Louisiana Law Review

Volume 7 | Number 2
The Work of the Louisiana Supreme Court for the 1945-1946 Term
January 1947

Torts and Workmen's Compensation

Wex S. Malone

Code, however, allows remuneration if the business "has been well managed." A reading of the opinion leaves one free to conclude that the broker had acted in a manner which appeared to him to be his own best interest, rather than that of the seller or purchaser.

IV. TORTS AND WORKMEN'S COMPENSATION

*Wex S. Malone**

TORTS

A varied assortment of torts and workmen's compensation cases was handed down by the supreme court during the past term. Several of them were restricted to controversies of fact and do not lend themselves readily to treatment.[1] Other decisions are sufficiently significant to merit comment. But it cannot be said that the latest crops of cases has produced anything of startling importance.

Traffic and Transportation

The Louisiana courts have often had occasion to comment on the duty of a motorist who, having the right of way, nevertheless proceeds without regard for the safety of those who have entered or are about to enter the intersection from a less favored thoroughfare.[2] However, until the recent decision in *Kientz v. Charles Dennery, Inc.*,[3] the supreme court had not dealt with the situation presented where traffic lights determine the right of way. The presence of "stop" and "go" signals alters the picture slightly. Anyone who approaches an intersection against the light knows that to proceed further is an arbitrary violation of the law. He cannot discharge his duty simply by "reasonably giving

---

contemporaire (1921) 20 Rev. Prim. de droit civil 419, 458-461; and 7 Planiol et Ripert, Traité Pratique de droit civil francais (1931) n. 731.

* Associate Professor of Law, Louisiana State University.

1. Burns v. Evans Cooperate Co., Inc., 208 La. 406, 23 So.(2d) 165 (1945) (plaintiff, a motorist, left road and was injured when defendant's car ahead made a sudden turn to the left without signal. Evidence indicated plaintiff was guilty of contributory negligence under the circumstances in attempting to pass.); Hebert v. Meibaum, 209 La. 156, 24 So.(2d) 297 (1945) (pedestrian struck by defendant's car while attempting to cross at street intersection. Evidence showed plaintiff precipitated himself suddenly in path of vehicle, and there was no opportunity for defendant to stop); Pool v. Gaudin, 209 La. 218, 24 So.(2d) 383 (1945) (Defendant charged with defamation in accusing plaintiff of refusing to pay his share of his mother's funeral expenses. The case turned on the property implication to be drawn from the accusing letter).

2. See Comment (1946) 5 LOUISIANA LAW REVIEW 432, 434-438.

3. 209 La. 144, 24 So.(2d) 292 (1945).

way. The driver who moves with the green light is entitled to assume this, and he can cross the intersection with some assurance. Thus he need not be as cautious as one who is favored merely by the rules of the road.[4]

Nevertheless, the driver who is favored by the light is not wholly exempt from responsibility. If he discovers the presence of a vehicle which has unlawfully entered his path, he must do all reasonably within his power to avoid a collision. Further, he must maintain some sort of a watchout. How extensive his obligation may be in this latter respect is a matter upon which courts wisely refrain from venturing a generalized opinion. In three instances the courts of appeal of Louisiana have found that the favored motorist proceeded arbitrarily or failed to exercise "slight" care and have penalized him accordingly.[5] In each of these cases it is noteworthy that the accident occurred immediately after the light had shifted, and the other party to the collision was either caught in mid-street by the light or he had made the kind of improper adjustment to the change of light that common experience shows is to be expected with fair regularity at urban intersections. These deviations from the rules of traffic are routine and their occurrence must be expected by the motorist who proceeds with the light.

Once traffic is evacuated from the unfavored street a different situation is presented. The motorist who proceeds with the green light must be guilty of a serious departure from ordinary care before his rights against the law violator can be affected. No Louisiana case has been found in which the favored motorist was held guilty of negligence under these circumstances.[6] The

4. "Under the traffic light system, a motorist who is proceeding under the proper signal should not be held to that same high degree of care and vigilance as if no such system prevailed. He has a right to assume that the signals are understood and will be observed. . . ." Buckley v. Featherstone Garage, 11 La. App. 564, 123 So. 446 (1929). See also 2 Blashfield, Cyclopedia of Automobile Law and Practice (1935) § 1040.

5. Thomas v. Roberts, 144 So. 70 (La. App. 1932); Capillon v. Lengsfield, 171 So. 194 (La. App. 1936); Tooke v. Muslow Oil Co., 183 So. 97 (La. App. 1938).

6. In the following cases it was held that the motorist proceeding with the green light was not negligent in failing to keep a watchout for those who might enter the intersection from the unfavored direction: Buckley v. Featherstone Garage, 123 So. 446 (La. App. 1929); Manuel v. Bradford, 166 So. 657 (La. App. 1936); Roll Osborn & Sons v. Howatt, 167 So. 466 (La. App. 1936); Seiner v. Toye Bros. Yellow Cab Co., 18 So.(2d) 189 (La. App. 1944); FitzPatrick v. New Orleans Public Service Co., 22 So.(2d) 473 (La. App. 1945). In Manuel v. Bradford, supra, the highway favored at the time was a boulevard on which the two traffic lanes were separated by a neutral ground. The plaintiff observed the defendant and saw him enter the intersection against the light and proceed across the other traffic lane leading to the

Kientz case added nothing to the law except to sanction the consistent position that had been taken heretofore by our courts of appeal. The accident occurred some time after the lights had shifted, and the defendant was not obliged to keep a watchout for the possibility that plaintiff might run the light at such a time. The court was content to say that a motorist who is proceeding on a proper signal, "should not be held to the same degree of care and vigilance as if no such system prevailed." Identical language had appeared earlier in the decision of the court of appeal in *Buckley v. Featherstone Garage.*[7]

Normally, a person who places an obstruction in a highway will face a difficult suit if he attempts to recover for some injury inflicted on the obstruction during the course of ordinary traffic. In fact, he is more likely to be subjected to an action for the damage suffered by others because of his unlawful conduct.[8] However, the fact that there is an encumbrance on the highway which interferes somewhat with public passage will not relieve motorists of the duty to use some degree of care to avoid a collision. To knowingly encounter such an object is clearly an assumption of risk. But beyond this it is hard to draw a definite line. Certainly a motorist is not required to expect that the public highways will be imperiled by the encumbrances of others. Therefore, he need not be constantly alert for such dangers.[9] But on the other hand, a motorist cannot close his eyes to large objects that a routine lookout for the ordinary perils of

---

neutral ground. He nevertheless proceeded in reliance upon the fact that the light was in his favor. The following statement appears in the opinion: "May one who sees another violate a safety law in one respect assume he will respect it in another? In other words, does the assumption that all persons intend to obey the law exist in the case of one who has just violated the very law which the other person assumes he will obey?

"Our answer is that, under the circumstances shown by this record, [plaintiff] was justified in assuming that so long as it was possible for [defendant] to obey the law to stop in order to accord him the right of way, he [defendant] would do so."

7. 11 La. App. 564, 123 So. 446 (1929).

8. See 2 Shearman and Redfield, Negligence (rev. ed. 1941) § 346 for a variety of examples of obstructions to the lawful passage of vehicles.

9. This is a corollary of the broader rule that a motorist is entitled to assume that the use of the highway will not be imperiled by the general negligence of others, unless facts within his knowledge would make such an assumption unreasonable in a given instance. Cf. Work of Louisiana Supreme Court for the 1944-1945 Term—Torts (1946) 6 LOUISIANA LAW REVIEW 601, 603-604. However, the court of appeal has held that where the use of the highway is imperiled by an excavation on defendant's land adjacent to the way the passerby must be free of contributory negligence and will be held to have seen what he *should* have seen. Notice, however, that a peril of this sort, located wholly on defendant's own land, is hardly to be regarded as an "obstruction." Bamburg v. Standard Oil Co. of Louisiana, 199 So. 411 (La. App. 1940).

traffic would have revealed. This was the approach adopted by the supreme court in *Culpepper v. Leonard Truck Lines.*[10] Defendant's truck collided with a suspended fire escape which protruded over a public alley and which had not been pulled up to its full height above the way. The size of the obstruction and its obvious position would have made it visible to defendant's driver if he had been giving the attention to his driving that the congested condition of the alley demanded. The court indicated its willingness to characterize his conduct as recklessness if this were necessary in order to justify the decision.

Prior to the enactment of Louisiana Railroad Fencing Law in 1886[11] there was no duty on the part of a railroad to fence out trespassing cattle.[12] Furthermore the statute of 1886, unlike the laws of some of the other states,[13] did not impose this duty on the railroads. It provided, however, that in the event the fencing law was not complied with, the offending railroad must assume the burden of proving that the death or injury was not the result of carelessness on the part of its servants or agents. The effect of this statute was twofold: first it made a non-fencing railroad liable for the exercise of due and reasonable care with respect to trespassing cattle upon its tracks; second, it cast upon the defendant the burden of affirmatively exonerating itself from the inference of negligence. In the recent case of *Friedman's Estate v. The Texas and Pacific Railway Company,*[14] the supreme court held that a non-fencing railroad was liable for the destruction of the plaintiff's cattle, which were killed upon a trestle that the court found was so constructed that animals could not readily escape from it upon the approach of a train. Negligence was found likewise from the fact that the train approached this trestle from a curve, which precluded a fair view ahead, and yet the train was operated at such a speed that it was impossible to stop in time to avoid accident after the animals were seen or could have been seen through the exercise of a reasonable watchout.

The conclusion reached by the court seems fair enough. However, the decision proceeds on the erroneous idea that the animals were trespassers upon the defendants' tracks and that

10. 208 La. 1084, 24 So.(2d) 148 (1945).
11. La. Act 70 of 1886 [Dart's Stats. (1939) § 8154].
12. Stevens v. New Orleans etc. R.R., 35 La. Ann. 498 (1883).
13. See statutes listed in 3 Shearman and Redfield, Negligence (rev. ed. 1941) § 412.
14. 209 La. 540, 25 So.(2d) 88 (1945).

the case was therefore to be governed by the rules concerning the liability of landowners to anticipated trespassers. This assumption of course is not well founded in view of the fact that the statute of 1886 imposed the duty of reasonable care upon all railroads who chose not to fence their rights of way. The analogy used in the decision which compared trespassing animals with trespassing children and thus led to a review of the attractive nuisance doctrine can serve only to confuse the law on this subject.

Highly Dangerous Activities

Persons who deal in gas, electricity and other highly dangerous substances must exercise care commensurate with the unusual peril that is involved.[15] In such cases the liability imposed is virtually absolute, although the situation may be discussed by the court in terms of negligence. The decisions contain frequent references to the "highest degree of care,"[16] and res ipsa loquitur is readily available to supply proof of the defendant's shortcomings.[17]

Recently the supreme court again has emphasized the strict accountability of a person who installs a mechanism that utilizes gas.[18] In *Jones v. Blossman*[19] defendant had installed a gas water heater in plaintiff's residence. The device was set up in a small closet at plaintiff's request. At the time of the installation the closet was open, but a door was later provided, and defendant warned plaintiff to keep this open at all times. Oversight of these instructions caused raw gas in the heater to explode, and defendant was held responsible. The court found that the place of installation was unsuitable according to the rules of the National Board of Fire Underwriters. Perhaps more important, it was found that outlets could have been cut in the floor or door at small expense. The defendant's profession of competence and his assurance that the installation could be safely made were impor-

15. Bradley v. Shreveport Gas Co., 142 La. 49, 76 So. 230 (1917); Hebert v. Baton Rouge Electric Co., 150 La. 957, 91 So. 406 (1922).

16. In Feely v. National Packing Co., 141 La. 903, 75 So. 837 (1917), a gas company was notified of a peculiar odor but delayed several hours before investigating. In holding the company liable for a resulting explosion the court stated that the failure to investigate at once was negligence, "perhaps no very grave negligence; but gas companies are held to a very high degree of care." 141 La. 903, 909, 75 So. 837, 839.

17. See cases collected in Malone, Res Ipsa Loquitur and Proof by Inference—A Discussion of the Louisiana Cases (1941) 4 LOUISIANA LAW REVIEW 70, 85-97.

18. Cf. Loyocano v. Louisiana Power & Light Co., 165 So. 515 (La. App. 1936).

19. 209 La. 530, 25 So.(2d) 85 (1946).

tant factors inducing the court to dismiss the contention that the plaintiff assumed the risk by accepting and even suggesting the place of installation with knowledge of the danger.

Damages

In most jurisdictions the proper measure of damages for injury to movable property is the simple formula of depreciation, i.e., the difference between the value before and the value immediately after the injury.[20] Under this test the reasonable cost of repairing the article may be shown as bearing upon the diminution in its value resulting from the injury. The cost of repair, however, is usually not conclusive, because the repaired article might not be as valuable as it would have been had the injury not been inflicted.[21] In Louisiana, however, the cost of repair seems to have been favored as the controlling measure of damages in most cases.[22] The problem of the measurement of damages becomes more difficult when unusual economic conditions disrupt the normal used car market. Under such circumstances the urge to use the cost-of-repairs test is almost irresistible. This test was applied recently in the case of *Goode v. Hantz*.[23] The plaintiff's car was badly wrecked through the negligence of the defendant. The lower court fixed the damages at the difference between the salvage value of the car ($500) and the ceiling price prevailing for the same make and model automobile ($1689.10). This seemed fair enough in view of the fact that during the period in question a car of this make and model in any kind of passable condition could be sold at ceiling price. However, the trial court's action was reversed on appeal to the supreme court, which found that the amount of about $750 was all that would be required to repair the plaintiff's car. This position is defensible only on the rather doubtful assumption that a car receiving repairs as extensive as seem to have been necessary in this case would thereafter be in as good condition as it was prior to the accident.

The court refused to make an award for rental value during the period that would be required for repairs. The asserted ground for this refusal was that the plaintiff had made no claim in his petition for rental value. It is natural, of course, that the

20. McCormick, Damages (1935) § 124.

21. See, for example, Chicago, Rock Island & G.Ry. Co. v. Zumwalt, 239 S.W. 912 (Tex. Com. App. 1922).

22. See cases cited in Goode v. Hantz, 209 La. 821, 825, 25 So.(2d) 604, 605 (1946).

23. 209 La. 821, 25 So.(2d) 604 (1946).

plaintiff would have made no such claim in view of the fact that he was seeking damages in the amount of the difference between the salvage value of his own car and the purchase price of a replacement. The court had before it evidence of the amount of time required to make the repairs and there is no apparent reason why the case could not have been remanded for the purpose of determining the reasonable rental value during that period.

Trespass

The practice of prospecting for oil through unauthorized entry upon the land of others seems to continue and the courts are faced with difficult damage problems which arise from such trespasses. If the results of the defendant's unauthorized prospecting is the discovery of oil upon the plaintiff's premises, the information so gained is usually used by the defendant to gain an unfair bargaining advantage over the landowner. If, on the other hand, the prospecting discloses the fact that there is no mineral wealth, this information soon becomes public property and the plaintiff loses the former speculative value of his holdings. Several years ago our supreme court had held that an unauthorized entry of this sort, which proved the plaintiff's land to have no value for the purposes of producing oil warranted the plaintiff claiming damages in the amount of the depreciation of the speculative value of his property when the defendant let the cat out of the sack.[24] A similar problem arose recently in the case of *Layne Louisiana Company v. Superior Oil Company.*[25] In this case, however, the plaintiff was unable to show that the defendant's discoveries affected the value of his property for royalty purposes. He was, in effect, claiming damage for the appropriations of the privilege of making geophysical tests. It was shown that the generally prevailing price for shooting privileges in that community was fifty cents to a dollar per acre. The trial court, however, considered that five dollars per acre as claimed by plaintiff was a fair value for each acre of land invaded. This was affirmed by the supreme court.[26] It is clear from

24. Angelloz v. Humble Oil & Ref. Co., 196 La. 604, 199 So. 656 (1940). Malone, Ruminations on a New Tort (1942) 4 LOUISIANA LAW REVIEW 309. See also Green, What Protection Has a Landowner Against a Trespass which merely Destroys the Speculative Value of his Property? (1925) 4 Texas L. Rev. 215.

25. 209 La. 1014, 26 So.(2d) 20 1946).

26. Compare the method of assessment employed in Shell Petroleum Corp. v. Scully, 71 F.(2d) 772 (C.C.A. 5th, 1934). Usually the exploration privilege is purchased in conjunction with a selection lease. This makes the market value of such privileges of somewhat doubtful utility as a means of measuring damages.

the general tenor of the opinion that the large amount of the award was justified because of the flagrant character of the defendant's intrusion and the necessity of awarding substantial damages to discourage similar conduct in the future.

Prescription

The problem of prescription in connection with continuous torts has plagued the supreme court again in two recent decisions. It is normally assumed that a party who sets up the fact that his adversary's cause of action has prescribed must sustain the burden of establishing the facts of prescription upon which he relies. The normal prescriptive period for tort actions is one year. However, Article 3537 of the Civil Code provides that where property has been injured or destroyed the period of prescription starts running only from the date that knowledge of the damage was received by the owner. This qualification was added by amendment in 1902,[27] and its effect is to establish an exception to the normal rule that the prescriptive period starts running on the date of the commission of the tort. It follows that the plaintiff who wishes to recover for damage inflicted more than one year prior to the institution of his action and who relies upon the fact that he did not gain knowledge of the damage until a later date is in effect pleading a suspension of the normal running of prescription. Thus it is proper that under such circumstances he should be required to show affirmatively the time at which he gained knowledge of the damage, and the courts have so held.

When, however, the plaintiff does not rely upon late discovery there is no reason why the usual rule requiring the defendant to establish affirmatively the facts of prescription should not apply. Nevertheless loose language in the decisions has suggested that in the case of destruction of or damage to property the plaintiff must show that the tort was committed or the damage accrued within a period of one year prior to the institution of action. This is probably due to the inept language of the 1902 amendment referred to above. The result is to place on the plaintiff in a tort action a burden that properly should be shouldered by the party who seeks to rely on the plea of prescription. The most recent controversy perpetuating this error is *Parro v. Fifteen Oil Company*.[28] The case is noted elsewhere in the Review and further comment here is unnecessary. The basic unfairness

27. La. Act 33 of 1902.
28. 26 So.(2d) 30 (La. App. 1946).

of this position has forced the courts to create arbitrary exceptions. In the recent case, *In re Union Central Life Insurance Company*,[29] the court announced its adherence to the general rule that ordinarily in cases of the destruction of property the party against whom prescription is pleaded must show when the loss occurred. It avoided the implication of this position, however, by stating that the rule as announced does not apply where the plaintiff was not in possession of the land on which the property was situated during the period complained of. The court suggested that the burden of proving prescriptive facts should rest upon the party who is in the better position to know when the damage occurred. Thus bad law has been countered with confusion and perhaps more bad law. The writer suggests that the only solution to the problem is a clear recognition of the fact that the party who pleads prescription has the burden of establishing the prescriptive facts. Only if the claimant against whom prescription is pleaded wishes to avoid the normal consequences of prescription should he be required affirmatively to show the facts on which his claim of suspension depends. Despite the language of the 1902 amendment, such a position is still open to the courts.

An amendment of Article 3537 would obviate the present confusion. That article presently reads in part as follows:

> "The prescription mentioned in the preceding article [the one year prescriptive period affecting offenses and quasi offenses] runs: . . . . Where land, timber or property has been injured, cut, damaged or destroyed from the date knowledge of such damage is received by the owner thereof."

It is suggested that this article would accomplish its purpose and would at the same time not be susceptible of the present unfortunate interpretation, if it were to read as follows:

> The prescription mentioned in the preceding section runs: . . . . Where land, timber or other property has been injured, cut, damaged, or destroyed from the date of such destruction or infliction of damage. Provided, however, that the party claiming damage may show that he did not receive knowledge of his loss until after the destruction or infliction of damage had taken place, and in such event prescription shall run only from the date such knowledge was received.

---

29. 208 La. 253, 23 So.(2d) 63 (1945).

Indemnity and Contribution

Although the Louisiana courts have recognized the right of one tortfeasor to indemnity from another when the claimant is guilty of no fault and has been subjected to liability only because of some arbitrary rule of law, it has never made entirely clear the requisites necessary to a successful prosecution of his claim. Certainly it is not necessary that a solidary judgment has been secured by the original plaintiff against both the claimant and defendant,[30] although the existence of such a judgment would be essential if the claimant had been guilty of personal fault and were seeking contribution.[31] Nevertheless the claimant of indemnity must show that he discharged an existent obligation which, as between him and defendants, should in good conscience have been shouldered by the latter. In the recent case of *Winford v. Bullock*,[32] a master who had been sued for the negligence of his servant compromised the suit after judgment but prior to the expiration of the period within which he could have appealed. He then claimed indemnity from the servant for the amount of the compromise. The supreme court refused relief because the sum paid by claimant was not shown to be a payment under compulsion, but was rather the price of being relieved of the uncertainty of the result of appeal. This would seem to require a final judgment against the claimant as a prerequisite to indemnity. However, the language of the decision might be interpreted as indicating that had the claimant showed affirmatively that the amount of the compromise was fair and represented no more than he would have been required to pay under a final judgment he would have succeeded in his claim for indemnity.[33] The case deserves closer consideration than is possible here, and it will be treated in a forthcoming note in the Louisiana Law Review.

WORKMEN'S COMPENSATION

When the Louisiana Supreme Court decided in 1942 that persons other than those designated in Section 8(2)(D) of the

30. Appalachian Corp. v. Brooklyn Cooperate Co., 151 La. 41, 91 So. 539 (1922), is the leading Louisiana case on indemnity. Judgment had been secured against claimant, but not against defendant.

31. Quatray v. Wicker, 178 La. 289, 151 So. 208 (1933); Aetna Life Ins. Co. v. DeJean, 185 La. 1074, 171 So. 450 (1936).

32. 210 La. 301, 26 So.(2d) 822 (1946).

33. In an early case the supreme court had held that the fact that the plaintiff had compromised the suit against him did not preclude his action for indemnity. Brannan, Patterson and Holliday v. Hoel, 15 La. Ann. 308 (1860).

Workmen's Compensation Act might nevertheless recover as dependent members of decendant's family under Section 8 (2) (E) of the act,[34] it opened the door to a reconsideration of the claims of unacknowledged illegitimate children and stepchildren and of concubines. The ruling was promptly followed by the much discussed decision of *Thompson v. Vestal Lumber and Manufacturing Company*,[35] which held that an unacknowledged illegitimate child is entitled to compensation where it is a dependent member of the family and there are no other dependents designated in the act whose claim would take preference. In such case, of course, dependency is not presumed, as in the case of legitimate children, and must be proved as a fact. Later, the court of appeal for the first circuit announced that a dependent concubine does not enjoy a similar privilege.[36] Although this distinction is difficult to understand on principle, nevertheless, a writ of certiorari was refused,[37] and the matter must be regarded as settled for the present.

More recently, in *Dangerfield v. Indemnity Insurance Company*,[38] the supreme court held that an illegitimate stepchild, born of an illicit relationship between the mother and a third party, cannot recover as a "child" under Section 8 (2) (H) of the act. This ruling seems eminently correct both from the standpoint of construction and fairness. Since the decedent's own illegitimate child must come in as "other" dependent and prove both actual dependency and the non-existence of preferred claimants under the *Thompson* case, it is clear that the illegitimate stepchild should not receive preferential treatment. The court carefully pointed out that no effort was made to show dependency in fact and the situation does not fall under the protection of the rule of the *Thompson* case.

---

34. Archibald v. Employers' Liability Assurance Corp., 202 La. 89, 11 So. (2d) 492 (1942) (in-laws allowed compensation).

35. 208 La. 83, 22 So.(2d) 842 (1945), noted in (1945) 20 Tulane L. Rev. 145 and (1945) 6 LOUISIANA LAW REVIEW 482.

36. Moore v. Capitol Glass & Supply Co., 25 So.(2d) 248 (La. App. 1946). The court distinguished the concubine from the illegitimate child on the ground that the former is responsible for having assumed the illegal relationship, while the child is not. This sudden and anomalous solicitude for morality in the family is hard to understand. Apparently a chronically adulterous, but dependent, legitimate wife could recover, even at the expense of a dependent illegitimate child, despite her moral transgressions and her abuse of the very relationship on which she depends. The opinion also seems to overlook the large number of good faith irregular unions among the negro working classes where a complete and permanent family relationship in fact grows from such a union.

37. Writ of error refused May 27, 1946.

38. 209 La. 195, 24 So.(2d) 375 (1945).

Since the leading case of *Knispel v. Gulf States Utilities Company*[39] the supreme court has adhered faithfully to the position that a skilled workman is to be regarded as being totally disabled when he is rendered unable to do work of a character reasonably similar to that performed prior to the accident, even though he may demonstrate his ability to earn a substantial amount at some other calling. This position is not only eminently fair in view of the compromise character of workmen's compensation, but offers the additional advantage of being simpler to administer than any competing interpretation. This position was reaffirmed recently in *Ranatza v. Higgins Industries.*[40] Prior to the accident plaintiff's wage as a skilled carpenter averaged $62.50 per week. Thereafter he was able to earn an average of $30.00 per week as part time bus driver. The court refused to regard the disability as partial only. It is perhaps noteworthy that the net effect of a contrary ruling would have been only to reduce the maximum period of compensation from four hundred weeks to three hundred weeks, since the amount of compensation to be awarded under either view would exceed the permissible twenty dollar maximum.

V. BUSINESS AND COMMERCIAL LAW

BUSINESS ASSOCIATIONS

*Dale E. Bennett**

Ostensible Authority of President of Corporation

The general rule is frequently stated that the president-director of a corporation is merely presiding officer of the board of directors. He has no more authority than any other director in the management of corporate affairs—a matter which is under the control and responsibility of the entire board.[1] However, there is a tendency in modern business to put the president in general charge of business, with the result that courts have frequently held that he has, at least prima facie, authority of a general manager to conduct the ordinary, everyday business of the corporation.[2] Even where the strict rule prevails, the presi-

39. 174 La. 401, 141 So. 9 (1932).
40. 208 La. 198, 23 So.(2d) 45 (1945).
* Associate Professor of Law, Louisiana State University.
1. Knopf v. Alma Park, Inc., 105 N. J. Eq. 299, 147 Atl. 590 (1929).
2. Schwartz v. United Merchants & Manufacturers, Inc., 72 F. (2d) 256 (C. C. A. 2d, 1934).