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Immovables by Nature Under Article 467 of the Civil Code

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The Louisiana Civil Code classifies immovables into the following categories: (1) immovables by their nature; (2) immovables by destination; and (3) immovables by the object to which they are applied.[1] As to the latter, the Code provides that incorporeal things, consisting only in a right, are classed as immovable or movable according to the object to which they apply.[2] Immovables by destination are further divided into the two following classes: (1) movables which have been placed upon a tract of land[3] for its service and improvement by one who owns both the land and the movable; and (2) movables permanently attached to a building by one who owns both the movable and the building. From the foregoing it can be seen that there are three elements which are associated with immovables by destination: (1) a "unity of ownership" between the movable and the land or the building; (2) a placing upon the land for the service and improvement thereof; and (3) a *permanent* attachment to the building.[4]

Immovables by their nature are subdivided into three classifications. Land, buildings and other structures, regardless of whether their foundations are in the soil, compose the first group.[5] Standing crops, standing trees, and the ungathered fruits of trees are considered as *part of the land* to which they are attached and compose the second group of immovables by

1. LA. CIVIL CODE art. 463 (1870).
2. *Id.* art. 470.
3. *Id.* art. 468 was translated to read: "of a tract of land," while the corresponding word in the French Civil Code is "*fonds*," which was used indiscriminately to designate houses or land. 1 PLANIOL ET RIPERT, TRAITÉ ELEMENTAIRE DE DROIT CIVIL 11 (1937).
4. LA. CIVIL CODE art. 468 (1870). This article provides two methods of immobilizing by destination. See Bank of White Castle v. Clark, 181 La. 303, 159 So. 409 (1935); Morton Trust Co. v. American Salt Co., 149 Fed. 540 (1906); Comment, 5 TUL. L. REV. 90 (1931). In total, however, there are three elements necessary to immobilize by destination: (1) a "unity of ownership" between the movable and the land or the building; (2) a placing upon the land for the service and improvement thereof; and (3) a permanent attachment to the building. Under the first method the first and second elements are necessary. See Bon Air Planting Co. v. Barringer, 142 La. 60, 76 So. 234 (1917); Borah and Landen v. O'Neill, 121 La. 733, 46 So. 788 (1908); Townsend v. Payne, 42 La. Ann. 909, 8 So. 626 (1891). Under the second method of immobilizing under this article the first and third elements are necessary. See Bank of Lecompte v. Lecompte Cotton Oil Co., 125 La. 833, 51 So. 1010 (1910); Petty v. Jones, 10 La. App. 409, 121 So. 372 (1929); Day v. Goff, 2 La. App. 75 (1925).
5. LA. CIVIL CODE art. 464 (1870).

their nature.[6] The third class of immovables by their nature is designated by Article 467 of the Civil Code, which serves as the basis of this Comment. Prior to 1912 that article simply provided that water pipes furnishing the house or other estate with water are *part of the tenement* to which they are attached.[7] At that time none of the elements associated with immovables by destination played a part in the classification of immovables by nature.

However, in 1912 Article 467 was amended so that it now provides:

> "Wire screens, water pipes, gas pipes, sewerage pipes, heating pipes, radiators, electric wires, electric and gas lighting fixtures, bathtubs, lavatories, closets, sinks, 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* or *convenience* of the building are immovable by their nature." (Emphasis added.)

The purpose of this Comment is to consider the basic distinctions between immovables by their nature and immovables by destination and to investigate the factors which induced the legislature to introduce those elements formerly associated only with immovables by destination into Article 467, which deals with immovables by their nature. Following this, the interpretation of the article by the jurisprudence will be considered.

PURPOSES OF THE AMENDMENT

An evaluation of Article 467 as amended necessitates an understanding of the theory relating to the distinctions between immovables by their nature and immovables by destination. Under the provisions of Article 468 there are two means to render a movable immovable by destination. Under the first method the mere dedication of the movable to the service and improvement

6. *Id.* art. 465.

7. The Louisiana courts had no opportunity to apply Article 467 before it was amended; therefore, a look at the French interpretation of their corresponding article is pertinent. Article 523 of the French Civil Code, which was similar to Article 467 before the 1912 amendment, is placed between articles referring to immovables by destination. However, referring to Article 523 of the French Civil Code, Planiol states: "Conduit pipes are also immovable by nature not by destination. And this is so, notwithstanding the place which Article 523 assigns them between Article 522 and Article 524, both of which apply to immovables by destination. They are part of the house which without them would be incomplete." 1 PLANIOL ET RIPERT, TRAITÉ ELEMENTAIRE DE DROIT CIVIL 11 (1937). See also AMOS & WALTON, INTRODUCTION TO FRENCH LAW 87 (1935).

of the land will suffice, provided the owner of the land also owns the movable. Movables may also become immobilized by destination by being permanently attached to a building by one who owns both the building and the movable.[8] Thus, it may be seen that all immovables by destination were, at one time, movables. This is not true of immovables by their nature. All that is necessary to constitute an immovable by nature is that it fall into one of those classifications outlined in the introduction.

As has already been pointed out, there are three characteristics associated with immovables by destination: (1) unity of ownership; (2) permanent attachment; and (3) a placing for the service and improvement of the land.[9] According to the Civil Code none of these elements were necessarily identified with immovables by their nature prior to the amendment to Article 467. As amended, that article appears to have borrowed those characteristics formerly associated only with immovables by destination in requiring a unity of ownership and an attachment for the use and convenience of the building. It is felt that the reasons which induced the legislature to inject each of these characteristics into Article 467 may be ascertained.

First, it should be pointed out that Article 467 as amended apparently contemplates only a connection or attachment of a movable for it to become immobilized by nature, while Article 468 pertaining to immovables by destination requires a *permanent* attachment. From a policy standpoint, the undesirability of a literal application of Article 468, requiring a *permanent* attachment to immobilize a movable was significantly pointed up in the 1904 case of *McGuigin v. Boyle*.[10] In that case a purchaser of a house contended that certain chandeliers and their brackets became immovable by destination by being attached to the house. If this argument were accepted, the practical effect would be that the purchaser acquired the chandeliers when he purchased the house, and the former owner would have no right to claim them. This would result from the rule that a sale of an immovable by nature includes all immovables by destination appertaining thereto.[11] However, the court held that the chande-

8. See note 4 *supra*.

9. See note 4 *supra*.

10. 1 Orl. App. 164 (1904). See also L'Hote v. Fulham, 51 La. Ann. 780, 25 So. 655 (1899).

11. 154 So. 767 (La. App. 1934); Bon Air Planting Co. v. Barringer, 142 La. 60, 76 So. 234 (1917); Baldwin v. Young, 47 La. Ann. 1466, 17 So. 883 (1895); Townsend v. Payne, 42 La. Ann. 909, 8 So. 626 (1890); Succession of Dougherty, 32 La. Ann. 412 (1880); Mackie v. Smith, 5 La. Ann. 717 (1850); Nimmo v. Allen, 2 La. Ann. 451 (1847).

liers did not meet the permanent bond test and therefore were not immovable and did not pass with the sale of the residence. Under this permanent bond test, as set out in the Code[12] and as interpreted by the courts,[13] heaters, lighting fixtures, electric wires, and other objects generally thought of as part of the house could be removed after a sale of the residence if the removal did not break or injure the part of the building to which the thing was attached and did not damage the movable. It is suggested that policy considerations arising from the application of the "permanent" bond test led in part to the amendment to Article 467, which *apparently* does not require such a permanent fixation.

As has already been noted, the amendment to Article 467 also introduced the "unity of ownership" concept into that classification of things which are immovable by their nature. Apparently this concept was introduced to afford the same protection to a lessee of a building as that afforded the lessee of land, as exemplified by the case of *Porche v. Bodin*.[14] In this case the purchaser of land argued that the standing crops, although owned by the lessee, formed part of the land as an immovable by nature and therefore passed with a sale of the land pursuant to the foreclosure of a mortgage. Recognizing the consequences which would follow if this argument were accepted, the court held that the crops owned by the lessee in no sense formed part of the land and therefore did not pass in the sale to the purchaser. Although the decision does not appear to be in keeping with Article 465 which provides, "standing crops . . . are considered as part of the land to which they are attached," it does afford desirable protection to a lessee who has produced the crop. This decision was followed by Act 100 of 1906[15] which provides that a lessee's crops are not subject to the debts or mortgages of the landowner. As amended, Article 467 appears to achieve the same results as did Act 100 of 1906 insofar as protection of a lessee of a building is concerned. The requirement of "unity of ownership" protects the lessee from the lessor's creditors or a purchaser because those things which the lessee attaches would not meet the requirement.[16]

12. LA. CIVIL CODE art. 469 (1870).
13. Scovel v. Shadyside Co., 137 La. 918, 69 So. 745 (1915); L'Hote v. Fulham, 51 La. Ann. 780, 25 So. 655 (1899); McGuigin v. Boyle, 1 Orl. App. 164 (1904).
14. 28 La. Ann. 761 (1876).
15. La. Acts 1906, No. 100, now LA. R.S. 9:5105 (1950).
16. See Richardson v. Item Co., 172 La. 421, 134 So. 380 (1931).

The third characteristic of immovables by destination included in the amendment to Article 467 is that an object, to become immobilized, must be attached for the use or convenience of the building. This requirement serves to protect the owner of the building. Thus, if the owner were to attach a personal object, such as a family portrait, to the walls of the building, it would not become an immovable by nature and pass with a sale of the residence.[17]

THE JURISPRUDENCE UNDER ARTICLE 467 AS AMENDED

Article 467 lists numerous items which are immovable by nature if the other requirements of the article are met. In the case of *Scott v. Brennan*,[18] it was held that the maxim *"inclusio unius est exclusio alterius"* has no application in construing the article. After recognizing that the article is illustrative and thus greatly expanding the scope thereof, the court proceeded in the case of *Day v. Goff*[19] to apply its provisions. Here the court declared that certain items were not immovable under Article 467 or 468 because they were placed not for the service or improvement of the building but rather for the convenience of the particular business being carried on therein. The same issue arose again in the case of *Kelieher v. Gravois*[20] where the former owner attempted to remove certain venetian blinds after the sale of his property. The court held that the blinds were placed in the building for the convenience of the owner and were thus movable and could be removed after the sale of the building.[21] The requirement under Article 467 that the movable must be attached for the use and convenience of the building may often present a close question of fact as it did in the *Kelieher* case. However, but for that requirement the owner might lose all personal items attached to the house such as family portraits, clocks, cooking stoves, washing machines, and similar items.

The requirement of "unity of ownership" under Article 467 was dealt with in the case of *Holicer Gas Co. v. Wilson*,[22] a 1950 court of appeal decision. Here the owner of land entered into a

17. See Kelieher v. Gravois, 26 So.2d 304 (La. App. 1946).
18. 161 La. 1017, 109 So. 822 (1926).
19. 2 La. App. 75 (1925).
20. 26 So.2d 304 (La. App. 1946).
21. The dissent analogized the blinds to wire screens, saying that if the screens were not specifically mentioned in the article they too would be movable under the reasoning of the majority. *Id.* at 308.
22. 45 So.2d 96 (La. App. 1950).

lend-lease agreement with the plaintiff. Under this agreement the plaintiff placed one of its butane gas tanks on the landowner's property, it being agreed that the landowner would purchase all gas from the plaintiff. Later the landowner sold the land to the defendant who claimed that the tank was immovable by nature under Article 467 and therefore passed under the act of sale. The plaintiff contended that there was no "unity of ownership" and thus the movable could not be immobilized under the provisions of that article. However, the court held that the article simply requires that the owner attach the items or that they be attached on his orders. In other words, the court did not require a "unity of ownership" between the immovable and the movable under the provisions of Article 467, but only required that the owner do the physical attaching or that he have it done. In 1954 the case of *Edwards v. S. & R. Gas Co.*[23] presented to the same court the same set of facts as in the *Holicer* case. In reversing the *Holicer* case the court held that in order for immobilization to take place the owner of the tenement must have title to the movable which he dedicates to the interest of the building. The rule of this case was adopted by the legislature in Act 49 of 1954,[24] which provides that all tanks placed on rural or urban property by one other than the owner of the land or the storage of liquefied gas or liquefied fertilizer shall remain movable and shall not be affected by a sale of the land.

The jurisprudence is not clear as to what kind of attachment or physical bond is required under Article 467. The question presents itself in cases dealing with the vendor's privilege on movables. Under Article 3229 an unpaid vendor maintains a privilege on goods sold. However, this privilege does not survive if the movable becomes immovable by nature under Article 464, providing that "land, and buildings or other constructions . . . are immovable by nature."[25] However, the privilege on a movable is not lost in the case of immobilization by destination if two conditions are met: (1) the movable has not lost its iden-

23. 73 So.2d 590 (La. App. 1954).

24. La. Acts 1954, No. 49, now LA. R.S. 9:1106 (Supp. 1958).

25. *In re* Receivership of Augusta Sugar Co., 134 La. 971, 64 So. 870 (1914); Swoop v. St. Martin, 110 La. 237, 34 So. 426 (1903). In Monroe Automobile and Supply Co. v. Cole, 6 La. App. 337, 340 (1927), the court stated: "No principle of law is more firmly established in our jurisprudence that movables may, under some circumstances, become part of the realty in connection with which they were used and become by such use immovable, insofar as the vendor's right to assert a privilege thereon is concerned, even though such movables are not so broken up and are not so merged into the realty as to lose entirely their identity."

tity; and (2) the movable can be detached without substantial injury to either the movable or the immovable to which it is attached.[26] It would seem that this interpretation is plausible in the light of Article 469, which provides that the owner is supposed to have attached to his building forever such movables as are affixed with mortar or plaster so that they cannot be taken off without being broken, or without injury to the building.[27] However, the courts seem to apply the same standards when dealing with Article 467, and have thus held that the vendor will retain his privilege on a thing which has become an immovable by nature under Article 467 if he can identify the item and if it can be removed without injury to it or to the tenement.[28] The door was opened for such an interpretation by the United States Court of Appeals, Fifth Circuit, when it declared that the terms "immovable by nature" and "immovable by destination" are terms which create fictions of the law and can be considered interchangeable.[29] The court thus rationalized that the same rules apply to both fictions and thus under a long line of jurisprudence the vendor would retain his privilege if there was no *permanent* fixation. This view was later reaffirmed by the same court stating that the vendor retained his lien notwithstanding the fiction of immobility created by Article 467.[30] These two federal cases were followed by a Louisiana court of appeal decision, holding that the vendor's privilege is enforceable so long as the movable sold by him can be removed without substantial injury to the structure to which it is attached.[31] None of these cases, holding that the vendor retained his privilege on an immovable by nature, referred to earlier cases holding that the vendor lost his privilege if the movable became immobilized by nature under Article 464.[32]

As the jurisprudence now stands there are two rules in re-

26. Caldwell v. Laurel Grove Co., 175 La. 928, 144 So. 718 (1932); Succession of Sussman, 168 La. 349, 122 So. 62 (1929); *In re* Receivership of Augusta Sugar Co., 134 La. 971, 64 So. 870 (1914); Hamilton Co. v. Medical Arts Bldg. Co., 17 La. App. 508 (1931); Day v. Goff, 2 La. App. 75 (1925). Under the French jurisprudence a vendor loses his privilege if the movable becomes immovable by nature, while he retains his privilege if the movable becomes immovable by destination. 1 PLANIOL ET RIPERT, TRAITÉ ELEMENTAIRE DE DROIT CIVIL 16 (1937).

27. See notes 12 and 13 *supra*.

28. Tangipahoa Bank & Trust Co. v. Kent, 70 F.2d 139 (5th Cir. 1934); Cottonport Bank v. Dunn, 21 So.2d 525 (La. App. 1945).

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

30 Smith v. Kent, 79 F.2d 129 (5th Cir. 1935).

31. Cottonport Bank v. Dunn, 21 So.2d 525 (La. App. 1945).

32. See note 28 *supra*.

spect to the vendor retaining his privilege on movables which have become immovable by nature under Articles 464 and 467.[33] If a movable becomes immobilized under the former article the vendor's privilege is lost. If the immobilization takes place under Article 467, the vendor's privilege remains on the movable if there is no permanent attachment so that it can be removed from the tenement without substantial injury to the structure.[34] The writer was unable to find a case which held the contrary of this, but it is assumed that if a movable were permanently attached under Article 467 the privilege held by the vendor could not be exercised.

CONCLUSION

From the foregoing discussion the results accomplished by the amendment to Article 467 may be summarized. First, the amendment serves to broaden the classification of immovables by their nature. This result was carried even further by the jurisprudence when it was held that the items listed in the amendment are only illustrative. The amendment also affords protection to an owner who has attached personal items to a building by requiring that the movable be attached for the use and convenience of the building rather than for the use and convenience of the owner. The third accomplishment of the amendment to Article 467 was to introduce "unity of ownership," thereby protecting a lessee who had attached any item to the property.

The language of Article 467 does not appear to require an attachment or connection of a permanent nature in order to immobilize a movable. The courts' requirement that there be a permanent attachment under Article 467 in order to defeat a vendor's privilege apparently stems from a feeling that the vendor should be protected. It appears, however, that other methods are available to protect a vendor instead of resorting to a requirement of permanent attachment under Article 467. For example, one statute provides that the supplier of movables which have become immovable by nature still retains a supplier's lien.[35] The chattel mortgage also affords the vendor some measure of protection.[36] Under either of these provisions the vendor could

33. See note 28 *supra.*
34. See note 28 *supra.*
35. LA. R.S. 9:4801-4817 (1950), as amended.
36. *Id.* 9:5351-5365 (1950).

be protected and the court would not have to require a permanent attachment under Article 467 before holding that the movable became immobilized. These other forms of protection will be available whether the movable was attached permanently or not, whereas it is surmised that if the attachment were permanent the vendor would lose his right under the current interpretation of Article 467.

The policy considerations which prompted the amendment to Article 467 are not questioned by the writer. However, the method used to effectuate this policy is disturbing in certain particulars. The "unity of ownership" concept was peculiar to immovables by destination prior to the 1912 amendment. The Louisiana Civil Code was written and enacted as a unified body of law. This coherence has been disrupted by the amendment to Article 467 by requiring "unity of ownership" in the classification of things as immovable by their nature. It is suggested that the policy objectives which prompted the amendment could as easily have been accomplished through an addition to the Revised Statutes without disrupting the unity of the Civil Code.

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The Doctor-Patient Privilege in Civil Cases in Louisiana

Generally all evidence relevant to the issues at trial is admissible, although of course there are many exceptions. The physician-patient privilege is designed as an exception to this rule in that it works an exclusion of otherwise admissible evidence. It is designed to encourage the free exchange of information between physicians and their patients. The desirability of the privilege is essentially tested by the balancing of a revelation of truth on the one hand and the encouragement of disclosure to physicians on the other. Although the physician-patient privilege did not exist at common law,[1] various states have adopted it by statute.[2] Louisiana has provided for the privilege

1. 8 WIGMORE, EVIDENCE § 2380 (3d ed. 1940) and authorities cited therein; 3 JONES, EVIDENCE § 838 (5th ed. 1958); MCCORMICK, EVIDENCE § 101 (1954). England still does not recognize the privilege.

2. See note 1 *supra*. For a detailed compilation of the statutes adopted, see 8 WIGMORE, EVIDENCE § 2380 (3d ed. 1940).