

# Multiple Total and Permanent Disabilities in Louisiana Workmen's Compensation

William M. Nolen

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proof in actions which directly or indirectly adjudicate rights of ownership, although not categorized technically as real actions. Other changes of less importance, some of which have not been treated in this Comment, are proposed so that the new petitory and possessory actions will be better adapted to modern conditions. It should be observed that the changes suggested in this revision will effect simplification and liberalization in the procedural law, yet accord with the civilian concepts of property and possession, as well as with the basic principles on which the present procedural law is predicated. It is submitted that the adoption of this revision will do much to reduce the rigidity of the present real actions and to preclude the hypertechnical manner in which they have been applied.

Joseph W. Milner

### Multiple Total and Permanent Disabilities in Louisiana Workmen's Compensation

The purpose of this Comment is to investigate two problems of Louisiana Workmen's Compensation. The first of these is the possibility of multiple total and permanent disabilities under the act and the judicial interpretations thereof. The second is the recovery which is or should be available to a worker so disabled.

#### *Successive Total and Permanent Disabilities*

The Louisiana Workmen's Compensation Act provides that "total disability" is inability to do work of *any reasonable character*.<sup>1</sup> The Louisiana courts have interpreted this language as meaning inability to perform work of the same or similar character as the employee is accustomed to performing.<sup>2</sup> When the

1. LA. R.S. 23:1221 (1-2) (1950). The act allows 400 weeks of compensation for total and permanent disability. The amount is set at 65% of wages within the limits of \$10 to \$35. For temporary total disability compensation is recoverable during the period of disability, not to exceed 300 weeks. For partial disability, compensation payments are set at 65% of the difference between the wages received before the accident and those received afterwards. These benefits are recoverable during the period of disability, not to exceed 300 weeks. See *id.* 23:1202, 1221 (1-3). In addition to the disability provisions, the act provides compensation for certain permanent bodily impairments. The periods for which compensation is recoverable varies from ten weeks for the loss of a toe to 400 weeks for the loss of both hands or both feet. See *id.* 23:1221(4).

2. See *Knispel v. Gulf States Utilities Co.*, 174 La. 401, 141 So. 9 (1932); *Myers v. Jahneke Service Inc.*, 76 So.2d 436 (La. App. 1955); *Strother v. Stand-*

term "total and permanent disability" is given its commonly accepted lay meaning, it is obvious that a person can only be totally and permanently disabled once. However under the Louisiana definition of "total disability" it seems clear that a man may be totally and permanently disabled more than once. For example, if a skilled worker is prevented from performing skilled work due to injury but can still do unskilled work, he is nevertheless totally and permanently disabled under the Louisiana definition. If he were injured later while performing unskilled labor so that he could no longer perform work of any kind, the second injury would also result in total and permanent disability. Another situation which may give rise to multiple total and permanent disabilities is that of the injured employee who can continue in his former employment only by enduring pain and suffering. An employee who continues working under those circumstances is considered totally and permanently disabled.<sup>3</sup> If he then sustains a second injury while working with pain and suffering, the second injury would also fall within the definition of total and permanent disability.

No case was found where the Louisiana Supreme Court passed on the problem of successive total and permanent dis-

ard Accident Insurance Co., 63 So.2d 484 (La. App. 1953); Harper v. Ragus, 62 So.2d 167 (La. App. 1952); Johnson v. W. L. Richeson and Sons, Inc., 53 So.2d 192 (La. App. 1951); Boling v. Bituminous Casualty Corp., 42 So.2d 567 (La. App. 1949); Young v. Central Surety and Insurance Corp., 41 So.2d 700 (La. App. 1949); Lala v. American Sugar Refining Co., 38 So.2d 415 (La. App. 1949); Fisher v. Standard Accident Insurance Co., 28 So.2d 59 (La. App. 1946); Brown v. Continental Oil Co., 22 So.2d 758 (La. App. 1945); Ranatza v. Higgins Industries Inc., 18 So.2d 202 (La. App. 1944); McKenzie v. Standard Motor Car Co., 15 So.2d 115 (La. App. 1943); Thompson v. Leach and McClain, 11 So.2d 109 (La. App. 1942); Sumrall v. E. I. DuPont de Nemours and Co., 1 So.2d 430 (La. App. 1941); McQueen v. Union Indemnity Co., 136 So. 761 (La. App. 1931). See also MALONE, LOUISIANA WORKMEN'S COMPENSATION §§ 272-275 (1951). This broad definition of total disability has caused the sections of the act dealing with partial disability and scheduled compensation to fall into disuse to a great extent. See MALONE, *op. cit. supra*, at §§ 278, 279. The few cases where partial disability is found are generally border-line cases where an application of the Louisiana definition of total disability would be manifestly unfair. The tendency is to base compensation on the medical estimate of percentage of disability suffered. See Blanchard v. Pittsburg-Des Moines Steel Co., 223 La. 577, 66 So.2d 342 (1953); Morgan v. American Bitumals Co., 217 La. 968, 47 So.2d 739 (1950); Gray v. Bird and Son, Inc., 12 So.2d 828 (La. App. 1943). The scheduled losses have been held to be merely supplemental to the disability sections and are therefore confined to situations where there is neither a total nor partial disability to do work of the same character. See Barr v. Davis Brothers Lumber Co., 183 La. 1013, 165 So. 185 (1935); McGruder v. Service Drayage Co., 183 La. 75, 162 So. 806 (1935); Moore v. Aysen, 69 So.2d 551 (La. App. 1953).

3. See, e.g., Brannon v. Zurich General Accident and Liability Insurance Co., 224 La. 161, 69 So.2d 1 (1953); Zito v. Standard Accident Insurance Co., 76 So.2d 25 (La. App. 1954); Nubles v. Texas Gas Transmission Corp., 72 So.2d 565 (La. App. 1954).

abilities.<sup>4</sup> In *Whitfield v. Barber Brothers Construction Company*,<sup>5</sup> the Court of Appeal, First Circuit, indicated that there could be only one total and permanent disability. In that case the employee was seeking compensation for a hernia after having compromised an earlier claim with another employer based on a similar hernia. In denying compensation, the court stated that "if a hernia is once totally and permanently disabling, as this plaintiff represented to the court that his was in 1939, it cannot again become so disabling." The court might have been stating a medical conclusion rather than a rule of law, but in any event the statement is merely dictum since the court found that the alleged second accident did not in fact cause the disability.

In two later cases, the Courts of Appeal for Orleans and the Second Circuit allowed compensation for total and permanent disability after the plaintiffs had compromised earlier compensation claims. However the courts did not reach the instant problem because they found that the prior accidents did not result in total and permanent disability.<sup>6</sup> An earlier Second Circuit case<sup>7</sup> appears to have disposed of the problem in the same manner, although this reasoning was not articulated by the court. The claimant in that case had compromised an earlier compensation claim for a hernia. The court did not seem to believe that he had actually suffered a hernia at that time but considered him bound by his judicial admission. However, they found that he did not have a hernia at the time he went to work for the second employer and allowed compensation for the hernia he suffered during that employment. The *Whitfield* case<sup>8</sup> was distinguished on the ground that it involved only *one* hernia.

In *Jackson v. H. B. Bruser*<sup>9</sup> the employee was suing two different employers for compensation. He alleged that he had suffered an injury while working for the first employer with the result that he could work thereafter only with pain and suffering. He also claimed that he had suffered an accident while

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4. The Supreme Court has denied writs in court of appeal cases concerning this problem. *Castee v. Great American Indemnity Co.*, 81 So.2d 101 (La. App. 1955); *Whitfield v. Barber Brothers Construction Co.*, 10 So.2d 393 (La. App. 1942); *White v. Taylor*, 5 So.2d 337 (La. App. 1941).

5. 10 So.2d 393 (La. App. 1942).

6. *Castee v. Great American Indemnity Co.*, 81 So.2d 101 (La. App. 1955); *Johnson v. W. L. Richeson & Sons, Inc.*, 53 So.2d 192 (La. App. 1951).

7. *Townley v. Williams*, 13 So.2d 551 (La. App. 1943).

8. 10 So.2d 393 (La. App. 1942).

9. 96 So.2d 850 (La. App. 1957).

working for the second employer, which aggravated his condition. The court awarded compensation benefits against the first employer but found that the employee had suffered no accident or injury in the second employment. Thus the problem of possible successive total and permanent disabilities again was not reached.

*White v. Taylor*,<sup>10</sup> decided by the Second Circuit Court of Appeal in 1941, was the first case to hold two employers liable to a worker for total and permanent disability resulting from two separate accidents. The claimant was injured while working for the first employer and was able to work the following day only by enduring pain and suffering. He was injured again the next day while working for a second employer, and thereafter could not work at all. The court stated that either of the two accidents happening alone would eventually have resulted in total disability. However, it took the two accidents together to result in *immediate* total disability. Therefore, the two employers were held liable for compensation in solido. A similar result was reached by the First Circuit Court of Appeal in *Brock v. Jones and Laughlin Supply Company*.<sup>11</sup> In that case, the worker was struck in the side with a wrench while working for the first employer. He was thereafter able to work only with pain and suffering. He went to work for a second employer and suffered an accident in that employment. Later examination revealed that he had a hernia. Consequently, he could no longer secure employment in his former line of work. Both employers were held liable for compensation in solido because the worker's disability resulted from the combination of the two injuries.

A possible explanation for holding the two employers liable in solido in these two cases would be that the worker had suffered only one total and permanent disability. Since he was doing the same type of work for each employer he had suffered only a disability to do one type of work. However, this explanation appears inadequate. In each of those cases the first accident resulted in the inability of the employee to continue in the same type of work without enduring pain and suffering. It is well settled in Louisiana that one who can work only by enduring pain and suffering is totally and permanently disabled.<sup>12</sup> Thus,

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10. 5 So.2d 337 (La. App. 1941).

11. 39 So.2d 904 (La. App. 1949).

12. See note 3 *supra*.

it would seem that the first employer should be liable for total disability benefits independently of any subsequent injury. Upon going to work for the second employer, the worker in each of these cases suffered an injury making it impossible for him to work at all. This also resulted in total and permanent disability. Had the employee been able to work only with pain and suffering because of some congenital defect or some prior non-compensable accident before entering an employment in which he suffered an accident entirely disabling him, the employer could hardly escape liability by alleging that the worker was already totally disabled. It is well settled that the employer takes the worker as he finds him and cannot set up an earlier injury as a defense.<sup>13</sup> It may be that the second employer in these cases should be in no different position because the suffering experienced by the worker is due to an earlier compensable accident. The employee in each case suffered two distinct injuries producing distinct results. It would seem that a strong case could be made for holding each employer liable for full compensation for total disability on the ground that the employee had suffered separate total disabilities in the service of each employer.

Another possible explanation of the *White* case is that since the accidents occurred on succeeding days it was impossible to determine the exact effect of each, although it was clear that the two together had resulted in total disability. Similarly it was not at all clear in the *Brock* case exactly when the employee suffered the hernia for which he was refused employment, but it was clear that each of the two accidents had contributed to the disability. Thus it is by no means certain that the Louisiana courts have taken the position that an employee may be totally disabled only once in the same type of work although these two cases could be so interpreted.

Perhaps the most clear-cut case involving two permanent total disabilities is *Stansbury v. National Automobile and Casualty Insurance Company*,<sup>14</sup> which was decided by the First Circuit Court of Appeal in 1951. The claimant broke his leg on the job. While the leg was still in a cast, he went back to work for the same employer doing lighter work. During the interim, the employer had acquired a different liability insurer. A second

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13. See, e.g., *Behan v. John B. Honor Co.*, 143 La. 348, 78 So. 589 (1918); *Ray v. International Paper Co.*, 68 So.2d 803 (La. App. 1953).

14. 52 So.2d 300 (La. App. 1951).

accident occurred, rebreaking the claimant's injured leg, and resulting in his complete inability to work. He then instituted suit against both the previous and present insurers, claiming compensation from each for total and permanent disability. The court held that each accident resulted in total disability and awarded compensation for each. However, the total amount of weekly compensation was limited to \$30, which was the maximum amount of compensation allowable at that time. The court prorated this amount between the two insurers for the period in which both insurers were liable.

From the preceding discussion it appears that the possibility of a worker's being totally and permanently disabled more than once has been recognized by the Louisiana courts of appeal.<sup>15</sup> This is clearly a true observation where two types of work are involved.<sup>16</sup> This result seems to have been unavoidable under the judicial construction of total and permanent disability in Louisiana.<sup>17</sup> However, as will be discussed later in this Comment, the Louisiana courts have thus far refused to allow double benefits during any given week but instead have held the employers liable in solido or on a pro rata basis.<sup>18</sup>

The only other jurisdiction in which this problem is likely to arise is Michigan, where the Workmen's Compensation Act contains a definition similar to that adopted by the Louisiana courts.<sup>19</sup> An early Michigan case held that a worker could not be

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15. *Stansbury v. National Automobile and Casualty Insurance Co.*, 52 So.2d 300 (La. App. 1951).

16. *Ibid.*

17. See page 109 *supra*.

18. *Stansbury v. National Automobile and Casualty Insurance Co.*, 52 So.2d 300 (La. App. 1951); *Brock v. Jones and Laughlin Supply Co.*, 39 So.2d 904 (La. App. 1949); *White v. Taylor*, 5 So.2d 337 (La. App. 1941).

19. The Michigan compensation act provides that the "weekly loss in wages" on which compensation benefits are based is to be computed so as to "fairly represent the proportionate extent of the impairment of his earning capacity *in the employment in which he was working at the time of the injury.*" (Emphasis added.) 12 MICH. STAT. ANN. § 17.161 (1951). Thus, total disability has been interpreted as inability to continue in the same "employment." See, e.g., *Walding v. General Motors Corp.*, 89 N.W.2d 537 (Mich. 1958); *Leitz v. Labadie Ice Co.*, 211 Mich. 565, 179 N.W. 291 (1920); 2 LARSON, WORKMEN'S COMPENSATION LAW §§ 57.22, 57.33 (1952). However, the Michigan rule is not as liberal as is Louisiana's. In Michigan, earnings in any unskilled manual labor can be compared with former earnings in any other unskilled manual labor classification. *Leitz v. Labadie Ice Co.*, 211 Mich. 565, 179 N.W. 291 (1920); *Smith v. I. Stevenson Co.*, 212 Mich. 154, 180 N.W. 384 (1920); *Kling v. National Candy Co.*, 212 Mich. 159, 180 N.W. 431 (1920); 2 LARSON, WORKMEN'S COMPENSATION LAW § 57.22 (1952). Although the Louisiana courts are more reluctant to find total disability where the worker is a common laborer rather than a skilled worker, full recovery will be allowed for total disability when such a laborer is *substantially handicapped* in competing with able-bodied workers although he may

totally and permanently disabled more than once.<sup>20</sup> However, both accidents involved in that case occurred in the same type of employment, and in *Hebert v. Ford Motor Company*<sup>21</sup> the Michigan Supreme Court squarely held that a worker could be totally and permanently disabled twice. Thus both jurisdictions with this type of definition of total and permanent disability have been inevitably led to the conclusion that a worker may receive more than one such disability.

### *Concurrent Compensation Payments*

The second problem raised by the Louisiana definition of total disability is the effect one employer's liability has on that of the other employer when each is liable for compensation payments at the same time. The courts can choose one of two possible solutions. One solution would be to hold that the weekly maximum amount of compensation for "total disability"<sup>22</sup> is all the employee can receive. Under this rule multiple employers would be liable either for a pro rata share or in solido. A second solution would be to hold each employer fully liable up to the statutory maximum and thus allow a person disabled twice to receive twice that amount.

On the surface, at least, it would seem that a worker who has received two total and permanent disabilities should be able to receive an award of compensation for each and that the amount received for one of these disabilities should have no effect on the amount recoverable for the other. The question next arises as to whether there is any reason to deny an injured worker recovery of the full statutory maximum for each injury. It is arguable that there is nothing in compensation theory against allowing an injured worker to recover more than \$35 per week. Apparently the reason for establishing the limit was to lighten the burden on the employer and ultimately on the consumers of his product.<sup>23</sup> The Workmen's Compensation Act represents a compromise in which the employer gives up his right to be free of liability in the absence of fault and in return has his liability limited to the maximum amount stated in the act.<sup>24</sup> It is there-

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still be able to perform some types of common labor. See generally MALONE, LOUISIANA WORKMEN'S COMPENSATION § 275 (1951).

20. *O'Brien v. Albrecht*, 206 Mich. 101 (1919).

21. 285 Mich. 607, 281 N.W. 374 (1938).

22. Thirty-five Dollars in Louisiana.

23. See MALONE, LOUISIANA WORKMEN'S COMPENSATION § 32 (1951).

24. *Ibid.*

fore proper for an employer whose employee has suffered a total and permanent disability to have his compensation liability limited to \$35 per week. However, it is arguable that his liability should not be limited to half that amount because the worker had suffered a different total and permanent disability while working for another employer. There would seem to be no reason to allow an employer a windfall because his employee had suffered a second injury in a different employment. However, the Louisiana courts have thus far taken the position that an injured employee can never receive benefits in excess of \$35 per week.<sup>25</sup> In the *White* and *Brock* cases<sup>26</sup> the two employers were held liable in solido for a single compensation award. In the *Stansbury* case<sup>27</sup> the two insurers were each held liable for their pro rata share of the maximum amount of compensation allowable at that time. It is interesting to note that in the latter case the employee might have been worse off than if he had suffered only one accident. By prorating the compensation award the employee was made to bear the risk of one of the insurers' insolvency. Where a judgment in solido is rendered against the two employers each employer bears the risk of the other's insolvency.

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25. *Stansbury v. National Automobile and Casualty Insurance Co.*, 52 So.2d 300 (La. App. 1951); *Brock v. Jones and Laughlin Supply Co.*, 39 So.2d 904 (La. App. 1949); *White v. Taylor*, 5 So.2d 337 (La. App. 1941). It is interesting to note that the situations where the courts have thus far applied pro rata or solidary liability are cases in which the two accidents occurred where the employee was engaged in the same type of work (*White* and *Brock*) or where the two accidents occurred while the claimant was working for the same employer (*Stansbury*). Although there were separate insurers involved in the *Stansbury* case, the burden of the compensation award theoretically fell on the consumers of the employer's product in each case. It would therefore seem that the question of concurrent payment of compensation benefits where the two accidents occurred under different employers and involving different types of work is still open.

26. *Brock v. Jones and Laughlin Supply Co.*, 39 So.2d 904 (La. App. 1949); *White v. Taylor*, 5 So.2d 337 (La. App. 1941).

27. 52 So.2d 300 (La. App. 1951). In this case the first accident occurred at a time when the statutory maximum compensation was \$20 per week. The second occurred after the maximum had been raised to \$30. Benefits for the first accident amounted to the \$20 maximum while those for the second amounted to \$29.25. During the overlapping period, the first insurer was held liable for 2/5 and the second insurer for 3/5 of \$29.25. If solidary liability had been decreed (as in the *White* and *Brock* cases), the two insurers would have been liable in solido for \$20 per week and the second insurer would have been liable for an additional \$9.25. Here, however, the court apparently reasoned that if an employee could receive more than \$30 per week, the worker would have been entitled to \$20 from the first insurer and \$29.25 from the second for a total of \$49.25. But, they concluded that \$30 was the maximum they could award and they therefore pared down the liability of each insurer proportionately. It would seem that under this reasoning the amount of compensation should have been \$30 rather than \$29.25, but the court apparently felt that a twice-injured workman should be able to recover no more during any given week than he could have for one of the injuries.

The courts have based the rule of single recovery for successive disabilities on Section 1202 of the Louisiana Act,<sup>28</sup> which reads as follows: "The maximum compensation to be paid under this Chapter shall be thirty-five dollars per week and the minimum compensation shall be ten dollars per week; provided that if at the time of the injury the employee was receiving wages at the rate of ten dollars or less per week, then compensation shall be full wages." There seem to be several reasons why this section does not give a conclusive solution to the problem. It has already been pointed out that the purpose of the limitation seems to be to restrict the employer's liability for a total disability to \$35 per month — not to limit it to half that amount when another employer is also liable for benefits. Moreover, the section speaks of the maximum compensation to be paid and not the maximum amount to be received. In a concurrent award of compensation, no employer (or specific group of consumers) would have to pay more than the maximum amount stated in Section 1202. Also, in cases involving multiple claimants for death benefits, the courts have held that the minimum of \$10 (formerly \$3) per week refers to the amount to be paid by the employer and not to the amount to be received by the claimant.<sup>29</sup> There appears to be no good reason for not applying the same principle to the maximum provision.

To hold that the \$35 per week maximum applies to dual compensation awards would also create an additional problem as to the effect of lump sum settlements. Where the first claim is settled for a lump sum and a second claim arises during the period in which payments would have been made if the award had been on a weekly basis, it is not at all clear what effect the first award would have on the second. Conceivably the court could determine what portions of the lump sum are attributable to any given week and limit the second award accordingly. On the other hand, the court could disregard the first award altogether.

A good argument can be made against concurrent awards of compensation from a policy standpoint. To allow a twice injured worker up to \$70 per week would in many cases make it more profitable for him to draw compensation than to continue working and malingering might therefore be encouraged. Also, in-

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28. L.A. R.S. 23:1202 (1950).

29. Archibald v. Employers' Liability Assurance Corp., 20 So.2d 178 (La. App. 1945); Moore v. Maryland Casualty Co., 104 F. Supp. 563 (E.D. La. 1952).

creased awards of compensation would increase the burden on the public, which must ultimately sustain all such payments. However, for the reasons pointed out above, there would seem to be nothing in the theory of workmen's compensation or in the Louisiana act to bar such concurrent payments. Moreover, these arguments are equally valid against the other aspects of the Louisiana definition of "total disability" and the proper solution would seem to be an alteration of that definition.

In Michigan, where the problem of concurrent compensation payments also exists, the Supreme Court has apparently allowed an employee who has been totally and permanently disabled twice concurrent awards each of which may be up to the maximum.<sup>30</sup> As pointed out above, it is arguable that this is the proper solution under the Louisiana-Michigan definition.

### *Conclusion*

The problem of successive total and permanent disabilities has arisen in Louisiana because that term has been given a strained definition, i.e., inability to perform work of the same or similar character as that performed before the accident. Perhaps the best solution would be to change that definition either legislatively or judicially.<sup>31</sup> However, the definition applied by the Louisiana courts today makes it possible for a worker to receive two or more total and permanent disabilities and this fact has been recognized by the courts. Furthermore there would seem to be no theoretical or statutory bar to the concurrent payment of benefits for multiple total and permanent disabilities with the statutory maximum applied to each separate claim rather than the aggregate. However, the Louisiana courts have thus far refused to allow an injured worker to recover more than

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30. *Hebert v. Ford Motor Co.*, 285 Mich. 607, 281 N.W. 374 (1938). Claimant suffered the first accident in 1927 and the second in 1930. In 1933, he was awarded compensation for total disability for the second accident. No mention was made of the concurrent payment problem, but at this time total disability benefits were payable for 500 weeks, so presumably the claimant was still receiving benefits under the 1933 award when he received the second award in 1937. This view is re-inforced by a later case where it is said that the statute did not provide for concurrent compensation for *total disability in the same line of work*. The *Hebert* case was distinguished on the grounds that there the second injury disabled the claimant to do a different kind of work. *Wolanin v. Chrysler Corp.*, 304 Mich. 164, 7 N.W.2d 257 (1943).

31. Although the statutory language does not by any means compel this definition, it has been accepted by the courts for a number of years, and it is extremely unlikely that the long line of cases will be overruled judicially. Therefore, if the definition is to be changed it would seem that this would have to be done by the legislature, probably as part of a general revision of the statute.

\$35 during any one week regardless of the number of disabilities he has suffered or the number of employers liable for compensation. This position can be supported on policy grounds. Presumably the question will not be finally settled until the Supreme Court or the Legislature acts upon it.

*William M. Nolen*

## The Doctrine of Anticipatory Breach of Contract

In the recent case of *Marek v. McHardy*<sup>1</sup> the Supreme Court announced that the common law doctrine of anticipatory breach of contract<sup>2</sup> is now law in Louisiana. The purpose of this Comment is to outline the most significant features of that doctrine at common law,<sup>3</sup> and to compare these features with established principles of Louisiana law.

### THE DOCTRINE AT COMMON LAW

#### *In General*

At common law it is well-settled that when a contracting party learns from his obligor prior to the time for performance of the contract that the obligor does not intend to comply with his contractual obligation, the party so informed may sue his obligor immediately, as for a present breach of contract.<sup>4</sup> Furthermore, whether or not the obligee in this situation chooses to bring his action at the time of the repudiation, he may nevertheless discontinue his own performance under the contract without fear of prejudicing his right of action against the obligor.<sup>5</sup> In other words, the doctrine of anticipatory breach of contract includes two basic principles: (1) that the party receiving an anticipatory repudiation of a contractual obligation

1. 234 La. 841, 101 So.2d 689 (1958). See Note, 33 TUL. L. REV. 229 (1958).

2. A more accurate title for the doctrine might be "the doctrine of breach of contract by anticipatory repudiation."

3. For a complete discussion of the doctrine at common law, see 4 CORBIN, CONTRACTS §§ 959-989 (1951); 5 WILLISTON, CONTRACTS §§ 1296-1337A (rev. ed. 1937). Other discussions include Ballantine, *Anticipatory Breach and the Enforcement of Contractual Duties*, 22 MICH. L. REV. 329 (1924); Limburg, *Anticipatory Repudiation of Contracts*, 10 CORN. L.Q. 135 (1925); Vold, *Withdrawal of Repudiation After Anticipatory Breach of Contract*, 5 TEXAS L. REV. 9 (1926); Vold, *Repudiation of Contracts*, 5 NEB. L. BULL. 269 (1927); Vold, *The Tort Aspect of Anticipatory Repudiation of Contracts*, 41 HARV. L. REV. 340 (1927); Williston, *Repudiation of Contracts*, 14 HARV. L. REV. 317, 421 (1901); Comment, *Anticipatory Breach in Louisiana*, 7 TUL. L. REV. 586 (1933).

4. 4 CORBIN, CONTRACTS § 959 (1951), and authorities therein cited.

5. *Id.* §§ 960, 975.