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Movables and Immovables in Louisiana and Comparative Law

A. N. Yiannopoulos*

According to Article 461 of the Louisiana Civil Code "the third and last division of things is into movables and immovables."¹ This "division" was known in Roman law² and has been adopted by modern civil codes.³ Its significance lies primarily in the fact that different rules of property law may apply to the different categories of things classified as movable or immovable, in connection with the scope, acquisition, protection, and transfer of rights.⁴ Further, the division of things into movables and immovables transcends the limits of property law and carries consequences in the fields of obligations,⁵ family law,⁶ successions,⁷ civil procedure,⁸ taxation,⁹ criminal law,¹⁰ and conflict of laws.¹¹

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1. LA CIVIL CODE art. 461 (1870). *Of.* LA. CIVIL CODE art. 452 (1825); LA. CIVIL CODE p. 96, art. 12 (1808).

2. *Of. infra* text at note 287.

3. *Of. infra* text at notes 290, 305.

4. See, *e.g.*, LA. CIVIL CODE arts. 660-708 (legal servitudes); arts. 3472-3477 (acquisitive prescription); arts. 1536, 1539, 2440, 2441 (formalities of transfer); arts. 3191-3251 (privileges); arts. 3278-3411 (mortgages); arts. 3176-3181 (antichresis); arts. 3133-3175 (pledge) (1870).

5. See, *e.g.*, *Lighting Fixture Supply Co. v. Pacific Fire Ins. Co.*, 176 La. 499, 146 So. 35 (1932); *Boykin v. Boykin*, 4 La. App. 210 (1926); *Morris v. Pratt*, 114 La. 98, 38 So. 70 (1905).

6. See, *e.g.*, LA. CIVIL CODE arts. 2337-2382 (1870) (dotal property). Differences exist also with regard to the powers of a tutor in the administration of a minor's property. See LA. CODE OF CIVIL PROCEDURE arts. 4304, 4342 (1960). See also *Dillon v. Dillon*, 35 La. Ann. 92 (1883); *Rosata v. Cali*, 4 So. 2d 54 (La. App. 1st Cir. 1941) (community property).

7. See, *e.g.*, *Succession of Allen*, 48 La. Ann. 1036, 20 So. 193 (1896); *Succession of Gamble*, 23 La. Ann. 9 (1871); *Penny v. Christmas*, 7 Rob. 481 (La. 1844).

8. See, *e.g.*, LA. CODE OF CIVIL PROCEDURE art. 80 (venue); art. 326 (protection and preservation of property seized); art. 2501 (judgment ordering delivery of possession); arts. 3651-3664 (real actions) (1960).

9. See, *e.g.*, *Straus v. New Orleans*, 166 La. 1035, 1055, 118 So. 125, 131 (1928) ("machinery . . . was immovable by destination, and was therefore subject to the mortgage in favor of the bondholders, and not subject to a tax lien for the taxes levied against the personal or movable property of the corporation"). See also *Albert Hanson Lumber Co. v. Board of State Affairs*, 154 La. 988, 98 So. 552 (1924).

10. See, *e.g.*, LA. CRIM. CODE art. 63 (criminal trespass), art. 68 (unauthorized use of movables) (1942).

11. In the field of conflict of laws immovables are governed by the law of the situs and movables by the law of the owner's domicile. See *Succession of Harris*,

The distinction of things into movables and immovables has as its purpose, like most legal constructions, convenience of understanding and regulation. Lines of demarcation are ordinarily drawn in accordance with prevailing notions in society bearing on the relative economic significance of elements of wealth. Since ancient times and up to the era of industrial revolution, landed property was regarded as the most important species of wealth from the viewpoints of both social and individual interests. Hence, particular rules were developed designed to safeguard interests connected with the use and enjoyment of landed property. In modern times, economic emphasis has shifted to values other than landed property and the law has been slowly developing in new directions. In medieval civil law, the criteria for the distinction between movables and immovables were durability and utility of a thing as a source of income.¹² In contemporary civil law, the distinction rests, in principle, on physical notions of mobility and on "inherent" characteristics of things. For reasons of policy, however, the law may treat as movables things which according to lay notions could be regarded as immovables, such as standing crops.¹³ On the other hand, the law may classify as immovables things broadly considered to be movables, such as farm implements and animals.¹⁴

IMMOVABLES

Articles 462-471 of the Louisiana Civil Code define and regulate the category of immovable things. Several of these articles also furnish tests for the distinction between movables and immovables.

Article 462 declares that "immovable things are, in general, such as cannot either move themselves or be removed from one place to another."¹⁵ The second paragraph of the same article indicates that the definition "strictly speaking," applies only "to such things as are immovable by their own nature, and not to such as are so only by the disposition of the law." The following Article 463 indicates further that, in a broad sense, certain

179 La. 954, 155 So. 446 (1934); Succession of Packwood, 12 Rob. 366 (La. 1845).

12. See 3 PLANIOL ET RIPERT, TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS 68 (2d ed. 1952).

13. See, e.g., LA. R.S. 9:4341 (1950) (pledge of standing crops).

14. See LA. CIVIL CODE art. 468 (1870).

15. Cf. LA. CIVIL CODE art. 453 (1825); LA. CIVIL CODE p. 96, art. 13 (1808).

things are "immovable by their nature, others by their destination, and others by the object to which they are applied."¹⁶

Immovables by Nature

In Louisiana, the category of things immovable by their nature includes tracts of land, trees, crops and fruits, buildings and other constructions, and all those things which are so closely connected with tracts of land or buildings as to be regarded as component parts thereof. In a strict sense, this category is a juristic abstraction. Contemporary mechanical means make possible transfer in space of immense quantities of earth, buildings, and various kinds of constructions. The law, however, may regard, as it does, the ground and various things permanently attached thereto as immovables though they could be removed by application of extraordinary mechanical means. In this light, it appears that immovability "by nature" is a creation of the law based both on practical considerations and on inherent characteristics of the things concerned.

(1) *Tracts of land.* Urban and farm lands are immovables par excellence. In Roman law, and in some modern civil codes, distinction is made between these two categories of land.¹⁷ In the Louisiana Civil Code, while formal analytical distinction is avoided, there are a number of rules applicable to rural, as distinguished from urban, estates.¹⁸

(2) *Trees, crops, and fruits.* "Standing crops and the fruits of trees not gathered, and trees before they are cut down" are also immovables. They are considered as "part of the land to which they are attached" (Article 465(1)).¹⁹ Under this article, all vegetation adhering to the soil should be regarded as immovable by nature and as insusceptible of separate ownership.²⁰ Legislative and judicial action, however, resulted in the recognition that standing crops are not always to be treated as a part

16. Cf. LA. CIVIL CODE art. 454 (1825) ; LA. CIVIL CODE p. 96, art. 14 (1808).

17. See text at note 287 *infra*.

18. See, e.g., LA. CIVIL CODE arts. 710, 722-726 (1870) (rural servitudes).

19. Cf. LA. CIVIL CODE art. 456 (1825) ; LA. CIVIL CODE p. 96, art. 17 (1808).

20. Plants in containers probably should be regarded as movables, unless they qualify as immovables by destination. See LA. CIVIL CODE art. 468 (1870). Trees and plants in the ground, (even in nurseries), though destined to be transplanted, should be regarded as immovables. See 3 PLAÑIOL ET RIPERT, TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS 76 (2d ed. 1952).

of the land,²¹ and that standing timber is an immovable distinct from the ground.²²

The question of the status of crops arises typically in cases involving transfer or mortgage of lands. In the absence of particular contractual provisions, interested parties claim standing or gathered crops as included in, or excluded from, the transfer or mortgage by virtue of Article 465(1). As to gathered crops, the rule is clear: they are not a part of the land and are not included in either transfer or mortgage.²³ But it is argued that standing crops, as immovables, should follow the ownership of the ground in all cases.²⁴ This solution might leave without protection lessees cultivating the ground, in accordance with the terms of a recorded lease, and purchasers of standing crops. Louisiana courts, therefore, felt early the necessity of restrictive interpretation and it was held in *Porche v. Bodin*²⁵ that Article 465(1) applies in connection with transfer or mortgage of lands only where the crops belong to the owner of the ground.²⁶ Where

21. See, e.g., LA. R.S. 9:4341 (1950) (pledge of standing crops). Cf. SAUNDERS, LECTURES ON THE CIVIL CODE 155 (1925): "Crops which are grown with these advances are then treated in law as not making part of the real estate, but as being a separate item of movable property belonging to the owner of the land. . . . Accordingly crops do not fall under operation of the mortgage [on the land] until the lender of the money with which the crops are made has been repaid."

22. According to La. Acts 1904, No. 188, § 1 (LA. R.S. 9:1103 (1950)): "Standing timber shall remain an immovable, and be subject to all the laws relative to immovables, even when separated in ownership from the land on which it stands." Standing timber is treated as an immovable having an independent existence for all purposes. See SAUNDERS, LECTURES ON THE CIVIL CODE 156 (1925). Dead timber is movable. See *Gillespie v. W. A. Ransom Lumber Co.*, 132 F. Supp. 11 (E.D. La. 1955), *aff'd*, 234 F.2d 285 (5th Cir. 1956). It is settled in Louisiana that trees are not *fruits* of the soil. *Vance v. Sentell*, 178 La. 749, 152 So. 513 (1933); *Harang v. Bowie Lumber Co.*, 145 La. 96, 81 So. 769 (1919). On the status of timber as immovables, see *The Work of the Louisiana Supreme Court for the 1948-1949 Term—Property*, 10 LOUISIANA LAW REVIEW 175, 176 (1950); Comment, *The Sale of Standing Timber in Louisiana*, 20 TUL. L. REV. 428 (1946); Note, 15 TUL. L. REV. 475 (1941).

23. See *Alliance Trust Co. v. Gueydan Bank*, 162 La. 1062, 111 So. 421 (1927). See also *Andrus v. His Creditors*, 46 La. Ann. 1351, 16 So. 215 (1894). In case of sale, delivery of gathered crop is necessary to affect interests of third parties. See *Succession of Minter v. Opposition of Union Cent. Life Ins. Co.*, 180 La. 38, 156 So. 167 (1934).

24. See *Colligan v. Benoit*, 13 La. App. 612, 128 So. 688 (1st Cir. 1930); *Napper v. Welch*, 2 La. App. 256 (2d Cir. 1925); *Adams v. Moulton*, 1 McGloin 210 (La. 1880); *Williamson v. Richardson*, 31 La. Ann. 685 (1879); *Baird v. Brown*, 28 La. Ann. 842 (1876); *Bludworth v. Hunter*, 9 Rob. 256 (La. 1844).

25. 28 La. Ann. 761 (1876). The decision was founded in part on the principle that "no one should be permitted to enrich himself at the expense of another." *Id.* at 763.

26. This decision was followed by La. Acts 1906, No. 100, LA. R.S. 9:5105 (1950), which provides that a lessee's growing crops are not subject to the debts or mortgages of the landowner recorded after the date of the lease. See also LA. R.S. 9:3204 (1950).

the crops do not belong to the owner of the ground, neither transfer nor mortgage of the land confers a valid title to the standing crop. Presumably, standing crops in these circumstances are regarded as movable.²⁷ Separate ownership of standing crops may derive from lease²⁸ or sale²⁹ which, in order to affect interests of third parties, must be duly recorded. In this case, the interests of the purchaser of standing crops, and the interests of the lessee and his creditors are amply protected in spite of subsequent seizure³⁰ or transfer of the land.³¹ The rule of *Porche v. Bodin* may tend to blur traditional concepts and may depart from solutions given under modern continental codes; however, it leads to equitable solutions and accords with the policy favoring cultivation.

Several cases are concerned with crops produced on mortgaged or seized lands. The general rule is that the fruits of mortgaged lands are subject to the mortgage only while they are in the hands of the mortgagor, and that fruits accruing after transfer of the land to a bona fide purchaser and possessor are not subject to the mortgage.³² Crops maturing and collected while the land is mortgaged may be seized and sold by creditors other than the mortgagee.³³ But "the fruits of an immovable, gathered or produced while it is under seizure, are considered as making part thereof, and inure to the benefit of the person making the seizure" (Article 466).³⁴ In interpreting this ar-

27. See SAUNDERS, LECTURES ON THE CIVIL CODE 155 (1925): "[T]he crops grown by the tenant . . . are not regarded a part of the land; they are regarded as the personal property of the tenant and liable to his debts, and not liable to the debts of the owner of the land except in so far as the tenant may be indebted to him." Cf. *Rosata v. Cali*, 4 So.2d 54 (La. App. 1st Cir. 1941). The court held that standing strawberries were *movable* property. Article 465 was not mentioned. The holding rested, primarily, on equity considerations. See also *Fallin v. J. J. Stovall & Sons*, 141 La. 220, 74 So. 911 (1917).

28. See *Porche v. Bodin*, 28 La. Ann. 761 (1876).

29. See *Succession of Minter v. Opposition of Union Life Ins. Co.*, 180 La. 38, 156 So. 167 (1934); *Napper v. Welch*, 2 La. App. 256, 257 (2d Cir. 1925). The right of the purchaser may be regarded as "equivalent to an anticipatory mobilization." See *Williamson v. Richardson*, 31 La. Ann. 685, 687 (1879). In France, standing crops have been classified as "movables by anticipation." See 3 PLANIOL ET RIPERT, TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS 104 (2d ed. 1952).

30. See *Vosburg v. Federal Land Bank*, 172 So. 567 (La. App. 2d Cir. 1937); *Federal Land Bank v. Carpenter*, 164 So. 487 (La. App. 2d Cir. 1936).

31. Cf. *Deville v. Couvillon*, 5 La. App. 519 (2d Cir. 1927).

32. See *Bludworth v. Hunter*, 9 Rob. 256 (La. 1844). See also *Skillman v. Lacy*, 5 Mart.(N.S.) 50 (La. 1826).

33. See *Alliance Trust Co. v. Gueydan Bank*, 162 La. 1062, 111 So. 421 (1927).

34. Cf. LA. CIVIL CODE art. 457 (1825); LA. CIVIL CODE (1808) (no corresponding article).

ticle, the courts have pointed out that gathered crops do not change status; they are still regarded as immovable and follow the soil.³⁵ The rule should be understood as limited to cases in which the crops seized belong to the owner of the soil.³⁶

The precepts of the Code have undergone changes in this area which seem to defy accurate classification of standing crops within the established categories of movables and immovables. According to the letter of Article 465(1) standing crops are immovable and a part of the soil. Louisiana courts, however, thought it necessary and convenient to recognize the possibility of separate ownership of standing crops, and attendant rights of creditors to seize and sell the crops separately from the ground. This means that standing crops, though immovable, are susceptible of rights separate from those existing in the soil, and may, for certain purposes, be treated as movable. Thus, today, reasoning *a priori* from the premise that standing crops are immovable and a part of the soil may be grossly misleading. Instead, consideration of specific rules applicable to standing crops — apart from conceptual generalizations — seems to be the only accurate method of analysis.

(3) *Buildings and other structures.* Buildings and other structures "whether they have their foundations in the soil or not"³⁷ are, according to Article 464, immovable by their nature. What is a "building" or any "other structure" which could qualify as immovable under Article 464 is left for judicial determination according to prevailing notions in society.

Buildings

Apart from difficulties connected with the definition of the word "buildings,"³⁸ Louisiana courts have faced additional difficulties in determining the consequences of the classification of buildings as "immovable by nature." According to traditional civilian conceptions ownership of immovables is not susceptible of horizontal division.³⁹ Thus, if buildings were always regarded

35. See *Townsend v. Payne*, 42 La. Ann. 909, 8 So. 626 (1890).

36. *Cf. supra* text at note 26.

37. *Cf. LA. CIVIL CODE* art. 455 (1825); *LA. CIVIL CODE* p. 96, art. 16 (1808). See also *Vaughn v. Kemp*, 4 La. App. 682 (2d Cir. 1926).

38. See *Scovel v. Shadyside Co.*, 137 La. 918, 927, 69 So. 745, 749 (1915): "The meaning of the word 'building' is not clear, and may have been used either as a synonym for 'residence', or as applicable to any building other than mills, distilleries, refineries, and other manufactories mentioned in the preceding paragraph."

39. See *SOHM-MITTEIS-WENGER, INSTITUTIONEN DES RÖMISCHEN RECHTS* 253

as immovable by nature according to the unqualified declaration of Article 464, they should be insusceptible of separate ownership and should, in all cases, follow the ground. Obviously, this result would afford excessive protection to landowners to the detriment of persons erecting edifices on the land of another, in good faith or with the consent of the landowner.

In continental legal systems, inequitable results are avoided by code articles indicating that buildings are component parts of the ground and insusceptible of separate real rights only when they belong to the owner of the ground.⁴⁰ Buildings erected by lessees and other persons having a contractual or real right do not belong to the owner of the ground; these buildings are regarded as movables.⁴¹

Louisiana courts, apparently proceeding on the assumption that ownership of immovables was not susceptible of horizontal division, felt compelled in certain instances, in order to avoid inequitable results, to admit that buildings erected on leased ground could be treated as movables.⁴² In other instances, however, Louisiana courts seemed to indicate that buildings are always immovables and insusceptible of separate ownership or other real rights.⁴³ Gradually, the original assumption became

(1923); 3 ENNECCERUS-KIPP-WOLFF, *SACHENRECHT* 355-56 (1957); *Lasyone v. Emerson*, 220 La. 951, 57 So.2d 906 (1952); *Boyle v. Swanson*, 6 La. Ann. 263 (1851) (transfer of dwelling house separate from the land on which it was situated could not be recognized in law; land and building were inseparable from their nature and should be sold together); Comment, *Individual Ownership of Apartments in Louisiana*, 19 LOUISIANA LAW REVIEW 668 (1959). Exceptions to the rule, however, are well established in contemporary continental law by custom, jurisprudence, or legislative action. Cf. GREEK CIVIL CODE art. 1002; German Law of March 15, 1951 (ownership of individual apartments); 3 PLANIOL ET RIPERT, *TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS* 262 *et seq.* (2d ed. 1952).

40. See GERMAN CIVIL CODE art. 95; GREEK CIVIL CODE art. 955. For the situation in France, see 3 PLANIOL ET RIPERT, *TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS* 268-278 (2d ed. 1952).

41. See 1 STAUDINGER, *KOMMENTAR ZUM BÜRGERLICHEN GESETZBUCH, ALLGEMEINER TEIL* 464 (1957); BALIS, *GENERAL PRINCIPLES OF CIVIL LAW* 512 (1955) (in Greek).

42. See *Weil v. Kent*, 52 La. Ann. 2139, 28 So. 295, 298 (1900): "Houses though declared by the Code to be immovables by their nature . . . are sometimes held to be movable." Cf. *McCormick v. Louisiana & N.W.R.R.*, 109 La. 764, 33 So. 762 (1903) (depot erected on another's ground, ordered to be removed at the request of the owner of the ground). See also SAUNDERS, *LECTURES ON THE CIVIL CODE* 154 (1925): "Under certain circumstances and conditions the structures upon the land are regarded as movables. Where the owner of land permits someone not the owner to erect structures upon his land, the buildings or structures so erected with the consent of the owner do not form a part of the land so as to fall under the ownership of the owner of the land. They retain their character of movables and belong to the person who put them there with the license of the owner of the land."

43. See *Boyle v. Swanson*, 6 La. Ann. 263 (1851); *Miller v. Michoud*, 11 Rob. 225 (La. 1845) (lessee cannot mortgage buildings erected on lessor's ground; he

forgotten, and courts, although granting the proposition that buildings are always immovables, seemed to indicate the possibility of separate ownership.⁴⁴ A legislative attempt to classify buildings on leased ground as movables failed,⁴⁵ and today it is well settled in Louisiana that, under the Civil Code, buildings are immovable by nature whether they belong to the owner of the ground or not.⁴⁶

It is also settled that buildings, erected with the consent of the landowner,⁴⁷ by a lessee or any other person having a contractual or real right,⁴⁸ belong to these persons rather than to the owner of the ground. These buildings are regarded, apparently for *all* purposes, as immovables by nature. Thus, they may be subjected by their owner to a real mortgage rather than to a chattel mortgage.⁴⁹

This modern distinction between the concepts of ownership, on the one hand, and immovability, on the other, carries signifi-

has not an immovable interest); *New Orleans v. Campbell*, Man. Unrep. Cas. 47 (La. 1880) (buildings erected by a lessee belong to the owner of the soil; the lessee has merely a *dominium utile*, namely, the right to use and enjoyment, and the right to claim compensation from the owner or take away the buildings at the end of the lease; this right is not subject to mortgage). *Cf.* *Louisiana Land & Pecan Co. v. Gulf Lumber Co.*, 134 La. 784, 64 So. 713 (1914); *Vaughn v. Kemp*, 4 La. App. 682 (2d Cir. 1926).

44. See *Buchler v. Fourroux*, 193 La. 445, 190 So. 640 (1939); *Lange v. Baranco*, 32 La. Ann. 697 (1880); *Keary v. Ducote*, 23 La. Ann. 196 (1871); *Davis-Wood Lumber Co. v. Insurance Co. of North America*, 154 So. 760 (La. App. 1st Cir. 1934); *Scardino v. Maggio*, 15 La. App. 444, 131 So. 217 (1st Cir. 1931); *Dougherty v. Yazoo & M.V. Ry.*, 9 La. App. 295, 119 So. 543 (1st Cir. 1923) (a barn on leased premises owned by tenant); *Di Crispino v. Bares*, 5 Orl. App. 69, 71 (La. App. Orl. Cir. 1908) ("In no sense can this house owned by one person and built on the land of another, be deemed inseparable from the land, from the standpoint of either fact or law").

45. See *Buchler v. Fourroux*, 193 La. 445, 190 So. 640 (1939); La. Acts 1918, No. 198; Comment, *Chattel Mortgages on Buildings on Leased Ground*, 13 TUL. L. REV. 600 (1939).

46. An exception has been established by LA. R.S. 9:5351 (1950), as amended by La. Acts 1952, No. 50 and La. Acts 1956, No. 90. According to this section buildings erected "under the Farm Storage Facility Loan Program formulated by the Commodity Credit Corporation and the Production and Marketing Administration of the United States Department of Agriculture, or either of such agencies . . . shall, notwithstanding any other provision of the Revised Statutes or of the Civil Code, have the status of a movable for the purpose of the [chattel] mortgage."

47. It is a matter of speculation whether the same rule applies to buildings erected *without* the consent of the landowner. In these circumstances Louisiana courts may follow faithfully Article 508 of the Civil Code.

48. See *Davis-Wood Lumber Co. v. Insurance Co. of North America*, 154 So. 760 (La. App. 1st Cir. 1934); *Di Crispino v. Bares*, 5 Orl. App. 69, 71 (La. App. Orl. Cir. 1908): "The fact that the house stood on defendant's land is immaterial, it was placed there with the defendant's consent to remain the property of plaintiff until purchased from him." *But cf.* LA. CIVIL CODE art. 2726 (1870).

49. See LA. R.S. 9:5102 (1950). *But cf.* *Miller v. Michoud*, 11 Rob. 225 (La. 1845).

cant legal consequences. Persons erecting edifices on another's land with the consent of the landowner apparently always enjoy the protection of real property laws *vis-a-vis* the owner of the ground, and, if their interests are recorded, with respect to third persons. The recognition of separate ownership in lands and buildings as distinct immovables has also affected the scope of the rule that buildings are included in case of transfer or encumbrance of the land. Application of this rule is necessarily limited to buildings which belong to the owner of the ground and buildings which may be presumed to belong to him in the absence of recordation.⁵⁰ Thus, unless recorded, a lease does not entitle a lessee to claim ownership of a building erected on the lessor's land against third parties in case of sale or mortgage executed by the landowner; in these circumstances the title of the lessee is lost.⁵¹

Component parts of buildings

The Code regards as *immovable by nature* things such as "wire screens, water pipes, radiators, electric wires, electric and gas lighting fixtures, lavatories, gasplants, meters and electric light plants, heating plants and furnaces, when actually connected with or attached to the building by the owner for the use and convenience of the building." (Article 467)⁵² Originally, Article 467 provided that "the pipes made use of for the purpose of bringing water to a house or other estate, are immovable, and are part of the tenement to which they are attached."⁵³ To solve a controversy as to whether the original Article 467 could apply by analogy, an amendment was passed by the Louisiana legislature in 1912,⁵⁴ producing the lengthy list, with the additional

50. See *Federal Bank v. Cook*, 179 La. 857, 155 So. 249 (1934) (mortgage; residence included); *Westwego Canal & Terminal Co. v. Pizanie*, 174 La. 1068, 142 So. 691 (1932) (sale; buildings included); *Coltharp v. West*, 127 La. 430, 53 So. 675 (1910) (mortgage; residence included). See also *Prevot v. Courtney*, 241 La. 313, 129 So.2d 1 (1961) (party acquiring real property on faith of public records acquires valid title to all buildings and improvements on the land); *Bacque v. Darby*, 69 So.2d 145 (La. App. 1954) (buildings and other improvements, in the absence of stipulation to the contrary, were conveyed by an act of partition).

51. See *Louisiana Land & Pecan Co. v. Gulf Lumber Co.*, 134 La. 784, 64 So. 713 (1914); *Vaughn v. Kemp*, 4 La. App. 682 (2d Cir. 1926). The lessee, however, may have a claim against the landowner for the value of his improvements. *Prevot v. Courtney*, 241 La. 313, 129 So.2d 1 (1961).

52. LA. CIVIL CODE art. 467 (1870), as amended by La. Acts 1912, No. 51.

53. See LA. CIVIL CODE art. 458 (1825); LA. CIVIL CODE p. 98, art. 18 (1808).

54. La. Acts 1912, No. 51; Zengel, *Elements of the Law of Ownership*, in 3 WEST'S L.S.A.-CIVIL CODE 20 (1950). But see Comment, *Immovables by Nature under Article 467 of the Civil Code*, 20 LOUISIANA LAW REVIEW 410, 411, n. 7

declaration that these things were immovable by nature. Subsequently, it has been correctly held that the enumeration is indicative rather than exclusive.⁵⁵ Thus things which are *component parts* of a building and all mechanisms incorporated therein and destined to complete it should be regarded as immovable by nature under Article 467. "Buildings" are not mere skeletons and a framework of walls; balconies, lifts, electric networks, and a number of appliances should be treated as legally inseparable from the structure itself. Additions to a building, such as partitions, new roofs, mezzanines, resulting from incorporation of materials into an existing building have also been regarded as immovable by nature, but under Article 464, rather than under Article 467.⁵⁶ Louisiana courts have regarded as immovables by nature and as part of a building (under Article 467) a steam heating system,⁵⁷ a hot water heater,⁵⁸ a safe,⁵⁹ and a butane gas system.⁶⁰ Venetian blinds, on the other hand, have been held to be movable.⁶¹

Article 467 establishes criteria for the definition of things immovable by nature as part of a building—movables "connected with or attached to the building by the owner for the use or convenience of the building." The test of "the use or convenience" is broad enough to include almost everything imaginable and in part overlaps with the last paragraph of the following Article 468.⁶² Thus, the same thing could be classified as

(1960): "The Louisiana courts had no opportunity to apply Article 467 before it was amended."

55. See *Scott v. Brennan*, 161 La. 1017, 109 So. 822 (1926).

56. See *Lighting Fixture Supply Co. v. Pacific Fire Ins. Co.*, 176 La. 499, 502, 146 So. 35, 39 (1933). In this case, "office fixtures, shelving, mezzanine floor, and other so called betterments and improvements placed by the lessee in the leased premises became immovable by nature" and the property of the lessor. The lessee, the court said, had an "immovable right" in the use and enjoyment of these items for the duration of the lease.

57. See *Petty v. Jones*, 10 La. App. 409, 121 So. 372 (Orl. Cir. 1929).

58. See *Scott v. Brennan*, 161 La. 1017, 1020, 109 So. 822, 823 (1926). The court also said that "bath tubs, lavatories, closets, and sinks, connected with the water pipes in a building are unquestionably immovable by nature."

59. See *Folger v. Kenner*, 24 La. Ann. 436 (1872).

60. See *Cottonport Bank v. Dunn*, 21 So.2d 525 (La. App. 1st Cir. 1945). See also *Hollier Gas Co. v. Wilson*, 45 So.2d 96 (La. App. 2d Cir. 1950), discussed *infra* note 65.

61. See *Kelieher v. Gravois*, 26 So.2d 304 (La. App. Orl. Cir. 1946); Note, 7 LOUISIANA LAW REVIEW 429 (1947). The jurisprudence is not clear as to what kind of attachment is meant by Article 467. The question, in the last analysis, may depend on the purpose of adjudication. See *infra* text at notes 152-177. See also Comment, *Immovables by Nature under Article 467 of the Civil Code*, 20 LOUISIANA LAW REVIEW 410, 415 (1960).

62. See *infra* text at note 79. It has been observed that immovables by nature under Article 467 differ from immovables by destination under Article 468 in that "Article 467 as amended apparently contemplates only a connection or attachment

immovable by nature and immovable by destination. A proper interpretation of Article 467 should limit its scope to component parts of a building; in this way the line of demarcation between things immovable by nature and immovable by destination would not be blurred. The law applicable to these two categories of things may differ in some particulars. It can therefore be seen that clear distinctions are not merely a matter of legal esthetics.⁶³

According to the wording of the Code, there is a distinction between immovables by nature under Articles 464 and 467. Thus, in the case of buildings or other structures, attachment to the ground by the owner is not, in terms, a material consideration;⁶⁴ but, component parts of a building, in order to become immovable by nature under Article 467 must be installed *by the owner* or on his behalf.⁶⁵ This requirement blurs tradi-

of a movable for it to become immobilized by nature, while Article 468 pertaining to immovables by destination requires a *permanent* attachment." Comment, *Immovables by Nature under Article 467 of the Civil Code*, 20 LOUISIANA LAW REVIEW 410, 412 (1960).

63. For example, a sale of an immovable by nature under Article 464 includes all immovables by destination appertaining thereto, and all immovables by nature under Article 467. It is possible that certain things which might not qualify as immovable by destination could be included in the sale as immovable by nature under Article 467. This result has been regarded as one of the reasons for the amendment of Article 467 in 1912. See Comment, *Immovables by Nature under Article 467 of the Civil Code*, 20 LOUISIANA LAW REVIEW 410, 413 (1960). Further, classification of things as immovable by nature under Article 464 rather than as immovable by destination under Article 468 may be determinative in the relations between landowners and lessees. See *Lighting Fixture Supply Co. v. Pacific Fire Ins. Co.*, 176 La. 499, 511, 146 So. 35, 39 (1932): "Some of these betterments and improvements, probably, were so incorporated into the building as to be a component part of it — and hence a part of an immovable by nature. . . . Therefore did not belong to the lessee. Other parts . . . were, probably, not incorporated into the building as to be a component part of it; and such parts . . . would have continued to belong to the lessee, but for the stipulation to the contrary in the contract of lease" (concurring opinion by O'Niell, C.J.). See also *infra* text at notes 81-83.

64. See *Buchler v. Fourroux*, 193 La. 445, 190 So. 640 (1939); *Vaughn v. Kemp*, 4 La. App. 682 (1926). See also *Whiteman v. Le Blanc*, 28 La. Ann. 430 (1876).

65. This requirement of "unity of ownership" was apparently disregarded in *Holicer Gas Co. v. Wilson*, 45 So.2d 96 (La. App. 2d Cir. 1950). In this case, according to the terms of a lease agreement, plaintiff placed on the premises a butane gas tank. Later the landowner sold the land to defendant who claimed that the tank passed to him under the act of sale as immovable by nature. The court found that the gas tank in question had become immovable by nature under Articles 467 and 464 and that the ownership of the plaintiff was lost. In a subsequent case involving almost identical facts the same court overruled the *Holicer* case and reached the opposite conclusion. See *Edwards v. S. & R. Gas Co.*, 73 So.2d 590 (La. App. 2d Cir. 1954). The decision was founded on the ground that the requirements of Article 467 had not been met: the tank had not been attached to the ground by the "owner." The rule of this case was adopted by the Louisiana Legislature by La. Acts 1954, No. 49, LA. R.S. 9:1106 (Supp. 1960). The act provides that all tanks placed on rural or urban property by one other than the owner of the land for the storage of liquefied gas or liquefied fertilizer shall remain movable and shall not be affected by a sale of the land.

tional concepts as it seems to imply the possibility of separate ownership over component parts of a building. Thus, improvements and additions made by a person with the consent of the owner may *not* result in their becoming immovables. While this rule may tend to protect interests of lessees,⁶⁶ it runs counter to economic considerations of utility. Lands and buildings (with their essential parts) should be regarded as an economic unity. In this case, indeed, real rights of third parties over component parts of an immovable would be extinguished. However, recourse against the owner of the land or building could be had in other ways.⁶⁷

Louisiana courts, following the language of the Code, draw a distinction as to whether a thing in a building or on a tract of land is placed for the convenience of the immovable or for the convenience of the occupant. In the latter instance, immobilization is excluded.⁶⁸ It would seem that this test should not be controlling in the case of component parts of an immovable. Here we are concerned with a factual determination: whether a movable is or is not a component part; and in the determination of this question convenience of the occupant or of the immovable could be taken into account among several other considerations.

Other structures

Structures other than buildings, though grounded on the soil, are seldom regarded by the courts as immovable by nature under Article 464. Actually, Louisiana courts either disregard

66. This requirement was apparently inserted in amended Article 467 for the protection of lessees from the lessor's creditors or purchasers. Obviously, things which the lessee attaches to a building do not meet this requirement. See *Richardson v. Item Co.*, 172 La. 421, 134 So. 380 (1931); Comment, *Immovables by Nature under Article 467 of the Civil Code*, 20 LOUISIANA LAW REVIEW 410, 413 (1960). *But cf.* *Lighting Fixture Supply Co. v. Pacific Fire Ins. Co.*, 176 La. 499, 146 So. 35 (1933).

67. See LA. CIVIL CODE arts. 508, 2726 (1870). In continental legal systems, in addition to remedies similar to those available under the Louisiana Civil Code, there is available an action for unjust enrichment. See GERMAN CIVIL CODE arts. 812-822; GREEK CIVIL CODE arts. 904-913.

68. See *Day v. Coff*, 2 La. App. 75 (2d Cir. 1925); *Kelieher v. Gravois*, 26 So.2d 304 (La. App. Orl. Cir. 1946). According to the wording of amended Article 467, both the tests of "unity of ownership" and "convenience of the building" should be met before a thing is treated as immovable by nature as part of a building. See *Edwards v. S. & R. Gas Co.*, 73 So.2d 590, 592 (La. App. 2d Cir. 1954): "Our difference from the author of the Holicer opinion is first, the tank was not truly an accessory to the fundus; second, it was employed in the service of the fundus, but in the service of the person who owned the fundus; and third, it was not placed on the fundus by the owner of both the fundus and the movable."

this part of Article 464 or tend to apply a very narrow interpretation. In the absence of foundations, a certain degree of integration with the soil seems to be necessary. A canal,⁶⁹ a cistern,⁷⁰ a brick pit,⁷¹ a corn mill,⁷² and a gas tank⁷³ have been classified as immovable by nature. It is obvious that some of these structures could be regarded as component parts of buildings. A derrick⁷⁴ erected by a lessee for the purpose of drilling a well has been held to be a movable and not a structure under Article 464. Similarly, although railroad tracks may become immovable by destination,⁷⁵ they are not "structures" and therefore may not become immovable by nature.⁷⁶

For a structure to be included under Article 464, apart from other considerations, a certain degree of permanence is necessary. In France, constructions erected on the occasion of an exhibiton are regarded as immovable by nature, though destined to be demolished. Tents and barracks, on the other hand, erected on the occasion of a fair, are regarded as movable.⁷⁷

69. See *Albert Hanson Lumber Co. v. Board of State Affairs*, 154 La. 988, 98 So. 552 (1924).

70. See *Polhman v. De Bouchel*, 32 La. Ann. 1158 (1880).

71. See *Folse v. Loreauville Sugar Factory*, 156 So. 667 (La. App. 1st Cir. 1934).

72. See *Bigler v. Brashear*, 11 Rob. 484 (La. 1845).

73. See *Monroe Auto & Supply Co. v. Cole*, 6 La. App. 337 (2d Cir. 1927). See also *Prevot v. Courtney*, 241 La. 313, 129 So.2d 1 (1961) (tractor shed and poultry house immovables by nature under Article 464); *Holicer Gas Co. v. Wilson*, 45 So.2d 96 (La. App. 2d Cir. 1950) (a butane gas tank held immovable by nature as a "construction"). *But cf. Edwards v. S. & R. Gas Co.*, 73 So.2d 590 (La. App. 2d Cir. 1954).

74. *Jones v. Conrad*, 154 La. 860, 98 So. 397 (1924).

75. This means that the nature of a railroad laid as movable or immovable is determined under Article 468 rather than 464. See *State v. Mexican Gulf Co.*, 3 Rob. 513 (syllabus) (La. 1843): "A railway is not an immovable, either by nature or destination, when the soil on which it is laid belongs to another"; *Woodward v. American Exposition Ry.*, 39 La. Ann. 566, 569, 2 So. 413, 414 (1887): "As the railroad was constructed on the soil of another, it was movable property, and as such governed by the law regulating pledges on movables." Most cases actually involve vendor's liens which are upheld against claims by mortgagees or purchasers of the immovable property on which the railroad is laid. See *Louisiana Ry. & Nav. Co. v. Cash Grocery & Sales Co.*, 150 So. 57 (La. App. 1st Cir. 1933); *Caldwell v. Laurel Grove Co.*, 175 La. 928, 144 So. 718 (1932). See also *infra* note 76.

76. *Caldwell v. Laurel Grove Co.*, 175 La. 928, 144 So. 718 (1932); *La. Ry. & Nav. Co. v. Cash Grocery & Sales Co.*, 150 So. 57 (La. App. 1st Cir. 1933). *But cf. Morgan's La. & Tex. Ry. & S.S. Co. v. Himalaya Planting & Mfg. Co.*, 143 La. 460, 78 So. 735 (1918) (railroad laid immovable by nature as "structures" under Article 464 of the Civil Code). This case was expressly overruled by the Louisiana Supreme Court in *Caldwell v. Laurel Grove Co.*, *supra*. In France, a railroad laid is regarded as immovable by nature. See Note, 8 TUL. L. REV. 280 (1933).

77. See 3 PLANIOL ET RIPERT, TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS 77 (2d ed 1952).

Immovables by Destination

Articles 468 and 469 of the Louisiana Civil Code concern "immovables by destination." These are things movable by their nature but classified as immovable because of their close association with an immovable. They preserve their identity as movables and do not become component parts of the ground or of a building; thus, they differ from "immovables by nature" under Articles 464 and 467. The fiction of immobilization rests on policy considerations: it is expedient that, for certain purposes, movables should be regarded as accessories to an immovable, forming with the latter an economic unity. Indeed, if care were not taken in this or some other way, certain accessories would be regarded as movables and they would not follow the immovable in case of seizure, partition, transfer, and determination of matrimonial rights — contrary to considerations of utility and productivity.

From the viewpoint of abstract logic, the category of things "immovable by destination" seems to be clear; in practice, however, Louisiana courts have found it difficult to distinguish in some instances between things immovable by destination and things immovable by nature. Indeed, it has been observed that Articles 467 and 468 overlap in part,⁷⁸ and it has been held that "either article is broad enough to include a sprinkling system by necessary implication," and that "the terms [immovables by nature and immovables by destination] create fictions of law and may be considered interchangeable."⁷⁹ Indeed, in principle, immovables by destination are subject to the same rules of law as immovables by nature; thus, a real mortgage extends to all accessories of a tract of land or building.⁸⁰ But, contrary to broad judicial language, it seems that the classification of a thing as immovable by nature or by destination *does* carry significant legal consequences. In case a movable becomes immovable by

78. See *supra* text at note 62.

79. *Tangipahoa Bank & Trust Co. v. Kent*, 70 F.2d 139, 141 (5th Cir. 1934).

80. See *infra* text at note 162. Cf. SAUNDERS, LECTURES ON THE CIVIL CODE 157 (1925): "[S]uch movables as have been immobilized . . . become subject to the operation of all mortgages that rest upon the place, whether already in existence before the movables were brought on the place or whether it was granted after the movables were brought on the plantation." Similarly, the sale of an immovable includes both immovables by nature under Article 467 and immovables by destination. See *supra* note 63. Further, under Article 645 of the Code of Practice (1870) neither immovables by nature under Article 467 of the Civil Code nor immovables by destination could be seized separately from the land. See *Tison v. Taniehill*, 28 La. Ann. 793 (1876). The new Code of Civil Procedure does not include a corresponding provision.

destination, immobilization is less complete than in the converse situation in which a movable becomes immovable by nature. A vendor's lien on a movable may be lost when the movable becomes part of an immovable by incorporation, while it is preserved in the case of immovables by destination.⁸¹ Similarly, ownership of a movable may be lost when it is incorporated into an immovable, while it is preserved in case of an immobilization by destination.⁸² Further, there may be differences with regard to the applicable tests for immobilization under Articles 464, 467, and 468.⁸³

The category of things immovable by destination is post-classical and of doubtful utility. Texts in the Digest are frequently cited in support of this analytical category. The Roman jurists cited, however, were simply concerned with the concrete issue of what passes with a transfer of immovables in case of sale or inheritance.⁸⁴ There is no indication that these jurists were concerned with the nature of things. Medieval writers elaborating on the Digest rationalized the particular solutions as sustaining the idea that certain accessories, having become

81. *Lighting Fixture Supply Co. v. Pacific Fire Ins. Co.*, 176 La. 449, 146 So. 35 (1932): "If an article of machinery, or other betterment of improvement, which has been sold to the owner of the immovable by nature, and placed by him upon or in the immovable by nature, the article retains its character as a movable quo ad the seller, until the price is paid, and is subject to the seller's lien, if the article sold has not lost its identity by being incorporated into the immovable by nature. . . . But, if the movable article so sold has become so incorporated into the immovable by nature as to lose its identity as a movable, and as to become a component part of the immovable by nature, such as building material, it has ceased to be movable property, even as to the seller, and his lien is thereby lost." (Concurring opinion by O'Niell, C.J.). "The question of when or under what circumstances this merger will be held to have taken place is one to be determined from the particular facts of each case." *Receivership of Augusta Co.*, 134 La. 971, 974, 64 So. 870, 871 (1914). See also *Morgan's La. & Tex. Ry. & S.S. Co. v. Himalaya Planting & Mfg. Co.*, 143 La. 460, 78 So. 735 (1918). Several cases, however, seem to indicate that a vendor's lien is lost only in connection with things immobilized under Article 464. Thus, as to things immobilized under Article 467, the vendor's lien is preserved. See Comment, *Immovables by Nature under Article 467*, 20 LOUISIANA LAW REVIEW 410, 415, 416 (1960). Cf. *Infra* text at note 154.

82. See *Louisiana Ry. & Nav. Co. v. Cash Grocery & Sales Co.*, 150 So. 57 (La. App. 1st Cir. 1933). See also *supra* notes 56, 81; *infra* notes 157, 177.

83. See *Lighting Fixtures Supply Co. v. Pacific Fire Ins. Co.*, 176 La. 449, 146 So. 35 (1932). See also *Buchler v. Fourroux*, 193 La. 445, 477, 190 So. 640, 650 (1939): "[T]here is a vast distinction between immovables by destination and immovables by nature. The status of an immovable by destination can be changed by an act of the landowner, but there is no provision of law that we are aware of, and none has been cited to that effect, that the act of the landowner, or any other person, can change the status of an immovable by nature. . . . The status of an immovable by nature is never changed by any act of the owner, while the status of an immovable by destination changes according to its use by the owner."

84. See D. XIV tit. 1, fr. 13-18; XXXIII tit. 7.

inseparable from the soil, acquired its juridical nature.⁸⁵ Finally, the redactors of the French Civil Code went one step further and introduced the distinction between things immovable by nature and immovable by destination.⁸⁶ In Louisiana, this distinction figured in the Code of 1808.⁸⁷ The category of things immovable by destination has been termed "the most useless construct of modern law."⁸⁸ Indeed, a provision declaring that accessories of lands and buildings destined to their exploitation and improvement should not be susceptible of separate ownership and other real rights would amply serve the policy underlying immobilization. This is the technique employed in a number of modern civil codes.⁸⁹

(1) *Conditions for immobilization.* Articles 468 and 469 furnish criteria for the determination of the issue of immobilization. According to Article 468 things "which the owner of a tract of land has placed upon it for its service and improvement" are immovable by destination. The rule is illustrated by reference to "cattle intended for cultivation. Implements of husbandry. Seeds, plants, fodder, and manure. Pigeons in a pigeon house. Beehives. Mills, kettles, alembics, vats, and other machinery made use of in carrying on the plantation works. The utensils necessary for working cotton, and sawmills, taffia distilleries, sugar refineries and other manufactures." The last paragraph of the same article declares that "all such movables as the owner has attached permanently to the tenement or to the building, are likewise immovable by destination."⁹⁰ The following Article 469 declares that "the owner is supposed to have attached to his tenement or building for ever such movables

85. See BOUTILLER, *SOMME RURAL*, tit. 74; GRAND COUTUMIER, Bk. II, Chap. 18; COQUILLE, *INSTITUTION AU DROIT DES FRANÇAIS* 96 (1666). *Of.* 3 PLANIOL ET RIPERT, *TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS* 79 (2d ed. 1952).

86. See 3 PLANIOL ET RIPERT, *TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS* 79 (2d ed. 1952).

87. LA. CIVIL CODE p. 96, arts. 14, 20-21 (1808).

88. 3 PLANIOL ET RIPERT, *TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS* 80 (2d ed. 1952). Immobilization by destination is unknown in the converse situation where immovables might be regarded as accessory and dependent on a movable. Thus, a real mortgage attached to an obligation (a movable right) does not lose its juridical nature as immovable. The law did not create the category of things *movable by destination*. *Of.* LOUISIANA CIVIL CODE art. 3284 (1870): "The mortgage is accessory to a principal obligation which it is designed to strengthen, and of which it is to secure the execution."

89. See, e.g., GERMAN CIVIL CODE arts. 93, 94; GREEK CIVIL CODE arts. 954, 956.

90. *Of.* LA. CIVIL CODE art. 459 (1825); LA. CIVIL CODE p. 98, art. 20 (1808). It is settled that the list in Article 468 is merely indicative. See *Scovel v. Shady-side Co.*, 137 La. 918, 69 So. 745 (1915); *Breaux v. Ganucheau*, 3 La. App. 481 (1st Cir. 1925).

as are affixed to the same with plaster, or mortar, or as can not be taken off without being broken or injured, or without breaking or injuring the part of the building to which they are attached."⁹¹ The interpretation of these two articles involves a number of interesting questions.

"By the owner"

Articles 468 and 469 declare that, for effective immobilization by destination, the movables concerned must be placed in position "by the owner." The courts have held consistently that immobilization by destination may occur only where the owner of a tract of land or building places on the premises things also owned by him.⁹² Personal action is not necessary; action on behalf of the owner will suffice.⁹³ Thus, "improvements" made by a tenant,⁹⁴ a hot water heater placed on the premises by a lessee,⁹⁵ and an automatic sprinkler system⁹⁶ or railroad tracks⁹⁷ installed by persons other than the owner of the land, remain movable.

91. Cf. LA. CIVIL CODE art. 460 (1825); LA. CIVIL CODE p. 98, art. 21 (1808).

92. See *Richardson v. Item Co.*, 172 La. 421, 134 So. 380, 381 (1931) ("A movable becomes an immovable by destination when the owner unites it with lands, tenements, or buildings which are also owned by him, with the intention that the movables shall henceforth be merged and associated with the destiny of the realty"); *Scovel v. Shadyside Co.*, 137 La. 918, 69 So. 745 (1915); *Hibernia National Bank v. Sarah Planting and Refining Co.*, 107 La. 650, 31 So. 1031 (1902); *State v. Mexican Gulf Co.*, 3 Rob. 513 (La. 1843); *Folse v. Loreauville Sugar Factory*, 156 So. 667 (La. App. 1st Cir. 1934); *Buckley v. Lindsay Mercantile Co.*, 5 La. App. 467 (2d Cir. 1927). Cf. *Jones v. Conrad*, 154 La. 860, 98 So. 397 (1924) (water pump placed by the owner became immovable by destination). The requirement that things be placed "by the owner" does not apply to buildings and other structures under Article 464. See *Lighting Fixture Supply Co. v. Pacific Fire Ins. Co.*, 176 La. 499, 146 So. 35 (1933). Movables attached by the husband, as head of the community, to the plantation of his wife are not placed *by the owner* and do not become immovable by destination. See *Hall v. Wyche*, 31 La. Ann. 734 (1879).

93. See *Holicer Gas Co. v. Wilson*, 45 So.2d 96, 100 (La. App. 2d Cir. 1950). The case has been overruled on other grounds. See *supra* note 65.

94. See *Henry v. Tricou*, 2 McGloin 79 (La. 1884). See also *Richardson v. Item Co.*, 172 La. 421, 424, 134 So. 380, 381 (1931): "For a movable to become an immovable by destination it must necessarily be placed upon or attached to the immovable by the owner himself. When such things are placed upon an immovable by a lessee as an improvement or addition, they remain movables." *But of. Lighting Fixture Supply Co. v. Pacific Fire Ins. Co.*, 176 La. 499, 510, 146 So. 35, 38 (1933): "[A]ccording to the plain declaration of article 464 of the Civil Code, the alterations and improvements made by the lessee to the leased premises were immovables."

95. See *Appel v. Ennis*, 34 So.2d 415 (La. App. Orl. Cir. 1948).

96. See *Richardson v. Item Co.*, 172 La. 421, 134 So. 380 (1931) (decision based in part on Article 2726 of the Civil Code).

97. See *State v. Mexican Gulf Co.*, 3 Rob. 513 (La. 1843); *supra* note 75.

"Service and improvement"

Article 468 seems to contemplate that the tests of *service and improvement* and that of *permanent attachment* are independent of each other. The first, in context, seems to apply to *tracts of land* and the second to apply to *tenements or buildings*. Indeed, the last paragraph of Article 468 may be taken to mean that "the preceding declarations, though apparently broad enough to include *anything* placed on a tract of land, *in any manner*, by the owner of the land, for its service and improvement . . . was not intended to include movables which the owner has attached 'to the tenement or to the building', and which become immovable by destination only when attached 'permanently' to such 'tenement' or 'building'."⁹⁸ Today, it is settled in Louisiana that the test of service and improvement is not confined to tracts of land alone; it applies as well to tenements and buildings. Proof of permanent attachment, therefore, may be avoided. In the leading case of *Straus v. New Orleans*,⁹⁹ the Louisiana Supreme Court declared that the first paragraph of Article 468 necessarily refers to industrial establishments since "the illustrations given in the subsequent paragraphs are made up of two distinct classes of things which thus become immovable by destination, viz., (1) those which are used in the cultivation and exploitation of lands; and (2) those which are used in the operation of manufacturing establishments, such as cotton mills, sawmills, taffia or rum distilleries, sugar refineries, 'and other manufacturers'."¹⁰⁰ This interpretation has been fortified by reference to the legislative history of Article 468. The provi-

98. *Scovel v. Shadyside Co.*, 137 La. 918, 927, 69 So. 745, 749 (1915).

99. 166 La. 1035, 1049, 118 So. 125, 130 (1928).

100. See also *Bank of Lecompte v. Lecompte Cotton Oil Co.*, 125 La. 844, 51 So. 1010 (1910); *Maginnis v. Union Oil Co.*, 47 La. Ann. 1489, 18 So. 459 (1895); *Choate Oil Corp. v. Glassel*, 153 La. 715, 96 So. 543 (1922); Comment, *Immovables by Destination*, 5 TUL. L. REV. 90, 98 (1930). La. Acts 1904, No. 187, LA. R.S. 9:1104 (1950), provides that one may establish by a recorded declaration for purposes of mortgage and sale, "as being immovable by destination the machinery and appliances owned by him and used in a manufacturing or industrial establishment located on his land." Apparently, the purpose of the act was to classify machinery in industrial plants as immovable by destination, for purposes of mortgage and sale, only when the intention of the owner is declared and recorded. Cf. SAUNDERS, LECTURES ON THE CIVIL CODE 160 (1925). However, it has been held repeatedly that immobilization may occur in accordance with the tests established by Articles 468 and 469 of the Civil Code, even though the statute is not complied with. Thus the only effect of the statute is that the party claiming immobilization is relieved of the burden of proving it in case of compliance with the statute. See *Bank of Lecompte v. Lecompte Cotton Oil Co.*, *supra*; *Willis v. Thompson*, 1 La. App. 313 (2d Cir. 1924); *Breaux v. Ganucheau*, 3 La. App. 481 (1st Cir. 1925); *Straus v. New Orleans*, 166 La. 1035, 118 So. 125 (1928).

sion first appeared in the Code of 1808,¹⁰¹ and was reproduced in the Civil Code of 1825 as Article 459.¹⁰² In the French text of the Louisiana Code, the word corresponding to tracts of land is "*fonds*."¹⁰³ This word means, ordinarily, "landed property."¹⁰⁴ Accordingly, the Louisiana Supreme Court declared that "inasmuch as the word 'fonds' in the French text of article 459 of the Code of 1825, includes the meaning of—and means something more than—the phrase, 'a tract of land', in Article 468 of the Revised Civil Code, we must adopt the most enlarged meaning."¹⁰⁵

The French Civil Code and the French text of the Louisiana Civil Code seem to limit immobilization to agricultural and industrial exploitation of immovables.¹⁰⁶ The French courts, however, expanded the scope of the relevant provisions to include,

101. LA. CIVIL CODE p. 98, art. 20 (1808). See also *Straus v. New Orleans*, 166 La. 1035, 118 So. 125, 131 (1928): "The French version of these articles of which the original translation is retained in the Revised Civil Code are as authoritative as the corresponding articles of the Revised Civil Code."

102. See also *Straus v. New Orleans*, 166 La. 1035, 1050-51, 118 So. 125, 130 (1928): "The compilers of the Louisiana Code of 1825, in speaking of the movable effects that became immovable by being affixed permanently to an immovable, as with plaster or cement, used the French word 'fonds' somewhat indifferently—sometimes as meaning land only, and sometimes as meaning real estate, consisting of either land or a building. In copying the last paragraph of article 524 of the French Code, where the word 'fonds' alone is used to describe the real estate, in the declaration that all of the movable effects which the proprietor has attached permanently to the real estate 'fonds' are likewise immovable by destination, the redactors of the Louisiana Code added the words, 'ou au batiment'—meaning 'or to the building'. A literal translation of that paragraph of article 459 of the Louisiana Code, therefore, is that all of the movable effects which the proprietor has attached permanently to the land or building are likewise immovable by destination; but, strange to say, in their translation of it into English, the redactors translated the word 'fonds' as meaning tenement."

103. See *Straus v. New Orleans*, 166 La. 1035, 1050, 118 So. 125, 131 (1928): "In the French text of the Louisiana Code, as in the Code Napoleon, the word which was translated into 'a tract of land' is the French word 'fonds.'" The court also observed correctly that "Where the word 'fonds' alone is used in the French Code, the words 'fonds ou batiment' (land or building) are used in the Code of 1825, and the words 'tenement or building' are used in the translation, and, again, where the word 'fonds', alone, is used in the French Code, the words 'du batiment ou fonds' are used in the Code of 1825, and the word 'building' alone, is used in the translation."

104. In *Straus v. New Orleans*, 166 La. 1035, 1050, 118 So. 125, 130 (1928), the court pointed out correctly that the word *fonds* "has no exact synonym in English" and that its use "is not confined to *land* or *ground*, but may mean landed property . . . *real estate*, including buildings on the land." Perhaps, in absence of a correct synonym in English, the Latin word *fundus* could be used to translate the French word *fonds*. See *Breaux v. Ganucheau*, 3 La. App. 481 (1st Cir. 1925) ("interest and utility of fundus"); *Edwards v. S. & R. Gas Co.*, 73 So.2d 590, 592 (La. App. 2d Cir. 1954) ("service of the fundus").

105. *Straus v. New Orleans*, 166 La. 1035, 1051, 118 So. 125, 131 (1928). *Cf. Morton Trust Co. v. American Salt Co.*, 149 Fed. 540 (E.D. La. 1906).

106. See FRENCH CIVIL CODE art. 524; LA. CIVIL CODE art. 459 (1825).

in addition to agricultural and industrial, commercial and residential exploitation.¹⁰⁷ The English text of the Louisiana Civil Code does not leave room for such distinctions, and it seems to be settled that the specific destination of the immovable is immaterial.¹⁰⁸

In applying the test of service and improvement, Louisiana courts frequently insist that the things placed on the premises not be there merely for the service of the occupant.¹⁰⁹ It would seem that this criterion should be relevant only in connection with immovables by nature under Article 467.¹¹⁰ In the case of *Day v. Coff*,¹¹¹ the court found that office equipment was not for the service and improvement of the immovable but for the personal convenience of the occupants. Similarly, a hot water

107. See 3 PLANIOL ET RIPERT, *TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS* 88-90 (2d ed. 1952).

108. See Zengel, *Elements of the Law of Ownership*, in 3 WEST'S LSA—CIVIL CODE 23 (1950). The English text of Article 468 uses the expression "service and improvement" rather than "service and exploitation" (*service et exploitation* in the French text of Article 459 of the 1825 Code). *Cf.* Bank of Lecompte v. Lecompte Cotton Oil Co., 125 La. 844, 51 So. 1010 (1910). Application of Article 468 to residential destination of immovables was questioned in Scovel v. Shadyside Co., 137 La. 918, 69 So. 745 (1915). See also L'Hote v. Fulham, 51 La. Ann. 780, 25 So. 655 (1890); Dixie Building Material Co. v. Chartier, 8 La. App. 469 (Orl. Cir. 1928) (the court apparently assuming that the test of "service and improvement" does not apply to residential destination). It has been also observed that almost all decisions involving immobilization by destination in residences are founded on permanent attachment under Article 469. See Comment, *Immovables by Destination*, 5 TUL. L. REV. 90, 101, n. 35 (1930); Note, *LOUISIANA LAW REVIEW* 429, 430 (1947). Broad language indicating the possibility of application of Article 468(1) to residential destination of immovables was used in Straus v. New Orleans, 166 La. 1035, 118 So. 125 (1928). In a subsequent case, Kelieher v. Gravois, 26 So.2d 304 (La. App. Orl. Cir. 1946), the court conceded applicability of Article 468(1) to residences. However, certain venetian blinds were held to be movable as serving the convenience of the occupants rather than destined to the service and improvement of the immovable.

Application of Article 468(1) to commercial destination of immovables seemed to be a relevant question in *Day v. Goff*, 2 La. App. 75 (2d Cir. 1925). The court, however, avoided this question by a finding that the movables in question served the convenience of the business conducted in the building rather than the building itself. This holding is in line with French authorities. Indeed, in France, the test of "service and improvement" applies to industrial and commercial establishments housed in buildings erected for these particular purposes. See Comment, *Immovables by Destination*, 5 TUL. L. REV. 90, 100 (1930).

109. See *Morton Trust Co. v. American Salt Co.*, 149 Fed. 540, 543 (E.D. La. 1906): "The movable in order to become immobilized, must be employed in the service of the fundus, and not in the service of the person who owns the fundus." See also note 108 *supra*.

110. Article 467 uses the expression "use or convenience of the building." No reference to convenience is made in either Article 468 or 469. *Cf.* text at note 68 *supra*.

111. 2 La. App. 75, 79 (2d Cir. 1925). See also *Campbell v. Hammond Box and Veneer Co.*, 167 So. 111 (La. App. 1st Cir. 1936) (office equipment in manufacturing plant did not become immovable by destination).

heater,¹¹² a Ford roadster and a horse,¹¹³ trucks and cars,¹¹⁴ and a mare not intended for use in cultivation¹¹⁵ have all been held to be movables serving the convenience of the occupants of lands or buildings. On the other hand, a dough-mixer in a bakery,¹¹⁶ a butane gas tank,¹¹⁷ and a water pump¹¹⁸ have been regarded as "improvements," and, therefore, immovable by destination.

Ordinarily, things necessary for carrying out business are regarded as dedicated to the service and improvement of the premises. Thus, machinery necessary for the operation and development of a mineral lease¹¹⁹ has been treated as immovable by destination; similarly, all property "used in carrying out the industry to which the real estate was subjected" has been regarded as effectively immobilized.¹²⁰ Things "accessory and dependent" are also within the scope of service and improvement. Thus, a servitude has been held an immovable by destination as accessory to a plantation, and a tramway laid on the servitude, as accessory and dependent on the servitude.¹²¹ Finally, machinery in a sugar factory has been found to be immovable by destination and an "improvement" by reference to economic considerations.¹²² When a movable "ceases to be of service to a tract of land,"¹²³ immobilization terminates. Likewise, mov-

112. See *Baldwin v. Young*, 47 La. Ann. 1466, 17 So. 883 (1895). This decision "was, in effect, overruled so far as it sustained the validity of conditional sales in this state, but not so far as it sustained the right of an unpaid vendor to enforce his privilege on the movable sold, notwithstanding by the act of the vendee it has become part of an immovable." *Caldwell v. Laurel Grove Co.*, 175 La. 928, 936, 144 So. 718, 720 (1932). See also *Appel v. Ennis*, 34 So.2d 415 (La. App. Or. Cir. 1948).

113. See *Choate Oil Corp. v. Glassel*, 153 La. 715, 96 So. 543 (1923).

114. See *Willis v. Thomason*, 1 La. App. 313 (2d Cir. 1924).

115. *Lapene v. McCan*, 28 La. Ann. 749 (1876). *Cf. Morton Trust Co. v. American Salt Co.*, 149 Fed. 540, 543 (5th Cir. 1906).

116. See *Breaux v. Ganucheau*, 3 La. App. 481 (1st Cir. 1925).

117. See *Holicer Gas Co. v. Wilson*, 45 So.2d 96 (La. App. 2d Cir. 1950), discussed *supra* note 65.

118. See *Jones v. Conrad*, 154 La. 860, 98 So. 397 (1923).

119. See *Choate Oil Corp. v. Glassel*, 153 La. 715, 96 So. 543 (1923). See also *Bass v. Southern States Bottle Co.*, 17 La. App. 304, 136 So. 159 (2d Cir. 1931); *Bank of Winnfield v. Olla State Bank*, 11 La. App. 640, 124 So. 621 (2d Cir. 1929).

120. *Rochereau v. Bobb*, 27 La. Ann. 657, 658 (1875). See also *Succession of Allen*, 48 La. Ann. 1036, 20 So. 193 (1896).

121. *Coguenhem v. Trosclair*, 137 La. 985, 69 So. 800 (1915).

122. *Swoop v. St. Martin*, 110 La. 237, 34 So. 426 (1903); *infra* note 145. The intention of the owner is apparently immaterial in connection with the test of service and improvement. See *Folse v. Triche*, 113 La. 915, 918, 37 So. 875, 876 (1904): "If such machinery be not incorporated with the building, but placed therein for the service and improvement of the land, it becomes immovable by destination, not because the owner so wills or intends, but by reason of such service and improvement."

123. See *Folse v. Triche*, 113 La. 915, 917, 37 So. 875 (1904): "Movables

ables which have not had the opportunity to become of service to an immovable are not immobilized.¹²⁴

Permanent attachment.

In terms, the test of *permanent attachment* seems to apply to "tenements or buildings" as an independent ground of immobilization. Louisiana courts, however, tend in certain cases to consolidate the test of permanent attachment with that of service and improvement and apparently require that all conditions must be met before a thing will be treated as an immovable by destination.¹²⁵ In France, courts interpreting the corresponding provisions of the French Civil Code have reached the conclusion that either test would suffice.¹²⁶ This interpretation is preferable in the light of the text of the Civil Code.

It is not clear what constitutes permanent attachment. While intention to immobilize may be material in some cases, it seems clear that mere intention of the owner will not suffice. Some overt act by the owner or on his behalf is always necessary.¹²⁷ In most instances, intention to immobilize is gathered from the fact of permanent attachment.¹²⁸ Permanent attachment does not mean attachment for "perpetuity or eternity."¹²⁹ Further, permanent attachment is distinguishable from the situation in which a movable becomes incorporated into an immovable so as to become a component part thereof. In that case, the movable

which do not perform this function do not fall within the terms of the definition. Hence it would seem that when, from any cause, a movable ceases to be of service to a tract of land, or is detached from a building or tenement of which it formed a part as an accessory, there is no longer ground for the claim that such movable appertains to the realty."

124. See *Willis v. Thomason*, 1 La. App. 313 (2d Cir. 1924); *Nimmo v. Allen*, 2 La. Ann. 451 (1847). See also *Beard v. Duralde*, 23 La. Ann. 284 (1871).

125. See Zengel, *Elements of the Law of Ownership*, in 3 WEST'S LSA—CIVIL CODE 22 (1950); Comment, *Immovables by Destination*, 5 TUL. L. REV. 90, 104 (1930). See also *Scovel v. Shadyside Co.*, 137 La. 918, 69 So. 745 (1915); *Hollier Gas Co. v. Wilson*, 45 So.2d 96 (La. App. 2d Cir. 1950) (butane gas tank an immovable under Articles 464, 467, and 468). *But cf.* *Bank of Lecompte v. Lecompte Cotton Oil Co.*, 125 La. 844, 848, 51 So. 1010, 1011 (1910): "There are two categories of immovables by destination—property attached to the realty, and the other forming part of the realty for its exploitation." The court also indicated that permanent attachment is unnecessary as to movables placed on the *fonds* for its service and improvement. See also *Folse v. Triche*, 113 La. 915, 37 So. 875 (1904).

126. See 3 PLANIOL ET RIPERT, *TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS* 84, 92 (2d ed. 1952).

127. *Cf.* *Bon Air Planting Co. v. Barringer*, 142 La. 60, 76 So. 234 (1917).

128. See *Scovel v. Shadyside Co.*, 137 La. 918, 69 So. 745 (1915). It is clear that the test of permanent attachment applies to all immovables, regardless of destination. *Cf. supra* note 108.

129. *Coguenhem v. Trosclair*, 137 La. 985, 69 So. 800 (1915).

becomes immovable by nature under Articles 464 or 467 rather than immovable by destination.¹³⁰ However, the courts have not been always consistent in their interpretation and application of Articles 468 and 469 in connection with the issue of permanent attachment. In some instances it is indicated that Article 469 furnishes the only possible method of permanent attachment.¹³¹ In other instances, Article 469 is regarded as merely illustrative of the methods which can be used. Thus, it has been held that the cases specified in Article 469 do not limit the general disposition contained in Article 468, and that "when none of the presumptions established by article 469 exist, the fact may be shown by any competent evidence."¹³² It is submitted that Articles 468 and 469 contemplate distinguishable situations. Permanent attachment may be effected in several ways and by different methods.¹³³ Where the methods of attachment conform to the tests furnished by Article 469, the intention of the owner is immaterial, and immobilization should be considered proven. Where attachment is claimed apart from Article 469, permanent attachment may still be proved by reference to the intention of the owner and overt acts indicating this intention.

The courts, quite frequently, determine the issue of permanent attachment by reference to the possibility of identification and facility of removal of the movables concerned. Thus,

130. Cf. *Monroe Auto & Supply Co. v. Cole*, 6 La. App. 337 (2d Cir. 1927). In that case the court found that a gas tank and other articles "had become merged into the immovable and have become so far a part of it as to lose entirely the character of movables."

131. See *Day v. Goff*, 2 La. App. 75, 79 (2d Cir. 1925): "There is no pretence that they [i.e. office furniture and supplies] are permanently attached to the building either by plaster, mortar or in any other way which would prevent their being taken off without breaking or injuring them or the building." See also *Richardson v. Item Co.*, 172 La. 421, 134 So. 380, 381 (1931); *Dixie Bldg. Material Co. v. Chartier*, 8 La. App. 469 (Orl. Cir. 1928); *L'Hote v. Fulham*, 51 La. Ann. 780, 25 So. 655 (1899).

132. *Scovel v. Shadyside Co.*, 137 La. 918, 922, 69 So. 745, 746 (1915): "Article 469 provides that all such movables as the owner has placed for the service and improvement of the land and those which are attached permanently to the building are immovable by destination; it embraces all cases in which the movable has been placed by the owner *ad intergrandum domun*; and, when none of the presumptions established by article 468 exist, the fact may be shown by any competent evidence." See also *Mackie v. Smith*, 5 La. Ann. 717 (1850) (under the corresponding provisions of the 1825 Code).

133. See SAUNDERS, LECTURES ON THE CIVIL CODE 159 (1925): "There have been a great many controversies as to what connection may be deemed permanent. One thing is certain, that what the Code says on the subject (469) is by way of explanation only. When the Code says whatever is connected by plaster or by mortar is a part of it, it is only an illustration of the permanent union between the thing and the house, and it admits of other methods of union which will be deemed to be permanent."

if things are identifiable, and easily removable, like refrigeration equipment in a building,¹³⁴ machinery in a sugar factory,¹³⁵ an ice crusher,¹³⁶ an oil burner,¹³⁷ a soda fountain in a drug store,¹³⁸ and chandeliers¹³⁹ in a residence, immobilization by destination does not occur. On the other hand, things which are identifiable but not easily removable are said to become immovable by destination. It has been so held in cases involving a gas tank,¹⁴⁰ certain valuable mirrors,¹⁴¹ a safe,¹⁴² and chandeliers in a residence.¹⁴³ Possibility of identification and facility of removal should not be and are not always controlling considerations.¹⁴⁴ In one case, identifiable pieces of machinery in a sugar factory, though easily removable, were declared to be immovable by destination because of economic considerations. If removed, these pieces of machinery would have become scrap iron to the detriment of all concerned.¹⁴⁵ And in another case, a pumping plant for irrigation of rice fields, though identifiable and easily removable, was found to have become immovable by

134. *Hamilton Co. v. Medical Arts Bldg. Co.*, 17 La. App. 508, 135 So. 94 (2d Cir. 1931). See also *Baldwin v. Joung*, 47 La. Ann. 1466, 17 So. 883 (1895) (heater "detachable without injury"); *supra* note 112.

135. *Folse v. Loreauville Sugar Factory*, 156 So. 667 (La. App. 1st Cir. 1934). See also *Garlin v. Gordy*, 32 La. Ann. 1285 (1880); *Lapene v. McCan*, 28 La. Ann. 749 (1876).

136. *Cristina Inv. Corp. v. Gulf Ice Co.*, 55 So. 2d 685 (La. App. 1st Cir. 1952).

137. *Succession of Sussman*, 168 La. 349, 122 So. 62 (1929).

138. *Liquid Carbonic Corp. v. Crow*, 177 La. 379, 148 So. 442 (1933).

139. *McGuigin v. Boyle*, 1 Orl. App. 164 (La. App. Orl. Cir. 1904). See also *L'Hote v. Fulham*, 51 La. Ann. 780, 25 So. 655 (1899). The *L'Hote* case was distinguished in *Scovel v. Shadyside Co.*, 137 La. 918, 925, 69 So. 745, 747 (1915), also involving chandeliers, on the ground that in *L'Hote* they were "placed with direct reference to the facility of detaching and removing."

140. *Holicer Gas Co. v. Wilson*, 45 So.2d 96 (La. App. 1950); *But cf. supra* note 65.

141. *Mackie v. Smith*, 5 La. Ann. 717 (1850).

142. *Folger v. Kenner*, 24 La. Ann. 436 (1872).

143. *Scovel v. Shadyside Co.*, 137 La. 918, 69 So. 745 (1915).

144. See *Monroe Auto & Supply Co. v. Cole*, 6 La. App. 337 (2d Cir. 1927). *Of. SAUNDERS, LECTURES ON THE CIVIL CODE* 158 (1925): "The vendor of machinery in many cases sells only a part of the complex machinery of a sugar plantation or refinery, and the part that he sells is merged and intermingled with other parts of the intricate machinery supplied by other parties, and if he were to take out the separate part that he sold he would inflict an injury on these other vendors greater than the benefit he would himself derive by separating the parts and recovering in that way."

145. *Swoop v. St. Martin*, 110 La. 237, 34 So. 426 (1903). See also *Hibernia Bank & Trust Co. v. Knoll Planting & Mfg. Co.*, 133 La. 697, 63 So. 288 (1913); *Milliken & Farwell v. Roger*, 138 La. 823, 70 So. 848 (1916) (the court after directing attention to the significance of the difference in the original cost of the materials and the amount they realized at the sheriff's sale as showing their loss of character as things of commerce, rejected the claim for a vendor's privilege). These cases "must be considered overruled" insofar as they are inconsistent with Louisiana jurisprudence tending to preserve a vendor's lien. Caldwell

destination.¹⁴⁶ On the other hand, identifiable pieces of machinery in a sugar factory, though not easily removable, were treated as movable.¹⁴⁷

For a thing to become immovable by destination under the last paragraph of Article 468 it is not necessary that it be placed by the owner "upon" the land or building. It suffices that it is "attached" thereto; and this attachment need not be physical.¹⁴⁸ Thus, a servitude may be attached to a plantation, and a tramway may be attached to the servitude.¹⁴⁹ This seems to imply the possibility of immobilization even where land ownership does not coincide with the ownership of the movables. Actually, it indicates that things placed on the land of another may at times be regarded as accessories of immovables. This is a commendable interpretation leading to equitable results in accordance with the policy grounds for immobilization.

(2) *Critique.* Louisiana courts, in determining the question whether a thing is movable or immovable, have encountered a number of analytical difficulties which, in turn, have resulted in seemingly inconsistent determinations. In several instances, courts felt almost compelled to declare that the issue of immobilization should be determined as a fact.¹⁵⁰ It is submitted, however, that the Code provides general criteria for this determination and that Louisiana jurisprudence permits rational analysis. The seemingly conflicting decisions could be reconciled by a realistic analysis of the issues involved in each case.

The issue of immobilization arises, ordinarily, in cases involving claims for acquisition or loss of rights as a result of a close association of a movable with an immovable. This association may take one of two forms: The movable may lose its in-

v. Laurel Grove Co., 175 La. 928, 941, 144 So. 718, 722 (1932).

146. Pan-American Life Ins. Co. v. Reynaud, 4 La. App. 290 (1st Cir. 1926).

147. Receivership of Augusta Co., 134 La. 971, 64 So. 870 (1914). See also Pratt E. & M. Co. v. Cecelia Sugar Co., 135 La. 179, 65 So. 100 (1914).

148. "The requirement of the Code [Article 468] is not necessarily that the movables be 'upon' the tenement, but it suffices that they be 'attached' thereto; and, of course, this attachment need not be physical." Coguenhem v. Trosclair, 137 La. 985, 993, 69 So. 800, 803 (1915). *But see* Comment, *Immovables by Destination*, 5 TUL. L. REV. 90, 104 (1930).

149. Coguenhem v. Trosclair, 137 La. 985, 69 So. 800 (1915). See also New Orleans, Spanish Fort & Lake R.R. Co. v. Delamore, 34 La. Ann. 1225 (1882) (a pavilion connected with plaintiff's land and for its exclusive use, though not on plaintiff's land but upon the land of another person, was an accessory).

150. See, e.g., Receivership of Augusta Co., 134 La. 971, 64 So. 870 (1914); Swoop v. St. Martin, 110 La. 237, 34 So. 426 (1903).

dividuality and may become a component part of an immovable (immovable by nature) or it may retain its individuality despite close association with the immovable (immovable by destination). In the first, the movable should not be susceptible of separate ownership rights and should follow, almost always, the ownership of the immovable. In the second, the movable should, in principle, be susceptible of separate ownership. The question is under which circumstances should rights established on the immovable be extended to include the movable or in which instances should the movable follow the ownership of the immovable. This question arises, particularly, in cases involving vendor's liens, mortgages, sales, and relations between landowners and persons establishing improvements on the premises. Determination of the issue of immobilization in each of these distinguishable situations may be made by reference to *different* considerations. Consequently, a judicial finding that certain things are movables or immovables in these cases is, ordinarily, the statement of a conclusion reached on *other grounds*.

Vendors' liens.

The issue of immobilization is frequently raised as an answer to a vendor's claim for a lien on movables. Apparently, it was once assumed that as to movables immobilized by nature or by destination vendors' liens were extinguished. Thus, in order to protect vendors' interests, certain courts have been reluctant to find that the objects in question became immovables.¹⁵¹ Other courts, however, have declared that vendors' liens were preserved even though the particular objects became immovable by destination¹⁵² or by nature.¹⁵³ According to these holdings,

151. Succession of Sussman, 168 La. 349, 122 So. 62 (1929) (oil burner); Cristina Inv. Corp. v. Gulf Ice Co., 55 So.2d 685 (La. App. 1st Cir. 1952) (ice crusher). Cf. Pan-American Life Ins. Co. v. Reynaud, 4 La. App. 290 (1st Cir. 1926) (materials immobilized; lien lost).

152. Receivership of Augusta Co., 134 La. 971, 64 So. 870 (1914); Hibernia National Bank v. Sarah Planting and Refining Co., 107 La. 650, 31 So. 1031 (1901); Walburn-Swenson Co. v. Darrell, 49 La. Ann. 1044, 22 So. 310 (1897); Carlin v. Gordy, 32 La. Ann. 1285 (1880); Hamilton Co. v. Medical Arts Bldg. Co., 17 La. App. 508, 135 So. 94 (2d Cir. 1931). Cf. Shelly v. Winder, 36 La. Ann. 182 (1884).

153. Tangipahoa Bank & Trust Co. v. Kent, 70 F.2d 139 (5th Cir. 1934), 9 TUL. L. REV. 282 (1935); Cottonport Bank v. Dunn, 21 So.2d 525 (La. App. 1st Cir. 1945); Davis-Wood Lumber Co. v. Ins. Co. of North America, 154 So. 760 (La. App. 1st Cir. 1934) (the court seemed to indicate that a vendor's lien on materials used in the construction of a house was not lost by incorporation). *But see* Monroe Auto & Supply Co. v. Cole, 6 La. App. 337 (2d Cir. 1927) (vendor's lien lost with regard to things immobilized by nature); Comment, *Immovables by Destination*, 5 TUL. L. REV. 90, 103, n. 38 (1930).

the issue of immobilization becomes *immaterial* in connection with vendors' liens: whether liens are preserved or lost is decided on other grounds. In that regard, distinction should be made between cases involving vendors and vendees or their successors in title and those involving third parties. In the relations between vendors and vendees facility of removal and possibility of identification of the things concerned seem to be determinative. If these tests are met, the lien is preserved.¹⁵⁴ In a leading case, the Louisiana Supreme Court held that possibility of identification alone suffices; facility of removal should be immaterial.¹⁵⁵ When the things are no longer identifiable, and, according to some cases, when the things cannot be removed without excessive expense or effort,¹⁵⁶ the lien is lost. In the event of transfer of the immovable with its immobilized accessories to third parties of good faith the lien is lost.¹⁵⁷ The vendor may protect his interests by recordation¹⁵⁸ or by intervention¹⁵⁹ prior to the transfer.

154. See *Cristina Inv. Corp. v. Gulf Ice Co.*, 55 So.2d 685 (La. App. 1st Cir. 1951 (ice crusher)); *Cottonport Bank v. Dunn*, 21 So.2d 525 (La. App. 1st Cir. 1945); *Hamilton Co. v. Medical Arts Bldg. Co.*, 17 La. App. 508, 135 So. 94 (2d Cir. 1931); *Lapene v. McCan*, 28 La. Ann. 749 (1876). See also *Baldwin v. Young*, 47 La. Ann. 1466, 17 So. 883 (1895).

155. *Receivership of Augusta Co.*, 134 La. 971, 64 So. 870 (1914) (vendor's lien preserved although pieces of machinery could not be detached without disabling factory). See also *Pratt E. & M. Co. v. Cecelia Sugar Co.*, 135 La. 170, 65 So. 100 (1914); *Caldwell v. Laurel Grove Co.*, 175 La. 928, 144 So. 718 (1932) (railroad tracks); *Tangipahoa Bank & Trust Co. v. Kent*, 70 F.2d 139 (5th Cir. 1934). *But cf. Monroe Auto & Supply Co. v. Cole*, 6 La. App. 337 (2d Cir. 1927); "Doors, window sash and blinds could easily be identified by the vendor, but he loses his privilege on them when used in the construction of a building, even though susceptible of identification"; *supra* note 147.

156. See *supra* note 145; Comment, *Immovables by Destination*, 5 TUL. L. REV. 90, 103, n. 38 (1930).

157. See LA. CIVIL CODE art. 3228 (1870); *Citizens' Bank v. Bellamy Lumber Co.*, 140 La. 497, 73 So. 308 (1916); *Dreyfous v. Cade*, 138 La. 297, 70 So. 231 (1915); *Davis-Wood Lumber Co. v. Insurance Co. of North America*, 154 So. 760 (La. App. 1st Cir. 1934); *Hamilton Co. v. Medical Arts Bldg. Co.*, 17 La. App. 508, 135 So. 94 (2d Cir. 1931); *Pan-American Life Ins. Co. v. Reynaud*, 4 La. App. 290 (1st Cir. 1926). The rule does not apply where ownership of the movable is reserved. See *Louisiana Ry. & Nav. Co. v. Cash Grocery & Sales Co.*, 150 So. 57 (La. App. 1st Cir. 1933). The lien is also preserved in case of seizure or sale of the immovable by creditors of the landowner. See *Shelly v. Winder*, 36 La. Ann. 182 (1884); *Caldwell v. Laurel Grove Co.*, 175 La. 928, 144 So. 718 (1932).

158. *Hearne v. Victoria Lbr. Co.* 131 La. 646, 60 So. 22 (1912) (recorded lien passes with the property); *Carlin v. Gordy*, 32 La. Ann. 1285 (1880) (materials immobilized but vendor's lien preserved). Recordation is unnecessary where title to the movable is claimed by creditors of the landowner. *Caldwell v. Laurel Grove Co.*, 175 La. 928, 144 So. 718 (1932). Recordation is also unnecessary where ownership of the movable is reserved. *Louisiana Ry. & Nav. Co. v. Cash Grocery & Sales Co.*, 150 So. 57 (La. App. 1st Cir. 1933).

159. *Pan-American Life Ins. Co. v. Reynaud*, 4 La. App. 290 (1st Cir. 1926); *Tangipahoa Bank & Trust Co. v. Kent*, 70 F. 2d 139 (5th Cir. 1934).

A few final observations may be in point. Perhaps the law should distinguish between instances involving immovables by nature and immovables by destination. It would seem that, with regard to the former, the vendor's lien, as a distinct real right, should be lost; as a procedural privilege, it could persist.¹⁶⁰ But with regard to immovables by destination there is no reason why a vendor's lien both as a real right and a procedural privilege should not be preserved against the vendee and his successors in title always and against third parties if recorded.¹⁶¹

Mortgage, sale, and other transfers.

Question frequently arises as to which movables, not mentioned specifically, are covered by a real mortgage or included in the transfer of title to an immovable. The general rule seems to be that a real mortgage extends to movables immobilized by nature or by destination¹⁶² and that these things follow the

160. *Cf. supra* note 81.

161. *Cf. La. R.S. 9: 5357* (1950).

162. See, e.g., *Coguenhem v. Trosclair*, 137 La. 985, 69 So. 800 (1915) (servitude and tramway); *Borah & Landen v. O'Neill*, 121 La. 733 (1908) (mules and implements in plantation); *New Orleans Canal & Banking Co. v. Leeds & Co.*, 49 La. Ann. 123, 21 So. 168 (1896) (materials in foundry); *Breaux v. Ganucheau*, 3 La. App. 481 (1st Cir. 1925) (dough-mixer); *Morton Trust Co. v. American Salt Co.*, 149 Fed. 540 (E.D. La. 1906) (machinery and implements in a salt mine). See also *Citizens' Bank v. Bellamy Lumber Co.*, 140 La. 497, 73 So. 308 (1916); *Dreyfous v. Cade*, 138 La. 297, 70 So. 231 (1915); *Brauds' Sugars v. Williams Richardson Co.*, 15 La. App. 616, 132 So. 670 (1st Cir. 1931); *St. Mary Iron Works v. Community Mfg. Enterprise*, 9 La. App. 743 (1st Cir. 1929); *In re Liquidation of Union Planting & Mfg. Co.*, 10 La. App. 744, 121 So. 362 (Orl. Cir. 1929). The parties cannot validly contract that property acquired in the future will be included in a real mortgage. See *State of Louisiana v. Atlas Pipeline Corp.*, 33 F. Supp. 160 (W.D. La. 1940); *LA. CIVIL CODE arts. 3288, 3308* (1870). However, things placed on mortgaged land, if immobilized by nature or destination, become subject to the mortgage. See *Federal Land Bank v. Cook*, 179 La. 857, 155 So. 249 (1934) (a residence); *Coltharp v. West*, 127 La. 430, 53 So. 675 (1910) (a residence); *Weil v. Lapeyre*, 38 La. Ann. 303 (1886) (implements and improvements); *Bass v. Southern States Bottle Co.*, 17 La. App. 304, 136 So. 159 (2d Cir. 1931) (machinery in bottle factory); *Bank of Winnfield v. Olla State Bank*, 11 La. App. 640, 124 So. 621 (2d Cir. 1929) (pumping rig in oil field). *Cf. Campbell v. Hammond Box & Veneer Co.*, 167 So. 111 (La. App. 1st Cir. 1936) (office furniture and equipment in manufacturing plant); *Liquid Carbonic Corp. v. Crow*, 177 La. 379, 148 So. 442 (1933) (soda fountain). In order to have a herd of cattle included in a real mortgage as immovable by destination, *La. Acts 1914, No. 169*, required that cattle be "described as near as may be by kind, age, color, marks, brand and such other indicia by which live stock is identified." *Alliance Trust Co. v. Gueydan Bank*, 162 La. 1062, 111 So. 421 (1927); *Vidalia Bank & Trust Co. v. Purcell*, 8 La. App. 39 (2d Cir. 1928). *La. Acts 1914, No. 169*, is superseded by *La. Acts 1934, No. 199, LA. R.S. 9:5104* (1950) which provides that: "No mortgage placed on rural real estate subsequent to July 22, 1934, shall affect the livestock and implements of husbandry used in farming the property nor the machinery likewise used and not permanently attached to the soil."

ownership of the soil in all cases.¹⁶³ The finding that a particular object has become immobilized is thus determinative. In that regard, the standard tests for immobilization are frequently applied by the courts, with results not always consistent if examined in the abstract.

Distinction, however, should be made between immovables by nature and immovables by destination. It would seem that a real mortgage and a transfer of an immovable should, ordinarily, include all accessories classified as immovable by nature. These things form an economic unity with the ground and, in principle, should not be susceptible of separate real rights. Party intention should carry little weight; the law should not encourage separate ownership of the ground and its accessories.¹⁶⁴ The law, perhaps, should not recognize a mortgage on the ground to the exclusion of buildings and improvements, or a real mortgage on buildings to the exclusion of the ground.¹⁶⁵ Reservation of title by the vendor of an immovable to, or separate sale of, things such as standing crops and buildings should necessarily mean that these things are regarded as movables and sooner or later should be removed from the ground. There is, no doubt, then, that in this group of cases courts will be inclined to clas-

163. See *Federal Land Bank v. Cook*, 179 La. 857, 155 So. 249 (1934) (residence); *Bass v. Southern States Bottle Co.*, 17 La. App. 304, 136 So. 159 (2d Cir. 1931) (machinery in bottle factory); *Scott v. Brennan*, 161 La. 1017, 109 So. 822 (1926) (hot water heater); *Scovel v. Shadyside Co.*, 137 La. 918, 69 So. 745 (1915) (chandeliers, bathtubs, gas outfits, mantel pieces, grillwork); *Coguenhem v. Troclair*, 137 La. 985, 69 So. 800 (1915) (servitude and tramway); *Hearne v. Victoria Lbr. Co.*, 131 La. 646, 60 So. 22 (1912) (materials incorporated in building); *Coltharp v. West*, 127 La. 430, 53 So. 675 (1910) (residence); *Maginnis v. Union Oil Co.*, 47 La. Ann. 1489, 18 So. 459 (1895) (machinery intended to be dismantled); *Polhman v. DeBouchel*, 32 La. Ann. 1158 (1880) (buildings and improvements); *Lapene v. McCan*, 28 La. Ann. 749 (1876) (utensils and animals on plantation); *Folger v. Kenner*, 24 La. Ann. 436 (1872) (a safe); *Theurer v. Nautre*, 23 La. Ann. 749 (1871) (machinery in oil factory); *Colligan v. Benoit*, 13 La. App. 612, 128 So. 688 (1st Cir. 1930) (standing crop); *Mackie v. Smith*, 5 La. Ann. 717 (1850) (mirrors). In a number of cases, however, movable things were held not to be included in the sale of an immovable. See *Liquid Carbonic Corp. v. Crow*, 177 La. 379, 148 So. 442 (1933) (soda fountain); *Willis v. Thomason*, 1 La. App. 313 (2d Cir. 1924) (car and trucks); *McGuigin v. Boyle*, 1 Orl. App. 164 (La. App. Orl. Cir. 1904) (chandeliers); *Nimmo v. Allen*, 2 La. Ann. 451 (1847) (corn, staves, building materials); *Key v. Woolfolk*, 6 Rob. 424 (La. 1844) (bricks for sale); *Edwards v. S.&R. Gas Co.*, 73 So.2d 590 (La. App. 2d Cir. 1954) (butane gas tank); *Kelieber v. Gravois*, 26 So.2d 304 (La. App. Orl. Cir. 1946) (venetian blinds).

164. See *Lighting Fixture Supply Co. v. Pacific Fire Insurance Co.*, 176 La. 499, 512, 146 So. 35, 39 (1933): "It would seem anomalous if we should maintain that the office fixtures, shelving, mezzanine floor, and other so-called betterments and improvements placed by the lessee in the leased premises became immovable by nature, and yet remained the property of the lessee." (concurring opinion by C. J. O'Niell). Cf. *Meyer v. Mathis*, 42 La. Ann. 471, 7 So. 605 (1890) (batture and alluvion are inseparable component parts of the ground).

165. Cf. *Bank of Terrebonne v. Engeron*, 140 So. 58 (La. App. 1st Cir. 1932).

sify buildings and component parts thereof as immovables by nature, and consider them as included in the acts of mortgage or transfer.

Whether immovables by destination are covered by a real mortgage or whether these are included in the transfer of an immovable are issues which should be determined according to considerations varying with the parties involved in litigation. In the relations between mortgagor and mortgagee, or vendor and vendee, and their successors in title, reference to party intention may be determinative: immovables by destination are susceptible of separate ownership and may be encumbered or transferred separately from the ground. The rule that immovables by destination follow the ground should be regarded as a rule of interpretation, applicable in the absence of other party intention.¹⁶⁶ The tests of immobilization in these cases may be either service and improvement of the ground or building, or permanent attachment, but as indicative of an intention that certain movables should, according to the wish of the owner, follow the immovable.¹⁶⁷ Where interests of third parties of good faith are involved, objective considerations should control. In the absence of specific mention in the recorded acts of mortgage or sale, courts very rarely decide that movables follow the immovable as immobilized by destination. Typically, in contests between mortgagees claiming title to movables as included in the mortgage by virtue of Article 465 (1), and persons claiming the same movables as purchasers of good faith,¹⁶⁸ as chattel-mortgagees,¹⁶⁹ or as having a vendor's lien,¹⁷⁰ the courts decide

166. *Cf. Stanfa v. Bynum*, 37 F. Supp. 962, 966 (W.D. La. 1941): "Article 464 is only applicable to contracts where parties have remained silent on the character of the thing sold." See also *Willis v. Thomason*, 1 La. App. 313, 315 (2d Cir. 1924): "The burden was on plaintiffs to show that the automobile and trucks in question were included in the act of mortgage." *Cf. Prevot v. Courtney*, 241 La. 313, 129 So.2d 1 (1961); *Smith v. Bell*, 224 La. 1, 68 So.2d 737 (1954).

167. See *Scovel v. Shadyside Co.*, 137 La. 918, 921, 69 So. 745, 746 (1915) (the "intention" of the owner was that certain movables "should be permanently attached for the service and convenience of the house").

168. The claim of a purchaser in good faith, however, is not superior to that of a chattel-mortgagee. *Liquid Carbonic Corp. v. Crow*, 177 La. 379, 148 So. 442 (1933).

169. *Day v. Goff*, 2 La. App. 75 (2d Cir. 1925) (office furniture and equipment); *Woodward v. American Exposition Ry.*, 39 La. Ann. 566 (1887). A subsequent chattel mortgage was also upheld against the claim of a prior real mortgagee in *Willis v. Thomason*, 1 La. App. 313 (2d Cir. 1924) (automobile and trucks). Today, the issue is controlled by LA. R.S. 9:5357 (1950). *But cf. Bank of Winnfield v. Olla State Bank*, 11 La. App. 640, 124 So. 621 (2d Cir. 1929) (real mortgage covers equipment immobilized by destination though subject to chattel mortgage).

170. *Caldwell v. Laurel Grove Co.*, 175 La. 928, 144 So. 718 (1932); *Receiver-*

the issue of immobilization against the mortgagee. Similarly, in contests between persons claiming an unrecorded vendor's lien and the vendee of an immovable in good faith, the courts afford protection to the vendee.¹⁷¹

Improvements by persons other than the landowner.

Immobilization either by nature or by destination is frequently invoked as determinative of the question of ownership of buildings and improvements placed on the ground by persons other than the landowner. In the past it was argued that ownership of the ground carried with it all accessories regarded as immovable by nature,¹⁷² and courts, in order to reach desirable results, were inclined at times to stretch the tests of immobilization. Fortunately, the issue of immobilization by nature under Articles 464 and 465 may be regarded today as divorced from the issue of ownership.¹⁷³ Accordingly, persons growing crops or erecting edifices are protected, and in their relations with the landowner are regarded as owners of the crops gathered or edifices erected.¹⁷⁴ But against third parties deriving title from the landowner, these persons are protected only if their title to the crops or buildings is recorded.¹⁷⁵ With regard to immovables by destination, the question as to what belongs to the landowner and what to other persons is ordinarily a matter of contractual interpretation.¹⁷⁶ In the absence of a governing con-

ship of Augusta Sugar Co., 134 La. 971, 64 So. 870 (1914); *Shelly v. Winder*, 36 La. Ann. 182 (1884); *Carlin v. Gordy*, 32 La. Ann. 1285 (1880); *Cristina Inv. Corp. v. Gulf Ice Co.*, 55 So.2d 685 (La. App. 1st Cir. 1951); *Hamilton Co. v. Medical Arts Bldg. Co.*, 17 La. App. 508, 135 So. 94 (1931). See also *Baldwin v. Young*, 47 La. Ann. 1466, 17 So. 883 (1895). *But cf. Swoop v. St. Martin*, 110 La. 237, 34 So. 426 (1903); *Monroe Auto & Supply Co. v. Cole*, 6 La. App. 337 (2d Cir. 1927). In that regard, it has been stated that the Louisiana courts seem to disregard Article 2266 of the Civil Code. See Note, 8 TUL. L. REV. 280, 282 (1933). In France, in contests between vendors claiming a lien and a mortgagee, the latter prevails. It is argued that recognition of a vendor's lien in these circumstances would be contrary to the Code and the mortgage system. See 12 PLANIOL ET RIPERT, TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS 220 (2d ed. 1953).

171. See *supra* notes 158, 159. As to contests between ordinary and mortgage creditors of the owner of the immovable, see *New Orleans Canal and Banking Co. v. Leeds & Co.*, 49 La. Ann. 123, 21 So. 168 (1897) (ordinary creditors prevailed; things not immobilized); *Breaux v. Ganucheau*, 3 La. App. 481 (1st Cir. 1925) (mortgage creditor prevailed; things immobilized). As to contests between vendors and vendees of an immovable, see *supra* note 163.

172. See *supra* text at note 26.

173. See *supra* text at note 44.

174. See *supra* text at notes 26, 46.

175. See *supra* text at notes 29, 50.

176. See *Gauche Realty v. Jansen*, 158 La. 379, 104 So. 122 (1925) (marble wainscoting, plumbing, and electric light fixtures, became property of the lessor

tract, the owner of the improvements should always be permitted to remove them¹⁷⁷ and the issue of immobilization should be immaterial. And in case the landowner transfers title to these things — which he does not own — to innocent third parties, the issue of immobilization should be equally immaterial.

Incorporeal Immovables

Article 470 of the Civil Code states that "incorporeal things, consisting only in a right, are not of themselves strictly susceptible of the quality of movables or immovables; nevertheless they are placed in one or the other of these classes, according to the object to which they apply."¹⁷⁸ The following Article 471 declares that the usufruct and the use of immovable things, a servitude established on an immovable estate, and an action for the recovery of an immovable estate or an entire succession "are considered as immovable from the object to which they apply."¹⁷⁹

From the viewpoint of strict logic, the distinction between movables and immovables should be applied, in principle, to corporeal things only.¹⁸⁰ In the French Civil Code,¹⁸¹ however, and in the Louisiana Civil Code, incorporeal things (namely rights) are classified for a number of purposes as either movable or immovable. The distinction of rights into movables and immovables is ordinarily based on the nature of the thing which is the object of the right, and, at times, is an arbitrary choice. Adoption of this distinction by the French Civil Code and the Louisiana Civil Code was the result of departure from Roman law standards in

upon termination of the lease as "permanent improvements" according to contract); *Morris v. Pratt*, 114 La. 98, 38 So. 70 (1905) ("embellishments and decorations" became property of the lessor upon the termination of the lease according to contract); *Boykin v. Boykin*, 4 La. App. 210 (2d Cir. 1926) ("Delco lighting plant" was "an improvement" included in succession settlement). See also *Lighting Fixture Supply Co. v. Pacific Fire Ins. Co.*, 176 La. 449, 146 So. 35 (1933).

177. See *Louisiana Ry. & Nav. Co. v. Cash Grocery & Sales Co.*, 150 So. 57 (La. App. 1st Cir. 1933). Cf. *Stanfa v. Bynum*, 37 F. Supp. 962 (W.D. La. 1941).

178. Cf. LA. CIVIL CODE art. 462 (1825); LA. CIVIL CODE 1808 (no corresponding article). See also Comment, *Incorporeal Immovables*, 19 TUL. L. REV. 610 (1945).

179. Cf. LA. CIVIL CODE art. 463 (1825); LA. CIVIL CODE p. 98, art. 22 (1808).

180. See SOHM-MITTEIS-WENGER, INSTITUTIONEN DES RÖMISCHEN RECHTS 256 (1923); WEISS, INSTITUTIONEN DES RÖMISCHEN PRIVATRECHTS 128 (1949); MONIER, MANUEL ÉLÉMENTAIRE DE DROIT ROMAIN 341, 353 (1947).

181. See FRENCH CIVIL CODE art. 516. Cf. GREEK CIVIL CODE art. 949: "Whenever distinction is made in the law or in a juridical act between the immovable property of a person, as a whole, and his movable property, in the immovables are included the usufruct and predial servitudes on immovables, and in the movables all obligations." (Transl. by writer.)

the fields of successions and community property.¹⁸² It was thought necessary that, in connection with transfer of property rights in these two broad fields, certain rights should be included in the category of immovables. Naturally, the distinction could have been avoided by an enumeration of these rights in the part of the Code dealing with these institutions.

Be that as it may, the interpretation and application of Article 471 involves a number of difficult questions. It is not clear, for example, whether the list of incorporeal immovables is exclusive or merely indicative. The view that any incorporeal not listed in Article 471 is *movable* may be supported by reference to Article 475, which indicates that the category of things "movable" is a residual one consisting of all things, whether corporeal or incorporeal, not classified as immovable by nature or by disposition of law.¹⁸³ On the other hand, the view that the list in Article 471 is merely indicative may be supported by reference to other considerations. The first two groups of incorporeal immovables listed in Article 471 include all fragments of the right of ownership over immovables which can form the object of independent real rights in Louisiana.¹⁸⁴ The right of ownership itself is conspicuously missing from the enumeration of incorporeal immovables. The omission can be explained as the result of a tendency to overlook the obvious fact that the owner of a corporeal thing has not only control over its body but also a *right* of ownership over it.¹⁸⁵ But if fragments of the right of ownership over immovables, such as use, usufruct, and servitudes, are regarded as incorporeal immovables in Louisiana, it would be hardly tenable to regard the sum total of these fragments as something different in nature. Characterization of the right of ownership over immovables as an incorporeal immovable is, indeed, important. It is in this way that full proprietary protection may be accorded to the owner of an immovable, in connection with the use and enjoyment of his property.¹⁸⁶

182. See 3 PLANIOL ET RIPERT, TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS 70 (2d ed. 1952).

183. LA. CIVIL CODE art. 475 (1870); *infra* text at note 245.

184. Cf. LA. CIVIL CODE art. 646 (1870); Comment, *Incorporeal Immovables*, 19 TUL. L. REV. 610, 613 (1945). See *Wemple v. Nabors Oil and Gas Co.*, 154 La. 483, 97 So. 666 (1923); *Iberville Land Co. v. Texas Co.*, 128 So. 304 (La. App. 1st Cir. 1930).

185. See 3 PLANIOL ET RIPERT, TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS 96 (2d ed. 1952); 9 DEMOLOMBE, TRAITÉ DE LA DISTINCTION DES BIENS 19 (1874-82).

186. Cf. *Arcadia Bonded Warehouse Co. v. National Union Fire Ins. Co.*, 206 La. 681, 19 So.2d 514 (1944).

French commentators elaborating on corresponding provisions in the French Civil Code have not hesitated to extend the list so as to include all *real rights* on immovables. Thus, the rights of usufruct, use, habitation, predial servitudes, emphyteusis, and ownership are regarded in France as incorporeal immovables.¹⁸⁷ Assuming that the list in Article 471 may be expanded in Louisiana, it is still a difficult question to determine which other rights could be regarded as incorporeal immovables. All recognized real rights in Louisiana have been included in Article 471, with the exception of the right of ownership (discussed hereinabove) and the right of habitation. Habitation has no practical significance in Louisiana today, and, in any case, it may be regarded as included in the enumeration: habitation is the use of a dwelling house.¹⁸⁸ From the viewpoint of economic considerations and actual importance, the most interesting question is whether mineral rights are incorporeal immovables within the meaning of Article 471.¹⁸⁹

Mineral rights in Louisiana are founded upon a non-ownership theory.¹⁹⁰ Contracts granting mineral rights give merely the right to search for and reduce to possession all minerals found.¹⁹¹ Mineral rights may derive from contracts of sale, reservation, or lease.¹⁹² Sale and reservation of mineral rights have been almost consistently classified as servitudes,¹⁹³ while mineral leases were treated for many years under various classifications. The Louisiana Supreme Court declared in 1922 that a mineral lease was a "personal servitude in the nature of a limited usu-

187. See 3 PLANIOL ET RIPERT, *TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS* 95 (2d ed. 1952); 1 COLIN, *CAPITANT, ET JULLIOT DE LA MORANDIÈRE, TRAITÉ DE DROIT CIVIL* 835 (11th ed. 1953).

188. See LA. CIVIL CODE arts. 626-628 (1870).

189. See DAGGETT, *MINERAL RIGHTS IN LOUISIANA* 27 (1939).

190. See *Frost-Johnson Lumber Co. v. Salling's Heirs*, 150 La. 756, 91 So. 207 (1922); *Harwood Oil & Mining Co. v. Black*, 240 La. 641, 651, 124 So.2d 764, 767 (1960): "The usual oil and gas lease 'is a contract of letting and hiring within the meaning of the codal articles, and . . . the lessee in such a mineral lease obtains an obligatory or personal right only, and not a servitude or a real right in the land': *Arnold v. Sun Oil Co.*, 218 La. 50, 48 So.2d 401."

191. See *Perkins v. Long-Bell Petroleum Co.*, 227 La. 1044, 81 So.2d 389 (1955); *Frost-Johnson Lumber Co. v. Salling's Heirs*, 150 La. 756, 91 So. 207 (1922).

192. See *Wemple v. Nabors Oil & Gas Co.*, 154 La. 483, 97 So. 666 (1923) (sale); *Frost-Johnson Lumber Co. v. Salling's Heirs*, 150 La. 756, 91 So. 207 (1922) (reservation); *Logan v. State Gravel Co.*, 158 La. 105, 103 So. 526 (1925) (lease).

193. See *Starr Davis Oil Co. v. Webber*, 218 La. 231, 48 So.2d 906 (1950); *Holcombe v. Superior Oil Co.*, 213 La. 684, 35 So.2d 457 (1948). Subsequent sale of reserved minerals, however, is the sale of an "incorporeal right" and not the sale of a servitude. See *Deas v. Lane*, 202 La. 933, 13 So.2d 270 (1943).

fruct."¹⁹⁴ Thus, mineral leases could, perhaps, qualify as incorporeal immovables either "as usufruct" or "as servitudes." In subsequent cases, however, the Supreme Court announced that mineral leases had never been defined to be a true usufruct¹⁹⁵ so as to fall within the first group of incorporeal immovables under Article 471, and that this type of servitude could not be included within the second group of incorporeal immovables under Article 471 because it did not attach to the immovable so as to pass with it.¹⁹⁶ It seems, however, that in a number of cases, and for several purposes, mineral leases were treated in Louisiana as servitudes and as immovable rights.¹⁹⁷

But in *Gulf Refining Co. v. Glassell*,¹⁹⁸ decided in 1936, the Supreme Court repudiated all prior inconsistent cases and declared that mineral leases were personal rights rather than servitudes, subject to the code provisions governing ordinary leases. In response to this decision, the Louisiana legislature passed Act 205 of 1938 defining and classifying mineral leases as real rights and as incorporeal immovable property.¹⁹⁹ When the act was attacked as involving a retroactive change in substantive property law, the Louisiana Supreme Court upheld its constitutionality on the ground that the purpose of the act was merely to give a procedural remedy.²⁰⁰ The act was amended in 1950 to include

194. See *Palmer Corp. of Louisiana v. Moore*, 171 La. 774, 782, 132 So. 229, 231 (1931); *Frost-Johnson Lumber Co. v. Salling's Heirs*, 150 La. 756, 780, 91 So. 207, 216 (1922). See also *State ex rel. Bush v. United Gas Pub. Serv. Co.*, 185 La. 496, 169 So. 523 (1936); *Federal Land Bank v. Mulhern*, 180 La. 627, 157 So. 370 (1934); *Wiley v. Davis*, 164 La. 1090, 115 So. 280 (1928).

195. See *Sample v. Whitaker*, 172 La. 722, 135 So. 38 (1931). In this case, however, the question of the nature of a mineral lease as movable or immovable was not before the court.

196. See *Wilkins v. Nelson*, 155 La. 807, 99 So. 607 (1924). *Cf.* *Wilkins v. Nelson*, 161 La. 437, 108 So. 875 (1926).

197. See *Hamilton v. Glassel*, 57 F.2d 1032 (5th Cir. 1932); *Noble v. Plouf*, 154 La. 429, 97 So. 599 (1923) (sale of lease subject to the rules governing sale of immovable property). See also *Arent v. Hunter*, 171 La. 1059, 133 So. 157 (1931); *Wiley v. Davis*, 164 La. 1090, 115 So. 280 (1928). *Cf.* *State ex rel. Bush v. United Gas Pub. Serv. Co.*, 185 La. 496, 498, 169 So. 523, 524 (1936): "The fact that an oil and gas lease is one of servitude is no longer a debatable question in this state."

198. 186 La. 190, 171 So. 846 (1936). See also *Ferguson v. Britt*, 191 La. 371, 185 So. 287 (1938); *Tomlinson v. Thurmon*, 189 La. 959, 181 So. 458 (1938); *Tyson v. Spearman*, 190 La. 871, 183 So. 201 (1938); *Posey v. Fargo*, 187 La. 122, 174 So. 175 (1937).

199. La. Acts 1938, No. 205, LA. R.S. 9:1105 (1950); *Hebert & Lazarus, The Louisiana Legislation of 1938*, 1 LOUISIANA LAW REVIEW 80, 100 (1938); *Moses, A Short History of the Development of the Statutory Definition and Classification of an Oil, Gas and Mineral Lease as a Real Right*, 13 TUL. L. REV. 416 (1939).

200. *Tyson v. Surf Oil Co.*, 195 La. 248, 196 So. 336 (1940). In most subsequent cases, the courts, though recognizing the lessee's rights as being "real," consistently held that Act 205 did not confer new substantive rights but was merely "remedial and procedural" in character. See *Wier v. Grubb*, 215 La. 967, 41

a declaration that it "shall be considered as substantive as well as procedural."²⁰¹ It would seem that the purpose of the amendment was to classify mineral leases as real rights and incorporeal immovables for *all* purposes. The Supreme Court, however, has indicated that this amendment did not convert mineral leases from personal contracts into immovable rights.²⁰² The nature of mineral leases as personal contracts remained unaffected, but these leases are considered as real rights so that lessees may *benefit* from the application of real property laws.²⁰³ This approach may be criticized as *contra legem* interpretation and as conducive to confusion. In any case, the question of the nature of mineral leases may be regarded as settled. Though personal contracts in nature, mineral leases are treated as immovable property in connection with issues of procedure always,²⁰⁴ and in connection with issues of substantive law in a number of situations specified by jurisprudence and legislation.²⁰⁵ Expansion of Article 471 to include rights other than

So.2d 846 (1949); *Allison v. Maroun*, 193 La. 286, 190 So. 408 (1939); *Payne v. Walmsley*, 185 So. 88 (La. App. 2d Cir. 1938). Thus, despite the 1938 enactment, mineral leases continued to be treated as contracts creating only personal obligations governed by the code articles on lease. See *Arnold v. Sun Oil Co.*, 218 La. 50, 48 So.2d 369 (1950) (mineral lessee not protected by the recordation statutes). The case was overruled by legislative action. See La. Acts 1950, No. 7, LA. R.S. 9:2721-24 (1950). See also *Coyle v. North Am. Oil Consol.*, 201 La. 99, 9 So.2d 473 (1942) (cancellation of lease); *Amerada Petroleum Corp. v. Reese*, 195 La. 359, 196 So. 558 (1940) (partition). The last case was overruled by the amendment of Article 741 of the Civil Code. See *infra* note 205. *But cf. Davidson v. Midstates Oil Corp.*, 211 La. 882, 31 So.2d 7 (1947); *Arkansas Louisiana Gas Co. v. R. O. Roy & Co.*, 196 La. 121, 198 So. 768 (1940) (leases incorporeal immovable property within the meaning of Article 471 of the Civil Code for purposes of formalities of transfer); *Alison v. Wideman*, 210 La. 314, 26 So.2d 826 (1946) (mineral lease an incorporeal immovable for purposes of petitory action); *Payne v. Walmsley, supra* (mineral lease an incorporeal immovable for purposes of venue).

201. La. Acts 1950, No. 6, LA. R.S. 9:1105 (1950). See also LA. CODE OF CIVIL PROCEDURE art. 3664 (1960).

202. See *Harwood Oil & Mining Co. v. Black*, 240 La. 641, 124 So.2d 764 (1960); *Tinsley v. Seismic Explorations, Inc.*, 239 La. 23, 117 So.2d 897 (1960); *Reagan v. Murphy*, 235 La. 529, 105 So.2d 210 (1958).

203. See *Reagan v. Murphy*, 235 La. 529, 105 So.2d 210 (1958).

204. See *supra* notes 200, 201. See also LA. CODE OF CIVIL PROCEDURE art. 3664 (1960). However, in spite of the declaration of this article that the mineral lessee "owns a real right," there is still room for doubt that the mineral lessee will enjoy in Louisiana the full protection accorded by the real actions. See Comment, *The Louisiana Mineral Lease as a Contract Creating Real Rights*, 35 TUL. L. REV. 218, 229 (1960).

205. Mineral leases are subject to mortgage as immovable property. See *infra* note 215. Transfer of leases and of mineral interests must be made by written contract. See *supra* note 200. The rights of the mineral lessee in a judicial partition by licitation are, in effect, equivalent to real rights. See LA. CIVIL CODE art. 741 (1870), as amended by La. Acts 1940, No. 336, and La. Acts 1950, No. 521; *Nabors, Report to the Mineral Law Committee of the Louisiana State Law Institute*, 26 TUL. L. REV. 172, 180 (1952). The mineral lease operates as a "real" right in connection with the problem of reliance on public records. See

mineral leases does not seem to be desirable. In one case the Louisiana Supreme Court suggested that the lessee's right to the use and enjoyment of improvements placed by him on leased premises was an immovable right.²⁰⁶ This declaration, made without reference to Article 471, does not seem to be compatible with the structure of the Louisiana Civil Code and an unbroken line of jurisprudence interpreting Article 471.

The third group of incorporeal immovables listed in Article 471 includes actions "for the recovery of an immovable or an entire succession." All actions directed to the recovery of an immovable and not only the petitory action should be regarded as incorporeal immovables.²⁰⁷ This conclusion was reached in France by courts and commentators elaborating on the corresponding provision of the French Civil Code.²⁰⁸ The Louisiana Supreme Court seems inclined to apply a rather narrow construction. The right of a universal legatee claiming the movable part

LA. R.S. 9:2721-24 (1950); *Serio v. Chadwick*, 66 So.2d 9 (La. App. 2d Cir. 1953). With regard to geophysical trespass, the owner of a mineral servitude (deriving his rights from a sale) enjoys full proprietary protection. See *Holcombe v. Superior Oil Co.*, 213 La. 684, 35 So.2d 457 (1948). But a mineral lessee apparently enjoys less than full proprietary protection. See *Tinsley v. Seismic Explorations, Inc.*, 239 La. 23, 117 So.2d 897 (1960). It would seem that the *Tinsley* case is overruled by Article 3664 of the Code of Civil Procedure. Finally, the mineral lease does not create a real right with regard to the rules governing liberative prescription. See *Reagan v. Murphy*, 235 La. 529, 105 So.2d 210 (1958). The reasoning of the *Reagan* case has been disapproved by the legislature, at least insofar as it may bear on real actions. See LA. CODE OF CIVIL PROCEDURE art. 3664 (1960), Comment (a). The mineral lease in Louisiana may thus be regarded as a hybrid contract at times "governed by the codal provisions on lease, sale, or servitude, separately or in combination, and at other times by specific statutes enacted by the Legislature." Comment, *The Louisiana Mineral Lease as a Contract Creating Mineral Rights*, 35 TUL. L. REV. 218 (1960).

206. *Lighting Fixture Supply Co. v. Pacific Fire Ins. Co.*, 176 La. 499, 146 So. 35, 39 (1933) ("the only thing owned by the lessee . . . was his immovable right of use and enjoyment in the improvements"). The right to use pews in a church has been also classified as an incorporeal immovable. See *Succession of Gamble*, 23 La. Ann. 9 (1871). See also *Penny v. Christmas*, 7 Rob. 481 (La. 1844) (money to be invested in lands treated as land for purposes of succession).

207. See LA. CODE OF PRACTICE art. 12 (1870) ("Although incorporeal rights be not in reality movables nor immovables, they are nevertheless placed by law in one of these two classes. Actions tending to recover an immovable or a real right, or an universality of things, such as an inheritance, are considered as real; while actions for the recovery of a movable or of a sum of money, though accompanied with a mortgage, are not real actions."); *Alison v. Wideman*, 210 La. 314, 26 So.2d 826 (1946) (the owner of a real right or incorporeal immovable property could resort to the petitory action against party in possession of immovable property); *Stephens v. Jones*, 14 La. App. 113, 129 So. 555 (2d Cir. 1930) (fixing boundary is a real right); *Weber v. Ory*, 14 La. Ann. 537 (1859) (the right of action to compel partition of immovable is an immovable right). Cf. LA. CODE OF CIVIL PROCEDURE art. 422 (2) (1960): "A real action is one brought to enforce rights in, to, or upon immovable property." See also LA. CODE OF CIVIL PROCEDURE arts. 3651, 3655 (1960).

208. See 3 PLANIOL ET RIPERT, TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS 97-98 (2d ed. 1952).

of an entire succession²⁰⁹ and the right of presumptive heirs to enter into possession of revenues of an absentee's estate²¹⁰ have been characterized as movable. But the right of an heir entitled to claim an entire succession composed only of movables should be classified as an incorporeal immovable.²¹¹

Article 471 does not define the practical consequences of the classification of a thing as an incorporeal immovable. It would seem that, as to things so classified, most provisions governing immovable property should apply by analogy.²¹² Incorporeal immovables, however, listed in Article 471 or established by other legislative texts and by jurisprudence, are not treated in all respects as immovable property. Several provisions governing "immovables" or "immovable property" seem to apply only to corporeal objects. Thus, the rules of the Civil Code defining immovables susceptible of a real mortgage are said to apply only to corporeal immovables, notwithstanding the language of Article 3289 (1), which refers without qualification to "immovables subject to alienation."²¹³ According to Article 3289 (2), the only incorporeal immovable which can be mortgaged under the Code is the usufruct of an immovable.²¹⁴ Legislative action, however, has conferred the right to mortgage mineral rights²¹⁵ and lessees' interests in any immovable property.²¹⁶ The procedural rule that the location of an immovable determines the place of litigation²¹⁷ has been held to apply to both corporeal and incorporeal immovables.²¹⁸ It is questionable whether the provisions of the Civil Code governing lesion apply to incorporeal immovables, notwith-

209. See *Bonneau v. Poydras*, 2 Rob. 1 (La. 1842).

210. See *Westover v. Aime*, 11 Mart.(O.S.) 443 (La. 1822).

211. *Cf.* *Succession of Harris*, 179 La. 954, 155 So. 446 (1934).

212. Analogy would fail only in connection with provisions which *cannot* apply to incorporeal immovables. See, *e.g.*, LA. CIVIL CODE art. 1436 (1870), providing that all incorporeal things, whether movable or immovable, may become the subject of an *inter vivos* donation only in accordance with an authentic act. The reason for this requirement is the impossibility of manual delivery of incorporeal things. *Cf.* LA. CIVIL CODE arts. 1538-39 (1870).

213. See LA. CIVIL CODE art. 3289(1) (1870). *Voorhis v. DeBlanc*, 12 La. Ann. 864 (1857) (an entire succession or an action for the recovery of an entire succession though "incorporeal immovable" may not be subject to mortgage).

214. See LA. CIVIL CODE art. 3289(2) (1870).

215. See La. Acts 1910, No. 232, LA. R.S. 30:109 (1950); La. Acts 1938, No. 96, LA. R.S. 9:5101 (1950); Hebert & Lazarus, *The Louisiana Legislation of 1938; Mortgage of Mineral Rights*, 1 LOUISIANA LAW REVIEW 80 (1938).

216. See La. Acts 1926, No. 186, LA. R.S. 9:5102 (1950).

217. See LA. CODE OF PRACTICE arts. 163, 164 (1870). *Cf.* LA. CODE OF CIVIL PROCEDURE arts. 80, 81 (1960).

218. *Payne v. Walmsley*, 185 So. 88 (La. App. 2d Cir. 1938) (mineral lease). *But cf.* *Scott v. Howells*, 177 La. 137, 148 So. 6 (1933) (venue not where the succession is opened but where corporeal immovable is located).

standing the broad language of Article 1862 which refers to "immovables."²¹⁹ Louisiana courts have allowed the action for lesion beyond moiety in connection with sales of immovables by nature or destination,²²⁰ but have refused to allow it in cases involving sale of mineral interests.²²¹ In the light of Act 205 of 1938, as amended, expansion in this direction, with regard to sale of developed leases, may be expected. Rules restricting transfer of an immovable by oral agreement, and those requiring recordation of transfer to become effective against third persons, apply in principle to both incorporeal and corporeal immovables.²²² Conflicting determinations have been made in connection with the interpretation of the word "immovable" in statutory legislation. Thus, Act 236 of 1920,²²³ governing real estate sales by real estate brokers, has been held inapplicable to sales of mineral rights.²²⁴ Act 136 of 1922,²²⁵ however, placing a limitation on the use of co-insurance clauses in policies covering property of a certain value other than movable property, has been held applicable to insurance of the owner's right of use and occupancy.²²⁶

Articles 470 and 471 fail to furnish workable tests for a clear line of demarcation between incorporeal movables and immovables. Conflicting judicial determinations, on the other hand, fail to furnish a reliable guide as to the consequences of classification. Perhaps abandonment of the distinction would be the

219. LA. CIVIL CODE art. 1862 (1870).

220. *Simmons v. Tremont Lumber Co.*, 144 La. 719, 81 So. 263 (1919); *Smith v. Huie-Hodge Lumber Co.*, 129 La. 28, 55 So. 698 (1911); *Smith v. Huie-Hodge Lumber Co.*, 123 La. 959, 49 So. 655 (1909); *Hyde v. Barron*, 125 La. 227, 51 So. 126 (1909).

221. *Wilkins v. Nelson*, 155 La. 807, 812, 99 So. 607, 608 (1924): "When article 1862 of the Code restricted the action of lesion to immovables, it meant immovables which are such by their nature and not such as are made immovable by the disposition of the law." See also *Haas v. Cerami*, 201 La. 612, 10 So.2d 61 (1942); *Vander Sluys v. Finfrock*, 158 La. 175, 103 So. 730 (1925); *Silbernagel v. Harrell*, 18 La. App. 536, 138 So. 713 (2d Cir. 1932). *Cf.* *Stanfa v. Bynum*, 37 F. Supp. 962 (W.D. La. 1941) (lease not an incorporeal immovable subject to law governing lesion).

222. LA. CIVIL CODE arts. 2246, 2264, 2275, 2440-42, 2449 (1870); *Deas v. Lane*, 202 La. 933, 13 So.2d 270 (1943); *Arkansas Louisiana Gas Co. v. R. O. Roy & Co.*, 196 La. 121, 198 So. 768 (1940); *Hamilton v. Glassel*, 57 F.2d 1032 (5th Cir. 1932); *Noble v. Plouf*, 154 La. 430, 97 So. 599 (1923); *Bailey v. Ward*, 32 La. Ann. 839 (1880); *Guier v. Guier*, 7 La. Ann. 103 (1852).

223. See La. Acts 1920, No. 236, LA. R.S. 37:1431 (1950).

224. See *Vander Sluys v. Finfrock*, 158 La. 175, 103 So. 730 (1925). See also *Stanford v. Bischoff*, 159 La. 892, 106 So. 371 (1925).

225. See La. Acts 1922, No. 136, amended by La. Acts 1948, No. 195 and No. 330, LA. R.S. 22:694 (Supp. 1960).

226. *Arcadia Bonded Warehouse Co. v. National Union Fire Ins. Co.*, 206 La. 681, 19 So.2d 514 (1944).

most preferable solution in case of a future revision of the Louisiana Civil Code. In the absence of a general revision of the Code, amendment of Article 471 for the purpose of precise enumeration of incorporeal immovables and definition of the effects of classification may be the right solution.²²⁷

De-immobilization

It has been observed that the Louisiana Civil Code does not provide for de-immobilization of things which become immovable by nature or by destination.²²⁸ According to physical notions, component parts of the ground or buildings, and all things permanently attached thereto, can be detached and removed. The legal question is under which circumstances these things can be regarded as de-immobilized, namely, as having reassumed the status of movable things.

De-immobilization may occur either as a result of a juridical act of the owner or as a consequence of other circumstances indicating that the close association of the movables with the immovable has come to an end. In general, the owner enjoys the right to dispose of his property as he pleases. Accordingly, if his ownership is not encumbered by rights of other persons, the owner may tear down buildings and other improvements and de-immobilize them at will.²²⁹ If the immovable is encumbered by a real mortgage, however, the owner's freedom to de-immobilize things at will may run counter to the interests of the mortgagee. The law, therefore, has developed toward solutions which, on the one hand, enable the owner to obtain additional funds by offering as security or selling things which were movables but had become immobilized, and on the other hand, tend to safeguard the interests of innocent third parties and those of the mortgagee.

It is clear that, as a general rule, a real mortgage extends over all things which are immovable by nature or by destination, whether existing on the premises at the time of recordation of the real mortgage, or placed thereon subsequently.²³⁰ Exception is made by Act 199 of 1934 for "livestock and implements of husbandry used in farming": whether permanently attached to the

227. See Comment, *Incorporeal Immovables*, 19 TUL. L. REV. 610, 620 (1945).

228. See *Bon Air Planting Co. v. Barringer*, 142 La. 60, 76 So. 234 (1917).

But cf. LA. CIVIL CODE art. 476 (1870).

229. See *Bank of White Castle v. Clark*, 181 La. 303, 159 So. 409 (1935).

230. See *supra* note 162.

land or not, these things are not affected by a mortgage on a rural estate.²³¹ Further, exception is made by Act 172 of 1944 for all movable property subject to a chattel mortgage.²³² According to the legislative declaration this property "shall and will remain movable, in so far as the mortgage upon it is concerned, and shall not pass by the sale of the immovable property to which it has actually or fictitiously attached, whether such sale be conventional or judicial."²³³ Accordingly, for purposes of mortgage, the issue of immobilization or de-immobilization of these exempt things becomes immaterial.

With regard to things affected by a real mortgage according to the general rule, distinction, perhaps, should be made between those brought in after the recordation of the mortgage and those already existing on the premises at the time of recordation. As to the former, the owner should, and does, enjoy freedom to de-immobilize. As to the latter, de-immobilization by the act of the owner should, perhaps, be excluded. This solution could be obtained by reference to Articles 3289(1) and 3397(1) of the Civil Code, in combination with Article 3310.²³⁴ This, however, does not seem to be the law. Apparently due to the difficulties involved in the judicial administration of such a prohibition, and also due to the desire of the courts to protect innocent third parties acquiring rights on movable things in good faith, the owner may de-immobilize things originally covered by the mortgage.²³⁵ De-immobilization, however, of certain home appliances

231. LA. R.S. 9:5104 (1950). These things may become subject to a chattel mortgage. LA. R.S. 9:5351 (1950).

232. LA. R.S. 9:5357 (1950).

233. *Ibid.* According to the same statute, its violation entails criminal responsibility. *Id.* 9:5358.

234. LA. CIVIL CODE art. 3289 (1870): "The following objects alone are susceptible of mortgage: 1. Immovables subject to alienation, and their accessories considered likewise as immovables"; LA. CIVIL CODE art. 3397 (1870): "The mortgage has the following effects: 1. That the debtor can not sell, engage or mortgage the same property to other person, to the prejudice of the mortgage which is already made to another creditor"; LA. CIVIL CODE art. 3310 (1870): "The conventional mortgage, when once established on an immovable, includes all the improvements which it may afterwards receive."

235. See *Weil v. Lapeyre*, 38 La. Ann. 303 (1886); *Meyer v. Frederick*, 26 La. Ann. 537 (1874); *Citizens Bank v. Knapp*, 22 La. Ann. 117 (1870); *Weill v. Thompson*, 24 Fed. 14 (E.D. La. 1885) (machinery subject to a real mortgage may be de-immobilized even after institution of foreclosure proceedings). See also *Wakefield State Bank v. T. FitzWilliams & Co.*, 158 La. 838, 104 So. 734 (1925); *Folse v. Triche*, 113 La. 915, 37 So. 875 (1904). Thus, the mortgagee enjoys his additional security on things immobilized by nature or destination only while these things are in the hands of the mortgagor. See *Sacco v. Centerville Co.*, 155 La. 569, 99 So. 452 (1924). There are, however, cases indicating that the mortgage creditor cannot remove fixtures from the mortgaged premises since the fixtures are a part of the creditor's security. See *New Orleans Nat'l Bank v. Raymond*,

and equipment is excluded by Act 361 of 1946, which provides that these appliances, subject to a real mortgage, shall remain immovable by destination until the indebtedness is paid.²³⁶

De-immobilization by the act of the owner of things subject to a real mortgage may be effected by sale²³⁷ of the movable things concerned or by the execution of a chattel mortgage.²³⁸ De-immobilization serves not only the interests of the owner but primarily the interests of innocent third parties; therefore, in case of fraud or collusion, de-immobilization does not take place.²³⁹ For effective de-immobilization by sale, removal of the things from the premises and delivery to the purchaser is necessary.²⁴⁰ In case the things are delivered to the purchaser but not removed, the purchaser must prove his good faith.²⁴¹ These rules, obviously, tend to safeguard the interests of mortgage creditors looking for their security to the immovable with all its accessories. For de-immobilization by chattel mortgage all requisite formalities must be fulfilled.

Even without sale and execution of a chattel mortgage, actual detachment by overt act of the owner has been said to be suffi-

29 La. Ann. 355 (1877) (a building). See also *Theurer v. Nautre*, 23 La. Ann. 749 (1871) (machinery set in bricks cannot be removed from mortgaged land after seizure); *Mechanics and Traders Ins. Co. v. Gerson*, 38 La. Ann. 310 (1886) (fraudulent removal of things).

236. LA. R.S. 9:5357 (1950). The violation of this provision entails criminal responsibility. See LA. R.S. 9:5359 (1950), as amended by La. Acts 1954, No. 391. See also LA. R.S. 6:769 (1950) (indebtedness to a building and loan association). Cf. LA. R.S. 9:1104 (1950) (machinery).

237. See *Sacco v. Centerville Co.*, 155 La. 569, 99 So. 452 (1924); see *Weil v. Lapeyre*, 38 La. Ann. 303 (1886); *Citizens' Bank v. Knapp*, 22 La. Ann. 117 (1870).

238. See *Buchler v. Fourroux*, 193 La. 445, 476, 190 So. 640, 650 (1939) (dicta): ("If the movables had been immobilized by the owner of the land . . . he might subsequently de-immobilize them by granting a mortgage on them"). See also *Bank of White Castle v. Clark*, 181 La. 303, 159 So. 409 (1935). The narrow holding of this case was that mules and agricultural implements subject to a chattel mortgage in accordance with Act 198 of 1918 were not covered by a subsequent real mortgage. Language in the case might be taken to indicate that things immobilized by destination and subject to a real mortgage could be de-immobilized by executing a subsequent chattel mortgage. Cf. *Alliance Trust Co. v. Gueydan Bank*, 162 La. 1062, 111 So. 421 (1927) (mortgage on land, in order to include livestock should contain a description in accordance with Act 169 of 1914; no such description was necessary for other implements).

239. See *Mechanics' & Traders' Ins. Co. v. Gerson*, 38 La. Ann. 310 (1886); *Weil v. Lapeyre*, 38 La. Ann. 303 (1886). In any case, the mortgage creditor has the right to enjoin the sale. *Ibid.* But cf. *Weill v. Thompson*, 24 Fed. 14 (E.D. La. 1885); *Citizens' Bank v. Knapp*, 22 La. Ann. 117 (1870) (good faith immaterial).

240. See *Bon Air Planting Co. v. Barringer*, 142 La. 60, 76 So. 234 (1917).

241. See *Von Puhl v. Caire & Graugnard*, 12 Orl. App. 93 (La. App. Orl. Cir. 1915).

cient for de-immobilization.²⁴² This is doubtful. The only case in point merely held that detached materials, such as dismantled machinery, junk, and certain implements no longer in use could be seized by ordinary creditors separately from the land.²⁴³ De-immobilization may also occur without regard to act or intention of the owner. Things damaged so that they cannot function with respect to the land or buildings to which they are attached are regarded as de-immobilized whether covered by a mortgage or not.²⁴⁴ But where the thing can be repaired, de-immobilization does not occur. This rule is apparently based on Article 476 of the Civil Code, which declares that materials "arising" from demolitions of buildings are movable. Obviously this rule cannot apply to things which in spite of attachment remain movable or to things which cannot be de-immobilized until the indebtedness they secure is fully paid.

MOVABLES

In Louisiana, the category of movable things is a residual one. According to Article 475 of the Civil Code, "all things corporeal or incorporeal, which have not the character of immovables by their nature or by the disposition of the law, according to the rules laid down in this title, are considered as movables."²⁴⁵ Movables are subdivided into "movables by their nature" and "movables by the disposition of the law."²⁴⁶ The two groups will be dealt with separately. As the Louisiana Civil Code follows the French Civil Code rather closely in this area, reference to French jurisprudence and doctrine with regard to particular issues will be both relevant and helpful.

242. See *Buchler v. Fourroux*, 193 La. 445, 476, 190 So. 640, 650 (1939). Mere intention to detach is not sufficient. See *Maginnis v. Union Oil Co.*, 47 La. Ann. 1489, 18 So. 459 (1895); *Weil v. Lapeyre*, 38 La. Ann. 303 (1886).

243. *Wakefield State Bank v. T. FitzWilliams & Co.*, 158 La. 838, 104 So. 734 (1925). Dismantling of machinery following a sale made with the consent of the mortgagee does not release the machinery from the mortgage. "The doctrine which protects one who, in good faith, buys machinery from the mortgagor . . . has no application to a case like this." *Straus v. New Orleans*, 166 La. 1035, 1057, 118 So. 125, 133 (1928).

244. See *Folse v. Triche*, 113 La. 915, 917, 37 So. 875 (1904): "When, from any cause, a movable ceases to be of service to a tract of land, or is detached from a building or tenement of which it formed a part as an accessory, there is no longer ground for the claim that such movable appertains to the realty."

245. *Cf.* LA. CIVIL CODE art. 467 (1825); LA. CIVIL CODE p. 100, art. 27 (1808).

246. LA. CIVIL CODE art. 472 (1870). *Cf.* LA. CIVIL CODE art. 464 (1825); LA. CIVIL CODE p. 98, art. 23 (1808). The distinction between corporeal and incorporeal movables is not merely academic. See, *e.g.*, *Succession of McGuire*, 151 La. 514, 92 So. 40 (1922) (incorporeal movables insusceptible of inter vivos donation by manual delivery).

Movables by nature

This category includes all corporeal things which are not classified as immovable by nature or destination. "Things movable by their nature" are, according to the Code, "such as may be carried from one place to another, whether they move by themselves, as cattle, or cannot be removed without an extraneous power, as inanimate things" (Article 473).²⁴⁷ For the characterization of a thing as movable by nature, controlling considerations should be, apart from economic value, the possibility of removal without application of extraordinary mechanical means or damage to the substance of the thing.²⁴⁸ A thing may be movable by nature although during its entire existence may have a fixed place according to the wishes of its owner. In France, bathhouses and several other structures on vessels permanently attached to the banks of rivers by ropes are considered to be movable, although similar structures on piles are regarded as immovable.²⁴⁹ Perhaps similar solutions could be given in Louisiana, to the extent that such structures are regulated by state rather than by federal law.²⁵⁰ Mobile homes and trailers should also be regarded as movables under the Louisiana Civil Code.²⁵¹

The category of things movable by their nature does not involve analytical difficulties, except in connection with the issue of immobilization by nature or destination. In general, movables do not lose their character when destined to become incorporated in a building. The Code indicates that materials collected for the purpose of erecting a building remain movables until actual incorporation.²⁵² Materials arising from the demolition of a building are also movables.²⁵³ It is disputed in France whether ma-

247. LA. CIVIL CODE art. 473 (1870). See LA. CIVIL CODE art. 465 (1825); LA. CIVIL CODE p. 98, art. 24 (1808).

248. Cf. LA. CIVIL CODE art. 469 (1870). A movable may be incorporated into another movable and thus lose its individuality. See *Roberts v. Williams*, 99 So.2d 392 (La. App. 2d Cir. 1957) (new motor in automobile).

249. See 3 PLANIOL ET RIPERT, *TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS* 102 (2d ed. 1952).

250. The problem is whether these structures could qualify as "vessels" within the admiralty jurisdiction of the United States. See *Evansville & Bowling Green Packet Co. v. Chero Cola Bottling Co.*, 271 U.S. 19 (1926); *Charles Barnes Co. v. One Dredge Boat*, 169 Fed. 895 (E.D. Ky. 1909). See also GILMORE & BLACK, *ADMIRALTY* 28 (1957).

251. Perhaps, owing to considerations of relative value, the law should regard mobile homes as immovable. In any case, in certain circumstances, mobile homes could be regarded under the Civil Code as things immovable by destination.

252. LA. CIVIL CODE art. 476 (1870). Cf. LA. CIVIL CODE art. 468 (1825); LA. CIVIL CODE p. 100, art. 28 (1808); *Beard v. Duralde*, 23 La. Ann. 284 (1871); *supra* notes 123-124.

253. LA. CIVIL CODE art. 476 (1870); *Wakefield State Bank v. T. FitzWilliams & Co.*, 158 La. 838, 104 So. 734 (1925).

materials detached from an immovable for the purpose of repair retain their status as immovables. The prevailing view is that such materials do not change status.²⁵⁴ In Louisiana, there is no room for uncertainty, for the Code provides that materials detached from an immovable for repairs or additions "and with the intention of replacing them, . . . preserve the nature of immovables."²⁵⁵

French jurisprudence is settled that energies, like electricity and gas, when captured or fabricated so as to become objects of ownership, are things movable by nature.²⁵⁶ As a result, the producer of energies in France enjoys full proprietary protection. Similar solutions should be reached in Louisiana. Energies, even if not regarded as corporeal things movable by nature, are "things" and may be quite valuable.²⁵⁷ Electro-magnetic waves produced in radio-telegraphy are not considered as susceptible of private ownership in France. However, exclusion of proprietary protection in this case may be arbitrary.

Several things which could be regarded as movable by nature may, nevertheless, be governed by rules of law applicable to immovables. In France, ships and airplanes are subject to rules governing immovables with regard to transfer of ownership and hypothecation.²⁵⁸ In Louisiana, according to Article 3289 (3) of the Code "ships and other vessels" are designated as susceptible of a real mortgage.²⁵⁹ This provision is still in force insofar as it is superseded by the federal Ship Mortgage Act of 1920.²⁶⁰ In general, however, ships and airplanes in Louisiana should be regarded as things movable by nature. On the other hand, several things which are immovable as part of the ground may be governed by rules applicable to movables. Such things are destined

254. See 3 PLANIOL ET RIPERT, *TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS* 103 (2d ed. 1952).

255. LA. CIVIL CODE art. 476 (2) (1870); *Beard v. Duralde*, 23 La. Ann. 284 (1871).

256. See 3 PLANIOL ET RIPERT, *TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS* 102 (2d ed. 1952); *Cass. Civ.* April 19, 1864, D. 1864.1.178.

257. See LA. CIVIL CODE art. 448 (1870). *Cf.* LA. CRIMINAL CODE art. 2, § 3 (1942): "'Anything of value' must be given the broadest possible construction, including any conceivable thing of the slightest value, movable or immovable, corporeal or incorporeal, public or private. It must be construed in the broad popular sense of the phrase, and not necessarily as synonymous with the traditional legal term 'property.'"

258. See 3 PLANIOL ET RIPERT, *TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS* 103 (2d ed. 1952).

259. See LA. R.S. 9:5381 (1950) (hypothecation and conveyances of vessels).

260. 41 STAT. 1005 (1920); 46 U.S.C. §§ 951-975 (1959); LA. CIVIL CODE art. 3305 (1870), as amended by La. Acts 1916, No. 105.

to become movable, and, for certain purposes, the law looks into future rather than present status.²⁶¹ In France, standing crops are governed by rules applicable to movables with regard to formalities of seizure and sale.²⁶² The same is not generally true in Louisiana.²⁶³ Standing timber, minerals to be extracted from the soil, and materials to arise from demolition of buildings, are subject to the rules governing sale of movables in France. The French Civil Code does not contain specific provisions in this regard, but doctrine and jurisprudence are firmly settled.²⁶⁴ Difficulties have arisen with regard to interests of third parties adversely affected by such sales. Courts in France, in order to protect innocent third parties, tend to characterize the sale of mineral interests (which include sale, reservation, or lease of mineral rights in Louisiana) as the sale of immovable property. Accordingly, recordation is necessary to be effective against third persons. This jurisprudence has been criticized as internally inconsistent and unrealistic. It is agreed that interests of third parties could be protected adequately by the code requirement of actual possession and exploitation: these would constitute sufficient notice in absence of recordation.²⁶⁵ In Louisiana, as a general rule, lines of demarcation between movables and immovables may be transcended in the private relations of contracting parties; but with regard to interests of third parties, the lines of demarcation established by law control. Consequently, sales of standing crops by the landowner, and sales of timber and mineral interests, in order to be effective against third parties, must be recorded.²⁶⁶

Movables by Disposition of Law

This group of movables consists of incorporeal things, name-

261. See *supra* note 29. Cf. *Pickens v. Webster*, 31 La. Ann. 870, 875 (1879). (standing crop was "a movable, or . . . an apparent immovable mobilized by anticipation").

262. See 3 PLANIOL ET RIPERT, *TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS* 105 (2d ed. 1952).

263. Crops belonging to a lessee are movable and, accordingly, any sale thereof should be regarded as the sale of a movable. Crops belonging to the owner of the ground, however, are immovable by nature and, presumably, a sale of the land with standing crops by the landowner should be made in the form governing sales of immovable property. Cf. *supra* notes 24, 26. Separate sale of standing crops by the landowner should be regarded as sale of "future things." Cf. LA. CIVIL CODE art. 2450 (1870). There is no distinction in Louisiana with regard to forms of seizure applicable to movables and immovables.

264. See 3 PLANIOL ET RIPERT, *TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS* 106-107 (2d ed. 1952).

265. See 3 *id.* at 108.

266. See *supra* text at notes 22, 30, 200.

ly, rights, obligations, and actions. The designation "movables by the disposition of the law" is, therefore, less accurate than one referring to "incorporeal movables," which would also correspond with the analogous provision of Article 470.²⁶⁷

Article 474 of the Code contains a list²⁶⁸ which, apparently, is merely indicative. Rights are, in principle, movable and only exceptionally are regarded as immovable in accordance with fictions established by the law. The rights of ownership, servitudes, usufruct, and use are movable when their object is a movable thing. The Code does not say so expressly but the implication is clear. The right of ownership over movables is, ordinarily, confused with its object and may be regarded as included in the group of movable things by necessary implication. The nature of other rights as movable may be established by reference to Article 471, which indicates that rights are immovable when their object is an immovable.²⁶⁹

Article 474 states that in this group are included "obligations and actions, the object of which is to recover money due or movables," and "obligations which have for their object a specific performance, and those which from their nature, resolve themselves into damages." The language used is broad enough to include all obligations to do or not to do because none of them has an immovable character.²⁷⁰ Article 474 also indicates that "perpetual rents and annuities" are movables by the disposition of the law. Rents and annuities are periodically recurring obligations to furnish a sum of money or other movables.²⁷¹ Rent obligations are distinguishable from those involving a performance due only once. Rents include arrearages, namely, sums due but not paid upon maturity. It is disputed whether in theory rents are based on a principal right which generates the obligation to render periodically accruing performances.²⁷² For systematic purposes, rents are distinguished by civilian writers into *perpetual* rents and those established *for life*, depending on whether

267. The term "incorporeal movables" is employed in LA. R.S. 9:5365 (1950) (incorporeal movables may not become subject to a chattel mortgage). Cf. LA. R.S. 9:4321 (1950) (pledge of incorporeal rights).

268. Cf. LA. CIVIL CODE art. 466 (1825); LA. CIVIL CODE p. 98, art. 25 (1808).

269. See 3 PLANIOL ET RIPERT, TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS 110 (2d ed. 1952). Cf. *supra* text at note 179.

270. See 3 PLANIOL ET RIPERT, TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS 96-97, 113 (2d ed. 1952). Cf. Mille v. Dupuy, 21 LA. ANN. 53 (1869).

271. See LA. CIVIL CODE arts. 2778, 2779, 2793 (1870).

272. See 3 PLANIOL ET RIPERT, TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS 116 (2d ed. 1952). In Louisiana the answer should be in the affirmative in the light of Articles 2779 and 2793 of the Civil Code.

the obligation terminates with the death of the obligee or not. Rents are also distinguished into *onerous* and *gratuitous*, depending on whether they are founded on consideration or not. Onerous rents are further distinguished according to the nature of consideration given in exchange thereof; if the consideration is a sum of money, the rent is called *constituted*, and if an immovable, the rent is called *ground-rent*.²⁷³ Contracts establishing constituted rents are obsolete today; originally, they were devices designed to circumvent the prohibition against usury. A ground-rent is essentially a sale for a price consisting in a portion of the revenues produced by the immovable rather than a lump sum. A very important question for Louisiana law today is whether oil royalties should be characterized as rents or as *sui generis* incorporeal immovables.²⁷⁴

According to Article 474 "shares or interests in banks or companies of commerce, or industry or other speculations" are movable by disposition of the law. Although shares or interests in various associations could be regarded as either movable or immovable property depending on the type of property owned by the association, Article 474 indicates that these shares or interests are movable "although such companies be possessed of immovables."²⁷⁵ Corresponding provisions in Article 529 of the French Civil Code have been explained on various grounds. According to one theory, the Code regards the "patrimony" of the association as a fund dedicated to a distinct purpose. The associates thus have two types of property interests — their individual property and their shares in the property of the association.²⁷⁶ The prevailing view is that the provisions of the French Civil Code may be sufficiently explained by reference to the distinct personality of the association. The immovables which the

273. See 3 PLANIOL ET RIPERT, *TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS* 115 (2d ed. 1952). Cf. LA. CIVIL CODE arts. 2779, 2792, 2794, 2796.

274. In the complex field of mineral rights, generalizations and conceptual classifications may be misleading since inventiveness, and a large measure of contractual freedom, resulted in the recognition of several kinds of interests described by the generic term *royalty*. In general, Louisiana courts have stated that the mineral royalty is not a servitude; yet, in Louisiana the mineral royalty has been given the characteristics of a real right. See DAGGETT, *LOUISIANA MINERAL RIGHTS* 258 (2d ed. 1949); Comment, *The Broussard Case and Prescription of Mineral Royalty*, 34 TUL. L. REV. 685 (1960); Comment, *The Nature of a Royalty Interest in Louisiana*, 13 TUL. L. REV. 279 (1934).

275. Cf. *St. Romes v. Levee Steam Cotton-Press Co.*, 127 U.S. 614 (1888); *State ex rel. Waterman v. J. S. Waterman & Co.*, 178 La. 340, 151 So. 422 (1934); *Succession of McGuire*, 151 La. 514, 92 So. 40 (1922) (corporate stock as movable).

276. See Mongin, *Etude sur la situation juridique des sociétés dénuées de personnalité*, [1890] REV. CR. JUR. 697.

association may own are the property of the association; the interests of the associates are distinct values of a movable character in their individual patrimonies. These interests consist in a right to participate in the distribution of any profits while the association is a going concern, and in the distribution of its capital upon dissolution.²⁷⁷

At the time the French Civil Code was promulgated, legal personality was attributed only to associations of a commercial character, as distinguished from associations of a civil law character. This is the reason why Article 474 of the Louisiana Civil Code, following Article 529 of the French Code, refers only to banks, companies of commerce and industry "or other speculations." Shares in civil law associations were regarded at that time as either movable or immovable, depending on the nature of the property owned by the associations.²⁷⁸ The Court of Cassation declared in 1891 that civil associations possessed legal personality²⁷⁹ and today in France Article 529 of the Code covers shares in any association. The same is true in Louisiana for the additional reason that no distinction is drawn between commercial and civil law associations.

Our Code provides that "shares or interests are considered as movables with respect to every associate as long only as the society is in existence; but as soon as the society is dissolved, the right, which each member has to the division of the immovables belonging to it, produces an immovable action." In France, it is settled law that the legal personality of an association terminates upon final liquidation, not upon merely formal dissolution.²⁸⁰ Accordingly, Article 529 of the French Civil Code applies only after the process of liquidation is completed and the capital of the property is divided among the associates. At this moment, the rights of the associates are regarded as movable or immovable depending on the nature of the property divided. Similar solutions should be acceptable in Louisiana with regard to associations not governed by specific legislation.²⁸¹ Characterization of shares or interests in associations as movable property

277. See 3 PLANIOL ET RIPERT, *TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS* 118 (2d ed. 1952); Cass., Feb. 9, 1864, D. 1864.1.138; Jan. 28, 1884, S. 1886.1.465.

278. See 3 PLANIOL ET RIPERT, *TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS* 119 (2d ed. 1952).

279. See Cass., Req. Feb. 23, 1891, D. 1891.1.337; S. 1892.1.73.

280. See Cass., Req. May 29, 1865, D. 1865.1.380

281. See, e.g., LA. R.S. 12:1-71 (1950) (business corporations); LA. R.S. 12:101-155 (1950) (nonprofit corporations); LA. R.S. 12:251-381 (1950) (special corporations).

may carry significant legal consequences. In France, transfer of shares is governed by rules applicable to movables, with regard to capacity to dispose: shares are part of the community property as movables; the legatee of movables acquires all shares owned by the testator; and the tutor of a minor is not under a duty to observe requisite formalities applicable to immovable property in connection with acquisition of shares.²⁸²

Rules of construction

Articles 477 to 480 of the Louisiana Code contain rules of construction defining the words "furniture,"²⁸³ "movable goods, movables or movable effects,"²⁸⁴ "sale or gift of a house ready furnished,"²⁸⁵ and "sale or gift of a house with all that is in it."²⁸⁶ The courts seem to have made little use of these articles. It is, indeed, rare that the intention of the parties cannot be gathered from surrounding circumstances, and it is even rarer that the intention of the parties will correspond to these legal definitions. These rules become applicable only in case the parties to a contract employ the words defined by the Code and their intention cannot be ascertained in any other way.

COMPARATIVE LAW

In Roman law,²⁸⁷ things were distinguished into movables and immovables, but the distinction was only of subordinate interest and did not have the same importance as in modern law. Land and its component parts were immovables, as provided by law; all other things were movables. Immovables, according to destination, were divided into urban (*praedia urbana*) and rural (*praedia rustica*), and, according to location, between Italian (*solum italicum*) and provincial (*solum provinciale*).

In principle, the same rule applied to both movables and immovables as to acquisition, loss and transfer of ownership, and

282. See 3 PLANIOL ET RIPERT, TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS 120 (2d ed. 1952).

283. LA. CIVIL CODE art. 477 (1870).

284. LA. CIVIL CODE art. 478 (1870).

285. LA. CIVIL CODE art. 479 (1870).

286. LA. CIVIL CODE art. 480 (1870). Cf. Hicks v. Levett, 19 La. App. 836, 140 So. 276 (2d Cir. 1932).

287. See BUCKLAND, A TEXT-BOOK OF ROMAN LAW 186 (2d ed. 1932); MONIER, MANUEL ÉLÉMENTAIRE DE DROIT ROMAIN 353 (6th ed. 1947); 1 HUVELIN, COURS ÉLÉMENTAIRE DE DROIT ROMAIN 421 (1927); SOHM-MITTEIS-WENGER, INSTITUTIONEN DES RÖMISCHEN RECHTS 256 (1923); WEISS, INSTITUTIONEN DES RÖMISCHEN PRIVATRECHTS 128 (1949).

other real rights. Different rules of law applied to movables and immovables in connection with possessory actions, usucapion, theft, and dotal property.²⁸⁸ Predial servitudes, emphyteusis, and superficies could exist only on immovables and were subject to specific regulation. The distinction was never generalized so as to include all things: successions and obligations were neither movables nor immovables.²⁸⁹

The provisions of the French Civil Code, though fewer in number and much more concise, are very similar to those of the Louisiana Civil Code. Reference to particular issues and solutions given in France has been made in connection with the analysis of Louisiana law. Here, the discussion is necessarily limited to a schematic approach.²⁹⁰

The distinction between movables and immovables is established in Article 516 of the French Civil Code. An immovable is defined as a thing having a fixed place in space, and a movable as a thing which can either move itself or be removed in space. As in Louisiana, the distinction does not always correspond with physical notions of mobility and is applicable to both corporeal and incorporeal things. The distinction between movables and immovables entails legal consequences attributable either to the nature of the things concerned or to their relative value. The law, taking into account the nature of things, has developed particular rules which apply to immovable property in connection with transfer, security transactions, seizure, acquisitive prescription, possession, jurisdiction of courts, and conflict of laws. Another set of rules which apply to immovable property derives, historically, from the relatively greater importance of landed property. These rules concern capacity to dispose, community property, dotal property, and inheritance taxes.

Immovables are distinguished into immovables by nature, immovables by destination, and immovables by their object. In addition to these three categories established by the Civil Code, French doctrine and jurisprudence created two more categories: *immovables by declaration* and *immovables by accession*.²⁹¹ Land,

288. See BUCKLAND, A TEXT-BOOK OF ROMAN LAW 186 (2d ed. 1932).

289. See 1 HUVELIN, COURS ÉLÉMENTAIRE DE DROIT ROMAIN 421 (1927).

290. See in general 2 AUBRY ET RAU, COURS DE DROIT CIVIL FRANÇAIS 27-30, 35-40 (5th ed. 1897); 1 COLIN-CAPITANT ET JULLIOT DE LA MORANDIÈRE, TRAITÉ DE DROIT CIVIL 837-848 (1953); 9 DEMOLOMBE, TRAITÉ DE LA DISTINCTION DES BIENS 243-298 (1874-82); 3 PLANIOL ET RIPERT, TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS 101-121 (2d ed. 1952).

291. The category of things *immovable by declaration* is confined to obliga-

all vegetation adhering to the soil, and buildings or other structures are immovables by nature. Immovability attaches to all parts of a building which are incorporated into it and which are destined to complete it. According to the Law of April 21, 1810, mineral concessions constitute immovable property distinct from the surface of the soil. This horizontal division of immovable property results in the recognition of two distinct immovables by nature: the mine and the surface.²⁹²

Immovables by destination are movables retaining their individuality but regarded as immovables because of their close association with a tract of land or building. In principle, immovables by destination are governed by the same rules of law governing immovables by nature; but there are several exceptions to the principle.²⁹³ For effective immobilization two things are necessary: ownership of the movable and immovable in the same person and a relationship of association. Accordingly, things placed on the premises by persons other than the owner do not become immovable by destination. This rule, however, applies only to the relations between the owner of the land and the owner of the movable things. With regard to third parties, things not belonging to the owner of the land are treated as immovables by destination. The provisions relating to immobilization are considered as rules of a "mandatory" character, and, for this reason, cannot be altered by contrary party agreement.²⁹⁴ Immobilization ceases by actual detachment of the things immobilized. This indicates that the most important condition for immobilization is the establishment of a relationship between the immovable and the movable.

Close association between a movable and an immovable may be effected by actual attachment or without attachment. A movable destined for the service and improvement of an immovable

tions of the Bank of France and to rents due by the state to municipalities, public institutions, and public utilities investing funds received gratuitously. The category of things *immovable by accession* is limited to mineral royalties so long as they are owned by the owner of the surface. See Law of April 21, 1810, art. 18. The nationalization of the Bank of France and of mines has rendered these two categories devoid of any practical interest. See 3 PLANIOL ET RIPERT, *TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS* 99-100 (2d ed. 1952).

292. See LENGEREAU, *ESSAI SUR LA NATURE JURIDIQUE DE LA PROPRIÉTÉ MINIÈRE* 16 (Diss. Toulouse 1922).

293. These exceptions relate to vendor's liens, expropriation, and *warrant hotelier* (chattel mortgage of hotel furniture). See 3 PLANIOL ET RIPERT, *TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS* 80 (2d ed. 1952).

294. See 3 *id.* 83. *Of.* Cass. Req. July 31, 1879, D. 1880.1.273; Cass. Div. Nov. 9, 1885, D. 1886.1.125.

is immobilized without regard to actual attachment. The movable must be necessary for the service of the immovable and not merely for the convenience of the occupant. The French Civil Code provided expressly only for agricultural and industrial exploitation, but courts and doctrine have extended Article 524 to cover any type of destination. Exploitation is not necessary; any use is sufficient. Agricultural destination includes practically all implements, animals, and supplies necessary for continuous operation of farms. Industrial destination includes not only heavy machinery but also light equipment in offices. Commercial destination extends to hotels, furnished homes, and several other establishments destined for commercial ends.²⁹⁵ Residential destination extends to all accessories destined to serve and complete private homes: keys, carpets, and venetian blinds are included. In general, the Court of Cassation has treated the issue of immobilization without actual attachment as a question of intention and fact.²⁹⁶ Things may also become immovable by destination as a result of their permanent attachment to a tract of land or building. Article 525 of the French Civil Code mentions attachment "by mortar or plaster," but this has been regarded by the courts as merely indicative of several possible methods of attachment.²⁹⁷ This article has been treated as repetitious and unnecessary.²⁹⁸ Indeed, things permanently attached by mortar or plaster are necessarily things destined to the service and improvement of immovables and are covered by the preceding Article 524.

All rights having as their object a corporeal immovable are incorporeal immovables. Servitudes, use and habitation, and emphyteusis²⁹⁹ always have as their object immovable property, and it follows that these are immovable rights. Usufruct, encumbrances, obligations to give, and actions may be movable or immovable rights depending on their objects. Mineral rights³⁰⁰

295 See Nancy, Ct. of App., Dec. 4, 1936, 1937 D.H. 123. Cf. Toulouse Ct. of App., Aug. 4, 1883, S. 1884.2.8; Cass., Nov. 9, 1885, D. 1886.1.125.

296. See Cass., Req. July 31, 1879, D. 1880.1.273; Req. Nov. 9, 1885, D. 1886.1.125; Req. Aug. 2, 1886, D. 1887.1.293; Civ. Feb. 8, 1926, S. 1926.1.153.

297. See Cass., Civ. Jan. 17, 1859, D. 1859.1.68; Req. Oct. 19, 1896, D. 1897.1.15; Req. March 17, 1931, 1931 D.H. 233; Civ. Oct. 18, 1950, 1950 GAZ. PAL. 2.411.

298. See 3 PLANIOL ET RIPERT, TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS 94 (2d ed. 1952).

299. Law of June 25, 1902, S. 505 (1903).

300. Law of Sept. 9, 1919, arts. 1-4 B.L.D. 668 (1919); Law of June 28, 1927, B.L.D. 303 (1927); and Feb. 9, 1930, B.L.D. 94 (1930).

and the right to exploit hydraulic energy are, according to special legislation, always immovable rights.³⁰¹

As in the Louisiana Civil Code, movables are distinguished in the French Civil Code into movables by their nature and movables by disposition of the law (Article 527). Doctrine has established the additional category of *movables by anticipation*.³⁰² This category includes standing crops, timber, and mineral substances to be extracted from the ground. Movables by nature are corporeal objects and energies. Provisions similar to those of the Louisiana Civil Code refer to materials collected for erecting an edifice and materials arising from demolitions. Vessels and airplanes, though movable, are for certain purposes subject to rules governing immovable property. A right having as its object a movable thing is an incorporeal movable, namely, a movable by disposition of the law. Certain legal offices,³⁰³ business assets,³⁰⁴ and literary, artistic, and patent rights are also incorporeal movables. Obligations to do or not to do, rents, and shares in an association, regardless of the nature of their capital structure, belong to the same category.

Under the German Civil Code, *land*, namely parts of the surface of the earth individualized by the human activity of setting boundaries, and its *component parts*, as defined by law, are immovables.³⁰⁵ Conversely, all things which are neither the land nor component parts thereof are movables. The distinction between things movable and immovable carries significant consequences in German law. Content and scope of ownership, as well as the acquisition and transfer of things, are regulated by dif-

301. Law of Oct. 16, 1919, B.L.D. 751 (1919).

302. See FRÉJAVILLE, DES MEUBLES PAR ANTICIPATION (Diss. Paris 1927).

303. The offices of lawyers, notaries, law clerks, bailiffs, and court interpreters are regarded as the objects of incorporeal property rights which are classified as movables. See 1 COLIN-CAPITANT ET JULLIOT DE LA MORANDIÈRE, TRAITÉ DE DROIT CIVIL 845 (1953).

304. Business assets (*fonds de commerce*) are generally regarded as a universality containing both corporeal and incorporeal elements. According to some authors the several elements of a *fond de commerce* retain their individual juridical natures and are governed by the appropriate rules of law. But the prevailing view, followed by the French courts, is that this universality has a distinct existence and is an *incorporeal movable*. See 3 PLANIOL ET RIPERT, TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS 103 (2d ed. 1952).

305. See LEHMANN, ALLGEMEINER TEIL DES BÜRGERLICHEN GESETZBUCHES 357 (1957); 1 ENNECERUS-NIPPERDEY, 1 ALLGEMEINER TEIL DES BÜRGERLICHEN RECHTS 503 (1952); 1 STAUDINGER, KOMMENTAR ZUM BÜRGERLICHEN GESETZBUCH, ALLGEMEINER TEIL 417 (1957). Component parts of the land are distinguished into essential and non-essential. Essential component parts of the land are immovable by definition. See *infra* note 308. Non-essential component parts of the land are immovable, according to the *Reichsgericht*, while their association with the land continues. See R.G. Nov. 14, 1938, 158 R.G.Z. 362, 369 (1938).

ferent rules, depending on the nature of things as movable or immovable. Classification of things as movable or immovable involves difficulties in German law only in connection with the question of whether a movable is a component part of an immovable or not. Immobilization by destination is unknown in German law. But consequences comparable to those flowing in France and Louisiana from the classification of a thing as immovable by destination result in Germany from a finding that a movable has become a component part or accessory of an immovable. A brief analysis, therefore, of the law governing principal things, component parts, and accessories is here appropriate.

A thing may consist of only one substance, a "simple thing," or alternatively, it may be composed of several "component parts" which lost their identity and are regarded as one "composite thing" while the association lasts. Component parts are classified as "essential" or "non-essential." Article 93 defines essential component parts to be those "which cannot be separated from each other without destruction of one part or another or without essential change in their substance."³⁰⁶ All things which are not classified as "essential" component parts are "non-essential." In general, factual relations of things and prevailing conceptions in society determine lines of demarcation and classification of things as essential or non-essential component parts. Apart from the test established by Article 93 of the Civil Code, essential component parts of a *tract of land* are things "firmly fixed to the ground, especially buildings and the products of the ground so long as they remain attached thereto,"³⁰⁷ and essential component parts of a *building* are "those things which are placed together for the construction of a building."³⁰⁸ Things attached only temporarily to a tract of land or building and "buildings or other constructions attached to the ground of another by one having the right to do so" are not component parts.³⁰⁹ But

306. GERMAN CIVIL CODE art. 93. The *Reichsgericht* has classified as component parts, whether essential or non-essential, elevators in a hotel building: R.G. May 5, 1917, 90 R.G.Z. 198 (1917); steam and electric motors in a furniture factory: R.G. Dec. 10, 1931, [1932] J.W. 1197; a diesel engine in a ship: R.G. Aug. 4, 1936, 152 R.G.Z. 91 (1936).

307. GERMAN CIVIL CODE art. 94(1).

308. *Id.* art. 94(2).

309. *Id.* art. 95(1): "Things which are not attached to the ground permanently are not component parts thereof. The same rule applies to buildings or other constructions which are attached to the ground of another person by one having the right to do so.

"(2) Things attached to a building only temporarily are not component parts thereof."

"rights connected with the ownership of a tract of land are regarded as component parts thereof."³¹⁰ The significance of the classification of a thing as an essential component part is that, so long as the association lasts, this thing is insusceptible of separate real rights and follows the principal thing in all cases of alienation or encumbrance.³¹¹ Non-essential component parts, on the other hand, are susceptible of separate real rights but follow the principal thing in the absence of provision to the contrary. Essential component parts of an immovable are regarded as an immovable; non-essential component parts of an immovable preserve their status as movables.³¹²

Analysis of the German law relating to accessories starts with the elementary proposition that things which preserve their identity may exist in a relationship of coordination with each other (spoon and fork) or in a relationship of subordination (house and key). In the second relationship, the subordinate thing is called an *accessory*. The German Civil Code provides that "accessories are movables which, without being component parts of the principal thing, are destined to serve its economic purpose and which stand with regard to the principal thing in a space relationship appropriate to their destination."³¹³

For the characterization of a thing as an accessory several conditions must be met. Obviously, two things are needed: one must be the principal and the other the accessory. The accessory must be a movable thing which preserves its identity and does not become a component part of the principal. The accessory must serve, permanently, the economic purpose of the principal thing. Temporary use of a thing for the economic purpose of another thing does not render it an accessory, nor does tem-

310. *Id.* art. 96. The nature of these rights as essential or non-essential component parts is not determined by the Code.

311. *Id.* art. 93. This rule is regarded as "mandatory." Post-war legislation, however, has established a notable exception: individual apartment ownership is permissible in Germany. See I ENNECCERUS-NIPPERDEY, 1 ALLGEMEINER TEIL DES BÜRGERLICHEN RECHTS 525 (1952).

312. See I ENNECCERUS-NIPPERDEY, 1 ALLGEMEINER TEIL DES BÜRGERLICHEN RECHTS 529 (1952). *But cf.* R.G. *supra* note 305.

313. GERMAN CIVIL CODE art. 97(1). Classification of a thing as principal, component part, or accessory may depend on the circumstances. The lighting and heating systems in a hotel are regarded as component parts of the building, cars used in the business as accessories, and the private car of the owner as an individual or principal thing. See R.G. Jan. 26, 1901, 47 R.G.Z. 197, 200 (1901). The *Reichsgericht* has also held that networks for the distribution of gas and electricity, if not component parts of the factory, are its accessories. See R.G. June 2, 1915, 87 R.G.Z. 43, 51 (1915). *Cf.* R.G. July 5, 1913, 83 R.G.Z. 54, 60 (1913).

porary detachment of an accessory from the principal thing affect its status.³¹⁴ Economic purpose is determined by reference to the actual use of the principal thing, and, ordinarily, this must be proved.³¹⁵ Thus, a piano in a bar is not *per se* an accessory of the business. Proof of economic purpose is dispensed with in connection with certain objects enumerated in Article 98 of the German Civil Code. According to this article, machinery and other apparatus necessary for the operation of industrial establishments, and implements, animals, and supplies needed for the continuous operation of farms are destined to serve the economic purpose of the principal thing.³¹⁶ Accessories stand in a dependency relationship to the principal. Raw materials in a factory, and, *a fortiori*, finished products are not regarded as accessories; but coal intended for consumption in a factory has been treated as an accessory.³¹⁷ Spare parts of machinery are accessories, but emergency equipment destined to be replaced is not.³¹⁸ The accessory must stand in close space relationship with the principal thing, though bodily contact is not required. Proximity is decided in each case as a fact. The accessory need not be in its proper place: the German Supreme Court, the *Reichsgericht*, held that machinery brought in and left in the courtyard of a factory was an accessory since it was destined to replace worn-out parts.³¹⁹ The last requirement for the characterization of a thing as an accessory is a negative one: the Civil Code provides that "a thing is not an accessory if it is not regarded as an accessory in trade."³²⁰

314. GERMAN CIVIL CODE art. 97(2).

315. In general, the one asserting the character of a thing as accessory must prove his allegation. Exception is made with regard to the proof of the negative requirements, namely, that the attachment of the thing is not temporary and that the prevailing views in business does not deny the quality of the thing as accessory. See *infra* text at note 320.

316. "The following objects are destined to serve the economic purpose of the principal thing: 1. In buildings permanently fitted out for industrial destination, particularly a mill, a smithy, a brewery, a factory, the machinery and other apparatus necessary for their operation. 2. On farms, the implements and cattle needed for farming purposes, agricultural products in so far as they are needed for the continuance of the establishment, up to the time at which prospectively the same or similar products will be earned, as well as the manure produced on the farm." See also *id.* art. 952. According to this article, debt notes and debentures not issued to the order of the bearer are accessory to the right they embody. The right to the paper follows the right represented by the paper. In truly negotiable instruments the situation is the converse.

317. See R.G. March 17, 1915, 86 R.G.Z. 326 (1915); R.G. July 4, 1911, 77 R.G.Z. 36 (1911).

318. See R.G. March 17, 1915, 86 R.G.Z. 326, 330 (1915); R.G. March 12, 1914, 84 R.G.Z. 284 (1914).

319. See R.G. May 3, 1902, 51 R.G.Z. 272. (1902).

320. GERMAN CIVIL CODE art. 97(1), (2).

The practical significance of the characterization of a thing as an accessory consists in the fact that in certain instances the accessory follows the principal thing. The law, relying on considerations of economic utility, protects the relationship between the principal thing and its accessories and regards them as forming an economic unity. But while in the case of essential component parts the things so characterized always follow the principal thing, accessories follow the principal thing only in enumerated instances in the absence of contrary party intention. It is disputed in Germany whether scattered code provisions may be taken to establish a general principle with regard to accessories. The German Civil Code provides specifically that juridical acts generating obligations to alienate or encumber a principal thing, in case of doubt, include its accessories.³²¹ Further, alienation of an immovable or of certain rights governed by rules applicable to immovable property includes, in case of doubt, all accessories,³²² provided that these belong to the transferor. There are no corresponding provisions applicable to transfers of movables. The generally accepted view in Germany is that the above-mentioned provisions apply by analogy, except that independent delivery of accessories may be required to effect transfer of ownership. Real mortgages, land charges, rent debts, and foreclosure of real mortgages include in all cases accessories belonging to the owner of the ground.³²³ These accessories cannot be pledged separately.³²⁴

The provisions of the German Civil Code relating to accessories have been criticized as too narrow.³²⁵ Indeed, only *corporeal* objects can have accessories, and only *movables* can be accessories. Thus, in the case of transfer of an enterprise or business as a going concern, the rules relating to accessories have no direct application. Neither enterprise nor business is a "thing" under the German Civil Code. Yet, it seems almost imperative that a transfer of business should include all its component parts and accessories, and all incorporeal rights such as trademarks and patents which are necessary for the business's continuous operation. The *Reichsgericht*, however, was able to

321. *Id.* arts. 314, 498, 2164.

322. *Id.* arts. 926, 1031, 1093, 1096.

323. *Id.* arts. 1120, 1192, 1199.

324. GERMAN CODE OF CIVIL PROCEDURE art. 865; Law of March 24, 1897 arts. 20, 21, 55, 146.

325. See LEHMANN, ALLGEMEINER TEIL DES BÜRGERLICHEN GESETZBUCHES 363 (1957).

reach desirable results in proper cases by reference to party intention and by broad interpretation of business transactions.³²⁶

The Greek Civil Code follows in the main the German Civil Code in this area. Most deviations from the German Civil Code are improvements in drafting and organization designed to correct a number of deficiencies which became apparent during several decades of practice in Germany. Things are distinguished under the Greek Civil Code into movables and immovables.³²⁷ This distinction applies to corporeal objects only, with one exception: Article 949 provides that where the law or juridical acts refer to "movable patrimony," as distinguished from "immovable patrimony," among the movables are included all obligations and among the immovables the usufruct and servitudes on immovables. In several other instances, the Code indicates that certain rights are governed by rules applicable to immovable property,³²⁸ but these provisions do not affect the nature of the (incorporeal) rights concerned. The provision of Article 949 is regarded as a rule of interpretation, applicable in the absence of other indication. All other provisions are regarded as rules of public policy which cannot be derogated from contrary party agreement.

As in Germany, distinction is made between principal things, component parts, and accessories. Component parts of an immovable may be either movables or immovables; component parts of a movable can be only movables. Component parts are distinguished into those susceptible of separate real rights and those not susceptible. According to Article 953, things insusceptible of separate real rights are the same things defined as essential component parts in Germany.³²⁹ Apart from this provision, and without regard to the tests it establishes, according to the following Article 954, things insusceptible of separate real rights are those firmly fixed to the ground, especially buildings, movables incorporated into a structure or building, vegetation and mineral substances, water under the surface, seeds when sown, and plants when planted. Firm attachment exists when detach-

326. Cf. R.G. April 22, 1921, 102 R.G.Z. 127 (1921); R.G. Dec. 19, 1925, 112 R.G.Z. 242, 244 (1925).

327. GREEK CIVIL CODE art. 948: "Immovables are the soil and its component parts. Everything which is not immovable is movable."

328. See, e.g., *id.* arts. 369, 1121, 1143, 1192, 1193, 1259.

329. "The component part of a thing which cannot be separated from the principal thing without damage or alteration to it or to the principal thing, or without alteration of their substance or destination, cannot be the subject of separate ownership or other real rights."

ment would necessitate excessive effort or expense.³³⁰ The list is considered to be exclusive rather than indicative. Predial servitudes are not mentioned and it follows that, contrary to the German Civil Code, servitudes are not component parts of an immovable.³³¹ The Code provides expressly that things attached to the ground or building for temporary purposes, though firmly fixed, do not become component parts insusceptible of separate real rights. The same rule applies to buildings and other structures erected on the ground of another by a usufructuary or other person having a real right.³³² These things remain movable and are susceptible of real rights distinguishable from those existing with respect to the land.

The practical consequences of the characterization of a thing as a component part insusceptible of separate real rights are significant. The owner is always free to terminate this relationship of association by actual detachment; but while association lasts, separate ownership and separate real rights are not recognized. Seizure and any real transfer or encumbrance include all component parts of this kind, even if incorporated subsequently. However, according to special legislation, machinery in industrial plants, in order to be included in a real mortgage, must be mentioned specifically, and standing crops may be seized separately from the land.³³³ Real rights to the movables prior to incorporation are extinguished and do not revive upon detachment. Real rights acquired on component parts of a thing by incorporation continue to exist even after the movables are detached. Exception is made as to the rights of a real mortgagee; movables covered by the mortgage may be detached and transferred to third parties free of the mortgage.³³⁴ Contrary party agreement cannot alter the legal consequences of the characterization of a thing as a component part insusceptible of separate real rights. Parties, however, may in their private relations create contractual rights (as distinguished from real rights) to things which are component parts insusceptible of separate real rights. Thus, the sale of standing crops, standing timber, and mineral substances are all valid transactions if made according to the formalities governing movable property. But no real rights are cre-

330. See BALIS, *GENERAL PRINCIPLES OF CIVIL LAW* 505 (1955) (in Greek).

331. *Ibid.*

332. GREEK CIVIL CODE art. 955.

333. See Law 4112 of 1929.

334. GREEK CIVIL CODE art. 1283.

ated by transactions which concern *future* things; in case of non-performance, the purchaser is entitled to damages only.

Contrary to the general rule, the Civil Code and special legislation have established exceptions whereby essential component parts of an immovable may be susceptible of separate real rights. According to Article 1023 of the Civil Code, trees on a boundary may be subject to ownership separate from that of the ground, and according to Article 1002, apartments in buildings may also be owned separately. According to special legislation, mines are immovables distinct from the surface, and standing crops may be hypothecated as distinct immovables.

The provisions of the Greek Civil Code relating to accessories are almost a verbatim translation of the corresponding articles in the German Civil Code.³³⁵ As in Germany, accessories follow the principal thing in the instances specified by the law and only in the absence of other indication.³³⁶ These rules of interpretation, though applicable to real transactions only, may apply according to the prevailing view by analogy to all transactions. Thus, transfer of a business or enterprise will, in the absence of other indication, include all corporeal and incorporeal objects qualifying as its accessories.³³⁷

CONCLUSIONS

The division of things into movables and immovables pervades the entire body of civil law and also carries significant consequences in several fields of public law. "Immovability" has been historically associated with additional safeguards and more effective protection of ownership. In contemporary society, it seems desirable that certain species of wealth should be given the kind of protection which was traditionally attributed to immovable property. This can be done by the fictitious classification of certain values as "immovables" or by specific regulatory legislation applicable to these values. In a future revision of the Civil Code, Louisiana legislators will thus face a *policy* prob-

335. *Id.* arts. 956, 957, 959, 960. Accessories are susceptible of separate real rights. See BALIS, GENERAL PRINCIPLES OF CIVIL LAW 515 (1955) (in Greek).

336. See GREEK CIVIL CODE art. 958, announcing the general rule that "every juridical act involving a real right on the principal thing [real transaction], includes also, in case of doubt, the accessory." It is presupposed that the accessory belongs to the owner of the principal thing. See also *id.* art. 1286 (differing from the solution given under the corresponding Article 97 of the German Civil Code).

337. See BALIS, GENERAL PRINCIPLES OF CIVIL LAW 517 (1955) (in Greek). *Of. GREEK CIVIL CODE art. 370.*

lem, namely, designation of values which need increased protection, and a problem of *legal* esthetics, namely, determination of a method of regulation. In that regard, it may be expected that the traditional "division" will be re-examined, and the terminology re-defined.

Perhaps the distinction between movables and immovables should apply to corporeal things only. Extension of the distinction to incorporeal things and creation of a category of "incorporeal immovables" should be reconsidered. It is possible to avoid fictions by a provision indicating that certain enumerated *rights* shall be subject to all or only some of the rules governing immovable property, applied by analogy. Mineral rights could be treated as an independent category of rights governed by rules applicable to immovable property.

The distinction of immovable things as immovable by nature, by destination, or by their object should also be reconsidered. Perhaps the category of "incorporeal immovables" is an avoidable fiction, as indicated hereinabove. The usefulness of the category "immovables by destination" may also be questioned. The essence of the problem is determination of circumstances in which movables may be regarded as indispensable accessories of an immovable. As the law stands today, the classification "immovables by destination" is meaningless in connection with vendors' liens, agricultural implements on mortgaged land, and with regard to all things subject to chattel mortgage in case of transfer or encumbrance of the land. In addition, immobilization by destination is immaterial in connection with certain home appliances which, according to special legislation, are regarded as immovables and as parts of the building until the indebtedness they secure is fully paid. Thus, in case of a future code revision, problems of immobilization by destination may be dealt with simply by provisions indicating which movables should be regarded as included in a transfer or mortgage of an immovable, according to the presumed intention of the parties and in the absence of other indication. If, for historical reasons, the category of things immovable by destination were to be retained, care should be taken to indicate which things may be immobilized, under what circumstances, and for which purposes.

It seems, therefore, that a revised Civil Code should provide for only one category of immovables, namely, immovables by

nature. There are today in Louisiana several categories of immovables by nature under both the Revised Statutes and the Civil Code. According to well settled jurisprudence, land, timber, buildings, parts of buildings, and a number of structures regarded as buildings are treated as immovables for *all* purposes. The category of "immovable" things could well be limited to these. Provision should be made, however, to indicate that certain *corporeal* things, such as standing crops, and certain *rights* should be subject to all or only some of the rules governing immovable property. Care should be also taken to indicate the circumstances in which movables may become part of a building by incorporation. In that regard, the test of permanent attachment under Article 469 of the Civil Code may be the proper solution.

The foregoing conclusions reflect in part the conceptual technique of the German and Greek Civil Codes. Closer *rapprochement* is not desirable; these codes are destined to be applied by a judiciary trained exclusively in the civilian tradition and often inclined to resort to a mechanical judicial process. In Louisiana, the legal profession is accustomed to pragmatic ways of thinking and to a less rigorous conceptualism. This means that there should be express provisions designed to cover specific situations, and propositions which might be regarded as self-evident by continental jurists. A Louisiana Civil Code cannot be entirely free of didactic materials.