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Standing Crops: Movables or Immovables?

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STANDING CROPS: MOVABLES OR IMMOVABLES?

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According to Article 465 of the Louisiana Civil Code of 1870, "standing crops and the fruits of trees not gathered" are immovables in the sense that they are "part of the land to which they are attached."[1] Under this provision, and in accordance with the rules of accession,[2] unharvested crops and ungathered fruits of trees might be regarded as immovable property for all purposes and as insusceptible of separate ownership in place.[3] Legislative and judicial action, however, have resulted in the recognition that standing crops and hanging fruits are not always to be treated as immovables[4] nor necessarily as a part of the land to which they are attached.[5] It is the purpose of this paper to determine the circumstances in which crops and fruits of trees are regarded as immovable property and those in which they are regarded as movable property.

Louisiana courts have not been consistent in efforts at classification of standing crops. In a number of cases, courts have

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1. LA. CIVIL CODE art. 465 (1) (1870); LA CIVIL CODE art. 456 (1825); LA. CIVIL CODE p. 96, art. 17 (1808); *cf.* FRENCH CIVIL CODE art. 520. GREEK CIVIL CODE arts. 948, 954; B.G.B. § 94; A. YIANNOPOULOS, CIVIL LAW PROPERTY §§ 44, 70, 71 (1966).

2. See LA. CIVIL CODE arts. 504-519 (1870).

3. According to traditional civilian conceptions, followed by Louisiana courts during the 19th century, the ownership of immovables is not susceptible of horizontal division. See A. YIANNOPOULOS, CIVIL LAW PROPERTY § 46 (1966). Standing timber, however, whether or not separated in ownership from the land on which it stands, is treated in Louisiana as a distinct immovable for all purposes. See La. Acts 1904, no. 1881, now R.S. 9:1103 (1950); Comment, *The Sale of Standing Timber in Louisiana*, 20 TUL. L. REV. 428 (1946). Dead timber is movable. Gillespie v. W.A. Ransom Lumber Co., 132 F. Supp. 11 (E.D. La. 1955), *aff'd* 234 F.2d 285 (5th Cir. 1956).

In Germany and in Greece, standing crops are regarded as inseparable component parts of the ground and as insusceptible of separate real rights in place. By way of exception, however, established by special legislation, standing crops may be pledged and may be seized separately from the ground. See G. BALIS, GENERAL PRINCIPLES OF THE CIVIL LAW 508 (7th ed. 1955) (in Greek); A. YIANNOPOULOS, CIVIL LAW PROPERTY §§ 18, 70, 71 (1966).

4. See, *e.g.*, LA. CIVIL CODE art. 3217 (privileges on growing crops); LA. R.S. 9:4341 (1950) (pledge of standing crops); *id.* 9:5105 (lessee's crops not subject to the debts or mortgages of the landowner recorded after the date of the date of the lease); Humble Pipe Line Co. v. Burton Industries, Inc., 253 La. 166, 217 So.2d 188, 191 (1968): "We are cognizant of the fact that *under certain circumstances*, as those contemplated by Article 465, supra, crops are immovables" (emphasis added); SAUNDERS, LECTURES ON THE CIVIL CODE OF LOUISIANA 155 (1925).

5. See Louisiana Farms Co. v. Yazoo & M.V.R. Co., 172 La. 519, 132 So. 747 (1931); Fallin v. J.J. Stovall & Sons, 141 La. 220, 74 So. 911 (1917), recognizing expressly the possibility of separate ownership in standing crops.

declared that standing crops are immovable property.[6] Thus, in *Minter v. Union Central Life Ins. Co.*, the Supreme Court relying on Article 465(1) of the Civil Code declared that a growing crop of cotton is "an immovable."[7] In other cases, however, courts have declared that standing crops are movable property. Indicatively, in *Louisiana Farms Co. v. Yazoo & M. V. R. Co.*, the Supreme Court declared that the "contention that standing crops are a part of the land to which they are attached, and belong to the owner of the land, is fundamentally unsound. It assumes as its predicate, that growing crops are immovable, an assumption that is its own refutation."[9] It is submitted that these seemingly irreconciliable decisions may be fully reconciled in the light of the facts and circumstances involved in each case and on the basis of the doctrine that growing crops are movables *by anticipation* for a number of purposes.

MOBILIZATION BY ANTICIPATION

According to well settled French doctrine and jurisprudence interpreting Article 520 of the Napoleonic Code, which corresponds with Article 465 of the Louisiana Civil Code of 1870, standing crops are, on principle, part of an immovable by nature.[10] Nevertheless, crops may be governed by rules applicable to movables, because they are destined to become movable. For certain purposes, standing crops are thus regarded as movables *by anticipation*, and the law looks to future rather than present status.[11] For example, standing crops are governed in France by the rules applicable to movables with regard to the formalities of sale and seizure.[12]

The doctrine of mobilization by anticipation is implicitly recognized in the Civil Code and in special legislation, and has been

6. See, *e.g.*, Swift & Co. v. Bonvillain, 139 La. 558, 71 So. 849 (1916); Dixon v. Alford, 143 So. 679 (La. App. 1st Cir. 1932); Dixon v. Watson, 143 So. 683 (La. App. 1st Cir. 1932). In the last two cases cited, the court held that Article 275(8) of the Code of Practice, dealing with sequestration of movable property, was inapplicable to the sequestration of standing crops. The problem is now moot, because Article 3571 of the Louisiana Code of Civil Procedure does not distinguish between sequestration of movables and that of immovables.

7. 180 La. 38, 156 So. 167, 169 (1934).

8. See, *e.g.*, Pickens v. Webster, 31 La. Ann. 870 (1879); Rosata v. Cali, 4 So. 2d 54 (La. App. 1st Cir. 1941).

9. 172 La. 569, 134 So. 747, 748 (1931).

10. See 2 AUBRY ET RAU, DROIT CIVIL FRANCAIS 21 (7th ed. Esmein 1961).

11. See, in general, FREJAVILLE, DES MEUBLES PAR ANTICIPATION (Diss. Paris 1927).

12. See 3 PLANIOL ET RIPERT, TRAITE PRATIQUE DE DROIT CIVIL FRANCAIS 105 (2d ed. Picard 1952).

expressly adopted by Louisiana courts, although the consequences of mobilization are not the same in France and in Louisiana.[13] Article 3217 of the Louisiana Civil Code of 1870, which has no exact equivalent in the French Civil Code, regards growing crops as movables to the extent that they may be burdened with a privilege. This article declares that "the debts which are privileged on certain movables, are the following: 1. The appointments or salaries of the overseer for the current year, on the crops of the year and the proceeds thereof; debts due for necessary supplies furnished any farm or plantation, and debts due for money actually advanced and used for the purchase of necessary supplies and the payment of necessary expenses for any farm or plantation on the crops of the year and the proceeds thereof." The last sentence of the same article makes it clear that these privileges are granted "on the growing crop," which is thus regarded as a movable by anticipation insofar as these privileges are concerned.[14] Mobilization by anticipation takes place in these circumstances by operation of law, and for this reason, these privileges need not be recorded to be effective against third persons.[15]

Further, Section 4341, Title 9, of the Louisiana Revised Statutes declares that a planter or farmer "may pledge or pawn any agricultural crop, either planted and growing or in contemplation of being planted" under the conditions prescribed.[16] Since pledge and pawn are security devices applicable to movable property,[17] there should be no doubt that under this legislation the execution of a pledge on growing crops constitutes a mobilization by

13. There is no distinction in Louisiana with regard to forms of seizure applicable to movables and immovables. Moreover, a sale of growing crops by the owner of the ground is the sale of immovable property and is subject to the rules of form and substance governing transfers of immovable property. Minter v. Union Central Life Ins. Co., 180 La. 38, 156 So. 167 (1934).

14. In Swift & Co. v. Bonvillain, 139 La. 558, 71 So. 849, 855 (1916), the court declared that as Article 3217 "is by its terms confined in its application to 'debts which are privileged on movables,' and as 'standing crops' are immovables, it would seem to follow that the privilege so conferred is intended to take effect only upon the severance of the crop from the soil." Apparently, the court did not realize that, under this article, standing crops are to be regarded as movables by anticipation quoad the privileges conferred. *Cf.* Citizens Bank v. Wiltz, 31 La. Ann. 244, 246 (1879): "The existence of a right on the growing crop is a mobilization by anticipation, a gathering as it were in advance, rendering the crop movable quoad the right acquired thereon."

15. See Purity Feed Mills Co. v. Moore, 152 La. 393, 93 So. 196 (1922); City Bank & Trust Co. v. Marksville Elevator Co., 221 So. 2d 853 (La. App. 3d Cir. 1969); Dantoni v. Montebello, 19 La. App. 290, 140 So. 67 (1932).

16. See LA. R.S. 9:4341 (1950). See also *id.* 4342, 4343, 4522, 4523, 4524.

17. See LA. CIVIL CODE art. 3135 (1870): "A thing is said to be pawned when a movable thing is given as security."

anticipation.[18] This method of mobilization, effected by juridical act rather than by operation of law, is subject to the requirement of recordation.[19] Still another example of anticipatory mobilization is furnished by Section 5105, Title 9, of the Louisiana Revised Statutes which declares that "the lessee's growing crops for the current year cannot be held to pay an ordinary debt of the landowner, or any mortgage against the landowner recorded after the date of the lease."[20] Obviously, the lessee's crops are regarded as movables by anticipation, and, therefore, they are not liable for the specified debts of the landowner.[21]

Following French doctrine and jurisprudence, Louisiana courts have for more than a century expounded the doctrine of mobilization by anticipation. In *Pickens v. Webster*,[22] the court rationalized earlier decisions on the ground that the growing crop belonging to a lessee is "a movable, or . . . an apparent immovable mobilized by anticipation." And in the leading case of *Citizens Bank v. Wiltz*,[23] the court declared that "the immovability of growing crop is in the nature of things temporary, for the crop passes from the state of a growing to that of a gathered one, from an immovable to a movable. The existence of a right on the growing crop is a mobilization by anticipation, a gathering as it were in advance, rendering the crop movable quoad the right acquired thereon." In the light of this decision, any right on growing crop, by its ownership, pledge, or another right, renders the crop movable insofar as the right is concerned.

Separate ownership of standing crops and ungathered fruits of trees may derive from a variety of contractual relationships, as leases of land, emphyteusis,[25] or sales of standing crops.[26] It may

18. See Citizens Bank v. Wiltz, 31 La. Ann. 244, 246 (1879) (pledge on growing crop rendres it "pro hac vice a movable").

19. See LA. R.S. 9:4341 (1950); City Bank & Trust Co. v. Marksville Elevator Co., 221 So.2d 853 (La. App. 3d Cir. 1969).

20. See LA. R.S. 9:5105 (1950).

21. See Pickens v. Webster, 31 La. Ann. 870, 875 (1879) (lessee's crop is "a movable, or . . . an apparent immovable mobilized by anticipation.").

22. 31 La. Ann. 870, 875 (1879). See also Williamson v. Richardson, 31 La. Ann. 685 (1879); *cf.* SAUNDERS, LECTURES ON THE CIVIL CODE OF LOUISIANA 154 (1925): "The crops grown by the tenant . . . are not regarded as 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 insofar as the tenant may be indebted to him."

23. 31 La. Ann. 244, 246 (1879).

24. See LA. R.S. 9:5105 (1950).

25. See LA. CIVIL CODE arts. 2779-2792 (1870).

26. See Minter v. Union Central Life Ins. Co., 180 La. 38, 156 So. 167 (1934).

also derive from real rights on the land of another, as usufruct[27] or antichresis,[28] or even from the possession of land in good faith.[29] The owner of the crops or ungathered fruits may always assert his rights against the owner of the land;[30] but, by virtue of the public records doctrine, he may assert his separate ownership against third acquirers of the land only if his interest is previously recorded.[31] It is only in this way that purchasers of standing crops as well as lessees of land may be protected in case of transfer, mortgage, or seizure of the land.

In the following discussion, the status of crops will be considered in the light of a working assumption, namely, that growing crops are immovable property unless they have been mobilized by anticipation. Reference will be made specifically to situations concerning: (1) transfer, mortgage, and seizure of lands; (2) transfer, pledge, and seizure of growing crops; (3) lessee's crops; and (4) crops of other persons.

TRANSFER, MORTGAGE, AND SEIZURE OF LANDS

The question of the status of crops and fruits of trees as part of the land arises typically in cases involving transfer, mortgage, or seizure of lands. In the absence of express provisions concerning rights to crops and fruits of trees, interested parties have claimed standing or even gathered crops as included in, or excluded from, the transfer, mortgage, or seizure by virtue of Article 465(1). As to gathered crops and fruits, however, the rule is clear: these are movables rather than a part of the ground, and, accordingly, they are not included by implication in a transfer, mortgage, or seizure of the land.[32] But it has been argued that standing crops and ungathered fruits of trees, as part of the immovable, should follow the ownership of the ground in all cases.[33] This solution would leave without protection lessees cultivating the ground, third possessors

27. See LA. CIVIL CODE art. 544 (1870).

28. *Id.* art. 3176.

29. *Id.* arts. 502, 3453.

30. See Flower & King v. S.S. Pearce & Son, 45 La. Ann. 853, 13 So. 150 (1893) (lessee's right of ownership "perfectly good and valid" against the lessor even without recordation).

31. See notes 56, 61 *infra*.

32. See Minter v. Union Central Life Ins. Co., 180 La. 38, 156 So. 167 (1934); Alliance Trust Co. v. Geydan Bank, 162 La. 1062, 111 So. 421 (1927); Andrus v. His Creditors, 46 La. Ann. 1351, 16 So. 215 (1894); Sandel v. Douglass, 27 La. Ann. 628 (1875).

33. 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).

of the immovable property, laborers having a privilege on the crops, and acquirers of standing crops by sale or other juridical act. Louisiana courts, therefore, felt early the necessity for a restrictive interpretation of Article 465(1) in order to avoid socially and economically undesirable results.

In cases involving transfer of lands, as purchase at private or public sale, Louisiana courts have held that standing crops and ungathered fruits of trees are part of the ground and follow it,[34] unless, of course, they belong to third persons[35] as movables by anticipation.[36] This is an application of the principle that no one can transfer a greater right that he himself has as well as of the rule that the transfer of immovable property does not include movables located thereon.[38] Thus, when the ungathered crops and fruits of trees do not belong to the owner of the ground, a transfer of the land does not confer title to these crops and fruits.[39]

Like a sale or any other disposition of immovable property, the establishment of a real mortgage extends to standing crops and ungathered fruits of trees,[40] unless, of course, they belong to a person other than the mortgage debtor.[41] This is again an application of the principle that no one can transfer a greater right than he himself has as well as of the rule that standing crops belonging to a person other than the landowner are movables by anticipation. Whether the standing crops belong to the landowner

34. See Williamson v. Richardson, 31 La. Ann. 685 (1879); Baird v. Brown, 28 La. Ann. 842 (1876); Bludworth v. Hunter, 9 Rob. 256 (La. 1844); Colligan v. Benoit, 13 La. App. 612, 128 So. 688 (1st Cir. 1930); Napper v. Welch, 2 La. App. 256 (2d Cir. 1925); *cf.* Adams v. Moulton, 1 McGloin 210 (La. 1880); Deville v. Couvillon, 5 La. App. 519 (2d Cir. 1927). See also Humble Pipe Line Co. v. Burton Industries, Inc., 253 La. 166, 217 So.2d 188, 191 (1968): "In the case of sale, unless reserved or except by contract or operation of law, crops attached to the land at the time of the sale generally pass to the purchaser of the land."

35. See Porche v. Bodin, 28 La. Ann. 761 (1876); Federal Land Bank v. Carpenter, 164 So. 487 (La. App. 2d Cir. 1935).

36. See Williamson v. Richardson, 31 La. Ann. 685 (1879); Pickens v. Webster, 31 La. Ann. 870 (1879); Citizen Bank v. Wiltz, 31 La. Ann. 244 (1879).

37. See LA. CIVIL CODE arts. 822, 2105 (1870).

38. See A. YIANNOPOULOS, CIVIL LAW PROPERTY § 57 (1966).

39. See note 35 *supra*.

40. See LA. CIVIL CODE art. 3310 (1870): "The conventional mortgage, when once established on an immovable, includes all the improvements which it may afterwards receive;" Townsend v. Payne, 42 La. Ann. 909, 8 So. 626 (1890). Of course, the mortgage need not mention standing crops *eo nomine*; these crops, as a part of the land, are included in the mortgage, Williamson v. Richardson, 31 La. Ann. 685 (1879).

41. *Cf.* Porche v. Bodin, 28 La. Ann. 761 (1876); Federal Land Bank v. Carpenter, 164 So. 487 (La. App. 2d Cir. 1935); Vosburg v. Federal Land Bank, 172 So. 567 (La. App. 2d Cir. 1937).

or to other persons is determined by application of the rules governing acquisition of ownership. Thus, standing crops may belong to a good faith possessor of the land or to a lessee cultivating the land under agreement with the landowner. Upon maturity of the debt, the mortgage creditor may foreclose and seize the land along with the standing crops that belong to his debtor.[42] However, crops maturing and collected while the land is mortgaged are freed of the mortgage;[43] they may be seized and sold by general creditors of the landowner who are under no obligation to account to the mortgage creditor.[44]

In the case of a seizure of lands by general creditors or by mortgage creditors of the landowner, standing crops and ungathered fruits of trees are included in the seizure as a part of the immovable only to the extent that they belong to the debtor.[45] This is an application of the principle that the property of the debtor is the common pledge of his creditors[46] as well as of the rule that movables are not included in the seizure of lands. If the seizing creditor holds a mortgage, his right extends to standing crops that belong to the mortgage debtor as well as to standing crops that the mortgage debtor has disposed of in violation of his obligation under the mortgage.[47] Moreover, in case the land has been transferred to a third possessor, the mortgage creditor is entitled to standing crops as of the time "notification of the order of seizure was served on him."[48] If the seizure of the land has been made by

42. See text at notes 45, 47 *infra*.

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

44. See Alliance Trust Co. v. Gueydan Bank, 162 La. 1062, 111 So. 421 (1927); *cf.* Minter v. Union Central Life Ins. Co., 180 La. 38, 156 So. 167 (1934).

45. See Flower & King v. S.S. Pearce & Son, 45 La. Ann. 853, 13 So. 150 (1893); *cf.* Townsend v. Payne, 42 La. Ann. 909, 8 So. 626 (1890); Williamson v. Richardson, 31 La. Ann. 685 (1879). Thus, the seizure does not include the crops that belong to a lessee or a third possessor of the property. See Porche v. Bodin, 28 La. Ann. 761 (1876); Federal Land Bank v. Carpenter, 164 So. 487 (La. App. 2d Cir. 1935).

46. See LA. CIVIL CODE art. 3183 (1870).

47. See LA. CIVIL CODE art. 3397 (1870): "[T]he debtor cannot sell, engage or mortgage the same property to other persons, to the prejudice of the mortgage which is already made to another creditor . . . . [I]f the mortgaged thing goes out of the debtor's hands, the creditor may follow it in whatever hands it may have passed. . . . See also LA. R.S. 9:5382 (1950): "The holder of a conventional mortgage shall have the same rights, privileges, and actions as the mortgagor land owner to recover against any person who, without the written consent of the mortgagee, buys, sells, cuts, removes, holds, disposes of, changes the form of, or otherwise converts to the use of himself or another, any trees, buildings, or other immovables by nature covered by the mortgage." Of course, crops that the debtor has harvested or delivered to purchasers prior tothe foreclosure of the mortgage are movables. See note 43 *supra*.

48. LA. CIVIL CODE art. 3408 (1870).

general creditors of the landowner, a mortgage creditor may intervene to secure his preference.[49] Article 466 of the Louisiana Civil Code of 1870 declares that "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." For the purposes of this article, gathered crops and fruits do not change status; they are still regarded as part of the immovable and follow it to the extent that they belong to the debtor.[50] It ought to be noted, however, that by virtue of new legislation the fruits of an immovable under seizure do not necessarily inure to the benefit of the seizing creditor; today, they are applied to the satisfaction of claims in accordance with the rules governing priorities among creditors.[51]

TRANSFER, PLEDGE, AND SEIZURE OF GROWING CROPS

The owner of growing crops, be he the landowner or another person, may sell,[52] pledge,[53] or otherwise dispose of his interest.[54] Creditors of the owner of the growing crops may seize them separately from the land to which they are attached.[55] Legislation applicable to crop pledges declares that a pledge must be recorded in order to be effective against third persons.[56] In the absence of similar legislation applicable to transfers of growing crops, however, a question may arise as to the requirement of recordation. A proper application of the doctrine of mobilization by anticipation ought to lead to the conclusion that recordation is not

49. See LA. CODE OF CIV. PROCEDURE arts. 1092, 2335, 2372, 2374 (1960).

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

51. See LA. CODE OF CIV. PROCEDURE art. 1092, *as amended* by La. Acts, 1962, No. 92; *id.* art. 2292; *id.* art. 2299, *as amended* by La. Acts 1961, No. 23. See also *id.* art. 327 which declares that "the seizure of property by the sheriff effects the seizure of the fruits and issues which is produces while under seizure. The sheriff shall collect all rents and revenue produced by the property under seizure."

52. See Minter v. Union Central Life Ins. Co., 180 La. 38, 156 So. 167 (1934); Lewis v. Klotz, 39 La. Ann. 259, 1 So. 439 (1877). Of course, a lessor may not pledge or otherwise dispose of a lessee's crops. See Louisiana Farm Bureau C.G. Co-op Ass'n v. Clark, 160 La. 294, 107 So. 115 (1926); Coguenhem v. Himalaya Planting & Mfg. Co., 140 La. 476, 73 So. 301 (1916). Nor may a lessee dispose of his lessor's crops. See LA. R.S. 9:3204 (1950). Moreover, a mortgage debtor may not dispose of standing crops to the prejudice of the mortgage creditor. See note 47 *supra*.

53. See LA. R.S. 9:4341 (1950); Citizens Bank v. Wiltz, 31 La. Ann. 244 (1879).

54. Rosata v. Cali, 4 So. 2d 54 (La. App. 1st Cir. 1941).

55. See Fallin v. J.J. Stovall & Sons, 141 La. 220, 74 So. 911 (1917); Pickens v. Webster, 31 La. Ann. 870 (1879); Colligan v. Benoit, 13 La. App. 612, 128 So. 688 (1st Cir. 1930). But *cf.* Holmes v. Payne, 4 La. App. 345 (2d Cir. 1926) (cropper's interest may be seized by his creditors *after* the crop is harvested and divided). For seizure of growing crops along with the land, see note 45 *supra*.

56. See LA. R.S. 9:4341 (1950).

required.[57] The Louisiana Supreme Court has held, however, that a sale of growing crops by the landowner is the sale of immovable property; therefore, it is effective against third persons from the date of recordation.[58] It is submitted that this rule should not apply to sales of growing crops made by persons other than the landowner, because the interest of these persons is an interest in movable property.

LESSEE'S CROPS

Louisiana courts have consistently held that, as between lessor and lessee, crops raised by the lessee belong to him[59] as movables by anticipation.[60] It is a critical question, however, whether the lessee may assert his ownership of standing crops against the creditors of the landowner or against third acquirers of the land. In this respect, Louisiana courts have held that the separate ownership of standing crops may be asserted against creditors and transferees of the landowner only if the lease is recorded. In *Flower & King v. S.S. Pearce & Son*,[61] the Louisiana Supreme Court declared that it is "a well-settled principle of our jurisprudence that an unrecorded lease of real estate has no effect to third persons and seizing creditors." In this case the lessee lost his standing crops to a purchaser of the property because his lease was unrecorded.[62] When the lease is recorded, however, the lessee is allowed to assert his ownership of the crops against both creditors of the landowner and purchasers of

57. This is the rule in France. See 3 PLANIOL ET RIPERT, TRAITE PRATIQUE DE DROIT CIVIL FRANCAIS 105 (2d ed. Picard 1952); *cf.* Citizens Bank v. Wiltz, 31 La. Ann. 244 (1879), quoting from the text of Marcade.

58. Minter v. Union Central Life Ins. Co., 180 La. 38, 156 So. 167 (1934).

59. See Lewis v. Klotz, 39 La. Ann. 259, 1 So. 539 (1887); Porche v. Bodin, 28 La. Ann. 761 (1870); *cf.* Sandel v. Douglass, 27 La. Ann. 628 (1875); Richardson v. Dinkgrave, 26 La. Ann. 632 (1874); Federal Land Bank v. Carpenter, 164 So. 487 (La. App. 2d Cir. 1935). See also Flower & King v. S.S. Pearce & Son, 45 La. 853, 13 So. 150, 152 (1893) (lessee's right "perfectly good and valid" as to the landowner); In re Maux Bros., 177 La. 997, 149 So. 886 (1933) ("The shares of the landowner and of the cultivator belong absolutely and at all times to them respectively in the proportions fixed in the contract"); Louisiana Farm Bureau C.G. Co-Op Ass'n v. Clark, 160 La. 294, 107 So. 115 (1926). *But cf.* State v. Jacobs, 50 La. Ann. 447, 23 So. 608 (1898) (larceny case; the court declared that "a bale of cotton in the seed" is deemed to belong to the plantation owner before the share of a laborer has been separated).

60. Pickens v. Webster, 31 La. Ann. 870 (1879). It follows that neither a lessor may dispose of the lessee's crops nor a lessee may dispose of the lessor's crops. See note 52 *supra*.

61. 45 La. Ann. 853, 13 So. 150 (1893); *accord*: Napper v. Welch, 2 La. App. 256 (2d Cir. 1925). See also Summers & Brannins v. Clark, 30 La. Ann. 436 (1878) (urban lease).

62. Flower & King v. S.S. Pearce & Son, 45 La. Ann. 853, 13 So. 150, 152 (1893) (the right of the lessee "unavailing without registry in the manner prescribed by law for conveyances of real estate").

the land.[63] It is in these circumstances that courts declare that standing crops are not a part of the land or that they are movables by anticipation.

Section 5105, Title 9, of the Louisiana Revised Statutes declares that "the lessee's crops for the current year cannot be held to pay an ordinary debt of the landowner, or any mortgage against the landowner recorded after the date of the lease."[64] A literal interpretation of the statute makes it clear that a lessee's growing crops may not be held liable for an ordinary debt of the landowner, whether that debt arose before or after the date of the lease. But with respect to a mortgage debt, the statute declares simply that growing crops may not be held liable for a mortgage debt of the landowner that is recorded *after* the date of the lease. An argument *a contrario* may thus be made to the effect that a lessee's growing crops are liable to pay a mortgage debt of the landowner that was recorded *before* the date of the lease. This argument would be clearly compatible with the general rules of the Civil Code protecting the security of mortgage[65] and with the idea that the landowner may not mobilize crops by anticipation to the prejudice of mortgage creditors,[66] but it would be contrary to the holding in *Porche v. Bodin*.[67] Perhaps, the Legislature has sought to overrule the *Porche* case by Act No. 100 of 1906 which is now Section 5105, Title 9, of the Revised Statutes.

The statute does not require that the lease be recorded in order to be effective against mortgage creditors or general creditors of the landowner. Act No. 100 of 1906, the source provision, provided expressly that the lease may be "recorded or unrecorded,"[68] but

63. See Lewis v. Klotz, 39 La. Ann. 259, 1 So. 539 (1887); Porche v. Bodin, 28 La. Ann. 761 (1876). See also the following cases in which the issue of recordation was not raised: Louisiana Farms Co. v. Yazoo & M.V.R. Co., 134 So. 747, 172 La. 569, (1931); Pickens v. Webster, 31 La. Ann. 870 (1879); Sandel v. Douglass, 27 La. Ann. 628 (1875); Richardson v. Dinkgarve, 26 La. Ann. 632 (1874); Colligan v. Benoit, 13 La. App. 612, 128 So. 688 (1st Cir. 1930). In Deville v. Couvillon, 5 La. App. 519 (2nd Cir. 1927), the court held the interests of mortgage creditors prime the interest of a lessee occupying the land under a *recorded* lease when a pre-existing mortgage contains the pact de non alienando. Today, the pact de non alienando is implied in every mortgage. LA. CODE OF CIV. PROCEDURE art. 2701 (1960).

64. La. R.S. 9:5105 (1950).

65. See note 47 *supra*; Deville v. Couvillon, 5 La. App. 519 (2d Cir. 1927).

66. See note 52 *supra*.

67. 28 La. Ann. 761 (1876). See also Federal Land Bank v. Carpenter, 164 So. 487 (La. App. 2d Cir. 1935). In Deville v. Couvillon, 5 La. App. 519 (2d Cir. 1927), the *Porche* case was distinguished on the ground that the crops had matured and were ready for collection at the time of foreclosure.

68. See La. Acts 1906, No. 100.

these words were suppressed in 1950. Since the redactors of the Revised Statutes did not have authority to change the laws,[69] and since the statute does not require recordation, argument may be made that none is needed. But, in the meanwhile, Act No. 7 of 1950 was enacted, now Section 2721, Title 9, of the Revised Statutes, which declares that "no sale, contract . . . surface lease . . . or other instrument of writing relating to or affecting immovable property shall be binding on or affect third persons or third parties unless and until filed for registry."[70] It would seem, therefore, that the requirement of recordation ought to be read now in the text of Section 5105, Title 9, of the Revised Statutes. This interpretation would conform with Articles 2264 and 2266 of the Civil Code which establish the public records doctrine and with jurisprudence requiring recordation of all leases in order to be effective against purchasers of the property.[71] Indeed, it would make little sense to require that a lease be recorded in order to be effective against purchasers and to dispense with this requirement when the lease is asserted against general creditors or mortgage creditors of the landowner.

The requirement that the lease be recorded in order to be effective against third persons is established in favor of persons who acquire interests in the land by reliance on public records. It should have nothing to do with a person who causes damage to the crops of a lessee. The lessee's interest in growing crops is property which is protected under Article 2315 of the Civil Code[72] and under Article 1, Section 2 of the Louisiana Constitution.[73] In *Andrepont v. Acadia Drilling Co.*,[74] a tenant farmer sued for damages caused to his crops by defendants' mineral operations. Plaintiff had raised crops under a verbal lease over the same property. The Louisiana Supreme Court, in an original hearing, affirmed a judgment dismissing the suit on the ground that the farmer tenant could not assert his separate ownership of the standing crops against the defendants. Following pertinent legislation and well-settled

69. *Cf.* Newson v. Caldwell & McCann, 51 So. 2d 393 (La. App. 1st Cir. 1951); LA. R.S. 1:16: "The Louisiana Revised Statutes of 1950 shall be construed as continuations of and as substitutes of the laws or parts of the laws which are revised and consolidated therein."

70. See LA. R.S. 9:2721 (1950).

71. See text at note 61 *supra*.

72. *Cf.* Louisiana Farms Co. v. Yazoo & M.V.R. Co., 134 So. 747, 172 La. 569 (1931); Miller v. Texas & P. Ry. Co., 148 La. 936, 88 So. 123 (1921).

73. See LA. CONST. art. 1, § 2 (1921); R.S. 19:21 (1950); Humble Pipe Lines Co. v. Burton Industries, Inc. 253 La. 166, 217 So.2d 188 (1968).

74. 255 La. 347, 231 So.2d 347 (1969).

jurisprudence, the Court declared that a lease, in order to be effective against third persons, must be recorded. In the absence of recordation, the Court reasoned, standing crops are regarded as movables in the relations between tenant and landlord and as part of the immovable under Article 465 of the Civil Code insofar as third persons are concerned. Since the farmer tenant did not have an ownership that could be asserted against the defendants, his action should be dismissed. On rehearing, the Court held that plaintiff could recover under a theory of stipulation *pour autrui*, namely, on the ground that the mineral lease between defendants and landowners contained a provision making defendants liable for the damage to the crops. The Court pointed out that plaintiff did not assert "secret claims or equities" unknown to defendants and that defendants were not third persons protected by the laws of reigstry insofar as plaintiff's claim is concerned.

The final disposition of the case rests on the narrow ground that the separate ownership of standing crops, arising under the terms of a lease, may be asserted against a third person tortfeasor who has made a stipulation in favor of the lessee. It would seem, however, that a tortfeasor should be also responsible to a lessee under Article 2315 of the Civil Code, even in the absence of any stipulation. Be that as it may, the final disposition of the case has nothing to do with the classification of standing crops as movable or immovable property. In this respect, the original opinion remains undisturbed and stands for three significant propositions of property law: 1. Standing crops belonging to a lessee, whether under a recorded or unrecorded lease are movable property; 2. This separate ownership of movable property may be asserted against the landlord always; it may be asserted against third persons protected by the public records doctrine, that is, persons other than tortfeasors, only if the lease is recorded; and 3. If the lease is unrecorded, third persons (other than tortfeasors) are entitled to regard the crops as part of the immovable property under Article 465 of the Civil Code.

Crops of Other Persons

It is not only lessees who may own standing crops on the land of another; good faith possessors, purchasers of standing crops, and persons having a contractual or real right may own crops on

the land of another.[75] It would seem that to the extent that the separate ownership of these persons derives from a juridical act made by the owner, this act must be recorded in order to affect third persons.[76] If, on the other hand, separate ownership of growing crops arises from acts of possession recordation is not required. In all cases, the interests of these persons ought to be classified as an interest in movable property by application of the doctrine of mobilization by anticipation.

CONCLUSION

The precepts of the Louisiana Civil Code of 1870 have undergone changes which seem to defy classification of standing crops and unharvested fruits of trees as either movables or immovables for all purposes. According to the letter of Article 465(1) of the Code standing crops and ungathered fruits of trees are immovables as a part of the ground. Louisiana courts, however, and the Legislature, thought it necessary and convenient to recognize the possibility of separate ownership of standing crops, and rights of creditors to seize and sell these crops separately from the ground. This means that standing crops, though in principle are regarded as a part of the ground, are susceptible of real rights separate from those existing on the soil, and may, for certain purposes, be treated as movables by anticipation. They are part of the land and follow it in case of transfer, mortgage, or seizure only when they have not been mobilized by anticipation. Thus, today, reasoning *a priori* from the premise that crops are a part of the ground would be grossly misleading. Instead, consideration of special rules applicable to growing crops, rather than conceptual generalization, is the accurate method of analysis.

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75. See text at notes 24-30 *supra*.

76. See LA. CIVIL CODE arts. 2264, 2266 (1870); LA. R.S. 9:2721 (1950).