THE WEST INDIAN CHATTEL HOUSE - A FIXTURE OR NOT?

A recent statement by Hogan, P in the Bahamas Court of Appeal[1] has thrown, it is suggested, a new light on the problem of reconciling the West Indian Chattel House with the English Common Law of Fixtures- the body of law which was received[2] by the West Indian Colonies from Britain during the seventeenth century and onwards. Such statement was made in the recent case of O'Brien Loans Ltd v Missick. In that case, a small wooden house was sitting on and bolted to concrete blocks. Cement was paved onto the blocks in order to make them solid. The house was fitted with a flush toilet, which was connected to a cesspit. While the house was being dismantled and removed, the pipe, connecting the toilet to the cesspit was broken. The Court of Appeal was then left to decide whether the house was sufficiently annexed to the land, to be considered a part of it. They came to the conclusion that annexation was insufficient.

In the course of his judgment, Hogan, P said: "it appears that the house was moved with little difficulty and retained its identity virtually intact on removal. In these circumstances, though not without considerable hesitation and with some difficulty, I have come to the conclusion that it would be right in the environment of the Bahamas to regard the house as a chattel rather than as a fixture."

It is suggested that this approach of Hogan, P has much to commend it, and is preferable to the approach adopted by Wooding, C.J. in the Trinidadian Court of Appeal.[3] In that case, the trial judge found that

the chattel house was a fixture but nevertheless held it to be removeable as a tenant's fixture.

As Hogan, P. recognised, however, there is some difficulty in adopting this approach. It is thus necessary to examine some of these difficulties and to attempt, where possible, to show why Hogan, P's approach is suggested as the better of the two.

Two cases primarily shaped the course of the English Common law relating to Fixtures. These are Herlakenden's Case[4] and Holland v Hodgson[5]

In the former, it was stated[6] that the fact of attachment of a chattel to the freehold or to something which is already annexed thereto, raises the presumption that the owner of the chattel loses any right to remove it without the permission of the freehold owner. Some three centuries later Blackburn, J. restated the general rule in a dictum which has been often cited to distinguish a chattel from a fixture. He stated[7] "Perhaps the true rule is, that, articles not otherwise attached to the land than by their own weight are not to be considered as part of the land. The onus of showing that they were so intended lying on those who assert that they have ceased to be chattels; and that, on the contrary, an article which is affixed to the land even slightly is to be considered as part of the land, unless the circumstances are such as to show that it was intended all along to continue a chattel, the onus lying on those who contend that it is a chattel."

Both these dicta are now usually condensed into one general rule or phrase: 'quicquid plantatur solo solo cedit'. (Whatever is attached to the soil becomes part of it.) Moreover, it was recognised by Hogan, P. that these principles[9] of the English Common Law applied in the Bahamas. Mr Justice

H. A. Fraser of the Court of Appeal of Trinidad and Tobago referred in an article[10] to these principles and in particular to the maxim 'quicquid plantatur solo, solo cedit', as being applicable to Barbados, Jamaica and Trinidad because of the reception of the English Common Law and Equity to the West Indies. He notes one exception, Guyana, which he states specifically excludes the operation of this maxim.

In addition, an Ordinance[11] in Trinidad provided that: 'Whenever any question shall arise, touching the right of the lessee or the tenant of any land to remove any fixtures annexed or affixed to the land, demised during the continuance of the lease... every question shall be determined according to the Law of England.'

Prima facie, it would appear, therefore, that a West Indian chattel house, resting by its own weight on the land, would have to be considered a fixture according to strict legal theory. It is, however, the purpose of this thesis to suggest that special consideration must be given to the social conditions prevailing in the West Indies when applying this aspect of the Common Law - difficult though it may be.

It is these Common Law principles which might have been the subject of some of the difficulties to which Hogan, P. was referring in his statement. For, as one writer has observed,[12] no case appears to be known uder the English Common Law, where a tenant who has erected buildings for residential purposes has been able to remove them without the landlord's permission. Such, it is submitted, is the result that the decision of Hogan, P's court would have occasioned in this instant case.

One is thus able to see how the Mitchell v Cowie

court, applying the strict rules with regard to fixtures, was able to hold the chattel house in that case to be a fixture. Wooding, C.J., with whom the other two members of the Court of Appeal agreed, used the "Purpose of Annexation Test"[13] to arrive at the conclusion that the house was a fixture. He derived six principles from Blackburn, J.'s judgment in Holland v Hodgson, as relevant to the issue. They are as follows:-

1. A house may be a chattel or a fixture depending upon whether it was intended to form part of the land on which it stands, the intention to be judged objectively according to circumstances as they appear.

2. To distinguish a chattel from a fixture, a primary consideration is whether or not the house is affixed to the land.

3. If the house is not affixed to the land but simply rests by its own weight, it will generally be held to be a chattel unless it be made to appear from the relevant facts and circumstances that it was intended to be a fixture.

4. If the house is affixed to the land, however slightly, it will generally be held to form part of the land unless it be made to appear from the relevant facts and circumstances that it was intended to be a chattel.

5. Specifically as regards a house affixed to land by a tenant thereof, a circumstance of primary importance is the object or purpose of annexation.

6. To ascertain the object or purpose of the annexation, regard must be had to whether the affixation of the house to the land is temporary and for use as a chattel or is permanent and intended to be for the better enjoyment of the land.

It is respectfully suggested that Wooding, C.J. is missing one essential point, in that there can be no enjoyment or use of a house, whether a chattel or not, unless it is attached in some manner or another to the land.[14] Thus, to suggest that there is a distinction between attachment for the use as a chattel and attachment for the better enjoyment of the land is somewhat redolent of pointless pedantry. For a house cannot be enjoyed without the use of land. One can view similar sentiments on this point by Georges, J.A., in the "O'Brien Case", where the learned Justice of Appeal states: 'With respect, in many situations in the West Indies, it will be impossible to distinguish between the use of the house as a chattel and the better enjoyment of the land.'[15]

This leads us back to the approach of the Bahamian Court under Hogan, P which appears to be taking into consideration the social realities of the West Indies and applying the Law to those realities and not in a vacuum as, it is suggested, the Wooding court has done.

But what are these ' realities' which the court appears to have looked at?

West Indian society is one that has evolved from slavery which ended only 150 years ago with Emancipation. The legacy of this society, as far as land tenure is concerned, was the concentration of the vast majority of land ownership into the hands of a few - the White Oligarchy. For the ex-slave, rental of land was often equated with taking employment on the landlord's estates. Legislation was also passed tying the renting of land with work on the owner's estate. An example is the Located Labourers Act of 1850, an Act which Samuel Jackman Prescod regarded as having converted simple tenancies-at-will into tenancies incidental to

service.[16] The labourer was given no security of tenure and as has been said, 'He was there only as a convenience to the owner or manager and could be given orders to vacate the spot at any time.'[17]

It can thus be seen that if the strict laws relating to fixtures were applied, certain injustices could be perpetuated in the hands of unscrupulous landlords. Thus, although to a certain extent the ownership of land has ceased to be so concentrated, this feature of landlord - tenant relationships still obtains throughout the Caribbean. The possibility of similar injustices, for example, the insistence that the chattel house be left at the end of the tenancy for the Landlord, could therefore theoretically recur.

Hogan, P.'s approach can therefore be defended because it takes into account the social conditions peculiar to the West Indies. It can also be shown that there can be some legal basis found for his decision. If one were to tap a slender stream of authority from the judgment of Blackburn, J. in Holland v Hodgson[18] one would find the following: 'There is no doubt that the general maxim of the law is that what is annexed to the land becomes part of the land; but it is very difficult, if not impossible, to say with precision what constitutes an annexation sufficient for this purpose. It is a question which must depend on the circumstances, as indicating the intention, viz. the degree of the annexation and the object of the annexation.'

"Circumstances" is the operative word, in this context, which was obviously considered by Hogan,P. as well as by the other judges, in deciding that the particular house with which the court was concerned should be regarded as a chattel. A further look at the judgment of the President of that Court

of Appeal will exemplify this: 'If this case was to be determined by a strict application of the views he (Wooding, C.J.) had expressed and in the environment of England, I think it would be very difficult to resist the Appellant's claim ... The concept of the chattel house has however, been a feature of countries in this part of the world and in the far East to a very much greater extent than in England and I believe it would be wrong to ignore that aspect in determining this appeal.'[19]

It is to Wooding, C.J. that we must return, however, to solve another of the difficulties that might have weighed on Hogan,P's mind. This is that if the chattel house is declared a chattel and not a fixture, it might be distrained on for arrears of rent, like any other chattel. This would for all intents and purposes give the landlord a method of obtaining the house, thereby defeating the attempt by the court to exclude this situation by declaring the house not a fixture. Wooding,C.J. put an end to this problem when he declared in Doolan v Ramlakhan,[20] another Trinidadian case: 'It is a long established practice in this country that if a house is let to a tenant who gets into arrears with his rent, the landlord distrains the tenant's furniture if the tenancy is of a house; but if building land is let to a tenant who is likewise in arrears he distrains or purports to distrain the building of the tenant standing thereon. How the practice began it is difficult to say, but it certainly has become established. The mistaken notion that it is the right thing to do should be removed from the minds of landlords and bailiffs as speedily as possible.'

Again, Wooding, C.J. expressed similar sentiments in a case decided shortly before Doolan. That was the case of Florence Baptiste v Ramnarine Supersad

& Anor.[21] Thus spoke the learned Chief Justice: 'Could the defendant Supersad lawfully distrain a house which is a fixture as he purported to do through his agent, ...? Section 8 of the Landlord and Tenant Ordinance gives to a landlord the same remedy by distress for the recovery of rent in arrear as is given by the law of England in the like case. By that law, subject to certain exceptions which are immaterial for present purposes, a landlord may distrain all goods and chattels found on the premises out of which the rent issues, whether they be the property of the tenant or of any other person. But no fixtures so long as they remain such, are distrainable for rent in arrears, whether they be severable or removable by the tenant.[22]

Although this dictum was favourable to the owner of the chattel house the actual decision, in the instant case declared the house to be a fixture. Wooding, C.J., denied that it could be held a chattel and referred to a dictum of Bourke, J. of Kenya in the case of Salah v Eljofri & Anor[23] to support his view. It is, he said, 'difficult to appreciate how a house of this nature in question can properly be said to be a chattel .... It could only, I suppose, be "completely transferred by delivery" by reducing it to pieces of wattlewood and dried mud. By such a process the whole character of the thing would be gone and its state hardly more enviable than that of the late, lamented Humpty Dumpty.'

What is interesting about this case is that Wooding, C.J. still applied the strict rules with regard to fixtures, that he enunciated in Mitchell v Cowie. Those rules had been derived from the early English case of Holland v Hodgson. Wooding, C.J. applied these rules in the above cases strictly, in spite of having stated, at the beginning of his judgment in Eva Fields v Modeste, that[24]: 'This case raises

questions about chattel houses once again. We can only repeat what judges have said in these courts for very many years, probably as many as 50, that the need is urgent to introduce legislation to deal realistically with chattel houses.'

The Chief Justice goes on to state that this problem must be left to the legislature. It is a view and position that was not totally adopted by Hogan, P who constrained by lack of legislation, and felt that it was indeed time to apply a 'realistic view'.

It is thus apparent that the position, in terms of a legal definition of the West Indian 'Chattel House" is yet unclear. What the Bahamas Court of Appeal was willing to regard as a chattel, for the purpose of facilitating its removal, the Trinidadian Courts grudgingly deemed to be a mere Tenant's Fixture. It is submitted that the former definition is the better. One ground for such submission is the pitiable predicament of the tenant, when the landlord exercises his legal right to buy a tenant fixture from his tenant. In view of this, it is submitted that, short of complete reform by legislation, the approach of the Bahamian Court must suffice as the more equitable and appropriate of the two.

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FOOTNOTES

1. O'Brien Loans Ltd v Missick (1977), 1B.L.R. pt 49, at p.55
2. "Reception of Law In the West Indies," by Prof. K.W. Patchett
3. Mitchell v Cowie (1964) 7 W.I.R. P.118 at 125 F

4. (1589), 4 Co. Rep. 62a

5. (1872), L.R. 7 C.P. 327

6. Supra note 4 at 64a

7. Supra note 5 at P.335

8. Minhall v Lloyd (1837) 2 M + W P.45o at 459

9. O'Brien Loans Ltd v Missick Op. cit. P.53

10. Land Law in the West Indies in June 1972, J.L.J p.25

11. Landlord and Tenant Ord; Cap. 27 no.16 March 1846-S.5. This provision is not incorporated in the new 1981 Landlord and Tenant Act - Act 19 of 1981, but at the time of the cases mentioned herein it was in force.

12. Fixtures by B.W. Adhin and D. Bowen 3rd Ed. Chpt VII - P.99

13. Mitchell v Cowie Op.cit. at P.121

14. Fraser Op.cit. Note the observation made by the author as to the practise in Barbados, (P.26) of resting the house on bricks so as not to actually touch the land.

15. O'Brien Loans Ltd v Missick op.cit. P.58

16. Edward Stoute - The Barbados Chattel House - Advocate News 12th April 1981.

17. Ibid

18. Supra Note 2

19. O'Brien Loans Ltd v Missick Op. cit. P.54

20. (1967) 12 W.I.R. P. 146 at 148.B

21. (1966-69)Vol 19. Part 1 T + T. R. P.7 154

22. (1966-69)Vol 19. Part 1 T + T.R . P 154 at 159

23. (1950) Kenya L.R. 17
24. (1966-69) 19, Part 4 Trinidad L.R. 154 at 159
25. Property Act (Barbados) 1979. See 27 (4)

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"The law's final justification is in the good it does or does not do to the society of a given place and time."

(Albert Camus)