Simeon McIntosh's Contribution to the Solution of the Chattel-House Problem in the Commonwealth Caribbean*

*Asya Ostroukh***

I. Introduction: What is a chattel house?

One of the distinctive features of the West Indian islands is an indigenous type of housing called a chattel house. A chattel house is a one-storey rectangular house made of wood (which was historically the cheapest building material) that can be easily dismantled, moved to another spot and re-assembled in a single day, and yet is able to survive this relocation with a minimal damage.[1] In the Caribbean this type of housing is still very common, especially on the island of Barbados.

Dark brown and light green, white and yellow, with just one or several bedrooms, rich or modest, lavishly decorated with flower pots or fretwork or literally falling into ruins, Caribbean chattel houses come in all shapes and sizes and are as diverse as the West Indian society. In the course of time, the chattel house has become not just a local architectural peculiarity, but also a part of West Indian cultural identity.

This is so because historically the chattel house was the only form of housing available to the emancipated slaves. After the Emancipation (1834), the slaves were landless as most of the land was still owned by the plantation owners (former masters). *Simeon McIntosh* justly affirms that,

> "[t]he chattel-house problem arises out of an historical background of slavery and, subsequent to its abolition, its legacy of plantocracy class continuing to control one of the most valuable resources in the society, so that the chattel-house owner, usually a peasant or farm labourer, is totally dependent on the landowner for permission to build his or her house on this land."[2]

For instance, in Barbados under the Located Labourers' Act of 1840 the former slaves were allowed to build their houses on plantation lands, but the owners reserved the

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** The University of West Indies, Barbados, E-Mail: asya.ostroukh@cavehill.uwi.edu

[1] Chattel house, in: *Carrington/Forde/Fraser/Gilmore*, A–Z of Barbados Heritage, 2003, 43. For more about physical features of the chattel-house see *Watson/Potter*, Low-cost Housing in Barbados: Evolution or Social Revolution, 2001, 57 ff.; *Watson*, The Tenantries of Barbados: A Sustainable Housing System, in: McGregor/Barker/Evans (eds.), Resource Sustainability and Caribbean Development, 1998, 214 ff. and *Fraser/Kiss*, Barbados chattel houses, 2011, 95.

[2] *McIntosh*, The "Chattel-house" Case: a Reading in Hegelian Jurisprudence, Caribbean Law Review 5 (1995), 482.

right to evict such tenants from the land at a short notice.[3] They were tenants at will which is a Common Law term meaning a tenancy that "arises where either party may at any time terminate the arrangement at will, i.e. on demand".[4] Thus, mobility of such a house was a natural response to precarious position of former slaves who were only tenants at will on the land belonging exclusively to plantation owners. *Fraser* and *Kiss* suggest that the fact that the chattel-house was owned and land rented resulted in the high quality of workmanship and repair.[5]

This relationship between the owner of the land and the owner of the chattel house changed in the twentieth century, when the number of landowners expanded beyond the class of the former slave masters and plantation owners. Nonetheless, the dissociation between the ownership of the land and of the chattel house was not uncommon throughout the whole century. For instance, in 1982 *Liverpool* wrote that

> "…it is a matter of everyday occurrence that such houses are removed either in whole (by placing it on skids and pulling it to its new location with the assistance of friends) or in part (by reducing it to sizeable parts which may be carried on the head with the assistance of friends, or …by moving the house as a complete unit) to their new location."[6]

Such dissociation of ownership necessarily raises a question of the legal status of chattel houses – the question that does not have a clear-cut answer.

II. Legal Status of Chattel Houses in the Commonwealth Caribbean

The expression "chattel house" tells little to a lawyer from a Common Law jurisdiction and virtually nothing to his or her colleague from a Civil Law country. It is the word "chattel" used to qualify the word "house" that creates a puzzle for foreign lawyers. In Common Law "chattel" means personal (and not real) property. The nearest Civil Law term for "chattel" would be "movable" as opposed to "immovable" that is a Civilian equivalent to "real". Thus, according to Common Law, a chattel house is an oxymoron as a house by default is not chattel (personalty), but realty. This said, the expression "chattel house" indeed reflects its twofold nature: it is a movable house that historically did not belong to the owner of the land, as we have already seen.

Such West Indian reality has always been at odds with the transplanted British land law according to which anything that is attached to the land, however slightly, as a general rule, becomes part of this land (fixture) and loses its quality of a chattel. This is based on the famous principle *quicquid plantatur solo solo cedit* (whatever is affixed to the land, becomes its part). "Thus, if a building is erected on land and objects are permanently attached to the building, then the soil, the building and the objects affixed to it are all in law "land", i.e. they are real property, not chattels," the classical textbook says.[7]

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[3] *Carrington/Forde/Fraser/Gilmore*, A–Z of Barbados Heritage, 2003, p.43.

[4] *Gray & Gray*, Elements of Land Law, 5th ed., 2009, 391.

[5] *Fraser/Kiss*, Barbados chattel houses, 2011, 98.

[6] *Liverpoo*l, Towards Reform in Commonwealth Caribbean Real Property Law, in: Alexis/Menon/White (eds.), Commonwealth Caribbean Legal Essays, 1982, 202.

[7] *Megarry & Wade*, The Law of Real Property, 7th ed. by Harpum, Bridge Martin Dixon, 2008, 1066.

In Civil Law there exists a similar principle *superficies solo cedit*, meaning that whatever is united to the surface of the land follows the land.

The chattel-house problem had not been acute in the West Indies in the nineteenth century when, without running water and electricity and with most of the houses standing on their own weight not connected to the land, most houses retained their chattel (movable) nature. In the twentieth century, however, most of them were already connected to modern facilities and utilities, thus, becoming physically attached enough to the land to become fixtures. Moreover, in the twentieth century the landlord was no longer a former plantation owner but anyone with a freehold title and the tenancy was a true tenancy and not "at will".

In post-colonial social context such mechanical application of the Common Law rules could (and sometimes did) result in blatant injustice – enriching an already wealthy and powerful owner of the land by attributing him the chattel house upon the termination of the lease and impoverishing an already poor and powerless owner of the chattel house by depriving him of this house.

Thus, the chattel-house problem clearly shows that at times colonial legal transplants are nonviable when planted into a different social, historical and cultural environment and could be even detrimental to vulnerable groups of the population. As *Marshall* puts it, "perhaps, however, the most far-reaching consequence of the Englishness of West Indian Land Law is its failure to take into account the realities of the socio-economic situation".[8] *Liverpool* also regrets that "… the law relating to fixtures is one of the best reminders of the timidity with which our courts have approached their role of interpretation" and that in the 1977 Bahamas case *O'Brien Loans Limited v. Edward Missick*[9] concerning a chattel house "… the learned judges discussed the matter without once adverting to the social consequences of their decision".[10] Such inadequacy of the British law of fixtures was realised by local judges and legislators who tried to provide some solutions to the problem.

Case-law in the Commonwealth Caribbean approached the problem by developing a range of tests to determine whether a chattel-house could be classed as a fixture or a chattel. This was performed by adapting the tests established by the British common law, such as "degree of annexation" (degree of physical attachment of the house to the land), "purpose of annexation" (whether the house was attached for better enjoyment of the land or for better enjoyment of the house itself) and 'intention of the parties' to West Indian cases in order to adjudicate chattel-houses either to the tenant or to the landlord. The seminal Trinidadian case establishing six criteria to distinguish fixtures from chattels is *Mitchell v. Cowie*.[11] *Glenn* and *Toppin-Allahar*, having compared West Indian chattel-house cases and Canadian mobile-home cases, arrived at a conclusion that Canadian courts were more flexible in application of traditional common law tests than their West Indian counterparts, especially in tolerating a greater degree of annexation to recognise a mobile house as chattel. These authors even suggest that the Commonwealth Caribbean judges follow the Canadian approach.[12]

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[8] *Marshall*, West Indian Land Law; Conspectus and Reform, Social and Economic Studies 20 (1971), 5.

[9] Bahamas Law Reports 1 (1977), 49.

[10] *Liverpool* in: Alexis/Menon/White (eds.), Commonwealth Caribbean Legal Essays, 1982, 197.

[11] West Indian Reports 7 (1964), 118.

[12] *Glenn & Toppin-Allahar*, Chattel Houses and Mobile Homes: Fixtures in Caribbean and Canadian Law, Caribbean Law Review 7 (1997), 372, 378 and 387.

In some Commonwealth Caribbean jurisdictions (Guyana, Belize, Barbados) statutory law directly recognised chattel houses as tenants' property removable upon the termination of lease.

Although the above-mentioned West Indian cases and statutory intervention were praised as "judicial and legislative attempts to close the gap between law and social reality",[13] the solutions proposed by judges and legislators were formal and based on legal positivism without proper consideration of economic, social and cultural context.

In 1995 a completely different approach to the chattel-house problem which transcends the boundaries of positive law and positivist approach to it and which is based on jurisprudential considerations, namely, on a specific theory of private property was suggested by the famous West Indian legal philosopher *Simeon McIntosh*.

III. Who is Simeon McIntosh?

Simeon Charles Randolph McIntosh was born on July 14, 1944 in the village of Mount Pleasant on the island of Carriacou, Grenada, one of the former British West Indian territories.[14] He studied at Brooklyn College (New York), but later transferred to York University in Toronto Canada, from which he graduated in 1971 with a Bachelor's Degree in English Literature. After that he studied at Howard University School of Law from which he graduated in 1974 with a J.D. degree. Finally, he attended Columbia University School of Law, from which he received his LL.M. degree in 1975.[15]

As for his employment, *McIntosh* started his teaching career at the University of Oklahoma College of Law (1975-6), then worked for many years as a law professor at his *alma mater* – Howard University School of Law (1976–1991) – and finally as a professor at the Faculty of Law at Cave Hill Campus of the University of the West Indies from which he retired in 2010. *McIntosh* served as the Dean of Law at Cave Hill Campus from 2004 until 2009. He was also a visiting professor at Harvard University (summer 1978), Cornell University (summer 1982), and Fordham University Law School of New York (1982–3).[16] Throughout his teaching career he taught such courses as constitutional law, jurisprudence, constitutional theory and civil procedure.

McIntosh passed away in 2013. His colleague *Stephen Vasciannie* recalls that *McIntosh* was joking about going in his afterlife "to a heaven in which Hegel, Kelsen, Frankfurter, Dworkin, H.L.A. Hart and other Monarchs of Jurisprudence would be arguing about the nature of law at dinner time".[17]

McIntosh was a prolific author. He has written numerous books and articles on jurisprudential problems of various fields of law: constitutional law, human rights, criminal

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[13] *Marshall*, Social and Economic Studies 20 (1971), 8.

[14] *Berry*, Tribute to Professor Simeon C.R. McIntosh from the Faculty of Law, http://www.cavehill.uwi.edu/Law/images/students/faculty-of-law-tribute-to-prof-mcintosh.aspx (Last visited 30/07/2015).

[15] *Simeon McIntosh*'s CV as of June, 15 June, 2007 on the web-site of the Organisation of the American States, http://www.oas.org/electoralmissions/Portals/4/Red_Expertos_Democracia/_CV/CV%20Simeon%20McIntosh_Grenada%20&%20Barbados.doc (Last visited 30/07/2015).

[16] *Berry*, Tribute to Professor Simeon C.R. McIntosh from the Faculty of Law, http://www.cavehill.uwi.edu/Law/images/students/faculty-of-law-tribute-to-prof-mcintosh.aspx (Last visited 30/07/2015).

[17] *Vasciannie*, Professor Simeon McIntosh: a Tribute, West Indian Law Journal 37 (2012), 28.

law and land law. Thus, he published such books as "Caribbean Constitutional Reform: Rethinking the West Indian Polity" (2002), "Fundamental Rights and Democratic Governance: Essays in Caribbean Jurisprudence" (2005), "Reading text and polity: hermeneutics and constitutional theory" (2012). One of *McIntosh's* interests was the Grenada's revolution as well as legality and legitimacy of the governments that ruled the country in its aftermath. This subject-matter is thoroughly studied in such articles as "Legitimacy, Validity and the Doctrine of Necessity: The Case of *Andy Mitchell and Others* Considered";[18] "Continuity and Discontinuity of Law: A Reply to John Finnis";[19] "Kelsen in the 'Grenada Court': Revolutionary Legality Revisited";[20] "In the Case of Yasin Abu Bakr and Others: A Dissenting View".[21] These four articles were later republished in a book "Kelsen in the 'Grenada Court': Essays on Revolutionary Legality" (2008, republished in 2014). Problems of constitutional theory are considered in such his articles as "A Poetic for Law: Constitutional Theory as Metaphor"[22] and "Constitutional Reform and the Quest for a West Indian Hermeneutics".[23] *McIntosh* also wrote extensively on problems of human rights and possible constitutional solutions to them. Apart from the above-mentioned three books, these problems are dealt with in such articles as "Reading Dred Scott, Plessy, and Brown: Toward a Constitutional Hermeneutics";[24] "Cruel, Inhuman and Degrading Punishment: A Re-reading of Pratt and Morgan";[25] and "Sexual orientation and the West Indian Constitution"[26] (published posthumously). In his writings *McIntosh* engaged into jurisprudential debates with the most famous European jurists of the 19th and the 20th century: *Austin, Hegel, Finnis, Hart, Rawls* and *Kelsen*. Thus, his article "The 'Chattel-House Case': A Reading in Hegelian Jurisprudence" (1995)[27] is an attempt to apply Hegelian philosophy of property and its modern interpretations to the law of real property in the Commonwealth Caribbean, while another one – "Controversial Propositions of Law and the Positivist Embarrassment: The Hart/Dworkin Debate Reconsidered"[28] – is his own contribution to the debate in question.

It goes without saying that *Simeon McIntosh* is the most famous legal philosopher in the Commonwealth Caribbean. His scholarship has exercised an exceptional influence in the field of constitutional law and constitutional theory as well as human rights in the region. This scholar is well-known here for his analysis of acute legal problems of the West Indian society against the background of European and North American legal philosophy. To put it briefly, *McIntosh* conceptualised burning social problems of the region and put them into jurisprudential context in order to provide possible solutions to these issues.

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[18] West Indian Law Journal 10 (1986), 127 ff.

[19] University of Connecticut Law Review 21 (1988), 1 ff.; republished in West Indian Law Journal 12 (1988), 64 ff.

[20] Caribbean Law Review 5 (1995), 1 ff.

[21] Caribbean Law Review 2 (1992), 1 ff.

[22] Howard Law Journal 30 (1987), 355 ff.

[23] Caribbean Law Review 7 (1997), 1 ff.

[24] Caribbean Law Review 4 (1994), 1 ff.; republished in Howard Law Journal 38 (1994), 53 ff.

[25] Caribbean Law Review 8 (1998), 1 ff.

[26] West Indian Law Journal, 37 (2012), 29 ff.

[27] Caribbean Law Review 5 (1995), 432 ff.

[28] Howard Law Journal 26 (1983), 699 ff.

According to his colleagues, *McIntosh*'s scholarship demonstrates

> "analytical precision, meticulous attention to detail, extensive and deep research from jurisdictions both within and without [*sic*] the Caribbean, and a pronounced desire to promote the development of the Caribbean law for the betterment of the Region [*sic*]."[29]

These words perfectly reflect *McIntosh's* scholarship in general and in relation to his study of the problem of chattel houses in particular.

IV. McIntosh's Solution to Chattel-House Problem

In his 1995 article "The 'Chattel-House Case': A Reading in Hegelian Jurisprudence" *McIntosh* critically examines the problem of the legal nature of chattel houses in the Commonwealth Caribbean not only from the viewpoint of the land law (law of real property), but also from the legal-philosophical perspective. Having analysed seminal cases concerning chattel-houses (*Mitchell v. Cowie* being the most important one when the chattel house was recognised as a fixture)[30] and the statutory intervention into the problem, *McIntosh* concludes that cases and statutes

"implicate deeper normative questions for moral and political philosophy, regarding the just distribution of one of the most important socially necessary goods in the society; questions masked by the obvious issue of positive law: whether the 'house' in question was indeed a fixture, and was therefore 'real' property; or was it rather 'personalty'…The parties to the dispute were the landowner – most likely of the more wealthy class in the society; and the chattel-house owner – most likely of the poorer class, and therefore of very modest means. It is therefore highly questionable whether a chattel-house owner would have the means of building a new house; and whether he would have access to some suitable spot on which to build. Yet the consequence of a decision in *Mitchell v. Cowie* that the 'house' is a fixture might result in the chattel-house owner – the already vulnerable party – losing his property".[31]

This problem, according to *McIntosh*, cannot be solved by means of positive law alone and requires an adequate legal philosophical theory.

McIntosh is firmly convinced that the most appropriate theory of property that can provide guidance for better understanding and solution of the chattel-house problem is the "personality theory of property" that was developed by a famous German philosopher of the nineteenth century *George Wilhelm Friedrich Hegel* and that constitutes the kernel of traditional liberal philosophy of property.[32] The personality theory of property states that ownership is bound up with self-constitution, self-realisation or personhood. It connects ownership with notions of freedom and individualism. *McIntosh* refers also to works of other modern liberal jurists that are based on Hegelian philoso-

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[29] *Vasciannie*, West Indian Law Journal 37 (2012), 28.

[30] *Liverpool* in: Alexis/Menon/White (eds.), Commonwealth Caribbean Legal Essays, 1982, 197.

[31] *McIntosh*, Caribbean Law Review 5 (1995), 453 f.

[32] A brief account of the "personality theory of property" can be found at *Alexander & Peñalver*, An Introduction to Property Theory, 2012, 57 ff.

phy,[33] among which he prefers the writings of *Margaret Jane Radin* and her "personhood theory of property".[34]

According to *Hegel*, ownership is the first step of externalisation of free will at the stage of abstract right: "A person must give to his freedom an external sphere, in order that he may reach the completeness implied in the idea,"[35] *McIntosh* summarises *Hegel's* philosophy of property as follows:

> "For Hegel, property is a political and philosophical necessity, essential for the development of men as rational beings, as individuals who are free. This follows on Hegel's conception of person as rational autonomous self, with a capacity for reflection and for self-realization... But this self remains a purely abstract unit of free will which has no concrete existence until that will acts on the external world…There is the need to embody the person's will to take free will from the abstract realm to the actual. The person becomes a real self only by engaging in a proprietary relationship with something external…Property is the first embodiment of freedom and, in this respect, is, in itself, a substantive end...Through the actualization of will in property, persons come to relate to each other as owners. And this mutual recognition of property owners constitutes a basis for interpersonal life. Property turns out to be a social relation between persons as owners of exchange value."[36]

Following *Brudner*, *McIntosh* also admits that

> "property may legitimately be regulated by the state to protect the vital interests of persons vulnerable to the exercise of proprietary power, or to prevent exercise of the right to alienate that deny the human equality on which Hegelian conception of property rests. In similar vein, property rights…may validly be suspended by a court of law when their exercise would amount to oppression".[37]

Such statement helps *McIntosh* to attenuate *Hegel's* individualistic approach to property so as to allow state intervention into this area.

McIntosh also incorporates into his reasoning the division of property proposed by *Margaret Jane Radin* into two types: "personal" and "fungible". This distinction has nothing to do either with the Civil Law distinction between fungible and non-fungible things[38] or with the Common Law dichotomy of real and personal property.[39] For *Radin*, "personal" are things that are "indispensable to someone's being", "the kind of property

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[33] For instance, he quotes extensively from *Brudner's "*The Unity of the Common Law: Studies in Hegelian Jurisprudence" (1995) as well as criticises this theory. This book is an attempt to adjust *Hegel's* theory of property, which was, despite being very abstract and philosophical, at the same time recognisably Civilian, to the Common Law tradition. Also *McIntosh* refers to *Pinkard's* "Hegel's Phenomenology: The Sociality of Reason" (1994), *Berry's* "Property and Possession: Two Replies to Locke – Hume and Hegel" (in: Pennock/Chapman [eds.], Property, 1980, 89 ff.), *Stillman's* "Hegel's Analysis of Property in the Philosophy of Right" (Cardozo Law Review 10 [1989], 1031 ff.).

[34] See *Radin*, Reinterpreting Property, 1993. This book is a collection of *Radin's* essays on personhood theory of property published in U.S. law journals in 1982–1991.

[35] *Hege*l, Philosophy of Right (translated by Dyde), 1896, 48.

[36] *McIntosh*, Caribbean Law Review 5 (1995), 455 f.

[37] Ibid., 469; *Brudner*, The Unity of the Common Law: Studies in Hegelian Jurisprudence, 1995, 74.

[38] See *Borkowski*, Textbook on Roman Law, 2nd ed., 1997, 155.

[39] See *Wacks*, Law: A Very Short Introduction, 2008, 60. *Radin* herself admits that the use of term "personal" may be confusing and she should have called such property "constitutive", "since 'personal property' already means something" [in Common Law] (*Radin*, Reinterpreting Property, 1993, 2 f.). A comparatist would definitely prefer the term "constitutive", but would also propose to replace "fungible" with another word as well since it "already means something" in Civil Law.

that individuals are attached to as persons", while "fungible" property is "wholly interchangeable with money", "the kind of property that individuals are not attached to except as to a source of money".[40]

McIntosh appreciates the fact that the personhood perspective "pays due regard to the subjective relationship between the holder and the thing".[41] A house that is owned by someone who resides there would be understood as "personal" property in this dichotomy (not fungible). Following *Radin*, *McIntosh* affirms that

> "[i]t is a social fact that people are bound up with their homes. The home is a moral nexus between liberty, privacy and freedom. There is a societal traditional connection between one's home and one's sense of autonomy and personhood. This is evidenced in our positive constitutional guarantees against unlawful searches and seizures of one's home".[42]

Thus, for *McIntosh* residential housing is a special type of property that is constitutive of one's personhood.

McIntosh further uses the personhood theory of property to justify judicial protection of chattel-house owners against landlords because "[t]his approach argues against the mechanical application of the rules of positive law with its rigid conceptualization into categories of "real" and "personal", with little regard to the person-object relationship" and because "[t]he breaking of the person-object bond based on mechanical application of positive law might result in injury to personhood."[43] While applying the law of fixtures, judges should take into account the importance of one's house to his or her personality and self-realisation.

On the basis of *Radin*'s reasoning *McIntosh* arrives at a conclusion that the personhood theory of property offers

> "far more compelling grounds for a resolution of the problem in *Mitchell v. Cowie* and similar cases than the positivist conceptualisation of a chattel house as either 'real' or 'personal' property in terms of some a priori master-rules" because "[a] conclusion that the property in question is either 'real' or 'personal' does not necessarily determine the issue in the case, since the question whether the result is just remains to be unanswered".[44]

Only application of the personhood theory will result not in a formal resolution of a case, but in a fair solution which looks at the essence of the problem.

Thus, while resolving chattel-house cases, according to *McIntosh*, we must consider the impact of considerations of justice and distributive fairness because the chattel-house problem engages normative issues concerning the distribution of property entitlements in West Indian society.[45] The court might want to consider whether and to which extent the chattel-house is necessary to its owner. The residential home (chattel-house included) constitutes a class of property that creates deep personal and emotional commitments, is partly constitutive to personhood, a condition of moral autonomy and falls into category of primary goods.[46] Thus, *McIntosh* insists that the judge's reasoning in

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[40] *Radin*, Reinterpreting Property, 1993, 2 f.
[41] *McIntosh*, Caribbean Law Review 5 (1995), 475.
[42] Ibid.
[43] Ibid., 476.
[44] Ibid., 477.
[45] Ibid., 479.
[46] Ibid., 480.

chattel-house cases should rely on the emotions that people develop in relation to these houses. The personhood perspective would help the court to decide a case, by taking into account the subjective relationship between the chattel house owner and the "thing" in order to determine whether an attribution of the chattel house to the landlord or to the tenant is fair, even where the status of the house as a fixture or a chattel was defined correctly.[47]

V. Conclusion

However good the approach proposed by *McIntosh* is, the major question is how to integrate it into the positive law of the Commonwealth Caribbean jurisdictions and how to encourage judges to follow it in their reasoning and decision making. *McIntosh* leaves this question unanswered which is a weakness of his theory. In my opinion, there could be two possible solutions to this. One, which is more typical of Civil Law countries, is a direct statutory intervention stipulating that whatever the nature of a chattel house be (fixture or chattel), if it is constructed on someone else's property during the lease, it remains the property of the tenant and is subject either to removal by the tenant or to redemption by the landlord. The other solution, which would be more typical of Common Law countries, is to integrate *McIntosh*'s reasoning into the "intention of the parties" test which is already present in the case-law. If ownership of a house is indispensable for personhood and self-realisation, then it is obvious that the intention of the tenant (and most likely of the landlord) is to treat the house as tenant's property.

This said, we have to admit that since 1995, when *McIntosh* wrote his article, Commonwealth Caribbean judges or legislators have not yet resolved the chattel-house problem either on the basis of *McIntosh*'s theory or following any other approach. I believe that this is so because the number of cases of dissociation of ownership of the land and of the chattel-house in the West Indies has significantly reduced. Already when *McIntosh* wrote his article, the chattel-house problem presented rather historical interest than a burning social issue. *Carrington, Forde, Fraser and Gilmore* wrote in 1990 about Barbados (which is probably the Caribbean territory where chattel houses were the most popular): "[w]ith better living standards the charming but modest chattel house does not fulfil the aspirations of younger Barbadians, and their numbers are dwindling rapidly".[48] As for Trinidad, already in 1964 justice *Wooding* admitted that

> "there still exist in this country wooden houses – but not very many[49], it is true, and certainly not nearly so many as may be seen in some neighbouring West Indian islands – which rest by their own weight upon stone or brick foundations".[50]

Thus, the chattel house as a type of housing in general has become less popular in the Caribbean, gradually losing its appeal to younger generations. Besides, the dissociation of ownership of the land and the house is becoming more uncommon. Currently, most of the owners of the chattel house own the land as well.

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[47] Ibid., 483.
[48] *Carrington, Forde, Fraser, Gilmore*, (Fn. 1), pp. 43–44.
[49] Emphasis added.
[50] *Liverpool* in: Alexis/Menon/White (eds.), Commonwealth Caribbean Legal Essays, 1982, 122.

Even though the problems is less acute now and it seems unrealistic that *McIntosh's* proposal to recognise the chattel house as a special class or property ("personal" according to personhood theory of property) could be ever incorporated into the Commonwealth Caribbean law, the very attempt to transcend the boundaries of the positivist legal thinking and of the application of positive law instruments to solve the problem, reveals a very important issue. *McIntosh*'s reflection clearly demonstrates that the British law of fixtures that was formed in a different social, historical and cultural background (namely, in the absence of removable housing erected on rented land as a widespread social phenomenon), however interpreted and adapted by West Indian judges and legislators, is nonfunctional in the West Indian society in relation to chattel houses which form part and parcel of local history and everyday life and, thus, an appropriate regional solution is required.