the funds of said deposit are not subject to execution for the debts of the deceased mate, to partition, to devise by will, or to the laws of descent and distribution. 3

These views, prevailing in Florida, are in accord with the weight of authority.

In Pennsylvania, a deposit of money in a joint account of husband and wife presumptively creates a tenancy by entireties, no agreement between the spouses or independent evidence of transfer being neces-

1 Stanley v. Powers, 123 Fla. 359, 166 So. 843 (1936); Bailey v. Smith, 89 Fla. 303, 103 So. 833 (1925).
2 F.S.A. Sec. 689.15; Menendez v. Rodriguez, 106 Fla. 214, 143 So. 223 (1932).
3 Hunt v. Covington, 145 Fla. 706, 200 So. 76 (1941); Richardson v. Grill, 138 Fla. 787, 190 So. 265 (1939).
Neither spouse has an individual portion which can be alienated or separated, or which can be reached by creditors of the other spouse.\(^4\)

Kentucky, adhering to what it considers the more recent “contractual” theory,\(^6\) states that such a tenancy by entireties entitles each spouse to the enjoyment of the whole estate, plus the right of survivorship; however, such account must be “intentionally and intelligently created” to effect an estate by the entirety.\(^7\) Here, too, the estate is free from the attacks of creditors.

Where the joint depositors are husband and wife, New York rejects this doctrine, holding that such a joint deposit is merely a contract made by the bank for their convenience. It would seem that an exception to the New York Banking Law arises upon the death of one of the spouses, so that each spouse is presumed to have intended that the right of survivorship be conferred upon the surviving spouse; and the balance of the account is rightfully that of the survivor.\(^8\)

Nebraska, applying the gift theory, rules that the deposit is presumed to have been made with donative intent if only one of the parties has deposited money in the account. Unless contrary rights appear from the terms of the deposit itself, the courts hold that the theory may be applied for the bank’s protection, and to fix the rights of the parties.\(^9\)

Immunity to various claims does not extend to federal taxation. Under the present tax law, a deposit held by husband and wife as an estate by the entirety is taxable as to the surviving spouse to the extent of one-half the value thereof.\(^10\)

In most states, then, the surviving spouse is entitled to the full amount of the deposit as against third parties, subject, however, to the federal estate tax.

\(^4\) In re Berkowitz’ Estate, 344 Pa. 481, 26 A. 2d 296 (1942).
\(^6\) Bishop v. Bishop’s Executrix, 293 Ky. 652, 170 S.W. 2d 1 (1943); see also 103 A.L.R. 1123, 1140.
\(^7\) Ibid. Compare intent with “presumption” in note 4 supra.
\(^8\) In re Kelly’s Estate, 20 N.Y.S. 2d 689 (1941). See also New York Banking Law, Sec. 134,239, held inapplicable to testator and wife.
\(^10\) Internal Revenue Code, Section 811 (E).