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optional right comes into existence when the insured has failed to exercise his choice. The question then is when has the insured failed to exercise his option. The Louisiana non-forfeiture statute does not specify the term within which the insured must make his election. However, when the issue becomes pertinent, the Louisiana courts will probably follow the general rule that when no time limit for the exercise of an option is fixed by the contract or statute, the right to exercise it expires after the passage of a reasonable time[13] and what constitutes a reasonable time must be determined by the circumstances of each case.[14] Once it has been determined that the conditional option has come into existence the language of the statute "without any further act on the part of the owner of the policy" infers that the insurer may exercise his option without any hesitation or notification to the insured.

In order to be more certain that they will be allowed to exercise their option in the event the insured fails to exercise his, the insurance companies should be careful to omit any clauses in policies issued in Louisiana which the court might interpret as a waiver of the insured's right to an option at the time the policy lapses. Since it is a settled rule of contract law that parties may agree upon what constitutes a reasonable time, it might be wise for insurance companies to insert a term provision in their policies to the effect that sixty days after the lapse of the policy the insurer will exercise his right to apply the reserve fund in one of two ways. However, particularly in a hard fact case, the court might decide that the sixty day clause is a restriction or delimitation on the insured's right. A lengthy stride might be taken by the Louisiana legislature toward settling the uncertainties which exist in the Louisiana non-forfeiture statute and relieving our courts of numerous, costly controversies by following the examples of the majority of jurisdictions and inserting a time limit clause stipulating when the insured's option terminates.

J. C. T., Jr.

NEGLIGENCE—SCOPE OF TORTFEASORS LIABILITY—ON PREGNANCY AND OTHER PRE-EXISTING CONDITIONS—Plaintiff had stopped her car at an intersection in obedience to a traffic signal. While in this stationary position the automobile was run into from the rear by a truck owned by the defendant company and driven by one of

13. 3 Couch, Encyclopedia of Insurance Law (1929) 2078-2079, § 641a. Marti v. Midwest Life Ins. Co., 108 Neb. 845, 189 N.W. 388, 29 A.L.R. 1507 (1922).

14. 4 Cooley, Briefs on the Law of Insurance (2 ed. 1927) 3815, c. 14.

its employees. Plaintiff was pregnant at the time of the collision and the impact caused her body to be thrown forward against the steering wheel of her car. Plaintiff brought action for damages for personal injuries and for loss of her child resulting from its premature birth. *Held,* the negligence of defendant's employee was the proximate cause of the plaintiff's injuries and she is entitled to compensation. The fact that plaintiff was pregnant at the time of the accident is a factor to be considered in fixing the amount of damages. *Broughton v. T.S.C. Motor Freight Lines, Incorporated,* 200 La. 421, 8 So. (2d) 76 (1942).

It is a fundamental principle of tort law that the wrongdoer is liable for any injury which is the natural and probable consequence of his misconduct; and the question always is, was there an unbroken connection between the wrongful act and the injury? Did the facts constitute a continuous succession of events so linked together as to make a natural whole, or was there some new and independent cause intervening between the wrongful act and the injury? It is not necessary in order to render a negligent act or omission the proximate cause of an injury that actor could or should have foreseen the particular consequence or precise form of injury. It is enough if, by the exercise of reasonable care, he might have foreseen or anticipated that some injury might result from his negligent act.

A tortfeasor must take his victims as he finds them. This rule is aptly stated by Judge Westerfield in *Poncet v. South New Orleans Light and Traction Company:* "the duty of care and of abstaining from injuring another is due to the weak, the sick, and the infirm, equally with the healthy and strong, and when that duty is violated the measure of damages is based on the injury inflicted, even though that injury might have been aggravated, or might not have happened at all but for the peculiar physical condition of the person injured."[1] This rule is grounded on the very practical consideration that the tortious injury sets the existing condition in motion, and that the latter cannot be regarded as the independent cause of the damage, nor can the wrongdoer be allowed to apportion the measure of responsibility to the initial cause.[2]

1. Poncet v. South New Orleans Light and Traction Co., 3 La. App. 64, 66 (1925).

2. Castelluchio v. Cloverland Dairy Products Co., 7 La. App. 534 (1928).

While it is true that the negligent defendant in the principal case had no specific reason to expect his victim to be a pregnant woman, he did know that women drivers and passengers are often in such a condition. Where a trespass is committed on the person of another the fact that she turns out to be one of the large class of pregnant women cannot mitigate the damages recoverable by her if she sustains injury, and the negligent party is liable for such damages as will fairly compensate the one injured for mental, physical pain and suffering and any impairment of her health occasioned by a resultant miscarriage.[3] Where the negligent person's act was the proximate cause of the miscarriage, recovery has been allowed in all Louisiana decisions,[4] and recovery has been allowed where the plaintiff suffered nervous shock at the time of pregnancy but no miscarriage.[5]

There are, however, some well recognized limitations upon the negligent defendant's liability. He is not liable for mental suffering of the plaintiff after the birth of the child or for prospective mental suffering and disappointment caused by its deformed condition, except where the injury is wilful, wanton, or malicious.[6] Also, he is not liable for injury to the plaintiff's feelings or mere sentimental suffering following a miscarriage and not constituting a part of the pain naturally attending it; or for injury to the child and the parent's loss of its society and prospective earnings.[7] The expectant mother cannot recover damages for the child born dead because it has no legal personality distinct from its mother.[8]

While almost all jurisdictions are in accord as to the fact that a pre-existing condition or injury does not constitute an intervening cause and will not bar recovery for negligent injury, they are at variance upon the measure of damages in such cases. In Louisiana the right to recover damages is based upon the broad language of Article 2315 of the Louisiana Civil Code of 1870: "Every act whatever of a man that causes damage to another

3. Nevala v. Ironwood, 232 Mich. 316, 205 N.W. 93 (1925).

4. Stewart v. Arkansas Southern Ry., 112 La. 764, 36 So. 676 (1904); Joiner v. Texas and Pacific Ry., 128 La. 1050, 55 So. 670 (1911); Thomson v. Cooke, 147 La. 922, 86 So. 332 (1920); Youman v. McConnell and McConnell, Inc., 7 La. App. 315 (1927); Green v. Frederick, 141 So. 505 (La. App. 1932); White v. Juge, 176 La. 1045, 142 So. 851, 147 So. 72 (1933).

5. Holzab v. New Orleans and Carrollton Ry., 38 La. Ann. 185 (1886); Favarola v. New Orleans Ry. and Light Co., 143 La. 572, 78 So. 944 (1918).

6. Nevala v. Ironwood, 232 Mich. 316, 205 N.W. 93 (1925).

7. Western Union Telegraph Co. v. Cooper, 71 Tex. 507, 9 S.W. 598 (1888).

8. Youman v. McConnell and McConnell, Inc., 7 La. App. 315 (1927).

obliges him by whose fault it happened to repair it . . .," and the question of the measure of damages is better settled than in other jurisdictions. A clear majority of Louisiana decisions follow the liberal view that where the negligent defendant activates an existing injury or a dormant condition the injured person is entitled to recover for the recurrence or aggravation of his affliction as a result of the accident.[9] Thus where plaintiffs, who had eaten poisoned food purchased from the defendant, were afflicted with dormant chronic appendicitis and heart trouble, the court held that the defendant whose negligence caused the dormant condition to become active was responsible for as much of the aggravated affliction as resulted from his negligence.[10]

A subsequently contracted disease presents another problem. The fact that an injury to the person creates a decreased power of resistance to a disease will not per se render the injury the proximate cause of a subsequently contracted disease. The supervening disease must be deemed foreseeable .The courts have upheld findings that a personal injury was the proximate cause of supervening cancer,[11] peritonitis, appendicitis, blood poisoning and varicose veins,[12] impotency,[13] loss of child-bearing power,[14] pneumonia,[15] heart disease, paralysis, consumption, rheumatism, and spinal afflictions.[16] In one case, the court held that although the immediate cause of a woman's insanity was climacteria, the shock that she received in an accident resulting from the defend-

9. Lapleine v. Mórgans La. and Tex. Ry. and S.S. Co., 40 La. Ann. 661, 4 So. 875, 1 L.R.A. 378 (1888) (latent hysterical hythesis symptoms never exhibited before accident); Hall v. Excelsior Steam Laundry Co., 5 La. App. 6 (1925) (plaintiff was suffering climacteria and the accident caused by defendant's negligence produced insanity); Castelluchio v. Cloverland Dairy Products Co., 7 La. App. 534 (1928) (cerebral hemorrhage resulted from aggravation of arterio sclerosis and high blood pressure); Goins v. Moore, 143 So. 522 (La. App. 1932) (Plaintiff had previous knee injury; subsequent injury caused by defendant's negligence produced complete ankylosis); Peppers v. Toye Bros. Yellow Cab Co., 198 So. 177 (La. App. 1940) (latent "colitis" activated); Levy v. Indemnity Ins. Co., 8 So.(2d) 774 (La. App. 1942) (plaintiff suffered recurrence of mental disorder).

10. Arndt v. D. H. Holmes Co., Ltd., 9 La. App. 36, 119 So. 91 (1928).

11. Baltimore City R.R. v. Kemp, 61 Md. 619, 48 Am. Rep. 134 (1883).

12. Murphy v. Southern Pacific Ry., 31 Nev. 120, 101 Pac. 322, 21 Am. Cas. 502 (1909).

13. Denver and Rio Grande Ry. v. Harris, 122 U.S. 597, 7 S.Ct. 1286, 30 L.Ed. 1146 (1887).
901 (1905).

14. Normile v. Wheeling Traction Co., 57 W.Va. 132, 49 S.E. 1030, 68 L.R.A.

15. City of Nashville v. Reese, 138 Tenn. 471, 197 S.W. 492, L.R.A. 1918B 349 (1917).

16. Dougherty v. New Orleans Ry. and Light Co., 127 La. 225, 53 So. 532 (1910); Hanlon v. Missouri and Pacific Ry., 104 Mo. 381, 16 S.W. 233 (1891); Schafer v. Gilmer, 13 Nev. 330 (1878).

ant's negligence was the proximate cause and that the defendant was liable for all the consequences of his negligent act.[17]

J. C. M.

RAILROADS—DUTY TO UNKNOWN TRESPASSERS—Plaintiff's one year old child was struck and killed by defendant's train which was travelling at fifty miles per hour on a clear morning in sparsely settled farm country. The child had wandered from its parent's care, up a footpath that crossed the defendant's railway tracks. Plaintiff sues to recover damages for the death of the child, alleging negligence of the defendant by improper speed and other lack of care. *Held*, the railroad was not liable, as it was under no duty to look out for trespassers in open country and might travel at any rate of speed consistent with the safety of its passengers. *Sullivan v. Yazoo & M. V. Railway Company,* 8 So. (2d) 109 (La. App. 1942).

In general, the landowner owes no duty to foresee the presence of, or to prevent injury to unknown trespassers; and this same rule has been applied to the railroad in the operation of trains on its right of way.[1] The railroad has not been charged with knowledge of the trespasser's presence in cases where the person killed was in a forest area 1300 feet from a crossing, and where there were only a few scattered houses and a turpentine distillery in the vicinity;[2] where the person killed was in railroad's yards;[3] or where the person killed was riding on a logging train.[4] In each case the court reiterates that the railroad owes no duty to a trespasser except not to injure him wilfully and wantonly after his presence is known.[5] However, where there is habitual trespassing over a limited area by a large number of people, the railroad is under a duty to "look out."[6] This is in accord with the analogous duty owed by a landowner to habitual and frequent

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17. Hall v. Excelsior Steam Laundry Co., Ltd., 5 La. App. 6 (1925).

1. Johnson v. Texas & Pac. Ry., 16 La. App. 464, 133 So. 517, 135 So. 114 (1931); Trotter v. Texas & Pac. Ry., 146 So. 365 (La. App. 1933). 3 Elliott, A Treatise on the Law of Railroads (1897) 1970, § 1253.

2. Savage and Wife v. Tremont Lumber Co., 3 La. App. 704 (1926).

3. Sizemore v. Yazoo & M.V. Ry., 164 So. 648 (La. App. 1935).

4. Morris v. Great Southern Lumber Co., 132 La. 306, 61 So. 383 (1913).

5. Texas & P. Ry. v. Modawell, 151 Fed. 421, 80 C.C.A. 651, 9 L.R.A.(N.S.) 646 (1907); Whitcomb v. Louisville & N. Ry., 47 La. Ann. 225, 16 So. 812 (1895); Spizale v. Louisiana Ry. and Navigation Co., 128 La. 187, 54 So. 714 (1911).

6. Lea v. Kentwood & E. Ry., 131 La. 852, 60 So. 370 (1913); Jones v. Chicago, R. I. & P. Ry., 162 La. 690, 111 So. 62 (1926) (twenty-five to seventy persons crossed footpath daily); Builliard v. New Orleans Terminal Co., 166