

MEMORANDUM FOR CABINET BY THEMINISTER OF JUSTICE AND PARLIAMENTARY AFFAIRSDesentailment of Property (extension to fiefs)Act, 1969.

In 1950 an Act was passed by the Legislative Assembly disentailing property subject to fideicommissa. The Act was entitled the Entailed Property (Disentailment) Act, 1950.

The Bill which was eventually passed by the Assembly in 1950 had been the sixth attempt to enact such a law, the first having been made in 1919. This notwithstanding no distinction seems to have been made, at any time during the discussion of the issues involved, between entails and fiefs, and all Bills presented to Parliament referred only to entailed property.

On the other hand it appears that the intention had always been that of freeing property from the mediaval fetters whereby property could not be freely disposed of and was subjected to accession "in tail". At no time was it said or implied that the Act was not to apply to fiefs; on the contrary the mover of the 1950 Bill made it clear that the Bill was intended to cover all entails (by which he evidently meant all forms of restrictions "in tail") and, indeed ascribed the origin of entails to fiefs and to the feudal system.

However, our courts have since held, and not without justification, that the 1950 Act does not apply to fiefs. We are, therefore, to-day in the position that while property subject to fideicommissa is free, property subject to fiefs is not, and there seems to be no good reason why this should be so.

There are, admittedly, differences between these two legal institutes and they are governed by different laws. These differences, however, which mainly refer to and arise from the fact that fiefs owe their origin to an act of the sovereign whereas fideicommissa originate from an act of a private individual, have no bearing on the reasons which justify their revocation. The *raison d'être* of the revocation of fideicommissa was the need to place all property in free circulation; and this applies equally to fiefs. Both institutes moreover have outlived their original purpose and are not only an anachronism in the modern

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economic world but tend to hamper the economic development of a country.

It is therefore proposed to extend the provisions of the 1950 Act to fields in the terms of a draft Bill annexed to this Memorandum.

Hon. Ministers are asked to agree that the Bill as drafted be presented to Parliament.

11th January, 1969.

CAG/1072/67.

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A B I L L
entitled

AN ACT to extend the provisions of the Entailed Property (Disentailment) Act, 1950, to property held in fief.

AS IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the house of Representatives of Malta, in this present Parliament assembled, and by the authority of the same, as follows:-

Short title.

1. This act may be cited as the Disentailment of Property (Extension to fiefs) Act, 1969.

Application of the Entailed Property (Disentailment) Act, 1950, to property held in fief.
Act 111 of 1950.

2. With effect from the coming into force of this Act, the Entailed Property (Disentailment) Act, 1950 shall apply to all property held in fief as it applies to property subject to fideicommissum with such modifications and adaptations as the case may require, and in particular, but without prejudice to the generality of the foregoing, with the modification that references in that Act to the material date shall, in respect of property held in fief, be construed as references to the date of the coming into force of this Act.

act not to affect titles of nobility.

3. Nothing in this Act shall affect any title of nobility, and the laws in force concerning any such titles shall continue to have effect.

Objects and Reasons

The object of the Bill is to extend to property held in fief the provisions of the Entailed Property (Disentailment) Act, 1950,

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in so far as they are applicable and subject to such modifications and adaptations as may be required in view of the differences in the nature and origin of fiefs and fideicommissa.

The extension of these provisions will take effect as from the date on which the Bill becomes law and comes into force; but will not affect titles of nobility which will continue to be governed by the laws applicable to them.

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