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and exclusively on the basis of Article 767.[39] Article 769 is sometimes cited,[40] noticeably in cases which deal with servitudes which happen to be both continuous and apparent, but it never constitutes a determining factor. Even more important in cases in which the servitude is discontinuous, there is little attention devoted to explaining that servitudes must be continuous *and* apparent in order to be established by destination; the court merely states that discontinuous servitudes, whether apparent or not, can be established only by title.[41]

In spite of the fact that the earlier cases to the contrary have not been expressly overruled, it seems safe to conclude that, without much discussion of the conflict in the articles, the Louisiana courts have finally settled on the first of the five theories of the French commentators. The result is that our Article 769 is unnecessary and meaningless—*in all cases* the servitude must be continuous and apparent in order to be established or revived by destination.

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EFFECT OF PAYMENT OF WAGES AFTER DISABILITY AS A CREDIT TOWARD WORKMEN'S COMPENSATION

In interpreting the Louisiana Workmen's Compensation Act,[1] the courts have concluded that an employee may be totally and permanently disabled if he cannot do work of the *same* character that he was performing prior to the accident.[2] The fact that he may be able to perform the same work with pain[3] or through assistance[4]

39. Taylor v. Boulware, 35 La. Ann. 469 (1883); Woodcock v. Baldwin, 51 La. Ann. 989 (1899); Capo v. Blanchard, 1 La. App. 3 (1924); Giarratano v. Angermeier, 7 La. App. 375 (1927); Kelly v. Peppitone, 12 La. App. 635, 126 So. 79 (1930); Burgas v. Stoutz, 174 La. 586, 141 So. 67 (1932).

40. Taylor v. Boulware, 35 La. Ann. 469 (1883); Woodcock v. Baldwin, 51 La. Ann. 989 (1899).

41. Capo v. Blanchard, 1 La. App. 3 (1924); Giarratano v. Angermeier, 7 La. App. 315 (1927); Kelly v. Peppitone, 12 La. App. 635, 126 So. 79 (1930); Burgas v. Stoutz, 174 La. 586, 141 So. 67 (1932).

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

2. Black v. Louisiana Central Lumber Co., 161 La. 889, 109 So. 538 (1926); Knispel v. Gulf States Utilities Co., 174 La. 401, 141 So. 9 (1932); Stieffel v. Valentine Sugars Co., 188 La. 1091, 179 So. 6 (1938).

3. Stieffel v. Valentine Sugars Co., 188 La. 1091, 179 So. 6 (1938); Hingle v. Maryland Casualty Co., 30 So. (2d) 281 (La. App. 1947).

4. Norwood v. Lake Bisteneau Oil Co., 145 La. 823, 83 So. 25 (1918); Hulo v. City of New Iberia, 153 La. 284, 95 So. 719 (1923); Carlino v. United States Fidelity and Guaranty Co., 196 La. 400, 199 So. 228 (1940).

or that he may be capable of performing other services at an equal rate of pay[5] does not alter the result.

After the accident the claimant may secure work with another employer, or he may be retained by his old employer for lighter work at the same or a slightly reduced wage. This practice of retaining injured employees is becoming increasingly prevalent with large industries, particularly during recent years of labor shortages. If the claimant secures a new employer, it is clear that he does not lose his right to full compensation merely because he is receiving wages, for his claim depends upon the existence of disability as determined solely by the principle set forth above.[6]

If, however, he is retained by the original employer, the courts have shown themselves willing to allow the employer some credit for wage payments made after the accident.[7] Thus the amount of compensation to be received may depend upon the identity of the employer following the accident.

This is forcefully illustrated in the case of *Gautreau v. Maryland Casualty Company*.[8] The injured employee had returned to work as a nightwatchman in the industrial plant where he sustained his injury. Later there was a change in the plant management, which in no way affected the worker's duties. In a subsequent suit for compensation, the court held that the original employer was entitled to a credit for the period the employee was engaged as a nightwatchman until the change of management, but after that time he was working for a different employer—hence no credit would be allowed.

5. Ranatza v. Higgins Industries, 208 La. 198, 23 So. (2d) 45 (1945); McQueen v. Union Indemnity Co., 18 La. App. 612, 136 So. 761 (1931); Anderson v. May, 195 So. 783 (La. App. 1940); Sumrall v. E. I. Du Pont de Nemours & Co., 1 So. (2d) 430 (La. App. 1941); Phillips v. Wohlfeld, 10 So. (2d) 258 (La. App. 1942); Thompson v. Leach & McClain, 11 So. (2d) 109 (La. App. 1943).

6. Ibid.

7. Norwood v. Lake Bisteneau Oil Co., 145 La. 823, 83 So. 25 (1918); Hulo v. City of New Iberia, 153 La. 284, 95 So. 719 (1923); Carlino v. United States Fidelity and Guaranty Co., 196 La. 400, 199 So. 228 (1940); McKenzie v. Standard Motor Car Co., 15 So. (2d) 115 (La. App. 1943); Thornton v. E. I. DuPont de Nemours & Company, 207 La. 239, 21 So. (2d) 46 (1944); Holliday v. Martin Veneer Company, 206 La. 897, 20 So. (2d) 173 (1944); Butzman v. Delta Shipbuilding Co., 21 So. (2d) 80 (La. App. 1945); Annen v. Standard Oil Co. of New Jersey, 28 So. (2d) 46 (La. App. 1946); D'Antoni v. Employers' Liability Assurance Corp., 28 So. (2d) 49 (La. App. 1946); Gautreau v. Maryland Casualty Co., 28 So. (2d) 96 (La. App. 1946); Daigle v. Higgins Industries, 29 So. (2d) 374 (La. App. 1947); Arbo v. Maryland Casualty Co., 29 So. (2d) 380 (La. App. 1947).

8. 28 So. (2d) 96 (La. App. 1946).

At first glance the distinction drawn in the *Gautreau* case[9] appears to be a tenuous one. However, the courts predicate this distinction on sound policy considerations. The purpose of the act is to insure against the loss of earning power.[10] The employer who retains his injured worker effectively insures him against such loss. This idea was best expressed in *McKenzie v. Standard Motor Car Company*[11] as follows:

> "We are of the opinion . . . that there is a difference in the matter of allowing wages to take the place of compensation depending on whether the injured employee continued to work for the same employer he was working for at the time he was injured or is working for some one else. As long as he is receiving wages from the same employer which are the equivalent of or in excess of the amount of compensation he is entitled to, he is getting that from the party who insured him against his disability and who owes him compensation. On the other hand, when he goes to work for some other employer, under the same circumstances, he is receiving wages from a party who owes him nothing in the way of compensation, as he had never insured him against disability on the job he was injured on, and the total amount he receives therefore bears no relation whatever to the compensation he is entitled to recover from the original employer. . . ."

Should there be a distinction between wages received as a gratuity and wages actually earned from the original employer? The anomaly is more pronounced if the employer is given credit for wages which the employee fully earned at a job different from the one he held at the time of the injury. This problem was recognized in *Annen v. Standard Oil Company of New Jersey*:[12]

> "It would be inequitable to charge the employer for compensation in addition to the wages during the period of disability that employee was employed; but it would also be inequitable to consider the wages paid during such period of employment as advanced workmen's compensation instead of wages paid for services rendered."

9. Ibid.
10. Rylander v. T. Smith & Sons, 177 La. 716, 149 So. 434 (1933).
11. 15 So. (2d) 115, 118 (La. App. 1943).
12. 28 So. (2d) 46, 48 (La. App. 1946).

The supreme court has not specifically ruled on this point since *Hulo v. City of New Iberia,*[13] where it held that only the portion which exceeded the amount actually earned would be credited on subsequent compensation. In *Carlino v. United States Fidelity and Guaranty Company*[14] and *Thornton v. E. I. DuPont de Nemours & Company,*[15] the payment of equal wages for lighter work—which presupposes that the wage was partially gratuitous—was allowed to take the place of compensation. *Holliday v. Martin Veneer Company*[16] contains language to the effect that unearned wages alone will be credited.

However, it is apparently settled insofar as the courts of appeal are concerned that the credit applies to earned as well as unearned wages.[17] The rehearing of *Daigle v. Higgins Industries*[18] gave a detailed discussion of this problem. The court, in reversing its previous decision, concluded that the supreme court decisions lead to the view that earned as well as unearned wages should be credited. Further, it would do violence to the spirit of the act to allow an injured employee to collect both wages and compensation from the *same* employer for the *same* period.

How much credit should be allowed? Two appellate cases[19] went so far as to hold that the employer would be credited with the entire wage received by the employee, though it exceeded the maximum compensation allowable. In the *Hulo* case[20] the supreme court ruled that when the employer paid the employee more than he actually earned, the excess payments should be taken into account as advance payments on compensation due. Thus, if the court should decide that twenty dollars represented the earned and thirty dollars the unearned portion of a weekly pay check of fifty dollars, the thirty dollars would be credited toward future compensation.

13. 153 La. 284, 95 So. 719 (1923).

14. 196 La. 400, 199 So. 228 (1940).

15. 207 La. 239, 21 So. (2d) 46 (1944).

16. 206 La. 897, 20 So. (2d) 173 (1944).

17. McKenzie v. Standard Motor Car Co., 15 So. (2d) 115 (La. App. 1943); Butzman v. Delta Shipbuilding Co., 21 So. (2d) 80 (La. App. 1945); Annen v. Standard Oil Co. of New Jersey, 28 So. (2d) 46 (La. App. 1946); D'Antoni v. Employers' Liability Assurance Corp., 28 So. (2d) 49 (La. App. 1946); Gautreau v. Maryland Casualty Co., 28 So. (2d) 96 (La. App. 1946); Daigle v. Higgins Industries, 29 So. (2d) 374 (La. App. 1947); Arbo v. Maryland Casualty Co., 29 So. (2d) 380 (La. App. 1947).

18. Supra note 17.

19. Becton v. Deas Paving Co., 3 La. App. 683 (1926); Hennen v. Highway Commission, 178 So. 654 (La. App. 1938).

20. Supra note 4.

A modification of this rule was made in the *Carlino* case,[21] where it was stated that the employee would not be entitled to compensation for a period during which he received wages equal to or exceeding maximum compensation allowable. The basis for the decision was that no right or cause of action existed during that period. The court went on to say:

> "But we see no reason why the insurer should have credit for excess payments made by the employer to an injured employee as a gratuity. The payments made in such a case in the form of wages, merely take the place of compensation due to the injured employee for the period in which the payments were made."

The effect of the *Carlino* decision was to allow the employer a maximum credit at the rate of twenty dollars per week for the period during which the employee received wages equal to or exceeding maximum allowable compensation. The same result has been reached in a variety of ways. In the *Thornton* case[22] the court indicated that the employee suffered no loss or diminution of earning power when his wages were paid in full.[23] Other cases have reached this conclusion by stating that compensation is suspended for that period,[24] that the payment of wages constitute compensation to the extent of twenty dollars per week,[25] or simply that compensation is not collectible for the period during which the employee received from his original employer wages equal to or exceeding the maximum allowable compensation.[26]

It is desirable to encourage the employer to rehabilitate his injured employee. This practice would serve a two-fold purpose: it would give the employee a sense of security and would tend to reduce employee-employer litigation. Both of these factors lead toward tranquillity on the industrial scene.[27]

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21. Ibid.

22. 196 La. 400, 199 So. 228 (1940).

23. See Ulmer v. E. I. DuPont de Nemours & Co., 190 So. 175 (La. App. 1939).

24. Butzman v. Delta Shipbuilding Co., 21 So. (2d) 80 (La. App. 1945).

25. Vega v. Higgins Industries, Inc., 23 So. (2d) 661 (La. App. 1944).

26. Hingle v. Maryland Casualty Co., 30 So. (2d) 281 (La. App. 1947).

27. Under Section 31 of the act [Dart's Stats. (1939) §4420], the employee is given one year to bring his action. Payment of compensation will interrupt this prescriptive period. See Comment (1948) 8 LOUISIANA LAW REVIEW 397.

The foregoing discussion applies only where compensation is sought for general disability.[28] Whenever the action is for a specific injury, no credit will be given the employer for wages paid after the injury.[29]

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UNITED STATES SAVINGS BONDS—OWNERSHIP AND STATE INHERITANCE TAXES

With a substantial portion of the nation's individual wealth held in the form of United States Savings Bonds, the questions of ownership and of taxability of these bonds have arisen in numerous successions.

The treasury department has authorized savings bonds to be registered in any one of three forms. They may be registered in the name of a single owner, as "John A. Jones"; or in the name of two persons as coowners, as "John A. Jones or Mrs. Ella S. Jones"; or in the name of two persons, one of whom is beneficiary of the other, as "John A. Jones, payable on death to Mrs. Mary E. Jones."[1] The single ownership form presents no problem. When the registered owner dies, the bonds obviously are a part of his estate and are subject to inheritance taxes. Virtually all the litigation on the subject has centered around the coownership and the beneficiary forms of registration.

The matter of actual ownership of the bonds upon the death of one coowner or of the registered owner seems to have been definitely settled. In the *Succession of Land*[2] the bonds were registered in the names of the decedent and another as coowners. The court held that the surviving coowner became absolute owner under the regulations governing United States War Savings Bonds[3] subject, however, to

28. La. Act 20 of 1914, § 8(1)(A)-(c) as amended [Dart's Stats. (1939) § 4398(1)(a)-(c)] provides the schedule of payments for temporary total, permanent total, and partial disability.

29. Subsection 1(d) of Section 8 of the act [Dart's Stats. (1939) § 4398(1)(d)] provides the schedule of payments for various specific injuries. In such cases the compensation is more in the nature of damages than disability payments. See Fulmer v. McDade Gin Co., 142 So. 733 (La. App. 1932); Smith v. Turner Lumber Co., 174 So. 699 (La. App. 1937).

1. Treasury Department Circular No. 530, Sixth Revision, 10 Fed. Reg. 1956 (1945).

2. 212 La. 103, 31 So. (2d) 609 (1947).

3. Treasury Department Circular No. 530, Sixth Revision, 10 Fed. Reg. 1956 (1945).