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AUBRY & RAU

DROIT CIVIL FRANÇAIS

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PROPERTY

Things — Possessory Actions — Ownership

An English Translation

By The

Louisiana State Law Institute

Jaro Mayda, Translator

AUBRY & RAU

DROIT CIVIL FRANÇAIS

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by
Paul Esmein
Honorary Professor of the Faculty of Law of Paris

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FOREWORD

This translation of the volume on *Property* of Aubry & Rau's *Cours de Droit Civil Français* is the second volume in a series entitled *Civil Law Translations* which, with the concurrence of the Louisiana State Law Institute, is being distributed by the publisher as an integral part of the *Louisiana Statutes Annotated.* The first volume of this new series was the translation of the work on *Obligations* by the same authors.

As observed in the foreword to Volume I, *Civil Law Translations*, the *Cours de Droit Civil Français* by Aubry & Rau covers the entire field of civil law with the conciseness and the clarity of style for which the authors are noted. The first edition appeared in five volumes published between 1838 and 1847. The authors, professors of law at Strasbourg and later counselors at the Court of Cassation, drew their inspiration from a German manual published in 1808 by Charles Solomon Zachariae. The arrangement of the treatise is original. Unli' e that of preceding commentaries, it does not follow the order of the Code. This fact, together with its concise and careful statement of conclusions, has resulted in its general recognition as one of the foremost works of its kind.

Volume II of the Seventh Edition, published in 1961, which served as the basis of this translation, was edited by Paul Esmein, honorary professor at the Faculty of Law of Paris. Professor Esmein has followed the original plan of the treatise and expounded basically the views of Aubrey & Rau, but has not merely brought this volume up-to-date. He has revised it with care and incorporated into it his own incisive thinking and critical views of the texts of the law and jurisprudence. It is believed that this volume will be found to be a reliable guide in the application of the rules and principles contained in Book II of the *Louisiana Civil Code* of 1870, devoted to institutions of property law, and will thus fill a recognized need.

The translator is Jaro Mayda, professor of law at the University of Puerto Rico. Professor Mayda is a native of Czechoslovakia. He has degrees in law from Masaryk University and the University of Chicago. He has served as instructor in law in this country as well as in his native country. He joined the University of Puerto Rico in 1958. He translated for the Louisiana State Law Institute the third volume of Planiol's *Traité Élémentaire de Droit Civil* and Gény's *Méthode*

d'Interprétation et Sources en Droit Privé Positif. He feels that "the preoccupation of a translator should be to convey the meaning of the original." In his choice of terms he has followed this principle, although in some instances the result may be counted as having a flavor more American than Gallic. For the same reason he has in some cases employed explanatory description instead of translation in the narrow sense.

The generosity of Libraries Techniques in granting to the Louisiana State Law Institute the right to publish translations of selected volumes of Aubry & Rau's outstanding treatise attests its active interest in furthering the science of law and a praiseworthy readiness to assist a kindred jurisdiction in the continuing development of its basic legal system. In expressing its sincere gratitude and appreciation, the Institute extends especial thanks to M. Paul Esmein not only for his concurrence in the authority granted to it but particularly for his amiable correspondence with the translator.

The Institute again expresses its indebtedness to the West Publishing Company for its cooperation in this aspect of the Institute's program adopted in response to its statutory responsibility, "To make available translations of civil law materials and commentaries and to provide, by studies and other doctrinal writings, materials for the better understanding of the civil law of Louisiana and the philosophy upon which it is based." LSA–R.S. 24:204(7).

J. DENSON SMITH
Professor of Law, Louisiana State University
Director, Louisiana State Law Institute

March, 1966

FRENCH CIVIL LAW

BOOK II — PROPERTY

INTRODUCTION

I

GENERALLY ON THE RIGHTS UNDER CIVIL LAW

§ 162

1. The concept of subjective right.

Property, in the broad sense, means everything that has material or moral value for human beings, beginning with their own body, reputation, freedom to think and act. The state guarantees by its laws, judiciary and police the enjoyment by natural or corporate persons of property rights, the protection of which it considers proper and worthwhile. When we say that a person has a right to enjoy certain property, we mean that the person claiming such enjoyment in conformity with the law may have recourse to the power of the state against anybody who interferes with this enjoyment or changes the property in any manner.

A right so understood is distinguished from the rules of law by being termed *droit subjectif*. The rules of law are called *droit objectif*. But since the context always makes it clear in which sense the term *droit* is used, it is not usually so specified in practice nor in law books, except for treatises and jurisprudential studies.

French private law is conceived as a function of the concept of rights belonging to individuals: right of ownership, creditor's rights, right of succession, author's rights, etc. It has not been shown that this conception goes very far back in history. The notion that Roman jurists pivoted legal relations on this idea of authority attributed to individuals, as we have done, has been contested.

Their system allegedly stemmed from the idea that there is a natural order which determines the place of everything in the world,

including that of every person in society. This was the conception of natural law espoused by Aristotle and throughout the antiquity. Subsequent to Renaissance, it was replaced by another conception of natural law—that of natural rights, belonging to the individual before there was organized society. Part of these rights the individual has reserved in the social contract, by which he gave up the rest of them in favor of the collective. Under the influence of the schools of natural law and the law of nations, the concept of *droit subjectif* has come to dominate European private laws, especially the Civil Code.[1]

2. Critique of this concept.

At the beginning of the 20th century, the concept of right (*droit subjectif*) was violently attached by various writers, especially Duguit and his school. According to Duguit, it implies that the individual has a will and powers which he can impose upon the will and powers of others. Since such a superiority can not be found in fact, the concept of individual rights is a metaphysical concept. In reality, we see only situations creating legal claims, which are indeed protected at the request of the person whose interest is involved or who has a power to intervene but only because they are within the law (*droit objectif*)[2].

However, if the concept of subjective rights is metaphysical, so is the concept of objective law. Neither of them exists outside the minds of men, unless we accept the old idea of natural law, the natural order in the universe. Duguit does not; for him the source of law lies in the belief of the majority of men. But contemporary Frenchmen believe in the existence of individual rights. For them the question is not about some superiority of the holder of a right over his neighbor. Moreover, this superiority would be reciprocal in the case of bilateral contracts. Nobody denies that the will of an individual is sufficient to create a right in his favor or to obligate himself. Every right presupposes an organized society, which defines and confirms it. In other words, every individual right presupposes a rule of law. But that does not mean that the power of an individual to enjoy property, to dispose of it and to seek public protection if his individual right is interfered with or if the property is in jeopardy, could not be conceived as a personal right of that individual.

Indeed it is possible to construct a legal system without using the term right to designate the power of the individual to demand that the rules of law be applied in his favor. But once we admit that he can dispose of property or claim public protection for it, we need a term to express this. Duguit calls a legal situation freely created and

1. See the important study by M. Villey, "Les origines de la notion droit subjectif," in *Leçons d'histoire de la philosophie du droit*, ch. xiv.

2. Duguit, *Traité de droit constitutionnel*, 1 (Ed. 3).

shaped by individuals, for instance a sales contract, a "subjective legal situation" (*situation juridique subjective*).

The semantics import little if we agree on recognizing rights and freedoms of individuals compatible with the general interest. At a time when the threat of tyrannical exercise of governmental power is so real that it was felt necessary to affirm the rights of man anew and solemnly in the Charter of the United Nations and within the Western European Community, it does not seem proper to abandon the concept of individual rights as the basis of private law.[3]

3. The content and classification of individual rights.

The term right, belonging to an individual (or a corporate person) means in some cases simply the power to choose between various decisions. Thus we speak of the right to accept or to renounce a succession or a community of property; the right to give notice or to dismiss an employee; the right to dispose by testament; the right to marry; the right to choose between two performances of an alternative obligation. At first sight, a right of this type appears quite different from such rights as the property right to a determined immovable or the right to the repayment of a money loan. Its immediate direct object is a simple power, not a thing or a person. It amounts to an access to the courts if the exercise of the power is interfered with by other individuals or agents of the government. But from a jurisprudential point of view, is this not also the case of rights which bear directly or indirectly on a thing,—an ownership interest or a claim for payment of money?

We can speak of rights with reference to very broad, even indefinite powers, such as the right to move around freely, to choose one's residence, profession, express one's views publicly, to associate and unionize, to choose and practice a religion, as well as to change one's faith. It is not important that the affirmation of these rights has so far aimed mainly at overcoming the obstacles the government can put in the way of these individual powers. Thus they came to be called civil rights (*libertés publiques*), which is surprising at first since they are exercised by individuals in their private interest.

Rights can be classified according to their object or, more exactly, according to the property interest which they permit to be protected. Aubry and Rau distinguished such objects of rights as body, freedom, honor which they said were identical with the very existence of a person, and those existing independently from the entitled person. They called the first group intrinsic property interests (*biens innés*),

3. Accord: Dabin, *Le droit subjectif*, I (1952), a basic work concerning the concept and definition of individual rights.

the second extrinsic property interests (*objets extérieurs*). Among the latter they distinguished, according to their object, persons and things. These distinctions are necessary for a systematic classification of rights, since their content and the powers of the subject with relation to the property are different depending on whether the interest is intrinsic or extrinsic, and in the latter case, whether the object of the interest is a person or a thing.

The expression *biens innés*, related to the conception of man's natural rights within the social-contract thesis, has been replaced at the present time by the notion of human rights. Basically the idea is the same: human personality deserves respect and ought to be attributed certain autonomy which man should not be permitted to renounce.

The value of human personality also founds a distinction among the extrinsic property interests; those which have another person as object have a different structure from those which have a thing as object. The subjection of one person to another is never complete, whether the right is one of authority, as for instance in relation of father to a minor child; or whether it is a right of a limited scope which we call the right (claim) of performance (*droit de créance*), for instance the right of an employer to receive the services for which an employee bound himself; or the mutual rights of vendor and buyer to receive the payment of the price and the delivery of the goods. Even when, as in the last example, the aim is the delivery of a thing, the fact that it must be obtained through the medium of a person influences the manner of enforcing the right. So, although the person of the debtor is considered as obligated, it is in principle impossible to proceed against his person to force him to perform.

When the monopoly of exploitation has been granted to the author of a work of art or of an invention, or when a manufacturer is protected against competition by the sole use of a name, trade mark, design or model, we speak of intellectual or industrial rights. Rights operating under such special circumstances have necessarily special features. The same is true of the composite property interest called the business goodwill; and of the rights and interests generated by family relations.

Aubry and Rau noted that rights related to the person of their bearer-subject, formerly called intrinsic rights, can not found a claim unless some one else has violated them. But the same is true of the custody of a father over his minor child; of a property owner, who does not complain if no one contests the enjoyment or disposal of his property; of a creditor who does not bring any claim if his debtor performs.

4. Patrimonial and extrapatrimonial rights.

Contemporary writers divide rights generally into patrimonial (*droits patrimoniaux*) and extrapatrimonial (*d. extrapatrimoniaux*). The latter can not be expressed in terms of money, such as those resulting from marriage (outside of monetary property relations between the spouses); or derived from paternal powers and the status as the head of family; or the right of man to his own body and name; or the intellectual right of an author to a work of art.[4] This classification is not absolute. It is never the right itself that can be evaluated in money; it is only the interest involved. But an injury to an extrapatrimonial right can lead to a damage award.

The extrapatrimionial rights are better characterized by the prohibition of assignment, for a consideration or even gratuitously; and by the fact that the creditors of the bearer of such rights cannot have an action based on them. Thus we can say that if estate is defined as the total of monetary interests of a person, these rights do not form part of it. But there are also rights susceptible of monetary evaluation which can not be assigned, for instance the right to use someone else's property or to reside on it (*usage-habitation*),[5] or the right of parents to use and administer the property of their children. A certain portion of salaries can not be assigned nor attached.[6] Numerous types of pensions, social security and family support payments are partially or totally unassignable or unattachable.[7] Alimonies awarded by courts can not be attached; neither can money left for the purpose of support even if the donor or testator did not declare it unattachable;[8] nor various objects considered indispensable for the debtor's livelihood.[9] The right of maintenance, within the scope of the Law of 1 September 1948, can not be assigned. There are rights the object of which has a monetary value, but which can not be acted upon by the creditors of the entitled person under Art. 1166, Civil Code, if he himself does not exercise them. For instance:

4. See Nerson, *Les droits extrapatrimoniaux* (Lyon thesis, 1939); Perreau, "Les droits de la personnalité," *Rev. trim.* (1909) 501; Decocq, *Essai d'une théorie générale des droits sur la personne* (1960), a book which deals completely with the extent of legal protection of a person against injuries to his physical integrity and freedom, even those to which he may have consented, These questions are discussed below in connection with the performance of obligations and of civil liability. As a whole they are dealt with in Vol. I, in connection with the discussion of persons.

5. Arts. 631, 634, C. Civ.

6. C. Trav. (Labor Code), I, Art. 61; excepted from the rule are alimonies (Art. 62). The same rule applies to public employees and members of the armed forces (Law, 24 Aug. 1930).

7. See Dalloz, *Rép. droit civil*, V° Cession de créance, N° 118.

8. Art. 581, C. Civ. Proc.

9. Art. 592, C. Civ. Proc.

the right to demand the revocation of a gift for ingratitude; to demand the separation of property; to claim damages for moral injuries. On the other hand, there are interests not susceptible of monetary evaluation which their subject may renounce so they can be acquired by another person. Such is the paternal power in case of adoption; or the assignment provided by Law of 24 July 1889, Tit. II.

Excepting these cases which are rare, the distinction between patrimonial and extrapatrimonial rights is in reality a distinction between rights which their subject may dispose of and those which he may not. The extrapatrimonial interests can not be expressed in currency because there is no market offering a current price for them.

5. Corporeal and incorporeal things.

Roman jurists considered fundamental the distinction between corporeal things (*choses corporelles*—those which can be perceived by senses) and incorporeal ones (*c. incorporelles*). But this distinction was arbitrary. They considered servitudes and usufruct incorporeal, while the ownership right was corporeal.[10]

In a legal system based on the concept of individual rights, such as the French,[11] one may claim that all interests, including property interests, are in reality incorporeal. Nevertheless, the corporeal or incorporeal nature of the object of the interest can not remain without influence on the manner of disposing with it. This is so not only when the interest bears directly on a thing (real right—*droit réel*), but also when it merely binds a determined person to grant enjoyment of it to another person. Despite the assimilation in modern law of the disposal of property for the purpose of transfer and the giving of corporeals and incorporeals as surety, now possible without dispossessing oneself of the thing, it would not have been possible to forget about the possession in cases of corporeal property, without causing considerable difficulties. It has been by means of concretizing rights on a piece of paper, a corporeal thing, that easy movement of certain types of rights was achieved. Specific performance and attachment can not be carried out in the same manner with respect to corporeal and incorporeal objects of the interest. Finally, there

10. Gaius, II, 13–14; Justinian, *Institutes*, II, 2. The distinction was important in that certain modes of acquisition applied only to corporeal things, for instance possessory interdict. Girard, *Droit romain* (Ed. 8) 289, 398. The criticism of this Roman classification applies equally to the distinction in France of movable and immovable property. This classification is actually limited to corporeal things. It is erroneous to divide all things into one category or the other; the classification was made, especially in our old law, as arbitrarily as the roman classification of corporeals and incorporeals.

11. Cf. the study of Villey (cit. n. 1) in the sense that Roman law was not based on this concept but rather on the idea of a definite place of persons and things in the natural and social order.

is no reason, in the nature of things, why all corporeals should not be possible objects of rights; but it is different with respect to some incorporeals. There are property interests which one should like to have protected in the form of rights without finding a means to do so. This is the case of the so-called scientific property, the right to benefit from scientific discoveries as such, without practical application.

The scope, and even the concept, of corporeals and incorporeals has been developed and modified in our time and is slated to be even more so. Fluids and waves are things that may be perceived through senses or appropriate instruments. Air can be liquified or decomposed. Inert matter is considered today as a mass which is in a perpetual movement. This new physical conception can not directly influence the concept of individual rights. But the recognition of interests in things previously unknown may require special handling.

Incorporeals have, in turn, multiplied in the form of exclusive rights to benefit from certain non-material things or to exercise certain activities: intellectual and industrial property, protected trade marks, the limitation on membership in certain professions, quotas which result in exploitation privileges, etc.[12] Obviously this type of property requires special handling.

6. *The meaning of the term ownership in the Civil Code. Universalities of rights.*

In the language of the Civil Code, the term ownership (*propriété*) includes neither the intrinsic rights of individuals, nor powers as such, independently of the monetary benefits possibly flowing from them (Arts. 516, 2092).

The total of property rights of a person constitutes his patrimony (*patrimoine*). The elements of a patrimony are such objects which under the civil law have the quality of property. Since these objects acquire this quality only by virtue of the rights to which they are subject with regard to a certain person, we can define patrimony as the total of rights of a person, governed by civil law, and related to objects which represent property.[13]

Patrimony is a universality of rights (*universalité de droit*) because the various property interests are unified through the person of the owner.

Positive law recognizes besides patrimonies also other similar legal units: the objects and interests subjected to successoral rever-

12. These developments and modifications have been amply described by Savatier in his two articles on corporeal and incorporeal property, in *Rev. trim. de droit civ.* (1958) 1, 331; reprinted in his *Métamorphoses du droit privé d'aujourd'hui* (3d ser.) 107 ff.

13. Cf. §§ 573 ff. dealing with the concept of patrimony.

sion (*retours successoral*) in the situations provided for by Arts. 351; 357,1; 747; 766; and the separate property of the wife under various matrimonial property regimes.

We must not confound these universalities of rights with such collections of objects which the owner has gathered for a specific purpose or common usage, for instance a library, a herd, etc. The objects which form such collections, commonly called universalities of things (*universalités de fait*), must be considered in law as remaining separate. Unless the owner in his autonomy, or the law specifically provide differently, the rights or obligations bearing on these objects are governed by the same principles as if they did not form part of such a collection (cf. Arts. 616, 1800).

Indeed, a universality of rights can be converted by the will of the owner into a universality of things, in certain cases and for certain purposes. This happens, for instance, if a person bequeathes *titulo singulari* a part of a succession, or even the whole succession which has devolved upon him.

7. *Outline.*

Although the structure of the Code is based on the idea of individual rights of persons, its second book follows the outline of the Roman Institutes and starts with a classification of things. The first item in this classification is the division in movables and immovables. This division had only limited effects in Rome and has lost a good deal of the importance which it had in old French law.

But following the Code, we shall start our exposition with this division of things.

II

VARIOUS CLASSIFICATIONS OF THINGS

§ 163

Division of Things into Movables and Immovables

8. The basis of this distinction. Its historical background.

Things were divided into movable and immovable in consideration of the physical nature of corporeal things with relation to their mobility. Things are movable or immovable according to whether they can be transported or can transport themselves from one place to another without having to be uprooted or detached from a thing itself fixed in the ground.[1]

The distinction has some practical importance with regard to the physical characteristics. The fixed nature of an immovable has resulted in attributing jurisdiction to the court of the place of its location in actions to determine the title (Art. 59, C. Civ.Proc.), actions to acquire possession and some other actions (Art. 23, Ordin. 58–1294, 22 December 1958) and, under various laws, actions related to lease of immovables. This fixed nature facilitates effective publicity and has been therefore one of the reasons for the distinction between movables and immovables with regard to the validity of, and defenses against, actions by third persons affecting property title. It has also played a role in the choice of law in conflict-of-laws situations.

But the principal importance of the distinction is not related to the fixed nature of things or its absence. Rather it comes from the feeling that certain things are more valuable than others as parts of individual estates and that, therefore, their conservation must be assured. Disposal of such property, if belonging to an incompetent, is subject to judicial authorization.[2] Their attachment is subject to special procedure. They remain separate property of their owner under the statutory community of property. Under the dotal type of community, the conservation of an immovable is better assured than that of movable dowry. One must add that the property transfer tax

1. See Art. 528. This definition is not entirely exact. In fact, accessories such as locks, doors, shutters, which can be dismounted without breaking anything, are considered as parts of an immovable building. The same is true of other movables which the owner provides for the use of a property without physically attaching them to it (immovables by destination under Art. 524, 1).

2. Art. 458. Immovables of a minor can not be sold by his creditors until after the state of the movables has been examined (Art. 2206).

is higher in the case of immovables than of movables Arts. 721 ff., C. gén. imp. [General Tax Code].

It so happened that for our ancestors immovables were in physical terms those property interests the conservation of which they wanted to assure.

In addition to the practical importance of the distinction between movables and immovables discussed above, our old law added still other consequences. Only immovables constituted succession proper; were subject to subrogation of heirs or legatees (*retrait lignager*) and to the customary reserved portion. All these provisions favored keeping valuable property in the family.

In this perspective, it was logical to submit to the rules, and thus to assure the conservation of, such property interests other than things physically fixed, which become important elements of private estates.[3] Thus feudal rights road and bridge tolls, land rentals, tithes, long-term usufructs, use of property on basis of special land rents (*emphytéose*) and public domain rights under the Civil Code, all derived from immovables, were classified as immovables. Even beyond that, purchasable offices (*offices venaux*) and even annuities not related to an immovable were classified as immovables.[4]

Having thus classified as movables or immovables incorporeal things with respect to which these terms in their original meaning made no sense, lawyers were led to classify all property interests in one or the other of these categories.[5]

9. The Civil Code.

The Civil Code says the same: "All things are either movable or immovable" (Art. 516). Thus the Code makes it necessary to classify all property as movable or immovable, for instance so as to

3. Beaumanoir came with the idea that immovables are durable things which yield a regular product. *Coutumes de Beauvoisis* (Salmon, ed.), ch. xxiii, secs. 672, 678. This idea has governed in general the classification of immovable property under our old law. A decision of the *Parlement de Paris* of 1668 (reported by Denisart, *Collection des décisions nouvelles*, V° Immeubles, N° 13 [1771]), related to the region of Lyon where the question was at issue, determined annuities to be immovables "because they are a kind of stable and permanent property which bears fruit over a period of time." But annuities were treated as movables in the regions of written law and under some customs. Cf. Guyot, *Répert. de jurisprud.*, V° Biens, § 11.

4. Cf. Denisart, *Id.*; Guyot, *Id.*; Brissaud, *Cours d'histoire du droit français*, p. 1182. With regard to rents and offices, cf. *Coutume de Paris*, Arts. 94–95. Indeed this type of immovables was often referred to as intangibles and fictitious. Cf. de Laurière on the *Coutume de Paris*, pref. to book III; Denisart, *Id.*, N° 4.

5. Art. 88, *Coutume de Paris*: "Within the military (*prévoté*) and civilian (*vicomté*) jurisdiction of Paris there are only two kinds of property: movables and immovables". Some customs subjected for various purposes certain non-important immovables, called *catteaux*, to the rules governing movables. Cf. Brissaud, *Id.*, 1181.

determine whether it enters into the community of property or doesn't; or to determine the rate of property registration fees.

But the Code has not attributed, as our old law did, the character of immovables to rights not attached to objects which are immovable by their nature.[6] The usufruct of an immovable, a servitude, a right of action for restitution of an immovable are all immovables (Art. 526). But the various quasi-public offices (*offices ministériels*) are not classified as immovables following the institution of purchasable offices under our old law. An annuity secured by a mortgage is not an immovable as the annuity in consideration of land transfer (*rente foncière*) used to be. Finally, Art. 529 declares that pensions (*rente viagère*), whether to the charge of the state or of other payees, are movables. Thus it discards the classification as immovables of annuities in consideration of capital payment (*rente constituée*) under the Custom of Paris.

The elimination of incorporeal and constructive immovables created by our old law has left a vacuum in case where new or more abunant incorporeal things formed an important part of individual patrimonies: quasi-public offices, capital values, business goodwill, literary or artistic property, patents. Spouses married under the community of property regime could reserve them as separate by a clause in the marriage contract. But the Civil Code has left the guardians the power to dispose without permission of incorporeal movables belonging to incompetent minors, whose property they administered. The legislator remedied this situation (Law, 27 February 1880) not by classifying this property as immovable, as one would have done under the old law, but by requiring that disposal of this type of property be under specific circumstances authorized by the family council and approved by the court.

The Civil Code still uses the language of the old law when it calls the conversion clause, whereby a spouse stipulates in the marriage contract that all or some of his immovables will belong to the community, a *clause d'ameublissement.* (Art. 1500); the opposite conversion clause, excluding all or part of movables from the community, is still called *clause de réalisation* (or *d'immobilisation*) Arts. 523–4). But these conversion clauses are effective only from the viewpoint of the contract that determines the property of which the community will consist.[7] For instance, the conversion of movable property for

6. It is necessary to make reservation with regard to statutes subsequent to the Code which have made it possible to declare as immovable the shares of the *Banque de France*, and certain annuities. See below § 165, nn. 19, 20.

7. This has been already said under the old law. Cf. de Laurière (cit. n. 4) *Ibid.*

the purpose of entering it into the community does not make it susceptible of being mortgaged.

Inversely, the 20th-century legislator has imitated the old law by authorizing that the *Banque de France* convert its shares into immovables by a special declaration and thus make them eligible for mortgaging and sale under conditions required for the sale of immovables.[8] The legislator also authorized the conversion into immovables, by declaration, of annuities due by the state to municipalities, public utilities and other public corporations.[9]

On the other hand, he has attributed the character of immovables to certain credits tied to immovable property (for instance, the special municipal mining tax *redevance des mines*), or substituting for it (for instance, indemnity for war damages to immovables).[10]

Finally, the Civil Code attributes, more broadly than the old law, the character of immovables to corporeal movables which facilitate the use of immovable property (immovables by destination).[11]

Inversely, ungathered fruits, standing trees, material to be gained by demolition of a building or to be extracted from the ground, may in certain respects already be treated as movables.[12]

The provisions of the Civil Code on movables and immovables are anachronistic. As soon as immovables by nature have ceased to be the only type of property the conservation of which is desired, and one has abandoned the fictitious classification as immovables of property interests which, not being corporeal, are neither movables nor immovables, one should abandon the provision that all property is either movable or immovable. This distinction should be limited to corporeal things, with a reservation in favor of property substitution (*subrogation réelle*).

§ 164

Corporeal Immovables

10. Classification.

Corporeal immovables are such either by nature or by destination (Art. 517).

(1) Immovables by Nature

11. a) Land.

Land is the basic immovable to which all other corporeal things must be attached to qualify as immovables by nature.

8. See § 165, n. 20.

9. Cf. *Id.*, n. 19.

10. *Id.*, nn. 7, 21.

11. See § 164, nn. 39 ff.

12. They are today called movables by anticipation. See *Id.*, nn. 32 ff.