Louisiana Law Review

Volume 20 | Number 3
April 1960

The Crain Myth - A Criticism of the Duree and Stephens Cases

Henry G. McMahon

Ben R. Miller Jr.

The Crain Myth— A Criticism of the Duree and Stephens Cases

*Henry G. McMahon**
and
Ben R. Miller, Jr.†

The Supreme Court of Louisiana quite recently, in the *Duree*[1] and *Stephens*[2] cases, held that legislative authorization to sue the state, or an agency, subdivision, or corporation thereof, in an action *ex delicto* constituted merely a waiver of immunity from suit, and did not waive governmental immunity from liability for the negligence of an employee. Even more alarming was the further holding that any legislative waiver of this latter immunity would be an unconstitutional exertion of the legislative power. Article III, § 35, of the Constitution of Louisiana, as amended in 1946, was held to preclude legislative waiver of this immunity from liability.

In view of the fact that both before[3] and after[4] the adoption of this constitutional amendment a vast majority of all legislative authorizations for suit against the state, its agencies, subdivisions, and corporations were to permit recovery of damages for wrongful death, physical injury, or property damage resulting from the negligence of a governmental employee, a holding that the constitutional intent was to preclude such suits comes as both a surprise and a shock. The legislature of Louisiana is placed in a most embarrassing position by these cases. The most favor-

*Professor and sometime dean, Louisiana State University Law School.
†Associate Editor, Louisiana Law Review.

1. Duree v. Maryland Casualty Company, 238 La. 166, 114 So.2d 594 (1959), reversing Duree v. State, 96 So.2d 854 (La. App. 1957).

2. Stephens v. Natchitoches Parish School Board, 238 La. 388, 115 So.2d 793 (1959), reversing *id.*, 110 So.2d 156 (La. App. 1959). See also Cotton v. Bossier Parish School Board, 117 So.2d 682 (La. App. 1960).

3. Of the 50 acts authorizing suit against the state or a public body during the period 1921-1944, 42 sanctioned tort actions to recover damages alleged to have resulted from the negligence of a governmental employee. See Table 1, *infra* p. 481.

4. Of the 229 acts and resolutions authorizing suits against the state or a public body during the period 1946-1959, 211 sanctioned torts actions to recover damages alleged to have resulted from the negligence of a governmental employee. See Table 2, *infra* p. 482.

able light in which the matter can be regarded, in view of these 211 authorizations for suit *ex delicto*, is that since 1946 the legislature has been engaged in the practice of extending invitations to these claimants "to visit the courthouse"[5] briefly for the purpose of instituting suits which would be immediately dismissed under exceptions of no cause of action. A harsher interpretation permitted by the *Duree* and *Stephens* cases is that since 1946 the Louisiana legislature has been engaged in the perpetration of a gigantic and cruel hoax upon these unfortunate claimants.

A close analysis of these two cases indicates that the astonishing conclusions of the Supreme Court were reached — and could only have been reached — through a syllogism, the major premise of which was the *assumption* that one of the purposes of the 1946 constitutional amendment was to overturn the *Crain* case.[6] If the validity of this assumption is once admitted, the remainder of the syllogism employed is completely valid and unassailable. The *Crain* assumption strikingly illustrates the truth of the assertion that if anything is repeated often enough it will eventually win acceptance. It was repeated so often in these cases without challenge that it was accepted first by the lower courts, and ultimately by the Bar. The Supreme Court has no responsibility for the *Crain* assumption; it was pressed upon the court by both litigants in both cases.

Yet there is no need to speculate on the validity or invalidity of the *Crain* assumption. This constitutional amendment was adopted less than fourteen years ago, and evidence of the purposes thereof is readily available in the annals of contemporary history. An examination and presentation of that evidence is made here. The thesis of this article is that the *Crain* case had no more to do with the 1946 constitutional amendment than the flowers that bloom in the spring.

I. PROLOGUE

The Crain Incident

On July 27, 1931, employees of the State Highway Commission were loading a truck with gravel from a pit in Washington Parish. Only two members of the group have survived historical anonymity. It was an unusually hot day, and as Mr. W. Ormond Crain paused briefly in his work to wipe his brow, he glanced

5. Leflar & Kantrowitz, *Tort Liability of the States*, 29 N.Y.U. L. REV. 1363, 1365 (1954).
6. Crain v. State, 23 So.2d 336 (La. App. 1945).

admiringly at the regular and rhythmic swing of the shovel in the hands of Mr. Ben Kennedy, as it picked up gravel from the pile and sent it unerringly on its way into the truck. Something or someone distracted the attention of Mr. Kennedy. He made an error which no good golfer ever makes: he failed to follow through in his swing, and thus lost control over the direction in which his implement traveled. An instant later, a sharp jolt and a dull thud told Mr. Kennedy his shovel had landed. A rapidly-spreading splotch of blood on the forehead of the prostrate Mr. Crain showed *where* it had landed.

Within a relatively short time Mr. Crain appeared to have recovered, with the scars of battle the only ill effect of his unfortunate accident. Ten years later, however, he began to complain of severe headaches, which at least one physician diagnosed as the result of a fracture of the skull from the shovel injury. For several years Mr. Crain labored under a sense of frustration almost as painful as the headaches. As a state employee the only relief to which he was entitled was under the Workmen's Compensation Act, and this remedy was both inadequate and prescribed. Mr. Crain, like Cardinal Wolsey, had cause to be embittered over the base ingratitude of sovereigns. As he brooded, he was led inevitably to that great American nostrum for all human faults and failings — "there oughta be a law." In 1944, he requested and was readily granted legislative authorization to sue the state to recover damages for the injury sustained through the negligence of his friend, Mr. Kennedy.[7]

His suit for damages was dismissed by the trial court under the state's exception of no cause of action, based on the contention that his remedy at the time of the accident was exclusively under the Workmen's Compensation Act, and that the legislature could not thereafter create a new or additional cause of action. He fared better in the court of appeal, which reversed.[8] A majority of the court held that the legislature could constitutionally provide a remedy which was not available to the claimant at the time of his injury. The late Judge Doré dissented vigorously, admitting that the legislature might waive the state's immunity from suit, but contending that under the doctrine of separation of powers it was the exclusive province of the judiciary to determine whether the claimant had a cause of action.

More about the unfortunate Mr. Crain later.

7. La. Acts 1944, No. 341, p. 964.
8. Crain v. State, 23 So.2d 336 (La. App. 1945).

The Lewis Sisters

During the nineteen thirties and forties no professional lobbyist attended sessions of the Louisiana legislature more regularly and religiously than the Lewis sisters. Miss Annie, the more dominant, supplied the drive and was the spokesman for the two. Miss Agnes provided the necessary moral support, and the nods of approval when her sister made impassioned appeals to unfortunate legislators trapped by the two in a corridor of the Capitol, or the lobby of the Heidelberg Hotel.

The interest of the Lewis sisters in matters legislative and judicial stemmed from Miss Annie's frustrated ambition to become a lawyer. Miss Agnes just went along for the ride. At various times of her life Miss Annie had sued members of her family,[9] the county agent of her parish, the local farm credit association, its president, and the Federal Land Bank.[10] She always was her own lawyer, and if she had ever heard the ancient saw that one who acts as his own attorney has a fool for a client, she would have brushed it aside as professional propaganda. If her lawsuits were short on *probata,* which Miss Annie regarded as boring trivia, they were long on *allegata.* She spent untold hours in drafting lengthy pleadings and briefs, which were as replete with redundancy, repetition, and hackneyed legal expression as any professional product. Her uniform lack of success discouraged her not one bit; Miss Annie was a dedicated woman.

She had not attended too many sessions of the legislature when she developed an interest in legislative authorizations to sue the state. These intrigued her, for in them she saw a double opportunity to gratify her professional ambitions. The wish was father to the thought. A quarter of a century earlier, she had been committed for treatment in one of the state's mental institutions. As many another she had resented the implications keenly, and her stay in the hospital had only been prolonged *vi et armis.* Treatment at any mental institution during this dark period was rugged, and in time she was able to recall vividly the cruel and inhuman treatment accorded her. Without too much difficulty, she located several permanent disabilities resulting therefrom.

9. See Succession of Lewis, 215 La. 79, 39 So.2d 830 (1949), certiorari denied in *In re* Lewis, 337 U.S. 912 (1949); *id.*, 178 La. 227, 151 So. 189 (1933); *id.*, 174 La. 901, 142 So. 121 (1932).

10. The dismissal of the appeal is reported in Lewis v. Federal Land Bank of New Orleans, 183 La. 724, 164 So. 780 (1935). The facts appear from the pleadings in the transcript, No. 33,460 of the docket of the Supreme Court.

Because of her congenital distrust of lawyers, Miss Annie drafted her own bill to obtain legislative authorization for suit. It was so patently invalid that in 1934, largely as a practical joke, it was adopted by both Houses.[11] Among its many deficiencies, the resultant act made no provision for the procedure to be employed in the institution and prosecution of the action thereby authorized, as required by Article III, § 35, of the Constitution. The suit which she filed was immediately dismissed by the trial court on the ground of the unconstitutionality of the authorizing act. After lying fallow in the Supreme Court for some years, this decision was finally affirmed in 1941.[12]

The theory of the constitutional mandate over which she had tripped was that it would allow greater flexibility in the procedural requirements to be adopted by the legislature. This theory backfired. Actually, it produced both confusion and the greatest variety of procedures, in those instances when the draftsman of the bill remembered to insert procedural matter. Miss Annie was not the only one who had come a cropper over this constitutional provision. The first *Lewis* case indicated a need for a constitutional provision which would both require and suggest an adequate and uniform procedure for all of these cases. This was the first reason for the 1946 constitutional amendment.

The Lewis sisters went back to work at the legislative session of 1942. They found the legislators more cooperative, probably as a result of legislative contrition over the shabby trick which had been played on Miss Annie some years before. She was again authorized to sue the state.[13] Again the suit which she immediately filed was dismissed by the trial court, which sustained the state's exceptions. This time, however, the Supreme Court reversed and remanded the case to the lower court for trial.[14]

The second *Lewis* case decided two important points. Firstly, the court held that when the legislature authorized suit against the state to recover damages because of the wrongful acts of the hospital employees, it necessarily waived the state's immunity from liability for these wrongful acts. This made plenty of sense, and it was followed consistently[15] until the decision in

11. La. Acts 1934, No. 206.
12. Lewis v. State, 196 La. 814, 200 So. 265 (1941), certiorari dismissed, Lewis v. Louisiana, 312 U.S. 705 (1941), rehearing denied, 313 U.S. 599 (1941).
13. La. Acts 1942, No. 273.
14. Lewis v. State, 207 La. 194, 20 So.2d 917 (1945).
15. Webb v. State, 91 So.2d 156 (La. App. 1956); Duree v. State, 96 So.2d 854 (La. App. 1957); St. Julian v. State, 82 So.2d 85 (La. App. 1955); Marler

the *Duree* case. Secondly, the court held that, under the peculiar language of Article III, § 35, of the Constitution, the legislature — and not the legislature and the Governor — were empowered to authorize suits against the state and to provide the effect of judgments rendered therein. Suits might be authorized, and provison made for the payment of judgments rendered, by legislative resolution which was not subject to veto by the Governor. This was a bomb loaded with TNT, but this fact was not noticed until a year later, when it exploded in the faces of administration leaders in the *Jefferson Lake Sulphur Co.* case.[16]

This constitutional provision had never proved workable. The legislature was not only authorized, but it had a mandate, to provide, at the time it authorized suit against the state, for the effect of any judgment subsequently rendered. The state was thus compelled to sign a blank check at the time suit was authorized, without knowing either the amount or the date it would be payable. If the judgment was made payable out of the revolving fund made available to the state penitentiary for its industrial operations,[17] and payment of the judgment when executory impaired those operations, it was just unfortunate. If made payable out of funds made available to the Department of Highways, and payment of the judgment when executory would impair current operations of the Department to this extent, this was unfortunate. If the authorizing act provided that any judgment would be paid out of surplus funds, and an unusually large judgment made heavy inroads on surplus which the state administration was hoarding for a particular future use, this similarly was unfortunate. In all these case there was a legislative mandate, made some months or years before, which had to be complied with. The normal constitutional controls over appropriations[18] did not apply to legislative authorizations for suit which made provision for the payment of the judgment. Further, the impact of the judgment when it becomes executory

v. State, 78 So.2d 26 (La. App. 1955). *Cf.* Preuett v. State, 62 So.2d 686 (La. App. 1953). See also Bordelon v. State, 59 So.2d 231, 235 (La. App. 1952).

16. Jefferson Lake Sulphur Co. v. State, No. 22,305 of the docket of the Nineteenth Judicial District Court for the Parish of East Baton Rouge. This case is discussed in more detail, *infra.*

17. As was provided in Senate Bill No. 100 of 1956. See Cobb v. Board of Institutions, 237 La. 315, 111 So.2d 126 (1958).

18. All appropriations, except those made in the general appropriation bill, have to be made through separate bills, having but one object. LA. CONST. art. IV, § 9. All appropriation bills must originate in the House. *Id.* art. III, § 22. No money may be withdrawn from the treasury except by an appropriation. *Id.* art. IV, § 1. The Governor may veto any appropriation bill, including any item in the general appropriation bill. *Id.* art. V, §§ 15, 16.

could not be cushioned by a contingency appropriation made in advance, as the latter are expressly prohibited.[19] That the system worked at all during the period 1921-1946 was due to a single fact. Up until the second *Lewis* case it had always been assumed that an authorization to sue the state and which made provision for the payment of any judgment therein could be obtained only through *legislation* which was subject to the veto of the Governor.[20] That case held to the contrary.

The second, and more important, of the reasons for the adoption of the 1946 constitutional amendment was to overrule that portion of the second *Lewis* case, and to prevent the legislature from making provision for the payment of judgments in these cases, except through a subsequent legislative appropriation subject to the normal constitutional controls, including the veto power of the Governor.[21]

The Sulphur Company Claim

In 1936, the State of Louisiana recovered judgment against the Jefferson Island Salt Mining Company for $1,165,419.54, with legal interest from judicial demand.[22] This suit had been brought to recover the value of salt extracted by the defendant under Lake Peigneur, a body of water which had been navigable in 1812 and the bed of which was owned by the state. Some years before, the state had executed a mineral lease affecting the bed of this lake to the assignor of the Jefferson Lake Sulphur Company, under which the mineral lessee was to receive seven-eighths of all minerals extracted therefrom. The trespass of the Salt Mining Company on lands subject to this mineral lease had been called to the attention of the state by the Sulphur Company; in fact, the latter's attorneys, engineers, and experts developed the facts subsequently proven by the state in its suit. The then Attorney General had agreed with the Sulphur Company that,

19. LA. CONST. art. IV, § 10.

20. The brief of the Attorney General in Jefferson Lake Sulphur Co. v. State, No. 38,490 of the docket of the Supreme Court, was devoted primarily to an attack on this phase of the second *Lewis* case, supported by an appendix listing every legislative authorization for suit against the state from 1874 through 1946, all of which were legislative acts either signed by the Governor, or which became law because of his failure to veto timely. A lengthy brief filed by the Attorney General to support the state's application for a rehearing was devoted exclusively to this point.

21. On this point, see Cobb v. Board of Institutions, 237 La. 315, 347-350, 111 So.2d 126, 137-138 (on rehearing, 1959).

22. See State v. Jefferson Island Salt Mining Co., 183 La. 304, 163 So. 145 (1935), certiorari denied in Jefferson Island Salt Mining Co. v. Louisiana, 297 U.S. 716 (1936), rehearing denied, 297 U.S. 729 (1936).

in the event of recovery, all of the expenses incurred in preparing the suit for trial and in its litigation would be deducted, and that the Sulphur Company would receive seven-eighths of the net balance.

The first suit against the Salt Mining Company was filed by the state and the Sulphur Company jointly, but this suit was discontinued,[23] and a new suit was filed by the state alone, under which the recovery was had. There had been a change of state officers since, and the new Attorney General refused to execute the agreement made by his predecessor, after the state's judgment was paid in 1936, on the ground that it was illegal. On March 1, 1939, the Sulphur Company filed suit against the State Treasurer to recover the sum of $897,465.72, with legal interest thereon from March 30, 1936; but this suit was dismissed on the ground that it was actually a suit against the state which could not be prosecuted without a legislative waiver of the immunity from suit.[24]

In 1940, the Sulphur Company requested legislative permission to sue the state, but in lieu thereof the legislature created a commission to investigate the facts and submit appropriate recommendations to the next legislature.[25] The report of this commission was vague and nebulous in certain respects, and the only recommendation submitted was that the Sulphur Company be reimbursed its expenses in preparing the state's suit for trial, and in the litigation thereof.[26] This recommendation, of course, was completely unacceptable to the Sulphur Company, which again requested legislative authorization to sue, but no action in the matter was taken in the 1942 session.

Various reasons were assigned by those who opposed payment of the Sulphur Company claim, but there is little evidence of the validity of any of these. The real reason for the opposition to its payment was the strained financial condition of the state, and the very natural reluctance of its officers to approve the adoption of legislation authorizing suit, and making provision for payment of any judgment therein out of surplus which might, and probably would, be badly needed for other purposes.

23. This suit was discontinued as to the state only, which immediately filed a new suit alone. See Brief of Plaintiff and Appellee, p. 4, Jefferson Lake Sulphur Co. v. State, No. 38,490 of the docket of the Supreme Court of Louisiana.

24. Jefferson Lake Sulphur Co. v. Tugwell, No. 14,118 of the docket of the Nineteenth Judicial District Court for the Parish of East Baton Rouge.

25. La. Acts 1940, No. 341.

26. Original Brief of Defendant and Appellant, p. 6, Jefferson Lake Sulphur Co. v. State, No. 38,490 of the docket of the Supreme Court of Louisiana.

The Sulphur Company girded itself for legislative battle in 1944. It was an open secret that the new state administration was as opposed to legislative authorization for suit as the preceding one. Passage of any legislative authorization in 1944 for suit against the state seemed highly doubtful.

At the opening of the legislative session in 1944, the Sulphur Company adroitly shifted its strategy. The bill to authorize its suit, instead of making provision for payment of any judgment therein out of a definite fund or out of surplus, merely provided for what was, in effect, a declaratory judgment.[27] Under this bill, after obtaining judgment the Sulphur Company would still have to come back for an appropriation for its payment, and the legislature and the Governor could decide then whether the state's financial condition justified the appropriation. This move should have dissipated all resistance to the bill, but it did not. The bill narrowly escaped defeat twice. After being reported favorably by the Senate committee, an opposing senator suddenly had it recommitted to the committe for further consideration[28] — a move which normally would have caused sufficient delay to prevent its adoption. Through unusually swift action by the Sulphur Company, it was immediately reported favorably by the committee again, and in due course passed the Senate. When the bill came up for final passage in the House, it received a majority of the votes cast, but not of the members elected to the House.[29] It was saved by a timely motion to reconsider; and when it came up again barely received the votes necessary for its adoption.[30] When it was presented to the Governor for signature, however, it was vetoed, and never passed again over the veto.[31] Since theretofore it had always been thought that permission to sue the state could only be granted by *legislation*, the state administration felt that it had won its fight.

"The best laid schemes o' mice an' men gang aft a-gley" — particularly when there is an Annie Lewis available to help them gang a-gley. On January 15, 1945, the Supreme Court decided the second *Lewis* case, holding, *inter alia*, that suits against the state might be authorized, and provision made for the payment of judgments therein, by legislative resolution which was not

27. Senate Bill No. 281 of 1944; Jefferson Lake Sulphur Co. v. State, 213 La. 1, 34 So.2d 331 (1947); LA. SENATE J. 215 (1944).
28. See LA. SENATE J. 841 (1944).
29. See LA. HOUSE J. 1907 (1944).
30. See *id.* at 1908, 1909.
31. See Jefferson Lake Sulphur Co. v. State, 213 La. 1, 34 So.2d 331 (1947).

subject to veto by the Governor. The fact that the full implications of this decison were not seen immediately is evidenced by the failure of the state to even apply for a rehearing.[32]

The impact was felt when the Sulphur Company filed its suit against the state some few months thereafter. The sole defense of the state was that there was no valid authorization for the suit, and this was raised by the state's exceptions. These were overruled on July 30, 1945, by one of the ablest trial judges in Louisiana — the late Charles A. Holcombe. His opinion[33] indicates clearly that but for the Supreme Court's decision in the second *Lewis* case he would have sustained the state's exceptions; but that, as the judge of a lower court, he was compelled to follow that decision and overrule the exceptions.[34] (The trial court's final judgment in favor of the Sulphur Company was affirmed by a divided court a year and a half later;[35] and this judgment was finally paid some seven years thereafter by a legislative appropriation.)[36]

The second *Lewis* decision staggered the state administration with twin blows. First, it caused the loss of the Sulphur Company case. Secondly, it made it impossible under the then constitutional provision for a Governor to control the financial irresponsibility of a legislature which would authorize suits against the state and make provision for the payment of judgments therein, regardless of the condition of the public exchequer. The latter made an amendment of Article III, § 35, of the Constitution imperatively necessary.

The 1946 Constitutional Amendment

Prior to amendment, Article III, § 35, of the Constitution provided simply that:

> "Whenever the legislature shall authorize suit to be filed against the State, it shall provide a method of procedure and the effect of the judgments which may be rendered therein."

As seen heretofore, this provision had proven unsatisfactory and unworkable, as indicated in the two *Lewis* cases, and amendment thereof was imperative so as to:

32. See Lewis v. State, 207 La. 194, 20 So.2d 917 (1945).
33. This opinion is quoted in full in Brief of Plaintiff and Appellee, p. 119, Jefferson Lake Sulphur Co. v. State, No. 38,490 of the docket of the Supreme Court of Louisiana.
34. See the opinion of the trial judge cited *supra* note 33.
35. Jefferson Lake Sulphur Co. v. State, 213 La. 1, 34 So.2d 331 (1947).
36. La. Acts 1954, No. 363.

(1) Require an adequate and uniform procedure for these authorized suits; and

(2) Require that all judgments rendered in these authorized suits be paid only by subsequent legislative appropriations, subject to all of the normal constitutional controls, including the veto power of the Governor.

This constitutional section was completely rewritten, by the amendment adopted on November 5, 1946, so as to provide that:

> "Whenever the Legislature shall authorize suit to be filed against the State it shall provide the method for citing the State therein and shall designate the court or courts in which the suit or suits authorized may be instituted and may waive any prescription which may have accrued in favor of the State against the claim or claims on which suit is so authorized. The procedure in such suits, except as regards citation and original jurisdiction, shall be the same as in suits between private litigants, but no judgment for money rendered against the State shall be satisfied except out of monies appropriated by the Legislature for the purpose. For the purpose of such suits the State shall be considered as being domiciled in the Capitol. No such suit shall be instituted in any court other than a Court of Louisiana. Except as otherwise specially provided in this section, the effect of any authorization by the Legislature for a suit against the State shall be nothing more than a waiver of the State's immunity from suit insofar as the suit so authorized is concerned."

Adequacy and uniformity of procedure in these suits was obtained through the provision that the procedure should be the same as in suits between private litigants, except with respect to citation and original jurisdiction, which the authorization had to spell out.

The second objective was obtained through elimination of the prior mandate to provide the effect of subsequent judgments, and the substitution of the requirement that "no judgment for money rendered against the State shall be satisfied except out of monies appropriated by the Legislature for the purpose." In an abundance of caution, and to absolutely prohibit the legislature from making provision for the payment of the judgment in the authorizing resolution, the final sentence was added:

> "Except as otherwise specially provided in this section,

the effect of any authorization by the Legislature for a suit against the State shall be nothing more than a waiver of the State's immunity from suit insofar as the suit so authorized is concerned."

The only phrase of the original provision retained in the amended section is the language "Whenever the Legislature shall authorize suit to be filed against the State." When language of a former constitutional provision has been construed judicially, and is retained in the amended provision, there is a strong presumption of an intent to retain this judicial construction.[37] This retained language had been construed in the second *Lewis* case, decided just a year and a half before, to mean that when the legislature authorized a tort action to be filed against the state it necessarily waived the state's immunity from liability for the wrongful act of its employee. This is not only a normal, sensible, and logical construction of the constitutional language, but horse sense would preclude any other interpretation of the amended provision since: (1) 42 of the 50 suits authorized during the period 1921-1944 were tort actions;[38] (2) 211 of the 229 suits authorized since were actions *ex delicto;*[39] and (3) 46 of the 56 judgments paid by the legislature since 1946 were on tort claims.[40]

There is nothing in the legislative history of this constitutional amendment which indicates any contrary intent. The proposed joint resolution to amend Article III, § 35, was introduced as Senate Bill No. 103 of 1946. Immediately after introduction, on motion of one of its sponsors, the bill was amended on the floor of the Senate to add: (1) the words "and shall designate the court or courts in which the suit or suits authorized may be instituted" to the first sentence; and (2) the words "and original jurisdiction" after the word "citation" in the second sentence.[41] Thereafter it was referred to a committee, reported favorably by the latter, and passed by the Senate.

When the proposed joint resolution reached the House, it was referred to Judiciary Committee "A". In due course, the latter

37. Kuhn v. Louisiana Highway Commission, 174 La. 990, 142 So. 149 (1932); State v. Glenn, 153 La. 147, 95 So. 534 (1923); Lehman v. Lehman, 130 La. 960, 58 So. 829 (1912); State v. Board of Assessors, 35 La. Ann. 651 (1883). See, to the same effect, State v. Schneller, 199 La. 811, 7 So.2d 66 (1942).

38. See Table 1, *infra* p. 481.

39. See Table 2, *infra* p. 482.

40. These tort judgments aggregated $465,063.37. See Table 3, *infra* p. 483.

41. See LA. SENATE J. 385 (1946).

recommended a further amendment so as to add the words "and may waive any prescription which may have accrued in favor of the State against the claim or claims on which suit is so authorized" to the first sentence, and otherwise reported the resolution favorably. The committee amendment was adopted, and as amended the bill was passed by the House.[42]

There was one additional change which must have been made by that omnipotent body — the legislative enrolling room. Throughout its progress through both the Senate and the House the word "specially" in the last sentence had read "specifically,"[43] and there is no record of any amendment of the bill in this respect. The word was changed to "specially" in the proposed constitutional amendment submitted to the people.[44] This, however, is of no moment.[45]

II. THE DUREE AND STEPHENS CASES

The Duree Case

The plaintiff here sued to recover damages for the wrongful death of her husband, killed as the result of the negligence of an ambulance driver of the State Department of Institutions in running a red light. The suit was originally brought against other defendants not pertinent here, but when legislative authorization was later obtained, the state was joined as a defendant. The trial court rendered judgment for a large amount in favor of plaintiff, and against the state and its liability insurer (under a policy of limited coverage). The state alone appealed from this judgment, and the intermediate appellate court affirmed.[46]

The legislative authorization for this suit[47] contained a provision which was substantially identical with the corresponding section of many other legislative authorizations adopted since 1946. Its Section 6 provided:

> "That nothing in this act shall be construed as conferring on [Mrs. Duree] any different or greater claim or cause of

42. See LA. HOUSE J. 1585, 1783 (1946).
43. See LA. SENATE J. 133, 258, 304, 344, 367, 385 (1946); LA. HOUSE J. 632, 1585, 1783, 1853 (1946).
44. See La. Acts 1946, No. 385.
45. These two words, in the sense employed here, are synonymous. Further, the proposal submitted to and adopted by the people used the word "specially."
46. Duree v. State, 96 So.2d 854 (La. App. 1957).
47. House Bill No. 387 of 1956.

> action than she . . . may have had before the passage of this act; the purpose of this act being merely to waive the State's immunity from suit insofar as the suit herein authorized is concerned."

(This provision will be referred to a number of times hereinafter simply as the "restrictive section.")

Based upon this section, the state argued that the plaintiff could not have sued the state in tort prior to the legislative authorization, and that the legislature had not waived its immunity from liability for the negligence of its employee in the authorization. The plaintiff answered by invoking the rule of the second *Lewis* case: that when the legislature authorizes a suit in tort against the state, it necessarily waives its immunity from liability.

In the alternative, the state contended that if the legislative authorization was construed as waiving the state's immunity from liability, it was unconstitutional. This contention was based on the argument that the purpose of the 1946 constitutional amendment was to overrule *Crain v. State*,[48] so as to preclude the legislature from authorizing a suit on a cause of action which was not available to the claimant prior to the authorization. The plaintiff admitted that the purpose of this constitutional amendment was to overrule the *Crain* case, but sought to differentiate the latter (where the claimant's only prior remedy was under the Workmen's Compensation Act) from a case where a plaintiff had a prior cause of action in tort, and the legislative authorization waived the immunities from suit and from liability. Relying upon an earlier case in which it had accepted the similar arguments of the plaintiff,[49] the intermediate appellate court affirmed.

Under a writ of review, the Supreme Court reversed, and held that under Article III, § 35, of the Constitution, as amended in 1946, the legislature could not constitutionally waive the state's immunity from liability for the negligence of an employee.[50] In support of the position that there is a difference between the state's immunity from suit and its immunity from

48. 23 So.2d 336 (La. App. 1945).

49. St. Julian v. State, 82 So.2d 85 (La. App. 1955). See, to the same effect, Marler v. State, 78 So.2d 26 (La. App. 1955). Writs of certiorari were refused by the Supreme Court in both cases. See also Webb v. State, 91 So.2d 156 (La. App. 1957).

50. Duree v. Maryland Casualty Company, 238 La. 166, 114 So.2d 594 (1959).

liability for the negligence of an employee, the Supreme Court quoted a lengthy excerpt from the second *Lewis* case which included the holding that when the legislature authorized a tort action it necessarily waived the state's immunity from liability. The court then went on to hold that there was no waiver of immunity from liability under the legislative authorization, and further that if such waiver was intended, it would have been unconstitutional, saying:

> "Furthermore, Section 1 [of the legislative authorization which specifically authorized the action to recover damages for the death resulting from the negligence of the ambulance driver], when considered alone, seemingly furnished to plaintiff a remedy that otherwise she did not have. But Section 6 of the enactment [the restrictive section] must also be taken into consideration; and when that is done it is clear that the legislation did not create in her favor a cause of action. . . .
>
> "We might observe that House Bill No. 387 of the 1956 Legislature (particularly Section 6 thereof) was obviously passed in conformity with an amendment adopted in 1946 to Section 35, Article 3, of the Louisiana Constitution, and for us to interpret such legislation as plaintiff asks us to do would render it unconstitutional. The mentioned constitutional amendment, the submission and adoption of which were apparently influenced by the decisions in Lewis v. State, supra, and Crain v. State, 23 So.2d 336 (both rendered in 1945), reads as follows: [Here the constitutional provision is quoted in full, with the court's emphasis by italics on its last sentence.]"[51]

The Supreme Court's reference to the second *Lewis* case, in the excerpt above, requires explanation as that case had two important holdings. The second of these was that under Article III, § 35 (prior to the 1946 amendment) the legislature might provide for the future payment of any judgment which might be rendered in any suit which it authorized, and the Governor had no power to veto the measure. As has been pointed out herein, and as the Supreme Court itself recognized in the second *Cobb* case,[52] this was the primary reason for the 1946 constitutional amendment. But in the *Duree* case, the Supreme Court was not

51. 114 So.2d at 597-598.

52. Cobb v. Louisiana Board of Institutions, 237 La. 315, 111 So.2d 126 (1958).

referring to this holding. Its reference was to the first holding of this *Lewis* case — that when the legislature authorized a tort suit against the state it necessarily waived the latter's immunity from liability for the negligence of an employee. This is a novel contention; but if the court's assumption that one of the purposes of the 1946 constitutional amendment was to overturn the *Crain* case is correct, this would seem to follow. The reason why the assumption was accepted was that it was pressed upon the court by both litigants, who had divergent views of the effect thereof.

If this assumption is justified, then the validity of the Supreme Court's syllogism in the *Duree* case is difficult to refute. If a purpose of the constitutional amendment was to preclude the legislature from authorizing suit in a case where the claimant had no right or cause of action before the authorization, it would preclude valid authorization in both the *Crain* and the *Duree* situations. Under this reasoning, there is little distinction or difference between a case where the missing element of the cause of action is due to a statutory rule, and one where it results from a jurisprudential doctrine.

It is interesting to note the effect of the *Crain* assumption on the construction of the amended constitutional provision. It is impossible to give effect to any constitutional intent to overrule the *Crain* case without a very strict construction of the first sentence of the constitutional provision, so as to reach the conclusion that when the legislature authorizes a suit to recover damages resulting from the negligence of an employee it does not necessarily waive the state's immunity from such liability. Then, since no subsequent language of the amended constitutional provision spells out authority for a waiver of immunity from liability, under the last sentence thereof any legislative authorization for suit can be only a waiver of immunity from suit.

In the reasoning of the Supreme Court in the *Duree* case, it is obvious that the *Crain* assumption is buttressed by the restrictive section of the legislative authorization for suit. This is a sort of thought transference, whereby language from the legislative authorization is lifted therefrom and inserted into the language of the constitutional provision. This is permissible only if the legislative authorization is a contemporaneous legislative construction of the constitutional provision. Both the validity of the

Crain assumption, and the matter of contemporaneous legislative construction will be inquired into later.

The Stephens Case

Here, the plaintiff sued the defendant school board to recover damages for the wrongful death of her husband, which resulted from the negligence of the defendant's employee, the driver of a school bus.[53] For present purposes, this case can be regarded simply as a reaffirmation by the Supreme Court of the *Duree* decision, and an extension of the latter's holding to state subdivisions.[54] The arguments *pro* and *con* were much the same, except that the plaintiff in the *Stephens* case did insist that the 1946 constitutional amendment was not intended to overrule the first point decided in the second *Lewis* case (as held by the Supreme Court in *Duree*), but rather the second. However, the plaintiff again admitted that one of the purposes of this amendment was to overrule the *Crain* case, and again was trapped by the logical extension of that assumption. The *Stephens* case stands or falls on the validity of the *Duree* decision, and both are bottomed on the *Crain* assumption.

III. THE CRAIN MYTH

Conception, Gestation, and Birth

It strains one's credulity to the breaking point to accept the view that all of the ponderous governmental machinery for the amendment of the organic law of the state was set in motion because some unfortunate highway employee was hit in the head by a shovel carelessly wielded by a co-worker, and wanted damages instead of workmen's compensation. The fellow-servant rule afforded the state a complete defense to such an action *ex delicto*, unless the legislature saw fit to waive this defense; and the legislature had complete control over the granting or withholding of authorization for such a suit. Here, the unfortunate Mr. Crain appears to be playing out of his league.

Had the constitutional intent been to overrule the *Crain* case,

53. The decision of the trial court, sustaining the defendant's exceptions, was reversed by the intermediate appellate court. Stephens v. Natchitoches Parish School Board, 96 So.2d 396 (La. App. 1957). After a remand, the trial court rendered judgment for the plaintiff, which was increased by the intermediate appellate court, and otherwise affirmed. *Id.*, 110 So.2d 156 (La. App. 1959).

54. See Stephens v. Natchitoches Parish School Board, 238 La. 388, 115 So.2d 793 (1959).

why did the language of the constitutional amendment so completely conceal that fact? How simple it would have been to add a proviso at the end of the first sentence of the amended constitutional provision reading: "but the Legislature may not waive the State's immunity from liability for the wrongful acts of its employees." Or, this proviso could have used the language of the restrictive sections of some of these legislative authorizations for suit and could have read: "but the Legislature may not grant any claimant a different or greater cause of action or claim than he had before the suit was authorized." Where and how did the *Crain* assumption originate? It can be traced back to a rumor current during the last few years that: (1) the bill proposing the 1946 constitutional amendment was drafted by a prominent member of the legal staff of a state department; and (2) the language of the bill which he drafted clearly reflected the purpose of overruling the *Crain* case, but this language was changed by legislative amendment prior to final passage. The second portion of this rumor is clearly refuted by the legislative history of this constitutional amendment. No convincing evidence was found which either confirms or refutes the first portion thereof. A hypothesis which appears to be more logical than his draftsmanship of the bill is that he was the draftsman of the restrictive section of at least the first of the bills to obtain legislative authorization for suit in 1946, and that he wrote therein his own interpretation of the proposed constitutional amendment. But assuming that he was the draftsman, and now says he had intended to overrule the *Crain* case, so what? It is not this expression of his intent which is determinative here, but the intent of the legislature which proposed the amendment and of the people who adopted it.[55]

The judicial fountainhead of the *Crain* assumption is the opinion of the able trial judge in *McKnight v. State*.[56] There, the

55. "My Lords, I have more than once had occasion to say that in construing a statute I believe the worst person to construe it is the person who is responsible for its drafting. He is very much disposed to confuse what he intended to do with the effect of the language which in fact has been employed. At the time he drafted the statute, at all events, he may have been under the impression that he had given full effect to what was intended, but he may be mistaken in construing it afterwards just because what was in his mind was what was intended, though, perhaps, it was not done." The Lord Chancellor, the Earl of Halsbury, in Hilder v. Dexter [1902] A.C. 474, 477. See, to the same effect, Third District Land Co. v. Toka, 170 So. 793, 795 (La. App. 1936); 2 SUTHERLAND, STATUTORY CONSTRUCTION 499, 504, 505 (Horack's 3d ed., 1943). See also Elliott, *Statute Construction and the Court of Military Appeals*, 30 TUL. L. REV. 1, 9 (1955).

56. See McKnight v. State, 68 So.2d 652 (La. App. 1953).

state had pleaded a prior judgment in favor of the state's employee as *res judicata* of the subsequent action brought against the state to recover damages for the alleged wrongful act of that employee, and had presented much the same argument which it was to present later in all subsequent cases. The legislative authorization for the suit in the *McKnight* case had a restrictive section and this appeared to the trial judge to corroborate the validity of the *Crain* assumption invoked by the state. In rendering judgment for the latter, the learned trial judge said in his opinion:

> "It is highly probable that the impact of Judge Dore's dissenting opinion [in the *Crain* case] was responsible for the amendment of the constitutional section in question, the decision being handed down just a few months prior to the 1946 session of the Legislature. Prior to the amendment of the section, any contrary opinion in the mind of this Court must, of course, have yielded to the majority opinion of the higher court in the Crain case. Now, happily, the plain language of the amended section places in the Constitution the provision that Judge Dore strove to place in the jurisprudence by interpretation."[57]

The snowball immediately commenced to roll. This opinion of the trial judge was approved and adopted by the intermediate appellate court in *McKnight v. State*;[58] and the *Crain* assumption was judicially accepted by the same court in the *Gilmore*[59] and *St. Julian*[60] cases. While not expressly reiterated, it was certainly implied in this court's opinion in the *Duree* case.[61] It had now been repeated so often that it had won universal acceptance; judicial recognition had provided "confirmations strong as proofs of holy writ."

Contemporary Explanations of Purposes of Amendment

Since this constitutional amendment was adopted in 1946, before the creation of the Legislative Council,[62] and prior to the time the Public Affairs Research Council commenced its studies on these matters, a resort must be had to less official contemporary explanations of the purpose thereof.

57. See *id.* at 654.
58. 68 So.2d 652 (La. App. 1953).
59. Gilmore v. State, 79 So.2d 192, 196 (La. App. 1955).
60. St. Julian v. State, 82 So.2d 85, 87 (La. App. 1955).
61. Duree v. State, 96 So.2d 854, 862 (La. App. 1957).
62. By La. Acts 1952, No. 51.

Probably the most accurate analyses and expositions of the purposes and effect of new legislation for years have been those written after each legislative session by Mr. Carlos E. Lazarus, Coordinator of Research of the Louisiana State Law Institute. Somewhat detailed explanations of the purposes of the proposed amendment of Article III, § 35, of the Constitution were written by him even before the adoption of this amendment on November 5, 1946.[63] There, he traces the history of the constitutional authorization for suits against the state, points out the defects of the constitutional provision then in effect, and voices the opinion that the purpose of this proposed amendment was to overrule the *Lewis* cases. He does not even cite the *Crain* case, nor does he mention any constitutional intent to preclude state employees from obtaining authority to sue the state in tort, nor any purpose of precluding the legislature from waiving the state's immunity from liability for the wrongful acts of its employees.

Let us see what explanations of the purposes of this proposed amendment were given to the people of Louisiana by its larger newspapers. The paper having the largest circulation in the state is, of course, the New Orleans Times-Picayune. An editorial published less than a week before the proposals to amend the Constitution were to be voted on, and entitled "Some Good, Some Bad Court Amendments," includes the following:

> "Present provisions of the constitution have made for confusion and delays in suits against the state when they are authorized by the Legislature. *Amendment No. 18,*[64] *which should be ratified,* would clarify the procedure. Safeguards are retained in that suits could be brought only with legislative consent and money could be paid out only from an appropriation made in each case."[65]

This same newspaper also published the recommendations for ratification of the proposed amendment by the New Orleans Association of Commerce,[66] and the Young Men's Business Club of New Orleans;[67] both of these organizations recommended an

63. Lazarus, *Louisiana Legislation of 1946,* 7 LOUISIANA LAW REVIEW 23, 51, 52, 109-112 (1946).

64. The official ballot used on November 5, 1946, to vote on the various constitutional amendments proposed lists the one to amend Article III, § 35, as No. 18 thereon.

65. New Orleans Times-Picayune 10 (October 30, 1946).

66. "The Board of the Association of Commerce Tuesday approved 12 of the 31 constitutional amendments to be voted upon in the November 5 general election: . . . No. 18, authorizing Leigslature to set procedure for suits against the state. . . ." New Orleans Times-Picayune 17 (October 23, 1946).

67. "Proposed amendments approved by the [Young Men's Business Club]

affirmative vote for this amendment, and stated its purpose as being a clarification of the procedure in suits against the state. This analysis is completely accurate, for the purpose of the amendment was to provide adequate and uniform procedure for the suits so authorized, and to change the procedure for the payment of judgments rendered therein.

The Baton Rouge State-Times ran a number of editorials and articles on this proposed amendment, recommending its adoption. All of these referred to the proposed amendment as necessary to clarify the procedure in suits against the state.[68] One of these editorials, in the light of the developments on the subject during the past year, is somewhat amusing: "18. Provide that the legislature shall adopt procedure for suits filed against the state. Vote 'Yes'. Reasons: *This will only save some confusion.*"[69] (Emphasis added.) What a poor prophet the State-Times has turned out to be!

In its editorial of November 3, 1946, recommending adoption or rejection of the various constitutional amendments proposed, the Shreveport Times appeared to be in doubt with respect to the proposal to amend Article III, § 35, for in this connection it states: "Number Eighteen — The lawyers should know, we asked them and they did not reply."[70] Apparently, this prodding seems to have had an immediate effect, for in an article in this newspaper entitled "Purposes of Amendments Summarized for Voters," it states the purpose of Amendment No. 18 to be the clarification of procedure in suits against the state.[71]

Not a single one of these newspapers contains the slightest hint that the purpose of this proposed constitutional amendment was to change the *substantive law* of Louisiana, so as to preclude

follows: . . . No. 18, establishment of a procedure in suits against the state; . . . ." New Orleans Times-Picayune 11 (October 31, 1946).

See also Editorial, "Thirty-one Amendments: A Digest": ". . . No. 18 — FOR — Clarifies procedure in suits against the state." New Orleans Times-Picayune 14 (November 3, 1946).

68. In an article entitled "31 Constitutional Amendments to Be Voted on by Louisiananians on Nov. 5," the following was said with reference to Amendment No. 18: "Provide that when the legislature authorizes suits against the state it shall designate in which courts they may be instituted and waive prescription; provide other procedural details for such suits." Baton Rouge State-Times 11A (October 28, 1946).

On the day before the election the following was said to be the purpose of Amendment No. 18: "Clarify procedure in suits against the state." *Id.* at 1A, 6A (November 4, 1946).

69. *Id.* at 4A (November 4, 1946).

70. Shreveport Times 18 (November 3, 1946).

71. *Id.* at 19 (November 3, 1946).

authorization for suits in tort by state employees, or legislative waiver of the state's immunity from liability for the wrongful acts of its employees. If either of these had been a purpose of this amendment, then elaborate and unusual precautions must have been taken by the persons responsible to prevent discovery of the true facts by alert reporters covering the legislative session.

Let us see whether the members of the legislature were let in on these esoteric secrets.

Contemporaneous Legislative Construction

The strongest — in fact, the only — evidence which was found to support the *Crain* assumption was the restrictive sections in the legislative authorizations for suit against the state, its agencies, and subdivisions. These restrictive sections made their first appearance in 1946, the year in which the proposal to amend Article III, § 35, was adopted, and continued through 1959. There is little doubt but that the draftsman of the first of these inserted them with the intent to overrule the *Crain* case, and probably because he thought this was the purpose of the constitutional amendment itself. However, this fact does not compel the further admission that this was the intention of the draftsmen of *all* of the legislative authorizations which contain a restrictive section, for the traditional slavery of attorneys to forms must be taken into account here. After all, the language of these restrictive sections is appealingly neat and attractive. Lawyers like neatly-turned phrases, particularly those sprinkled with hackneyed modifiers such as "said" and "aforesaid," which seldom serve any useful purpose, but which are relished as much as caraway seeds on rye bread, and probably for the same reason. But it must be admitted that a person or persons presently unknown — possibly an attorney or attorneys employed by a state department — thought that one of the purposes of the 1946 constitutional amendment was to overrule the *Crain* decision, and plastered these restrictive sections on all of the legislative authorizations for suit which he or they were requested to draft. What does this prove? The intent of the draftsman, whether of the bill proposing the constitutional amendment or of these restrictive sections, surely does not bind the legislature, the people, or the courts.[72] That fictive but very necessary concept, the con-

72. See note 55 *supra.*

stitutional intent, can be gleaned only from the language of the constitutional amendment *itself*, construed in the light of its history if there is any ambiguity therein.

So this evidence is valueless, unless there was a consistent, continuous legislative practice of using these restrictive sections in legislative authorizations for suit, which would constitute a contemporaneous legislative construction of the amendment supporting the *Crain* assumption. So many of these legislative authorizations adopted since 1946 do contain these restrictive sections that this creates the initial impression that they are contained in all — which would provide the answer for which the researcher was looking. A careful analysis of all of these legislative authorizations, however, pricks this bubble immediately. The following tabulation,[73] showing the number of legislative authorizations which contain such a restrictive section, and the number of those which do not, will serve our present purposes:

Legislative Authorizations	Number with Restrictive Sections	Number without Restrictive Sections
1946 Acts	14	6
1948 Acts	8	11
1950 Acts	7	4
1952 Acts	17	13
1954 Acts	16	20
1956 Acts	5	7
1957 Acts	6	1
1957 Resolutions	7	2
1958 Acts	43	14
1958 Resolutions	3	3
1959 Acts	8	6
1959 Resolutions	2	6
	136	93

So while these 136 legislative authorizations which contain a restrictive section constitute a majority, the 93 which do not clearly negative any continuous, consistent practice indicating any contemporaneous legislative construction supporting the *Crain* assumption.

The analysis required to obtain the information listed above, however, produced some very interesting by-products. Since the

73. These legislative authorizations are listed and classified in Table 2, *infra* p. 482.

claimant need not disclose the fact that he is a state employee when he seeks legislative authorization to sue for damage, it is impossible to determine how many of these authorizations cover the same factual situation as the *Crain* case — where a state employee, not disclosed as such and entitled to workmen's compensation, obtains legislation permitting him to sue for damages. But a number of these legislative authorizations were found where the claimant, disclosed as an employee of the state, or of an agency or subdivision thereof, was authorized to sue for damages for physical injuries alleged to have resulted from the negligence of another employee of the state, or of the same agency or subdivision thereof. Two such cases are to be found in the 1946 acts, passed the same year as the resolution proposing the constitutional amendment.[74] Two more legislative authorizations for suit under facts identical in this respect with the *Crain* case were adopted in 1948,[75] only a year and a half after the constitutional amendment. Two more such legislative authorizations were adopted in 1950;[76] two more in 1952;[77] one additional in 1954;[78] one more in 1957;[79] at least one additional in 1958;[80] and one more in 1959.[81]

Incongruously enough, at least two of these legislative authorizations for tort actions in situations like the *Crain* case contain a restrictive section.[82] But here is the choice morsel: who do you think came back to the legislature to obtain further legislative authority? You've guessed it: Mr. W. Edmond Crain — *the* Mr. Crain. He wanted his original legislative authorization amended and re-enacted, and though he sought confirmation of his authorization to sue for damages, this time he disclosed the fact that he was an employee of the Highway Department at the time of his injury. He also sought waiver of the ten-year prescription provided in R.S. 49:112, and authority for the Highway Depart-

74. La. Acts 1946, Nos. 40 and 244.

75. La. Acts 1948, Nos. 162 and 417. The second of these is ambiguous in authorizing suit "for damages and workmen's compensation." Section 1.

76. La. Acts 1950, Nos. 465 and 507.

77. La. Acts 1952, Nos. 164 and 219.

78. La. Acts 1954, No. 559.

79. House Concurrent Resolution No. 43 of 1957. See LA. SENATE J. 154, 155 (1957).

80. La. Acts 1958, No. 203. La. Acts 1958, Nos. 59 and 60 appear to cover the Crain situation, but are not included above because the language leaves it somewhat doubtful.

81. House Concurrent Resolution No. 33 of 1959. See LA. SENATE J. 169, 170 (1959).

82. House Concurrent Resolution No. 43 of 1957; La. Acts 1958, No. 203. See also La. Acts 1958, Nos. 59 and 60.

ment to compromise his suit. The legislature granted all of his requests.[83]

Do these matters evidence a contemporaneous legislative construction supporting the *Crain* assumption? There are, however, *two other* contemporaneous constructions of the constitutional provision evidenced by these legislative authorizations for suit[84] adopted during the period 1946 through 1959:

(1) The overruling of the *Crain* case was not a purpose of the constitutional amendment, evidenced by at least a round dozen of these Crain-type legislative authorizations; and

(2) Precluding the legislature from waiving the state's immunity from liability for the wrongful acts of its employees was not a purpose of the constitutional amendment, evidenced by 211 of these legislative authorizations.

Conclusions

At times the "hunch" may play a perfectly legitimate role in the judicial process. It does when the intuitive judgment of the experienced judge flashes spontaneously to end the travail and ordeal which always result from the weighing of clashing legal theories which compete for acceptance.[85] It should never be permitted to play any part in the decision of *facts*, whether based on evidence as to who reached the intersection first in automobile collision cases, or on judicial notice of the annals of contemporary history.

Viewed from any angle, there is no evidence of probative value to support the assumption that one of the purposes of the 1946 constitutional amendment was to overrule the *Crain* decision. Whether the inquiry is made through the textual construction of the constitutional provision, its legislative history, contemporary legal history, newspaper explanations made during the period in question, or the contemporaneous legislative construction consistently and continuously, it leads to the same conclusion. The purposes of this constitutional amendment were: (1) to require an adequate and uniform procedure for suits

83. La. Acts 1950, No. 465, amending and re-enacting La. Acts 1944, No. 341.
84. See Table 2, *infra* p. 482.
85. Hutcheson, *The Judgment Intuitive: The Function of the "Hunch" in Judicial Decision*, 14 CORN. L. Q. 274 (1929). Perhaps, in a parody of Judge Hutcheson's famous article, this paper should be entitled "The Judgment Assumptive: The Effect of a Hunch on Judicial Decisions."

authorized; and (2) to require that judgments therein be paid through legislative appropriations subject to constitutional controls, including the veto power of the Governor.

In view of all of these facts, the *Crain* assumption seems as fantastic as the lengthy and learned dissertations of the members of the Pickwick Club in an effort to decipher the mystic runic inscription on the flat stone on which, some years before, a nearly illiterate yokel had attempted to carve his name.[86]

IV. THE RESTRICTIVE SECTIONS

All that remains to be done is to interpret the legislative authorization for the *Duree* suit,[87] to determine the effect of the restrictive section therein.

The theoretical doubt as to whether recovery is permitted under this legislative authorization, assuming that the legislature may constitutionally authorize a suit to recover damages for wrongful death resulting from the negligence of a state employee, stems from the fact that the legislature is never required to exercise all of its constitutional power, where the latter is discretionary. Even though it had plenary power to authorize such a suit, conceivably it might have played a cruel hoax on poor Mrs. Duree by waiving immunity from suit but withholding waiver of immunity from liability for the negligence of the state employee.

With the Crain myth out of our way, an application of elementary principles of statutory construction leaves the members of the legislature as pure and as white as an Easter lily. Two separate arguments reach the same result. Firstly, if the first section of the legislative authorization permits suit against the state to recover damages for wrongful death resulting from the negligence of a state employee, under the second *Lewis* case this necessarily includes waiver of immunity from such liability. Then, to give effect to the legislative authorization as a whole, and not render it nugatory, the restrictive section must be construed liberally to avoid any contradiction of or conflict with the first section. As so construed, the restrictive section means only that the legislature has not authorized recovery on any claim or cause of action except the one specifically described in the first section.

86. *Cf.* DICKENS, PICKWICK PAPERS, c. XI.

87. The legislative authorization for the *Stephens* suit contained no restrictive section. See House Concurrent Resolution No. 45 of 1959, LA. SENATE J. 542, 543 (1959).

Secondly, the legislature definitely considered that the action which it authorized in the first section was on a *pre-existing* cause of action which Mrs. Duree had before the passage of the legislative authorization. This is proven conclusively by another section therein which waives *accrued prescription.* There can be no accrued prescription on a cause of action which is just being created. The only way the section waiving accrued prescription can be given any effect whatever is by construing the first section as authorizing suit on a pre-existing cause of action. As so construed, the restrictive section means only that the legislature has not authorized recovery on any claim or cause of action except the one specifically described in the first section.[88]

V. THE AFTERMATH AND THE REMEDY

As a result of these decisions, Mesdames Duree and Stephens and their children have been deprived of the compensation previously awarded them by the intermediate appellate courts. Numerous claimants, previously authorized to sue to recover for physical injuries, property damage, or the loss of a spouse or parent, resulting from governmental operations, now find that they are completely without a remedy. The legislature has been rendered impotent to afford any relief. The practicing lawyers of the state are greatly disturbed over these decisions, and though they may not know exactly why, they do feel intuitively that these decisions are wrong. The House of Delegates of the Louisiana State Bar Association has adopted a resolution recommending that they be overruled by constitutional amendment; and the Association's Committee on Law Reform is now working diligently on the drafts of such an amendment and on implementing legislation. All of this because, back in 1931, the unfortunate Mr. Crain was accidentally hit in the head with a shovel.[89]

Even prior to the *Duree* and *Stephens* cases, the enforcement of claims against the state, its agencies and subdivisions, was difficult, and the methods available therefor unsatisfactory. Seven years ago last February, twenty purebred Aberdeen-Angus cows worth $50,000 died as the result of eating a poisonous

88. This second argument is applicable to all of the legislative authorizations for tort suits which contain a restrictive section, except the two (or possibly four) authorizing an action *ex delicto* by state employees entitled to workmen's compensation, which are cited in note 82 *supra.*

89. In a moment of irritation generated by long and dull hours of research, the authors were strongly tempted by the feeling that the most appropriate title for this article would be "If That Shovel Had *Only* Missed Poor Mr. Crain."

ersatz sold as black-strap molasses to their owner by the state penitentiary sugar refinery. Ever since then the owner has been shuttled from the trial court to the Supreme Court to the legislature, and over this route again and again. This cycle is now being completed for the third time,[90] and the owner is still an unknown distance away from restitution.

One look at the legislative authorizations for suit and the special appropriations for the payment of judgments therein listed in the tables at the end of this article gives some indication of the extent to which the members of the legislature were forced to spin their wheels. Imagine the waste of legislative time and the cost to the state in dollars and cents which the introduction, consideration, and adoption of these bills and resolutions entailed. Parliamentary procedures are time consuming even for perfunctory matters. The pecuniary cost of the system is high, but this is not the only price which is paid; the process diverts a very considerable amount of legislative attention from more important matters. What has this cumbersome and antiquated system accomplished? Apparently, few requests for legislative permission to sue are refused,[91] and no requests for appropriations for the payment of judgments are denied, if funds therefor are available.[92]

Further, the public policies on which this system is based are completely unsuited to the twentieth century, and are as outmoded as the wager of battle. Both the state's immunity from suit and its immunity from liability for the wrongful acts of its employees rest on political dogmas which have been rejected in America, and repudiated many years ago in England. The first rests on the omnipotence of the King, who is above all human law; while the second is based on the ancient maxim "The King can do no wrong." In the effort to mitigate the harsh effects of

90. See Cobb v. Louisiana Board of Institutions, 229 La. 1, 85 So.2d 10 (1955), on rehearing (1956); Senate Bill No. 100 of 1956; Cobb v. Louisiana Board of Institutions, 237 La. 315, 111 So.2d 126 (1958); House Concurrent Resolution No. 5 of 1959, see LA. SENATE J. 79, 80 (1959). A third case, *Cobb v. Louisiana Board of Institutions*, is now pending in the Supreme Court on an appeal by the state from the trial court's third judgment in favor of the plaintiff.

91. No special search was made on this point, but from the authors' examination of the bills and resolutions introduced during the period 1946 through 1959 to authorize suit against the stae, its agencies and subdivisions, it appears that only two of these requests were not granted. House Concurrent Resolution No. 3 of 1959, authorizing an action *ex delicto*, was withdrawn without unfavorable action thereon. See LA. HOUSE J. 343, 344 (1959). Senate Concurrent Resolution No. 20 of 1959, authorizing suit to obtain a refund of taxes paid, was never even referred to a committee. See La. Senate Calendar 36-38 (1959).

92. See Senate Concurrent Resolution No. 41 of 1958.

these anachronistic immunities, we adopted the nebulous and shadowy distinction between "governmental" and "proprietary" functions, for which we have paid a price nearly equal to its occasional benefits. Government today is big business, whether at the national, state, or local level, and the risk of injury and damage from governmental operations has increased enormously in recent years. The laws which regulate the accountability of persons (including corporations, partnerships, and unincorporated associations), so far as practicable, should now be applied to define the responsibility of government.[93]

The present ills can be cured only through major surgery.

Firstly, Article III, § 35, of the Constitution should be amended so as to expressly:

(1) Empower the legislature to adopt general or special legislation,[94] prospective or retroactive, to authorize the filing of suits in the state courts against the state and its public bodies, and to waive the immunities thereof from suit and from liability for the wrongful act of an employee;

(2) Provide that the procedure in actions so authorized shall be the same as in suits between private litigants, except that there shall be no trial by jury, and the legislature may provide a different venue and mode of citing the defendant;

(3) Provide that the legislature may waive any prescription which may have accrued in favor of the defendant, as to all suits filed prior to January 1, 1962; and that the legislature may further waive the defense of *res judicata* when a prior suit was dismissed because there had been no waiver of immunity from liability for the wrongful act of an employee;

(4) Provide that judgments rendered against the state shall be paid only from funds appropriated for such purposes, and

93. Excellent articles on the subject were published in the *Government Tort Liability Symposium*, 29 N.Y.U. L. REV. 1321-1461 (1954). These include an introduction to the general subject by Dean Stason of the University of Michigan Law School, and the following articles: Gellhorn & Lauer, *Federal Liability for Personal and Property Damage*, *id.* at 1325; Leflar & Kantrowitz, *Tort Liability of the States*, *id.* at 1363; Wade, *Liability in Tort of the Central Government of the United Kingdom*, *id.* at 1416; and Schwartz, *Public Tort Liability in France*, *id.* at 1432.

94. The constitutional amendment suggested above would repeal by implication the sentence of Article XIX, § 26, of the Constitution, as amended on November 6, 1956, requiring individual legislative authorization for each action *ex delicto* against a special agency, as defined therein. However, this would not defeat the purpose of the latter constitutional provision, since the legislature could limit its general legislation by excepting therefrom suits against these special agencies prohibited by Article XIX, § 26.

that the legislature shall provide the manner in which judgments against local governmental bodies or units shall be paid; and

(5) Provide a broad definition of "public bodies," so as to include parishes, municipalities, and every public board or body created by the Constitution and laws of the state.

Future trouble would be invited by a retention of the final sentence of the present constitutional provision. This was inserted simply to require legislative appropriations to pay judgments rendered against the state, and since this is spelled out above, its retention is unnecessary.

One of the most difficult decisions to reach is with respect to the language to be employed in the general waiver of immunities which any implementing general legislation should contain. A number of solutions are available. The general legislation might track the language of the Federal Tort Claims Act; but in view of the difficulties experienced thereunder,[95] this certainly is not recommended. A second possibility is to subject the state and public bodies to exactly the same rules of substantive law which apply to persons. This, however, opens up a bottomless pit, as the duties owed by governments are so dissimilar to those owed by persons that liability for breach of every duty by a government is most alarming. Another alternative would be to permit any and all kinds of suits and actions, with a few broad exceptions. This has most of the same defects as the preceding alternative, with the added difficulty that these exceptions must be couched in broad and general terms, which may take decades of litigation to determine their meaning.

A more pragmatic, and less radical, solution of the problem is to permit the filing of all suits which in the past the legislature has permitted, or at least intended to permit; and later, as further extensions appear desirable, these may be added by retroactive amendments. This alternative is definitely feasible, as prior legislative authorizations for suit can be classified into a relatively few categories. The numerous cases where statutes and the jurisprudence now permit suits against public bodies without legislative permission can be covered by an omnibus section. The expansion of legislation affecting *persons*, by accretion in the manner suggested above, is completely unworkable, since the amendment cannot be made to apply retroactively, and

95. See Gellhorn & Lauer, *Federal Liability for Personal and Property Damage*, 29 N.Y.U. L. REV. 1325 (1954).

the rights which suggest the need for amendment are invariably sacrificed. This would not be true with respect to legislation affecting the state and public bodies, which can be made retroactive. Thus, amendments of the general legislation can be made from time to time as the desirability thereof becomes evident, and the amending act can provide that it is to apply retroactively. The claimant would be prejudiced only through the necessity of waiting less than a year, until the legislature could authorize his suit by a retroactive amendment of the general legislation.

General legislation to implement the amended constitutional provision, to take effect on the effective date of the latter, should provide expressly:

(1) The immunity from suit of the defendant is waived with respect to any suit or action brought against the state, or a public body thereof:

(a) Which could have been brought against the defendant on July 1, 1960;

(b) To recover just and adequate compensation for property taken or damaged for public purposes;

(c) To enforce a contract, or a quasi-contractual obligation, or to recover damages for breach of a contract;

(d) To enforce a claim of ownership of property, or a right to the possession thereof;

(e) To restrain the enforcement, or otherwise declare the invalidity, of an unconstitutional or invalid statute, ordinance, or regulation, except as provided in Article XIX, § 26, of the Constitution;[96]

(f) To recover a tax, local improvement assessment, license, or penalty paid in error, or under an unconstitutional or invalid statute or ordinance; and

(g) To recover money paid to the defendant, which lawfully belongs to the plaintiff.

(2) The immunity from suit, and the immunity from liability for the wrongful act of its employee, or the state or a public body thereof is waived with respect to a suit to recover damages for wrongful death, physical injury, or property damage resulting

96. See Note 94, *supra*.

from a negligent or wrongful act of commission or omission of an employee of the defendant in the following:

(a) The operation of a motorcycle, automobile, bus, truck, tractor, or other motor vehicle, of an elevator in a public building, or of machinery or mechanical equipment;

(b) The construction, repair, or maintenance of a highway, street, or other public road, sidewalk, or of a publicly owned or operated bridge or ferry;

(c) Trespass to private property;

(d) The repair or maintenance of a public building;

(e) The failure to confine, or to guard adequately, an inmate of a penitentiary, prison, jail, or other correctional institution, or of a mental institution or hospital; and

(f) The spraying or dusting with insecticides or other chemicals to eradicate weeds, or plant diseases.

These are the most important provisions of the implementing legislation recommended. The less important sections are summarized below.[97]

Finally, a policy decision must be made as to whether the death or injury of a governmental employee should be governed exclusively by the Workmen's Compensation Act, or whether a

97. This statute should have additional sections which provide:
(1) The procedure to be used in these suits;
(2) As to all suits filed prior to January 1, 1962: all accrued prescription in favor of the defendant is waived, and the defense of *res judicata* is waived if the prior suit was dismissed on the ground that there had been no waiver of immunity from liability for the wrongful act of an employee; and all suits filed thereafter are to be governed by the prescription applicable generally to the causes of action therein;
(3) A reasonable limit on the amount which may be recovered for the death or injury of one person, and another reasonable limit on the total amounts which may be recovered for the deaths or injuries resulting from a single accident;
(4) When a money judgment against the state becomes executory, a certified copy thereof shall be mailed by the plaintiff to the State Division of Administration, and the latter shall include an item in the proposed general appropriation bill to provide for the payment of all such judgments received more than one month prior to the regular legislative session; and that the next budget of a public body shall provide for the payment of all executory money judgments rendered against it prior to the introduction of its budget ordinance;
(5) A canon of liberal construction, to accomplish the purposes of the legislation;
(6) A broad and comprehensive definition of "public bodies," identical with that contained in the constitutional amendment;
(7) A severability clause; and
(8) The effective date of the statute, if and when the constitutional amendment is adopted.

recovery in tort should be permitted.[98] This brings us back to Mr. Crain again.

TABLE 1

LIST OF LEGISLATIVE AUTHORIZATIONS FOR SUIT AGAINST THE STATE OF LOUISIANA, ITS AGENCIES AND SUBDIVISIONS DURING THE PERIOD 1921 THROUGH 1944, BOTH INCLUSIVE

Authorization:	Type of Claim:	Authorization:	Type of Claim:
	Regular Session of 1928		
Act No. 184	Title to property	Act No. 330	Title to property
	Regular Session of 1930		
Act No. 25	Physical injury		
	Regular Session of 1934		
Act No. 206	Physical injury		
	Regular Session of 1938		
Act No. 88	Title to property	Act No. 287	Physical injury
Act No. 217	Physical injury	Act No. 336	Physical injury
	Regular Session of 1940		
Act No. 158	Title to property	Act No. 359	Physical injury
Act No. 352	Physical injury	Act No. 360	Wrongful death
Act No. 353	Wrongful death	Act No. 361	Physical injury
Act No. 354	Physical injury	Act No. 362	Property damage
Act No. 355	Physical injury	Act No. 363	Wrongful death
Act No. 356	Wrongful death	Act No. 364	Trespass to property
Act No. 357	Physical injury	Act No. 365	Physical injury
Act No. 358	Trespass to property	Act No. 366	Wrongful death
	Regular Session of 1942		
Act No. 273	Physical injury	Act No. 279	Wrongful death
Act No. 274	Physical injury	Act No. 280	Physical injury
Act No. 275	Wrongful death	Act No. 335	Property damage
Act No. 276	Physical injury	Act No. 336	Property damage
Act No. 277	Physical injury	Act No. 337	Property damage
Act No. 278	Wrongful death	Act No. 354	Physical injury
	Extraordinary Session of 1942		
Act No. 11	Title to property		
	Regular Session of 1944		
Act No. 36	Property damage	Act No. 194	Physical injury
Act No. 52	Money paid in error	Act No. 249	Property damage
Act No. 61	Physical injury	Act No. 333	Property damage
Act No. 82	Physical injury	Act No. 334	Property damage
Act No. 155	Workmen's compensation	Act No. 336	Property damage
		Act No. 341	Physical injury
Act No. 162	Wrongful death	Sen. Bill No. 281[1]	

1. This bill, authorizing the Jefferson Lake Sulphur Co. to sue the State to recover money due, passed both Houses, but was vetoed by the Governor and never re-passed over this veto. This was held sufficient as a legislative resolution to authorize the suit. Jefferson Lake Sulphur Co. v. State, 213 La. 1, 34 So.2d 331 (1948). This legislative authorization was not included in the Louisiana Acts of 1944.

98. This general legislation should also provide specifically that no action may be brought for the recovery of damages for the wrongful death or injury of an employee of the state. Otherwise, under a liberal construction of the statute it may be held that such a cause of action has been created, which will lead to a complete breakdown of the present system of covering these employees under the Workmen's Compensation Act. In such an event, the compensation insurer would then be able to recoup all compensation payments which it had paid, or would pay, under its subrogatory rights.

TABLE 2

LIST OF LEGISLATIVE AUTHORIZATIONS FOR SUIT AGAINST THE STATE OF LOUISIANA, ITS AGENCIES AND SUBDIVISIONS DURING THE PERIOD 1946 THROUGH 1959, BOTH INCLUSIVE

(All acts and resolutions below not preceded by an asterisk authorized tort suits to recover damages for wrongful death, physical injury, or property damage)

Authorization:	Restrictive Section:	Authorization:	Restrictive Section:
Regular Session of 1946			
Act No. 40	No	Act No. 335	Yes
*Act No. 110	No	Act No. 336	Yes
Act No. 188	No	Act No. 337	Yes
Act No. 244	No	Act No. 342	Yes
Act No. 252	Yes	Act No. 344	Yes
*Act No. 298	No	Act No. 353	Yes
*Act No. 309	No	Act No. 356	Yes
Act No. 317	Yes	Act No. 360	Yes
Act No. 320	Yes	Act No. 365	Yes
Act No. 324	Yes	Act No. 378	Yes
Regular Session of 1948			
Act No. 76	No	Act No. 317	No
Act No. 106	No	Act No. 319	No
Act No. 162	No	Act No. 328	No
Act No. 218	No	Act No. 332	Yes
Act No. 220	Yes	Act No. 417	No
Act No. 221	Yes	Act No. 418	No
Act No. 222	Yes	Act No. 421	Yes
Act No. 226	Yes	Act No. 422	Yes
Act No. 249	Yes	Act No. 424	No
Act No. 251	No		
Regular Session of 1950			
Act No. 9	Yes	Act No. 488	Yes
Act No. 297	Yes	Act No. 507	Yes
*Act No. 322	Yes	H. Bill No. 145[1]	No
Act No. 399	Yes	H. Bill No. 956[2]	No
Act No. 427	Yes	Sen. Bill No.157[3]	No
Act No. 465	No		
Regular Session of 1952			
*Act No. 19	Yes	Act No. 179	No
Act No. 26	Yes	Act No. 193	No
Act No. 27	Yes	Act No. 219	No
Act No. 85	No	Act No. 224	Yes
Act No. 102	Yes	Act No. 227	Yes
Act No. 146	No	Act No. 228	Yes
Act No. 153	Yes	Act No. 234	Yes
Act No. 163	Yes	Act No. 235	Yes
Act No. 164	No	Act No. 267	Yes
Act No. 166	Yes	Act No. 349	No
Act No. 174	No	Act No. 377	Yes
Act No. 175	No	Act No. 411	Yes

1. This bill was passed by both Houses, vetoed by the Governor, and never passed again over his veto. It was not included in the 1950 Acts for this reason. See Preuett v. State, 62 So.2d 686 (La. App. 1953).

2. This bill was passed by both Houses, vetoed by the Governor, and never passed again over his veto. It was not included in the 1950 Acts for this reason. See Preuett v. State, 62 So.2d 693 (La. App. 1953).

3. This bill was passed by both Houses, vetoed by the Governor, and never passed again over his veto. It was not included in the 1950 Acts for this reason. See LA. HOUSE J. 1298 (1950).

TABLE 2 — *Continued*

Authorization:	Restrictive Section:	Authorization:	Restrictive Section:
Act No. 424	Yes	Act No. 466	No
Act No. 456	No	Act No. 479	Yes
Act No. 463	No	*Act No. 517	No
	Regular Session of 1954		
Act No. 18	Yes	Act No. 463	No
Act No. 30	Yes	Act No. 466	Yes
Act No. 62	Yes	Act No. 559	No
Act No. 77	Yes	Act No. 578	No
Act No. 85	No	Act No. 594	No
Act No. 110	Yes	Act No. 614	Yes
Act No. 111	Yes	Act No. 676	No
Act No. 163	Yes	Act No. 677	No
Act No. 185	No	Act No. 678	No
Act No. 196	No	Act No. 679	No
Act No. 201	Yes	Act No. 680	No
Act No. 243	No	Act No. 688	Yes
Act No. 383	Yes	Act No. 691	Yes
Act No. 406	No	Act No. 695	No
*Act No. 410	No	Act No. 696	No
Act No. 412	No	Act No. 715	Yes
Act No. 431	Yes	Act No. 726	No
Act No. 447	No	Act No. 728	Yes
	Regular Session of 1956		
Act No. 391	No	Act No. 437	Yes
Act No. 392	No	*Sen. Bill No. 100[4]	No
Act No. 393	No	Sen. Bill No. 181[5]	Yes
Act No. 394	No	Sen. Bill No. 373[6]	Yes
Act No. 416	No	H. B. No. 113[7]	No
Act No. 436	Yes	H. B. No. 387[8]	Yes
	Regular Session of 1957		
Act No. 7	Yes	H. C. R. No. 7[9]	Yes
Act No. 24	Yes	H. C. R. No. 9[10]	Yes
Act No. 25	Yes	H. C. R. No. 41[11]	Yes
Act No. 26	No	H. C. R. No. 42[12]	Yes
Act No. 36	Yes	H. C. R. No. 43[13]	Yes
Act No. 37	Yes	H. C. R. No. 44[14]	No
Act No. 42	Yes	H. C. R. No. 46[15]	Yes

4. This bill was passed by both Houses, vetoed by the Governor, and never passed again over his veto. It was not included in the 1956 Acts for this reason. See Cobb v. Louisiana Board of Institutions, 237 La. 315, 111 So.2d 126 (1958).

5. This bill was passed by both Houses, vetoed by the Governor, and never passed again over his veto. It was not included in the 1956 Acts for this reason. See LA. HOUSE J. 2497 (1956).

6. See LA. HOUSE J. 2515, 2516 (1956).

7. This bill was passed by both Houses, but vetoed by the Governor, and not included in the 1956 Acts for that reason. See Stephens v. Natchitoches Parish School Board, 96 So.2d 396 (La. App. 1957).

8. This bill was passed by both Houses, but vetoed by the Governor, and not included in the 1956 Acts for that reason. See Duree v. State, 96 So.2d 854 (La. App. 1957).

9. See LA. SENATE J. 39, 40 (1957).

10. See *Id.*, pp. 40-42.

11. See *Id.*, pp. 152, 153.

12. See *Id.*, pp. 153, 154.

13. See *Id.*, pp. 154, 155.

14. See *Id.*, pp. 130, 131.

15. See *Id.*, pp. 162, 163.

TABLE 2 — *Continued*

Authorization:	Restrictive Section:	Authorization:	Restrictive Section:
H. C. R. No. 53[16]	No	H. C. R. No. 55[17]	Yes
	Regular Session of 1958		
Act No. 10	Yes	Act No. 293	Yes
Act No. 14	No	Act No. 294	No
Act No. 30	Yes	Act No. 305	Yes
Act No. 42	Yes	Act No. 320	No
Act No. 48	Yes	Act No. 321	No
Act No. 59	Yes	Act No. 329	Yes
Act No. 60	Yes	*Act No. 355	No
Act No. 66	No	Act No. 364	Yes
*Act No. 73	No	Act No. 371	Yes
Act No. 122	Yes	Act No. 378	No
Act No. 127	Yes	Act No. 396	Yes
*Act No. 138	Yes	Act No. 426	Yes
*Act No. 139	Yes	Act No. 430	Yes
*Act No. 140	Yes	Act No. 445	Yes
*Act No. 141	Yes	Act No. 459	Yes
*Act No. 142	Yes	Act No. 461	Yes
*Act No. 143	Yes	Act No. 466	No
Act No. 148	Yes	Act No. 467	No
Act No. 155	Yes	Act No. 484	Yes
Act No. 159	Yes	Act No. 487	Yes
Act No. 162	Yes	Act No. 488	Yes
Act No. 182	Yes	Act No. 489	Yes
Act No. 189	No	Act No. 494	Yes
Act No. 203	Yes	Act No. 502	No
Act No. 214	Yes	Act No. 505	Yes
Act No. 230	No	S. C. R. No. 28[18]	Yes
Act No. 236	No	S. C. R. No. 42[19]	No
Act No. 237	Yes	S. C. R. No. 45[20]	Yes
Act No. 245	Yes	H. C. R. No. 33[21]	Yes
Act No. 282	Yes	H. C. R. No. 37[22]	No
Act No. 283	Yes	H. C. R. No. 41[23]	No
Act No. 290	Yes		
	Regular Session of 1959[24]		
*Act No. 11	No	Act No. 106	Yes
Act No. 15	No	Act No. 111	No
Act No. 16	Yes	Act No. 112	Yes
Act No. 17	Yes	Act No. 121	Yes
Act No. 20	No	Act No. 122	No
Act No. 82	Yes	S. C. R. No. 28[25]	No
Act No. 89	No	*H. C. R. No. 5[26]	No
Act No. 101	Yes	H. C. R. No. 9[27]	Yes
Act No. 102	Yes	H. C. R. No. 25[28]	No

16. See *Id.*, pp. 238, 239.
17. See *Id.*, pp. 239, 240.
18. See LA. HOUSE J. 984-986 (1958).
19. See *Id.*, pp. 1984, 1985.
20. See *Id.*, pp. 2040, 2041.
21. See LA. SENATE J. 971, 972 (1958).
22. See *Id.*, pp. 1076, 1077.
23. See *Id.*, pp. 1613, 1614.
24. The 1959 Acts had not been printed and distributed at the time this research was done.
25. See LA. HOUSE J. 278, 279 (1959).
26. See LA. SENATE J. 79 (1959).
27. See *Id.*, p. 71.
28. See *Id.*, pp. 206, 207.

TABLE 2 — *Continued*

Authorization:	Restrictive Section:	Authorization:	Restrictive Section:
H. C. R. No. 33[29]	No	H. C. R. No. 45[31]	No
H. C. R. No. 34[30]	No	H. C. R. No. 46[32]	Yes

29. See *Id.*, pp. 169, 170.
30. See *Id.*, pp. 170, 171.
31. See *Id.*, p. 543.
32. See *Id.*, p. 544.

TABLE 3

LIST OF LEGISLATIVE APPROPRIATIONS SINCE 1948[1] TO PAY JUDGMENTS[2] AGAINST THE STATE OF LOUISIANA

Act No.:	Tort Claims:	Other Claims:	Act No.:	Tort Claims:	Other Claims:
201 of 1948	$ 250.00	$	94 of 1955		1,666.66
205 of 1948	443.00		95 of 1955		2,666.66
206 of 1948	100.00		99 of 1955	750.00	
209 of 1948		45,765.06	100 of 1955	500.00	
330 of 1948	344.03		223 of 1956	3,500.00	
490 of 1948		2,025.52	508 of 1956		2,000.00
491 of 1948		1,246.00	24 of 1959	2,461.00	
377 of 1950	4,258.82		30 of 1959	3,000.00	
547 of 1952	6,465.51		31 of 1959	250.00	
548 of 1952	13,112.08		32 of 1959	1,500.00	
549 of 1952	3,756.34		33 of 1959	750.00	
550 of 1952	21,488.40		34 of 1959	750.00	
555 of 1952	29,500.00		35 of 1959	750.00	
556 of 1952	6,000.00		36 of 1959	5,000.00	
173 of 1954	28,500.00		53 of 1959	15,625.00	
192 of 1954	50,000.00		59 of 1959	800.00	
193 of 1954	9,420.00		64 of 1959	2,461.00	
199 of 1954	10,000.00		74 of 1959	3,000.00	
206 of 1954		8,000.00	84 of 1959		1,351.36
207 of 1954		9,500.00	85 of 1959	915.00	
208 of 1954	800.00		88 of 1959	9,500.00	
237 of 1954	30,000.00		90 of 1959	7,000.00	
244 of 1954	12,000.00		91 of 1959	2,834.00	
363 of 1954		897,465.72	92 of 1959	2,138.00	
5 of 1955	6,000.00		128 of 1959	20,457.00	
24 of 1955		11,977.50	129 of 1959	17,000.00	
25 of 1955	80,184.19		130 of 1959	16,500.00	
47 of 1955	14,000.00		132 of 1959	21,000.00	
				$465,063.37	$983,664.48

Total amount of judgments on non-tort claims, 1948-1959, both inclusive	$983,664.48
Less amount of Jefferson Sulphur Co. judgment	897,465.72
	$ 86,198.76
Total amount of judgments on tort claims, 1948-1959, both inclusive	$465,063.37

1. Appropriation bills to pay judgments against the State were introduced in 1957, but were never passed, probably because of an insufficiency of funds. No judgments against the State were paid in 1958. Senate Concurrent Resolution No. 41 of 1958 promised the payment thereof as soon as funds were available.
2. Exclusive of interest and court costs on some judgments.