THE CONVEYANCING AND LAW OF PROPERTY ACT, 1975 [DOMINICA][1] A REVIEW

by Cleopatra Henry

No other appropriate description of the Conveyancing and Law of Property Act, 1975 can be attempted than to borrow the views expressed by Professor Marshall describing West Indian Land Law.[2] According to him the fact that West Indian legislatures borrowed blindly, acted independently and legislated intermittently, led to an unfortunate disparity between the laws of one territory and another.[3] He saw applicable a criticism made by Joshua Williams of English Land Law in 1878[4] that some of the most remarkable of these laws, viewed by themselves, apart from their history, and judged only by the benefits which now result from them appear to be absolutely worthless. Others were regarded as more than worthless; in fact they were described as absurd and injurious. Marshall saw this criticism as applicable essentially because West Indian land law has failed to keep pace with such reforms in the same field enacted in the United Kingdom.[5]

The Dominica 1975[5a] Act illustrates for another time this sad home-truth. Again in Marshall's words it is not a source of pride that our land law shows all the imperfections of the English system at various stages of its development.[6] It is against this background that the provisions of the 1975 Act will be examined.

The Act came into effect on January 29, 1976 and its declared object was to enact provisions dealing with conveyancing mortgaging, charging, leasing or vesting of land similar to those obtaining in England.[7] In addition, the Act is said to be aimed at supplementing and extending the provisions in the law as found in the Title by Registration Ordinance.[8] It was modelled on the St. Kitts conveyancing and Law of Property Ordinance, 1961[9] which Ordinance was in turn the archetype of the Trinidad provision,[10] the latter being based on the English provision. The 1975 Dominica Act incorporates some of the provisions of the Law of Property Act, 1925 [U.K.], enacts for the first time or re-enacts some of the provisions of the Conveyancing Act 1881 [U.K.] and retains some of the common law principles.

The United Kingdom 1925 provisions was a modernizing statute intended to simplify conveyancing and make a clear break with feudal principles. By virtue of this it is probably appropriate to concede that while the legislation of 1925 did much to improve English Land Law it ought not to be assumed that it is suitable for adoption out of hand in other countries which use a version of that law. Since the 1925 provision was somewhat like an operation for cancer removing the ugly and

dangerous growth and substantially improving the condition of the patient suffering from it, it would be ill-advised to suggest that such an operation would benefit an entity not suffering from cancer or to conclude that one such operation is exactly like another. There are different forms of cancer and by virtue of this countries into which English law had been introduced did not necessarily suffer from all its complexities. Dominica received no feudal principles of note and the cure to be applied to take account of the complexities of the existing law ought to be different. The 1975 provisions while it indiscriminately attempted cures left other ills, recognisably infectious, unattended. The reforms neither particularly reflected the social realities of the country in 1975, nor did they recognise the existence of a mass of provisions which were again, being provided, although it can be said that same were necessarily repealed.

The Conveyancing and Law of Property Act, 1975 can hardly be said to have been a consolidating Act, bringing in one Act all the provisions governing conveyancing and the creation of interests in property. There still exists on the statute books governing provision in the form of the Law of Property Amendment Ordinance[11], the Real Property Ordinance,[12] the Real Estate Charges Ordinance[13] and the Registration of Title Ordinance[14]. The latter was the only one, the Bill expressly noted, the provisions thereof being intended to be extended by it.

The following comparative analysis of the 1975 Act and the last mentioned Ordinance has been attempted:

The 1975 Act

S. 9(1)	=	S. 8 of the Real Property Ordinance.
S. 65(1), (2)	=	S. 8(1), (2) of the Law of Property Amendment Ordinance.
S. 66(1)	=	S. 6(1), (2) ibid.
S. 67(1)	=	S. 7(1) ibid
S. 68(1) (2), (3)	=	S. 3, S. 4 ibid
S. 70(1), (2), (4) (5), (6), (7), (8), (9)	=	S. 9(1), (2), (3), (4), (5), (6), (7), (8) ibid
S. 78	=	S.12 ibid
S. 88(1), (2), (3) (4), (5)	=	S. 21 ibid
S. 5	=	S. 2 of the Vendor and Purchaser Ordinance
S. 6(1), (7)	=	S. 3(a), (b) ibid
S. 7(1)	=	S. 9
Part XI S. 83, S. 84	=	SS 1, 2, 3, 4, of the voluntary Conveyances Ordinance

While it is clear that these above provisions are impliedly repealed and replaced by the 1975 provision, the whole Ordinances are not however repealed and continue to have applicable provisions that do not find incorporation in the 1975 Act. To find out what the law is, it might be necessary to wade through a mass of these provisions.

The 1975 Act achieved an extraordinary patchwork, abolishing the technical rule in PATMAN v. HARLAND[15], providing for the implication of general words in conveyances, the statutory implication of covenants in any conveyance and includes the provision for the running of both the benefit and the burden of covenants. But it leaves unattended the noxious manifestations of the tenancy in common, the Rule in Shelley's case, the continued application of the Statute of Uses, the law as to future interests still reflecting the existence of legal and equitable contingent remainders, future trusts and executory interests, though it appears that the rules in PUREFOY v. ROGERS[16] and in WHITBY v. MITCHELL[17] have been done away with.

The implied repeal of the rule in PATMAN v. HARLAND[18] is contained in S.6 which section governs the obligations and rights of vendors and purchasers. The case of PATMAN v. HARLAND ruled that notwithstanding the provisions of the English 1881 Conveyancing Act providing that it is no longer necessary for the lessee to prove title to the freehold, failing an express exclusion by the contract, a lessee or purchaser of a term of years was bound by the equities affecting the legal estate that would have come to his notice had he expressly required the freehold title to be disclosed. This can no longer be said to be applicable in light of S.6(4) which provides that where by reason of any of the last three preceding sub-sections, an intending lessee or assignee not entitled to call for the title to the freehold or to a leasehold reversion as the case may be, he shall not where the contract is made after the commencement of this Act, be deemed to be affected with notice of any matter or thing of which if he had contracted that such title should be furnished he might have had notice. The rule is therefore abolished in cases where the purchaser of a leasehold interest has no right to call for the freehold title.

In another regard the rule in PUREFOY v. ROGERS[19] established the sacred common law rule which directed that a limitation that was capable of taking effect as a remainder must never be treated as an executory interest. This was endorsing the maxim that once a remainder always a remainder. The 1975 Act has altered the position by providing that every contingent remainder which would have been valid as a springing or shifting use had it not had a sufficient estate to support it as a contingent remainder, shall, in the event of the particular estate determining before the contingent remainder vests, be capable of taking effect in all respects as if the contingent remainder had originally been created as a

springing or shifting use. Clearly, where the remainder fails, it could be saved by framing it in fact as an executory trust and thereby allowing for the validity of the interest created which can by virtue of S. 61 be disposed of.

To turn to the rule in WHITBY v. MITCHELL,[20] under that rule a settlor could exercise his powers of disposition up to a point but not beyond. In fact where there was a grant of land limited to a living person, and then to an unborn child and then to the child of an unborn child, the last mentioned remainder was absolutely void. The rule was a perspicuous attempt to prevent land being kept in the family and to prevent it being withdrawn from commerce. The existence of such a rule came in to being directly confronted within circumstances of the island of the prevailing customary concept of 'terre la famille' or family land which concept allows land to remain tied for generations. Thus though WHITBY v. MITCHELL was the governing principle and even in dispositions where the settlor endeavoured to restrain each generation of beneficiaries in close limits, the notion has continued to survive in practice. Super-imposed on this however is S. 61 which now makes it possible to dispose of all rights and interests in land which can include a contingent, executory, or future equitable interest in any land or a possibility coupled with an interest in any land whether or not the object of the gift or limitation of such interests or possibility be ascertained.

One of the more significant provisions of the Act is S.15. S.15(1) provides for the abolition of technical words in conveyances. It enacts that a conveyance of freehold land to any person without words of limitation or any equivalent expression shall pass to the grantee the fee simple or other whole interest which the grantor had power to convey in such land, unless the contrary intention appears in the conveyance. The abolition of words of limitation was to take effect only after 29th January, 1976, the date on which the Ordinance came into force. Notably however S.15(3) goes on to provide

> Provided that in a deed executed after the 31st day of December, 1881, it is sufficient –
>
> (a) in the limitation of an estate in fee simple to use the words 'in fee simple without the word 'heirs'.
>
> (b) in the limitation of an estate tail, to use the words 'in tail' without the words 'heirs of the body; and
>
> (c) in the limitation of an estate 'in tail male' or 'in tail female', as the case requires, to use the words 'heirs male of the body' or 'heirs female of the body.'

S. 15(3) (a), (b), (c) thereby allows for the Act to have retrospective effect. The following will practically illustrate the point being posited.

A man who ceded property in 1890 using any of those terms provided for and at a time when in making his conveyance was cognisant of the law in existence will presently learn through his executors most probably that the interest legally created then is now a different interest in land altogether, that the life estate he then created is now converted into a fee simple estate. If he is dead, then he need not be perturbed, but the uncanny revelation will affect those persons who take interests or succeeded to property by virtue of the conveyance. Either such persons might well now possess no interests at all or now be vested with an interest greater than the one he held before.

If for instance he had used the words 'in fee simple' in the conveyance of 1890 he would at that time have succeeded in creating only a life interest since the common law applied to conveyances made then which made it compulsory for use to be made of the word 'heirs'. The life tenant who occupied that status until the Conveyancing and Law of Property Act came into effect, although he might be dead now, the beneficiaries of his estate or his heir might be able to maintain a claim on the ground that they are by statute entitled to claim as his beneficiaries to the fee simple now converted. The present beneficiaries claim could only be barred if an independent prescriptive title can be relied upon by the original remainderman or reversioner of the earlier life estate or if reliance can be placed on a certificate of title obtained under the Title by Registration Ordinance. It would be impossible to rely on a prescriptive title if the conveyance was executed after 1964. Can it be considered justiciable to inform a man who made his conveyance in 1913 and who used those words of limitation to which coincidentally the present law now gives legal effect that he has today created an interest by a document he executed in 1913 when the law at that time did not recognise the legal significance of the same?

In the same way beneficiaries and heirs who succeeded to property because the interest which the grantor created in 1913 was a life estate can no longer rely on having succeeded to the reversionary interest or remainder because the person to whom the life estate at that date was granted can now consider himself fortunate as his interest dates back to a fee simple. Thereby the present beneficiaries interest or the present purchasers who bought with the knowledge that the law as it then existed entitled him to purchase the fee simple did not in fact do so by virtue of the latin maxim 'nemo plus juris ad alium transferre potest qual ipse habet' – no man can transfer a greater right than he has himself and which is so ably supported by one of the conclusions arrived at in the Dominican case of GORDON v. BURKE[21] that the life tenant could not have disposed of a fee simple in an attempted transfer of property. Again, unless an independent title can be relied upon, as a bar to any adverse claims, under the Prescription Ordinance[22] or the Title by Registration Ordinance,[23] the attendant problems loom large.

Additionally, does it give existing purchasers of life estates, fee simple interests in the property because the words 'in fee simple' were used in the conveyance?[9]

A very likely consequence of such provisions is a rush on the Registry for an examination of deeds in order to find out what interests in land have been thereby affected in terms of those which are extinguished and those that have arisen to take the place of the former.

The sum effect of the section is to substantially affect vested property rights.

Any provision which intends to affect such rights must provide for compensation or it would otherwise be manifested as an unconstitutional taking, account being taken of the provision of the Constitution which provide for protection against deprivation of property.

S. 1 of the Dominica Constitution Order, 1967 generally provides that every person in Dominica is entitled to the protection for the privacy of his home and other property and from deprivation of property without compensation. Elaborating more on the principle of protection from deprivation of property S. 6(1) states that no property of any description shall be compulsorily taken possession of and no interest in or right over property of any description shall be compulsorily acquired, except where provision is made *by a law applicable to the taking* of possession or acquisition for the payment within a reasonable time of adequate compensation. S. 6(8) prevents the section from becoming applicable to any law which is made after the commencement of the Constitution that amends or replaces a law in force before its commencement if the law does not 'add to the kinds of property that may be taken possession of or the rights over and interests in property that may be acquired.'

S. 15(3) does not comply with the provisions of S. 6 of the Constitution and is thereby tainted with unconstitutionality. The Constitution of Dominica like all the other constitution of the West Indian territories, is a written document containing the fundamental law with reference to which the validity of laws enacted by the legislature are tested. No law enacted by the legislature can transgress or violate the provisions of the fundamental law.

There is very scant judicial pronouncements in the West Indian courts on what exactly amounts to a deprivation of property but the few that do exist provide sufficient guidance in the elucidation of the section.

In the case of LILLYMAN et al v. INLAND REVENUE COMMISSIONER et al[24] it was stated that the provisions in the constitution touching fundamental rights must be construed broadly and liberally in favour of those on whom the rights have been conferred. The case conclusively decided that to hold that money is excluded from S.1 of the

Guyana Constitution, which section is equivalent the S.1 of the Dominica Constitution Order, would be to make a mockery of the Guyana Constitution, in so far as it provides for protection from deprivation of property. Cummings J. who delivered the judgement of the Court noted that there can be a "no greater devastating deprivation of property than the taking of a citizen's money, depriving him of the use of it for six years and imposing upon him the State's terms with regard to interest, preventing him from saving in a bank of his choice on terms of his choice or investing his money where he pleases and on terms that he considers attractive.[25] He vindicated an opinion which can be appropriately extended to cover S.15 of the Conveyancing and Law of Property Act, by positively stating that the plaintiffs in the case had suffered the sort of deprivation that substantially robs a man of those attributes of enjoyment which normally accompany rights to or an interest in property.

If money is property, the case is even stronger for the extinguishment of an actual interest in land. Ownership under English law is translated through the doctrine of estates and the possession of one type of estate is the extent of that ownership. But there are varying degrees of estates, some greater in extent than others, for example a freehold as against a leasehold, or within the context of freehold estates, a fee simple as against a life interest, the former being greater in every respect than the latter, and the ownership of one as against the other essentially material.

Two other cases in which the principle of deprivation of property was litigated are HARRY v. THOM[26] and IN THE MATTER OF THE APPLICATION OF RAMESH MOOTOO UNEMPLOYMENT LEVY ACT, 1970.[27] In HARRY v. THOM, the court held that the withholding of the salary of a Crown servant was a deprivation of property. In the MOOTOO case the trial judge declared that the Trinidad and Tobago Unemployment Levy Act, 1970 was ultra vires the Constitution as the Act compulsorily imposed a levy on the property of the citizen for purposes which were neither defined nor definable by the terms of the provisions. The Court of Appeal however reversed his decision holding that the statement in the Act that the levy was imposed for the 'relief of unemployment and training of unemployed persons' was a sufficient declaration to endow the Act with the stamp of a taxing statute.

The provision while it divests persons vested rights in property does not make simultaneous provision for compensation which alone would have validated the taking under the Constitution. In the case of CENTRAL CONTROL BOARD v. CANNON BREWERY CO. LTD.,[28] Lord Atkinson indicated that there was an established presumption that an intention to take away the property of a subject without giving him a legal right to compensation for loss of it is not to be imputed to the Legislature unless that intention is expressed in unequivocal terms. In that case the House of Lords held that a government scheme for assessing compensation on

an ex gratia basis for property taken under war-time regulations was invalid. It held that there was a legal right to compensation assessed in the ordinary way under the Land Clauses Act, 1845.

Similarly the Privy Council held in COLONIAL SUGAR REFINERY Co. Ltd. v. MELBOURNE HARBOUR TRUST COMMISSIONERS[29] that private rights acquired over part of the land had not been overridden by an Australian statute which vested Melbourne Harbour in Commissioners. The position in the West Indies and in Dominica in particular is even more conclusive where there are specific restrictions in the Constitution providing for expropriation without compensation.

Such a section in the Conveyancing and Law of Property Act is exemplary of the pitfalls that might well result by blindly adopting and applying provision from other jurisdictions. Not only might they fail to take account of social realities and local circumstances of the territory but might well prove to be unconstitutional. S. 16 which provides for the statutory implication of general words in a conveyance might well have the same effect as S. 15 and the conclusions arrived at applies thereto.

Whether the St. Kitts' provisions which are similar and which was enacted in 1961 is itself similarly unconstitutional is entirely another question worth looking into. The 1961 provision had retrospective effect of an allied nature. However the absence of any contest as to the unconstitutionality of the provisions is not itself conclusive as to its constitutionality, but might well reflect a typical West Indian apathy or indifference.

At the same time, it might have been fair to speculate that S.15 of the Conveyancing and Law of Property Act, might have been inspired by the case of GORDON v. BURKE[30] though irrationally, the decision in the case would still be the same today, the conveyance having been executed in 1913 which makes by virtue of S.15, the provisions of the English 1881 Conveyancing Act applicable with reference to words of limitation, and in which conveyance neither the words 'in fee simple', or 'heirs' were used. The statement of the law with respect to conveyances no longer holds however.

In that case a trust instument was executed on March 18, 1913. George James Christian created a trust in which he named certain person as likely beneficiaries which included his two children Margery and Christiane Burke. The trust instrument vested the legal estate in the Mero Estate and the Cassada Estate in Thomas Howard Shillingford as trustee, his heirs or executors. The trust instrument paragraphs 1 – 7 outlined the conditions in which the trust property should devolve. Paragraph 4 stated that "should either the said Margery Burke or Christiane Burke be under the age of 21 years or without having married and leaving lawful issue, the whole of the lands, heriditaments, and premises shall be held in trust for *the survivor*"[31]

Margery Burke died in 1919, six years after the death of the testator. She had not attained 21, neither was she married nor did she die leaving lawful issue. Christiane Burke had entered into possession of the trust property when she attained her majority being the survivor. She had purported to convey as beneficial owner in 1952, the fee simple of about 179 acres of Mero Estate to one Edwin Pinard for £1,200.

Before the Court of Appeal of the West Indies Associated States, the plaintiff/appellant asked for a declaration that he was one of the reversionary owners of the fee simple absolute of the lands included in the trust instrument.

The important issue in the case was whether the respondent had a right to convey as beneficial owner, property which was the subject matter of a trust. The answer would be provided after the court had addressed itself to two questions:

(a) what estate did the respondent take;

(b) was the trust made under para 4 of the trust instrument executed or executory.

The submissions from both sides were weighty. The appellants urged that firstly, the absence of words of limitation prevented her from taking the fee simple in the trust property on her having attained the age of 21. Secondly, that on a proper interpretation of paragraph 4 as modified by paragraph 5 and subsequent paragraphs of the trust instrument, the respondent on attaining 21 without marrying and having lawful issue took either an estate in tail or a life estate. Thirdly, that by virtue of the conveyance, the respondent was estopped from denying that she sold as beneficial owner and that consequently she could not avail herself at this stage of the terms of the Settled Estates Ordinance.31(a)

The respondent on the other hand contended that the peculiar circumstances of the case rendered it a fitting one for the court to read 'and' for the word 'or' in paragraph 4 of the trust instrument for two reasons. Firstly, because the attitude of the courts was to presume in favor of divesting particularly in a case such as this where the clear intention of the settlor was to convey the legal estate to the respondent on her attaining the age of 21 years. Secondly, because the provision whereby the respondent was entitled upon attaining her majority to call upon the trustee to convey the legal estate to her rendered the trust an executory one and as such to fall within the category of cases to which the courts were inclined to lend a liberal interpretation in order to give effect to the intention of the settlor. The court was persuaded to adopt such a course as it would avoid absurdities in the trust instrument and the trust brought to a satisfactory end. Otherwise it was contended, the result might be that no legal estate in the trust instrument could vest in anyone.

Gordon J. A. reviewed the applicable principles of law. He noted that at that date in Dominica i.e. 1970, the Real Property Ordinance[32] and the common law of England as it was prior to 1881 when the English Conveyancing Act, 1881 came into force governed. This was because the Real Property Ordinance came into force in Dominica in 1873 and the Dominica legislature never adopted the provisions of the Conveyancing Act 1881 (U.K.).

S.16 of the Real Property Ordinance provides that no estate of fee tail shall be created, after the passing of the Ordinance, by any deed, or by any will or other instrument, or otherwise than by express limitation to a person and 'the heirs of his body or, the heirs, male or female, of his body as the case may be'.

The common law rule also provides that in order for a freehold estate of inheritance to be created in a conveyance inter vivos only a phrase which included 'heirs' would be effective. A fee simple or fee tail could not be created in any other way.

The court recognised the advanced position of Wills when S.29 of the Wills Ordinance[33] made adequate provision whereby a fee simple estate may pass without the use of words of limitation, S.29 provides:

> Where any real estate shall be devised to any person without words of limitation such devise shall be construed to pass the fee simple, or other the (sic) whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will.

Since this provision referred to wills only the court held that it therefore followed that in order to effectively pass the legal estate in real property by deed technical words of limitation had to be used. The court therefore dismissed the appellant's submission that the respondent was entitled to a fee tail as there were no words of limitation as called for by S.16 of the Real Property Ordinance following the word 'survivor' in paragraph 4 of the trust instrument.

In the words of Gordon J.A. on the law applicable at the time:

> The fact that the amending effect of the Conveyancing Act, 1881 (U.K.) and the Real (sic) Property Act 1925 (U.K.) on the real property of the United Kingdom, does not apply in Dominica, coupled with the provisions of the Real Property Ordinance, Cap. 219 (Dominica), lead me to the conclusion that in the instant case the effect of the absence of the words of limitation which included the word 'heirs' after

> the word 'survivor' in para. 4 of the trust instrument, is that only a life interest passed to the respondent on her attaining the age of 21.[34]

Because only a life estate was deemed to have passed to the respondent, she never had a beneficial interest amounting to a fee simple estate to sell as she had purported to do. Thus at the date of the indenture of conveyance by herself to Lionel Pinard, she was seised as cestui que trust of an estate for life in the said heriditaments and not an estate in fee simple, and was accordingly not entitled to sell the heriditaments as absolute owner thereof in fee simple.

Gordon J. A's statement of the law has been amended to bring it in line with the provisions of the English Law of Property Act, 1925 with respect to conveyances executed after January 29, 1976. But S.15(3) provides for the amending effect of the Conveyancing Act 1881 (U.K.) for conveyances executed between 1881 and the date of commencement of the Act. Every single stage of the English reforms have peculiarly been followed with consequences of course of a very unsavoury nature. It exemplified the adoption of precedent without reflection.

With regard to the additional point canvassed in GORDON v. BURKE re the nature of the trust, the Court of Appeal held that the instrument was an executed trust as the terms of the trust had been declared by the settlor in such a complete manner that no instrument was required to define the limitations to which he intended to subject his property.

Two other subsidiary issues dealt with referred to the locus standi of the applicant and the powers of sale of the life tenant. With reference to the first issue, it was not disputed that the appellant was the lawful son of Clara Gordon (nee Christian) who was one of the beneficiaries mentioned in paragraphs 5–7 of the settlement. She, however, died in 1964 leaving lawful issue but her death took place before she obtained a vested interest in the property. Consequently, there was nothing to pass to her heirs by way of succession. The appellant could accordingly have no claim to the heriditaments as one of her heirs. While however the question of locus standi was negatively answered, the appellant was able to move the court to determine the question whether or not the respondent had a right to convey the fee simple in the Mero Estate as she purported to do.

On the issue of the powers of a tenant for life, the court maintained that while the respondent was a tenant for life of a settlement under the Settled Estates Ordinance,[35] and in that capacity could have sold the heriditament pursuant to the power of sale conferred on such a tenant by the Ordinance, she did not however, purport to sell in that capacity. The court did not express any opinion on the question of the validity of the sale by the respondent as it did not arise in the appeal.

This exhaustive analysis of S.15 is not intended to regard the section as being undesirable in essence. The essence of provisions like S.15, S.16 and S.17 is to provide for simplicity in conveyancing and for much shorter conveyances and a movement away from the rigid rules of conveyancing. S.16 for example provides for the legal shorthand for conveyances enumerating the various interests as are deemed to be conveyed with land unless expressly excluded. With regard to covenants, SS. 27–31 provide for covenants to be implied in every conveyance whether of leasehold or freehold land or whether the instrument is a mortgage. Interestingly S.29(2) allows for both the benefit and the burden of a covenant to run with the land and can be said to be a statutory endorsement of the principle in TULK v. MOXHAY.[36]

The provisions relating to the creation of mortgage manifested no changes. The provisions which the Act makes applicable to the creation of a mortgage are those obtaining in England in 1845. A mortgage at present day can be made either by sale, demise or assignment. In fact when the mortgage is created, the legal interest in the property rests in the mortgagee, the mortgagor only retaining the equitable interest. S.32 of the Act stipulates that every mortgage made shall vest in the mortgagee the same legal estate or interest in the property comprised in such mortgage as the mortgagee would take in the like case according to the law of England at 1845, subject to the equity of redemption.

Such a provision coincides with the fact that unlike the English 1925 provisions which succeeded in reducing the number of legal estates, all the various estates can still exist in land as legal interests.

The task of the lawyer dealing with land in Dominica appears to have been made more difficult. Since there is no uniformity in the period and stage of development of the law, he has to frequently avert to either the English common law position if he is to deal with fixtures, and notice; the 1845 and 1881 provisions if he is dealing with mortgages; the 1925 provisions if he is concerned with the construction of words of limitation, to mention just a few. By virtue of the continued application of the Statute of Uses, 1535 (U.K.) which statute can only be expressly repealed, every conveyance of land must contain the words 'unto and to the use of', so as to validate the particular conveyance.

One final note of observation is apparent failure of the legislature in 1975 to heed the call for reform in the area of the West Indian 'chattel house', made on occasions by West Indian courts though not necessarily Dominican courts. There is nothing wrong in setting in motion a progressive and desirable development, since the concept and problems of the chattel house is as much a problem in Dominica as it is in Trinidad, manifesting itself in a similar fashion in places where it is evidenced. While it is true that many Dominican families own the plots on which their houses are built, there is a significantly large number of persons who have built houses on lands which have been leased; and for which rent is paid.[37]

But S.16(1) provides that a conveyance of land shall be deemed to include and by virtue of the Act operate to convey with the land inter alia all buildings, erections and fixtures.

A stream of West Indian cases have been concerned with the status of the chattel house and has demonstrated its existence as a typical feature of the West Indian scene. It has its evolution in the days of slavery when slaves ran away from the estates and sought to set themselves up by creating 'make-shift' houses, the beginnings of a peasant culture. It however has produced a dilemma for the West Indian courts who by virtue of the law applicable have been bound to apply English precedent thereto, despite the existence of the conflicting custom.

The chattel house is perceptively novel, and an off-shoot of the law of real property in the West Indies and an unknown concept in English law, but which nonetheless finds itself subject to the English principle of quicquid plantatur solo, solo cedit i.e. whatever is annexed to the realty becomes part of it. The exceptions made to this general rule have been made by the English courts to suit the exigencies of modern life and modern progress in England making a chattel which had been affixed for the purposes of trade, ornament or convenience severable. The courts did not extend the exception to buildings subservient to the purpose of agriculture or for dwelling purposes. Statute in England provided therefor. The only statutory exception in the West Indies or statutory recognition finds reflection in provisions like the Agricultural Small Tenancies Ordinance in Dominica[38] and other Eastern Caribbean Islands which gives the tenant the right to demand compensation in the case of specified fixtures, but notably not the right of removal.

In the Barbados Tenantries (Control and Development) Act, 1965,[39] the term chattel was mentioned but not explained, S. 2 of the Act made reference to it in its definition of a tenantry in those terms:

> 'tenantry' means any area of land, other than land vested in or leased to the Crown or a statutory board, which is now or shall be hereafter subdivided into more than five lots for the purposes of being let to tenants as sites for chattel buildings used or intended to be used as dwellings.

It is in Belize that the boldest attempt has been made to deal with the question when the legislature in the provisions of the Landlord and Tenant Ordinance, S.13[40] enacts that the doctrine of the common law, 'quicquid solo plantatur, solo cedit' shall have no application in Belize to tenant's fixtures of any kind and allows the tenant to remove such fixtures before or after the termination of the tenancy. This provision is further buttressed by S. 47 of the Law of Property Ordinance, 1954[41] which, unlike S. 16 of the Dominica 1975 Act similarly providing for general words in

transfers, states that the inclusion of all appurtenances in a transfer of land is not to be construed as giving to any person a better title to any property, right or thing than the title which the transfer gives him to the land and especially

> shall not transfer any right to houses, buildings, erections, and appertenances thereto belonging to a tenant or licensee on the land.[42]

Apart from this single bold legislative attempt, judicial decisions have attempted to highlight the problem. It was Frazer J. in MITCHELL v. FORDE[43] who in stating the incidents peculiar to fixtures in England expressed the view that in the absence of local custom or of restraining judicial authority to the contrary he felt himself constrained to apply the same incidents to fixtures in Trinidad and Tobago. He motioned that the extent to which the chattel house is used in Trinidad and Tobago and one can confidently add in Dominican like in most West Indian territories justifies statutory treatment of this distinct legal entity which has to an acute degree become part of the legal system of the West Indian territories.

Boland J., in DE FRIETAS v. SAMUEL[44] had at an early date already drawn attention to the position of the chattel house by indicating that it was unfortunate that legislation had not yet been introduced to fix the rights and obligations of landlord and tenant of these lands. Frazer J. expressed the hope that some definitive action would soon be taken in that direction. His views were not intended to be purely of local consequence and should have been reflected in the 1975 property provisions of the Dominican legislature.

The full text of S. 16 states:

(1) a conveyance of land shall be deemed to include and shall by virtue of this Act operate to convey with the land, all buildings, erections, fixtures, hedges, ditches, fences, ways, waters, watercourse, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, or part thereof, or at the time of the conveyance, demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to the land or any part thereof.

(2) A conveyance of land, having houses or other buildings thereon, shall be deemed to include and shall by virtue of this Act operate to convey, with the land, houses, or other buildings, all out-houses, erections, fixtures, cellars, areas, courts, courtyards, cisterns, sewers, gutters, drains, ways, passages, lights, watercourses, liberties, privileges, easements, rights and advantages whatsoever, appertaining or reputed to appertain to the land,

houses, or other buildings conveyed or any or them, or any thereof, or, at the time of conveyance, demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to, the land, houses, or other buildings conveyed, or any of them, or any part thereof.

Unless expressly excluded the provisions apply.

No apologies will be tendered for concluding on the note struck by Professor Marshall who quite appropriately remarked that West Indian legislatures must aim to provide comprehensive and intelligible land law legislation categorising interests in land according to the functions which land is required to serve in a modern community.[45] Such legislation ought to provide adequate legal machinery for its use, development and transfer and to probably re-emphasize the point ought to take note of existing social realities, and in the development of the land itself and in the final analysis attempt to achieve uniformity in that area of law within a West Indian context. Foresight, preception, planning and co-ordination are inevitable considerations for effecting land reform even in the reduction of technical legal complexities.

FOOTNOTES

1. Act No. 46 of 1975.
2. West Indian Land Law. Conspectus and Reform by O.R. Marshall (Article, U.W.I. Faculty of Law Library).
3. Ibid., p. 4.
4. THE SEISEN OF THE FREEHOLD p. 1. (Marshall op. cit. p. 4.).
5. Marshall loc. cit.

5(a) The Conveyancing and Law of Property Act, 1975 to be hereinafter referred to as the Dominica Act.

6. Ibid.
7. Bill for an Act to make provisions in the Law relevant to conveyancing and Law of Property, 1975.
8. Cap. 222 Vol. III Revised Laws of Dominica, 1961.
9. Cap. 271 Vol. VI. Revised Laws of St. Kitts, 1961.
10. Cap. 27. No. 12 Vol. III, Laws of Trinidad and Tobago, 1950.
11. Cap. 216, Vol. III Revised laws of Dominica, 1961.
12. Cap. 219 Ibid.
13. Cap. 218 Ibid.
14. Cap. 222 Ibid.
15. (1881) 17 Ch. D. 353.
16. (1671) 2 Wms. Saund. 380.

17 (1890) 44 Ch. D. 85.
18. (1881) 17 Ch. D. 353.
19. Supra.
20. Supra.
21. (1970), 16 W.I.R. 204 (Dominica) C.A. W.I. Associated States.
22. Cap. 14 Vol. I Revised Laws of Dominica, 1961.
23. Cap. 222 Vol. III Ibid.
24. (1963) 13 W.I.R. 224. S.C. of B.G. (Guyana).
25. Ibid., p. 236.
26. (1967), 10 W.I.R. 348 Full Court of H.C. of Guyana (Guyana).
27. No. 16 of 1970, Suit No. 2920A of 1974 (unreported).
28. /1919/ A.C. 744 /H.L./.
29. /1927/ A.C. 343 P.C. (Australia).
30. (196¼), 16 W.I.R. 204.
31. Emphasis added.
31(a). Cap. 221 Vol. III Revised Laws of Dominica, 1961.
32. Supra fn. 12.
33. Cap. 215 Vol. III Revised Laws of Dominica.
34. GORDON v. BURKE (1970), 16 W.I.R. 204 at p. 210.
35. Op. cit. Cap. 221.
36.
37. Many villages have the ring of Family names, most of the land in these villages having been bought by one family and while some of the land has been sold, sizeable protions continue to be leased to villages. The village of Mahaut exemplifies the feature.
38. Cap. 74 Vol. 1 Revised Laws of Dominica, 1961.
39. Cap. 239 Vol. IV. Laws of Barbados, 1971, Revised.
40. Cap. 201 No. 33 of 1953 Vol. IV, Laws of Belize, 1958 Revision.
41. Cap. 193 Vol. IV. Ibid.
42. S. 47(2) Ibid.
43. (1963) 5 W.I.R. 409 H.C. of Trinidad and Tobago (Trinidad).
44. Marshall supra.