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# Hazardous Businesses and Employments Under the Louisiana Workmen's Compensation Act

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whereby the landlord would not be unduly burdened nor the lessee placed at the mercy of his lessor. The court can achieve this by considering the reasonableness of the defendant's conduct, the nature of the repair, and the extent to which the plaintiff has disqualified himself by his own misconduct—in other words, by the operation of ordinary principles of negligence. To a certain extent this has been accomplished in Louisiana, not on the simple framework of negligence, however, but by the interpretations placed upon the various codal articles by the court.

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### HAZARDOUS BUSINESSES AND EMPLOYMENTS UNDER THE LOUISIANA WORKMEN'S COMPENSATION ACT

Today forty-seven of the forty-eight states have workmen's compensation acts, Mississippi being the only exception. Such legislation also exists in the territories of Alaska, Hawaii, and Puerto Rico.<sup>1</sup> Although all workmen's compensation acts seek to achieve the same result, that is, shifting the basis of liability for industrial injury from the concept of fault to the more humanitarian premise of industrial responsibility regardless of fault, the various federal, state, and territorial acts differ widely in scope and detail of coverage. In this respect the topic of hazardous employments is illustrative. The compensation acts of some eleven states apply only to hazardous or extra-hazardous employment.<sup>2</sup> The purpose of this type of act is to protect workmen employed in industries which according to custom and experience are recognized as threatening greater and more constant danger of physical injury to their employees than that ordinarily encountered by the working population at large. The protection is not against the common uncertainties which affect all walks of life, but rather against those additional hazards to which a person is subjected solely on account of the nature of his em-

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1. Horovitz, *Injury and Death under Workmen's Compensation Laws* (1944) 7.

2. Illinois: Ill. Rev. Stat. (1943) c. 48, § 139; Louisiana: La. Act 20 of 1914, § 1 [Dart's Stats. (1939) § 4391]; Maryland: Md. Ann. Code (Bagby, 1924) Art. 101, § 32; Montana: Mont. Rev. Codes Ann. (Anderson & McFarland, 1935) § 2847; New Hampshire: N.H. Rev. Laws (1942) c. 216, § 1; New Mexico: N.M. Stat. Ann. (1941) c. 57, § 902; New York: N.Y. Workmen's Compensation Law, § 3; Oklahoma: Okla. Stat. Ann. (1938) tit. 85, § 2; Oregon: Ore. Code Ann. (1930) § 49-1810; Washington: Wash. Rev. Stat. Ann. (Remington, 1932) § 7674; Wyoming: Wyo. Rev. Stat. Ann. (Courtwright, 1931) § 124-102.

ployment. Other states have included all occupations within the purview of their compensation acts without regard to considerations of inherent danger or hazard.

The Louisiana Workmen's Compensation Law<sup>3</sup> applies to hazardous employments only.<sup>4</sup> The scope of the act is limited to certain enumerated trades, businesses, and occupations by their nature inherently dangerous, and to others, unspecified, which may under certain conditions be deemed hazardous.<sup>5</sup>

The employment (trade, business, or occupation of the employer), rather than the particular duties of the employee, is generally considered the proper test for determining whether the injured employee may claim compensation for his injuries.<sup>6</sup> Thus if the business or occupation of the employer is regarded as being non-hazardous there can be no recovery even though the workman may be engaged in an operation which is hazardous, but which is not a part of the trade, business or occupation of the employer. On the other hand, a workman employed in a business that is hazardous is not entitled to compensation if his duties are *wholly* nonhazardous.<sup>7</sup>

The most troublesome cases appear within that sphere where businesses are rendered partially hazardous solely because certain employees perform hazardous or partially hazardous duties. No particular difficulty is encountered in allowing these employees to recover when injured while performing the hazardous phase of their duties. Many problems are presented, however, where the employee having partially hazardous duties is injured in the performance of his nonhazardous duties.<sup>8</sup>

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3. La. Act 20 of 1914, as amended [Dart's Stats. (1939) §§ 4391-4432].

4. Employees of the state, its political subdivisions, and agencies are placed under the operation of the act by peremptory provision. For these public employees the occupation need not be hazardous in order to qualify an injured person for compensation. La. Act 20 of 1914, § 1 (1) [Dart's Stats. (1939) § 4391.1].

5. La. Act 20 of 1914, § 1(2) [Dart's Stats. (1939) § 4391.3]; *Shipp v. Bordelon*, 152 La. 795, 94 So. 399 (1922).

6. *Mackey v. Fullerton Naval Stores Co.*, 4 La. App. 43 (1925); *DeLony v. Lane*, 155 So. 476 (La. App. 1934); *McAllister v. Peoples Homestead and Savings Association*, 171 So. 130 (La. App. 1936).

7. *Gray v. Tremont Lumber Co.*, 185 So. 314 (La. App. 1938), where a porter whose duties at a lumber mill were confined to sweeping offices and who never came into contact with the mill was held not to come under the act.

8. The principal question was summed up in the recent case of *Brown v. Toler*, 19 So. (2d) 680 (La. App. 1944): "We deem it unnecessary in this case to enter upon a full discussion of the rather unsettled state of our jurisprudence as to the relative extent of hazardous duties as compared to non-

The first clearcut case to be decided by our courts involving such a situation was *Byas v. Hotel Bentley, Incorporated*.<sup>9</sup> The plaintiff's husband was employed as a bell-boy in the defendant's hotel. In addition to the ordinary duties of this job he was required to operate a power-driven elevator, and to go into the basement of the hotel to operate and adjust certain electrical and motor-driven equipment. He was killed in the performance of his baggage handling duties in an altercation with a taxicab driver. The court held that his dependents were entitled to compensation despite the fact that the deceased was not performing a hazardous duty at the time of the accident. It was enough that he was charged with the performance of certain duties that were of a hazardous character. This decision is among those most frequently cited within the field of workmen's compensation. A consideration of the cases discussing this doctrine will be made according to the related factual situations.

#### AUTOMOBILE AND RELATED CASES

The operation of motor vehicles was early held, in *Haddad v. Commercial Truck Company*,<sup>10</sup> to characterize the business as hazardous and thus bring the operators under the protection of the act. The basis of coverage was not the dangers that arise from traffic hazards such as collision or upset, but rather the concept of danger arising from association with and operation of an "engine and other forms of machinery" as provided in the so-called "catch-all" clause<sup>11</sup> of the act. The rule of the *Haddad* case has usually been applied to cover an injury sustained by the regular driver of a motor vehicle as the result of an accident while operating the vehicle. Thus compensation has been awarded to a taxicab driver injured while operating the vehicle in the course of his employment.<sup>12</sup> The driver of a bakery truck was similarly covered.<sup>13</sup> In these cases it may be said that the operation of the motor vehicle was a substantial and integral part of the employer's business.

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hazardous duties an employee must be performing in order for him or his dependents to recover compensation where his employment requires him to perform both hazardous and nonhazardous work and where he is injured while performing nonhazardous services."

9. 157 La. 1030, 103 So. 303 (1924).

10. 146 La. 897, 84 So. 197, 9 A.L.R. 1380 (1920).

11. La. Act 20 of 1914, § 1(2)(a) [Dart's Stats. (1939) § 4391.2].

12. *Plick v. Toye Bros. Auto & Taxicab Co.*, 169 La. 44, 124 So. 140 (1929).

13. *Lemmler v. Fabacher*, 139 So. 683 (La. App. 1932).

While there is universal agreement that the *operator* of a motor vehicle is covered by the act, the courts of appeal have been unable to agree upon whether a *passenger* in an automobile is covered, if his employment is otherwise nonhazardous. The Orleans circuit extends the act to provide for coverage of passengers in motor vehicles.<sup>14</sup> The Court of Appeal for the First Circuit has taken the contrary position and has held that mere riding in a motor vehicle, having nothing to do with its operation, is not included within the purview of the act.<sup>15</sup> Since the feature that allows drivers of motor vehicles to come under the act is "the installation, repair, erection, removal, or *operation* of boilers, furnaces, engines, and other forms of machinery,"<sup>16</sup> the act does not seem to contemplate coverage of passengers. The hazards of traffic have not been considered in denoting motor vehicles as dangerous.<sup>17</sup> Emphasis has always been on operation of the engine. While the position of the first circuit seems logically sound, there is support for the holdings of the other courts of appeal under the liberal interpretation given the act. The supreme court has not yet indicated a choice between these two views.

A related problem is that of the employee who neither drives nor rides in a motor vehicle but works in close proximity to it, that being the only connection his duties have with any feature of the employer's business that could be considered hazardous. A filling station attendant was deemed to be engaged in a hazardous occupation because of his proximity to and close association with motor vehicles.<sup>18</sup> In *Richardson v. Crescent Forwarding and Transportation Company*<sup>19</sup> an employee injured while loading a truck was allowed compensation because it was necessary for him to work around the engine, it being said that whether or not the employee operated the machine was of no importance. A workman engaged in stacking cane preparatory to its being loaded on trucks was held to have been engaged in a hazardous undertaking although he neither drove nor rode on the cane

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14. *Comeaux v. South Coast Corp.*, 175 So. 177 (La. App. 1937); *Crews v. Levitan Smart Shops*, 171 So. 608 (La. App. 1937).

15. *Tregre v. Kratzer*, 148 So. 271 (La. App. 1933); *Lewis v. A. Moresi Co., Ltd.*, 196 So. 70 (La. App. 1940).

16. La. Act 20 of 1914, § 1(2) [Dart's Stats. (1939) § 4391.2]. Italics supplied.

17. *Horton v. Western Union Telegraph Co.*, 200 So. 44 (La. App. 1941) (injured on bicycle).

18. *Youngblood v. Colfax Motor Co.*, 125 So. 883 (La. App. 1930).

19. 135 So. 688 (La. App. 1931).

trucks.<sup>20</sup> In *Hayes v. Barras*<sup>21</sup> the plaintiff, who was employed temporarily to assist in loading the defendant's truck with office equipment which the latter had contracted to move, was injured when he stumbled while carrying a piece of furniture down the stairs of the building. The plaintiff was awarded compensation although he was not employed to operate or ride the truck. In the recent case of *Ryland v. R. & P. Construction Company*<sup>22</sup> the situation involved an employee who worked as a night watchman keeping a lookout over his employer's machinery which was not operated and not otherwise attended during the night. While about his duties as night watchman the plaintiff was seized with an epileptic fit and fell unconscious into a fire which he had built to warm himself. The employer resisted the claim for compensation on the ground that the plaintiff never came in contact with any of the machinery *while it was being operated*. The court awarded compensation, saying that the fact that the plaintiff was around the machinery at all was enough to make his duties hazardous.

Cases from the first circuit are to be found which do not agree with the ones above noted. It was held in *Allen v. Yantis*<sup>23</sup> that an employee injured while loading a truck could not recover compensation on the basis of close proximity to the motor vehicle. *Richardson v. Crescent Forwarding and Transportation Company*,<sup>24</sup> mentioned above, was not approved. In *Goodman v. National Casualty Company*<sup>25</sup> the plaintiff sought to base his recovery on the ground that his employer used trucks in his business, but the court found that the employee performed no duties connected with the trucks, although he worked near them on occasion. Recovery was not allowed.

Although there are minor features on which some of these cases may be distinguished, in the main they are the result of basically different interpretations of the act.

Since the decision in the *Haddad* case there have been many extensions of the rule therein expressed. In *Crews v. Levitan Smart Shops*<sup>26</sup> the plaintiff employee was employed by a retail

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20. *Robichaux v. Realty Operators*, 195 La. 70, 196 So. 23 (1940).

21. 6 So.(2d) 66 (La. App. 1941).

22. 19 So.(2d) 349 (La. App. 1944).

23. 196 So. 530 (La. App. 1940).

24. 135 So. 688 (La. App. 1931).

25. 15 So.(2d) 173 (La. App. 1943).

26. 171 So. 608 (La. App. 1937).

clothing store as a traveling solicitor. Her duties consisted of visiting homes in and around the neighborhood of the store, taking orders on the club plan. The defendant furnished an automobile and driver to carry the solicitors from house to house, and it was while riding in this automobile that the plaintiff was injured. Her demand in tort was rejected by the court and it was decided that she should have claimed workmen's compensation instead of damages. The fact that the defendant's business of operating a clothing store is not generally hazardous was held to be of no importance since in conjunction with the store he operated a gasoline engine with which the plaintiff was required to be in frequent contact.

Three years after the *Crews* case the supreme court decided the case of *Brownfield v. Southern Amusement Company*.<sup>27</sup> Here an attempt was made by the plaintiff to combine the rule of the *Byas* case (that an employee engaged in duties which are only partially hazardous may recover compensation for injury whether received in the nonhazardous or hazardous phase of his duties) with that of the *Crews* case to bring herself under the act. The plaintiff was the manager of a movie theatre. Her principal duties consisted of selling tickets and supervising the showing of films. Occasionally she was driven by her husband in her own automobile to inspect billboards or to pick up delayed film in a neighboring city. The plaintiff was injured, however, when she fell off a stool while selling tickets at the theater. She showed that she used an automobile from time to time in her business and invoked the rule of the *Byas* case in making her demand for compensation. Her demands were recognized in both the district court and in the court of appeal, both feeling that this was but the logical extension of the *Crews* case under the *Byas* doctrine. The supreme court, however, reversed the court of appeal's decision and rejected the plaintiff's demands. It was said that the plaintiff's occasional use of her automobile was so remotely connected with her employer's business that the effect of holding her occupation hazardous would be to place almost every occupation within the hazardous category. The facts of the *Byas* case were said to be the uttermost extent to which that doctrine should be applied. It was felt that such application to the *Brownfield* case would be carrying the doctrine beyond the limits of reason. Had the plaintiff been injured while being driven in her

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27. 196 La. 74, 198 So. 656 (1940).

car the supreme court in order to reach the same result would have been required to repudiate the *Crews* case and thus would have placed a definite limitation on the *Haddad* case. But since the decision was based on the amount the automobile was used in relation to the employee's other duties and to the business of the employer as a whole the *Brownfield* case must be taken as a definite limitation of the *Byas* case. The doctrine is thus restricted to situations where the dangerous feature of the employee's occupation represents at least a substantial portion of his duties.<sup>28</sup>

The courts have wedded the *Byas* doctrine to the rule of the *Haddad* case to produce some rather astounding offspring, especially in those instances where the operation of the motor vehicle was the only hazardous feature of the employer's otherwise nonhazardous business. One of the first cases of this type was *Labostrie v. Weber*.<sup>29</sup> Here the defendant employer conducted a barber shop, and also owned a truck which he used on occasion to haul furniture on contract, and which was driven by plaintiff. However, the plaintiff was injured while engaged at work upon the demolition of a building used by the defendant to house his truck, preparatory to the erection of a new garage for it. The building collapsed and the plaintiff was injured. Although the employee was injured while engaged in the demolition of a building, which occupation is expressly enumerated in the act as hazardous,<sup>30</sup> recovery could not be allowed under that theory because his employer was not in the business of construction or demolition of buildings.<sup>31</sup> Under the *Haddad* case, however, it could be held that one who operated motor vehicles in connection with his business was to that extent engaged in a hazardous occupation. It was said that so long as the employee had partially hazardous duties it did not matter that at the time of his injury he was occupied by duties not directly compensable under the act. The *Byas* case was cited. Thus the employer's liability is made to depend upon the use of a truck in his business.

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28. The supreme court granted a rehearing in the *Brownfield* case which failed to materialize because of a compromise between the parties. A more recent court of appeal case, *Franz v. Sun Indemnity Co. of N.Y.*, 7 So.(2d) 636 (La. App. 1942), has distinguished the *Brownfield* case by finding the act applicable to an employee who is regularly transported in motor vehicles, even though the injury occurred not in the automobile, but when the plaintiff stumbled and fell to the ground while alighting from the vehicle after it had drawn to a full stop.

29. 130 So. 885 (La. App. 1930).

30. La. Act 20 of 1914, § 1(2) [Dart's Stats. (1939) § 4391.2].

31. *Delony v. Lane*, 155 So. 476 (La. App. 1934); *McAllister v. Peoples Homestead and Savings Ass'n*, 171 So. 130 (La. App. 1936).

A similar situation arose in the case of *Hecker v. Betz*.<sup>32</sup> The plaintiff was a plumber employed by the defendant, an undertaker or mortician, to do some work on the building where the employer lived, conducted his business, and housed his trucks and automobiles. While hammering on a piece of pipe the plaintiff was injured by a fragment of steel which glanced from the pipe into his eye. The employer's defense to the plaintiff's demand for compensation was that the business of undertaking is not hazardous and does not come within the coverage of the compensation law. The court agreed that if the business of undertaking was not hazardous and contained no hazardous features, there could be no recovery. It was found, though, that because the defendant operated motor vehicles in his business of undertaking, it was, to that extent, engaged in a hazardous business. The *Haddad* and *Labostrie* cases were cited. Having said that the business was partially hazardous because of the motor vehicle feature the court cited the *Byas* case, saying,

" . . . if an employer is engaged in a business which has both hazardous and nonhazardous features, an employee whose work brings him into contact with both features is protected by the compensation laws even if the injury which forms the basis of the claim for compensation is sustained while he is performing nonhazardous duties. That conclusion and the reasoning from which it results are most potent here and, we feel, make it necessary that we hold that an employer who is engaged, as *Betz*, in a business which has two features, one hazardous and one nonhazardous, and who, in furtherance of that general business, undertakes construction work which, in itself, is hazardous, should be held liable in compensation to those employees who are engaged in such hazardous work."<sup>33</sup>

The court then mentioned that the building was to be used to house motor vehicles, comparing it with the *Labostrie* case again. It seems to overlook the fact that the plaintiff in the present case had nothing to do with the operation of the motor vehicles owned by the employer. These motor vehicles were the only hazardous features of the defendant's business. The court was careful to point out that it did not hold that any employer who undertakes to remodel his own business establishment there-

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32. 172 So. 816 (La. App. 1934).

33. *Id.* at 820.

by renders himself liable in compensation to an employee injured in such work. According to the opinion, all that was held was that if the building is being remodeled or reconstructed for use in a business which, at least to some extent, is hazardous, then those who do such reconstruction work are protected by the act. Thus it seems that the plaintiff could not have recovered had there been no automobiles connected with the defendant's business. Yet he had no connection whatsoever with the automobiles. The court does not seem to be justified in its use of the combined *Byas-Haddad* doctrine here, since it was admitted that the plaintiff could not recover by virtue of being engaged in construction or demolition duties because the occupation of his employer was not the construction business.

Neither the *Labostrie* case nor the *Hecker* case can be distinguished from the case of *Horrell v. Gulf & Valley Cotton Oil Company, Incorporated*,<sup>34</sup> which decided that an employee engaged in construction work not a part of the business of his employer was not covered by the act. The rule of the *Horrell* case was recognized in both the *Labostrie* and the *Hecker* cases, but the conclusion to which the rule would have led was avoided in both instances by misapplication of the combined rules of the *Byas* and *Haddad* cases.

#### CASES INVOLVING FARMERS

Farming is not necessarily a hazardous occupation,<sup>35</sup> but it may be made hazardous by installation and operation of certain types of engines and machinery.<sup>36</sup> However, the courts are reluctant to designate farming occupations as hazardous. They are also much less willing to say that a farmer's business is partially hazardous because of the use of a motor vehicle or other types of engines than in the class of cases discussed under the preceding heading.

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34. 131 So. 709 (La. App. 1930). The plaintiff in the *Horrell* case was the employee of an independent contractor and sought to recover damages in tort. However, the question upon which liability depended was whether or not a person who is performing hazardous work which is not a part of the employer's regular business comes within the purview of the act. In this respect it seems to be immaterial whether the plaintiff is a direct employee or is employed by an independent contractor. The rule is the same, whether the employee comes under Section 2(a) or under Section 6 of the act. App. 1934); *Rayburn v. DeMoss*, 192 So. 738 (La. App. 1939).

35. *Thompson v. J. B. Levert Land Co.*, 2 La. App. 159 (1929); *Bradley v. Blakely*, 154 So. 415 (La. App. 1934); *DeLony v. Lane*, 155 So. 476 (La.

36. *Staples v. Henderson Jersey Farms, Inc.*, 181 So. 48 (La. App. 1938).

In *Rayburn v. DeMoss*<sup>37</sup> the plaintiff was injured while doing carpentry work on a small dairy. The dairy owned a truck and various small items of machinery, but the plaintiff was not required to operate them, although he was in close proximity to them at times. Recovery was denied on the ground that the injured workman had performed no service directly or indirectly connected with any hazardous part of his employer's business. Unless it be admitted that special concessions are being made to farmers (and the Workmen's Compensation Law makes none) this case should largely nullify the effect of the decision in the *Hecker* case. The cases appear to be indistinguishable on the facts.

In *Lewis v. Moresi Company, Limited*,<sup>38</sup> it was held that an employee who was riding on a tractor-pulled wagon when he was injured was not entitled to compensation because his injury did not occur in a hazardous occupation or business. The court rejected the plaintiff's demands on two grounds. First, it was said that passengers on motor vehicles are not covered by the act. Second, the plaintiff's contact with the motor vehicle was rare and not a material part of his duties. This last reason is similar to the ground used to reject the plaintiff's demands in the *Brownfield* case, previously discussed. Thus it would appear that farm employees injured while engaged in truck loading operations have been denied recovery<sup>39</sup> while non-farm employees injured while similarly engaged have been awarded compensation.<sup>40</sup>

The case of *Williams v. Westdale Corporation*<sup>41</sup> went to the full extent of holding that a farm hand injured while driving a tractor could not recover compensation because the business of farming is not hazardous. The court commented to the effect that holding farm employees entitled to recover in such cases would produce disastrous results to farmers. However, it is safe to assume that the *Williams* case will not stand up under future assaults by employees seeking compensation because of *Collins v. Spielman*,<sup>42</sup> hereinafter discussed.

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37. 194 La. 175, 193 So. 579 (1940).

38. 196 So. 70 (La. App. 1940).

39. *Allen v. Yantis*, 195 So. 530 (La. App. 1940).

40. *Hayes v. Barras*, 6 So.(2d) 66 (La. App. 1941).

41. 3 So.(2d) 684 (La. App. 1941).

42. 200 La. 568, 8 So.(2d) 608 (1942).

Some cases have held that use of motor vehicles, engines, and machines on the farm is sufficient to transform the farm into a partially hazardous business. In *Robinson v. Atkinson*<sup>43</sup> the court recognized the fact that farming is not a hazardous business *per se*, but that it may be made partially hazardous by the operation of a gasoline ensilage harvester or hay cutter. It was further held that it makes no difference that the machinery is not a permanent feature of the farming operation but has only been borrowed for the one occasion upon which the employee is injured. Here the employee was injured directly by the machinery, and there was no occasion for applying the doctrine of the *Byas* case.

In *Staples v. Henderson Farms, Incorporated*,<sup>44</sup> the plaintiff was injured while driving a truck which belonged to his employer, a highly mechanized dairy, and recovery was allowed. Here again the employee was injured while operating hazardous machinery.

Recovery was allowed an injured employee in *Robichaux v. Realty Operators*<sup>45</sup> on the ground that the employee was employed in the "manufacturing" part of his employer's combination plantation-sugar factory rather than in the "farming" phase. The plaintiff was engaged as a cane stacker. His duties consisted of piling cane preparatory to loading it upon trucks with a motor operated derrick.

An outstanding recent case, *Collins v. Spielman*,<sup>46</sup> applied the combined *Byas-Haddad* doctrine to farming operations. The plaintiff, a general farm hand, whose duties included the driving of a tractor during planting season and the driving of a milk delivery truck at other times was injured while herding his employer's cows. The court of appeal<sup>47</sup> denied compensation on the ground that it had never been the intention of the legislature to extend the provisions of the act to "the small farmer or merchant." The supreme court reversed on the ground that the plaintiff was engaged in a partially hazardous occupation because of his operation of the machinery and appliances used in connection with the farm. The *Byas* case was cited as authority for the rule that recovery may be had whether the employee was en-

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43. 198 La. 238, 3 So.(2d) 604 (1941).

44. 181 So. 48 (La. App. 1938).

45. 195 La. 70, 196 So. 23 (1940).

46. 200 La. 568, 8 So.(2d) 608 (1942).

47. 8 So.(2d) 606 (La. App. 1941).

gaged in hazardous or nonhazardous duties at the time he was injured.

The *Collins* case may be taken as an indication that farmers are going to be held to the same responsibility as other employers. The supreme court was emphatic in its reaffirmation of both the *Byas* and the *Haddad* cases.

#### COMMERCIAL ESTABLISHMENTS HAVING SMALL MECHANICAL APPLIANCES

We have seen how the introduction of a machine or engine may render hazardous an ordinarily nonhazardous business. Employees of restaurants and stores have often been able to secure compensation for injuries by application of this principle, although generally such establishments are not considered hazardous businesses.<sup>48</sup>

In *Stephens v. Catalano*<sup>49</sup> compensation was allowed an errand and general utility boy employed by the defendant meat market. The plaintiff was injured while operating an electrically driven meat grinder. It was held that to the extent he was required to use the electric meat grinder the employee's duties were hazardous.

In the recent case of *Storm v. Johnson*<sup>50</sup> the plaintiff was employed in a restaurant as counterman and night manager. The restaurant was equipped with an electrical meat slicer and grinder which the plaintiff used from time to time in the performance of his regular duties. The plaintiff cut his thumb with a nonmechanical meat cleaver and was awarded compensation. The court cited the *Byas* case and pointed out that the award was not dependent upon whether the plaintiff was injured while using the machinery forming the hazardous portion of his job.

*Brown v. Toler*,<sup>51</sup> another recent court of appeal case, suggests a more cautious attitude than the *Storm* case takes. In this case the plaintiff was employed in a store containing an electric meat grinder. He injured himself while opening oysters. His demand for compensation was rejected by the trial court, the de-

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48. *Adams v. Hicks*, 149 So. 242 (La. App. 1933); *Atkins v. Holsum Cafeteria*, 159 So. 758 (1935); *Scott v. Dalton Co.*, 1 So.(2d) 412 (La. App. 1941).

49. 7 So.(2d) 380 (La. App. 1942).

50. 23 So.(2d) 639 (La. App. 1945).

51. 19 So.(2d) 680 (La. App. 1944).

cision being affirmed by the court of appeal. It was found that the plaintiff had failed to prove that his duties required him to operate or clean the meat grinder. The court might have rested the decision on this ground alone. It was pointed out, however, that the plaintiff did not show that his association with the grinder was a *major and material* part of his employment so as to make it hazardous within the meaning of the Workmen's Compensation Law. The court approved the *Brownfield* case as a salutary indication of a tendency on the part of the supreme court to modify the hitherto unrestricted application of the rule of the *Byas* case.

As previously stated, grocery and department stores have generally been held to be nonhazardous businesses.<sup>52</sup> The case of *Stockstill v. Sears-Roebuck & Company*,<sup>53</sup> however, is worth noting as an extreme application of the *Byas* case to this type of business. Here the plaintiff was employed by the defendant in its refrigerator department. His duties involved arranging the stock of refrigerators on the floor of his employer's store and installing them in customers' houses after sale. The employee injured his back while moving refrigerators on the floor of the store. He was awarded compensation on the ground that he was required to deal with electrical equipment (plugging the electric cords into the wall sockets) which was hazardous. Because his duties were partially hazardous recovery was allowed under the *Byas* case.

#### CONCLUSION

Up to the time of the *Brownfield* case there had been no tendency on the part of the courts to limit or restrict the application of the rule laid down in the *Byas* case. Whether the supreme court will maintain its decision limiting recovery to cases where the hazardous features of the employee's partially hazardous employment constitute a "substantial" or "material" portion of his whole employment remains to be seen. The fact that the *Brownfield* case was compromised pending a rehearing before the supreme court leaves room for doubt on the issue.

If the trend is away from unrestricted application of the rule of the *Byas* case the result will be the overturning of a large

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52. *Adams v. Hicks*, 149 So. 242 (La. App. 1933); *Rester v. Community Stores, Inc.*, 169 So. 183 (La. App. 1935).

53. 151 So. 822 (La. App. 1934).

number of cases. Such a trend would not mean that the amount of litigation would be lessened. The issue of "substantial" or "material" relation between total duties and hazardous duties is particularly nebulous.

Although many of the cases decided under the doctrine of the *Byas* and related cases are subject to criticism, a solution for the problem is not one susceptible of yardstick application. Each situation must be dealt with individually. These cases with their intricate fact situations cannot be expected to fall readily between any set lines of demarcation.

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