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tained the information should have been of no consequence, for facts in possession of a claimant before the commission of a crime may be easily divulged thereafter in response to an offer to pay a reward, thereby completing a contract. If the logic of this decision is rigidly followed, the result might be to deny claims which could be considered valid even under a strict contractual theory.

It is submitted that difficulties such as that encountered in the instant case could be avoided by adoption of a theory similar, in result at least, to that of the German code. This has been done, in effect, in the case of statutory offers of rewards. The strict adherence to the contractual theory in cases involving rewards for solution and punishment of crime is a survival of an age when *consensus ad idem* was very nearly a judicial obsession. The German view is based upon sound public policy, and possibly upon a more enlightened view of the true purpose of rewards of this nature, which is to bring the guilty to justice, and not merely to contract with an individual. However the adoption of such a policy might be accomplished,¹³ the law would be rid of an unnecessary source of complexity were it to impose upon the offeror of a reward of this type the obligation of paying the sum he has stipulated upon receipt of the service which he has requested, without inquiry into motive or knowledge.

George W. Hardy III

STATES — AMENABILITY OF STATE AGENCY TO SUIT

Plaintiff, basing his suit on breach of warranty, sought to recover from the Louisiana Board of Institutions the value of twenty registered breeding cows which died from eating al-

13. There are three possible methods by which this might be done in Louisiana :

(1) Enact a statute similar to the German provision.

(2) It would be possible, unless specific terms to the contrary were contained in the offer itself, to interpret a reward offer as an offer to pay for a result rather than an offer to contract for a result, the only acceptance necessary being the submission of a claim after performance has been rendered.

(3) In addition, the proper result could be achieved by reliance on the concept of quasi-contract embodied in LA. CIVIL CODE art. 2294 (1870) : "All acts, from which there results an obligation without any agreement, in the manner expressed in the preceding article, form quasi contracts. But there are two principal kinds which give rise to them, to wit : The transaction of another's business, and the payment of a thing not due." It is to be noted that payment in error and *negotiorum gestio* are definitely stated not to be the only types of quasi-contract. Thus, from a theoretical point of view, the introduction of such a policy as suggested would not have to be fitted into any rigid category, such as unjust enrichment, payment in error, or *negotiorum gestio*.

legedly unfit molasses purchased from the Louisiana State Penitentiary. The district court granted recovery, stating that when the Legislature authorized the penitentiary to engage in the proprietary function of selling molasses it necessarily consented to be sued for breach of warranty if the products it sold were unfit for their designated use. On appeal to the Supreme Court, *held*, reversed.¹ The defendant as an unincorporated administrative agency has no separate existence apart from the state, and any action directed against it is in reality a suit against the state. Since the Legislature has not here consented to be sued, the action is not maintainable. *Cobb v. The Louisiana Board of Institutions*, 229 La. 1, 85 So.2d 10 (1956).

Article 3, section 35, of the 1921 Louisiana Constitution provides the basis for the rule that the state may not be sued without the consent of the Legislature. However, this mandate has not always been literally complied with where the state has engaged in a proprietary function. In *State ex rel. Shell Oil Co. v. Register of State Land Office*² the court ordered the defendant, an unincorporated agency of the state, to accept delay rentals on mineral leases which had been executed by the Governor. The permission of the Legislature was held not necessary for that suit. The court reasoned the state was amenable to suit because it had accepted the benefits of this agreement and thus it, like an individual, could not ignore the correlative burdens. Suits against the State Mineral Board have been entertained when that agency was engaged in the proprietary function of leasing state-owned lands for mineral development.³ In allowing these actions, the court has stated that since the agency involved is a body corporate, authorized to sue and be sued, a suit against it is not a suit against the state.

The instant case enlarges the area of state immunity from suit. The decision of *State ex rel. Hart v. Burke*,⁴ which the court here relied upon, did grant the state immunity from suit, but the decision was reached on narrow grounds which did not involve a proprietary function of the state. In that case the court refused to allow a state bondholder to sue the state for the recovery of interest due on the bonds but the decision was grounded

1. Moise, J., dissented.

2. 193 La. 883, 192 So. 519 (1939).

3. *Texas Co. v. State Mineral Board*, 216 La. 742, 44 So.2d 841 (1949); *Begnaud v. Grubb and Hawkins*, 209 La. 826, 25 So.2d 606 (1946).

4. 33 La. Ann. 498 (1881).

upon a specific constitutional provision which prohibited the payment of interest on the bonds. The court in the instant case, in overruling in part a 1946 Supreme Court decision,⁵ specifically held that the state is not amenable to suit even though it has contracted in a private capacity, but it reiterated the exception that recognizes the validity of an action against an agency of the state that is a body corporate. The result of the decision is to put parties dealing with the state on notice that the area of the state's amenability to suit is being narrowly confined. It would seem that the test laid down by the court depends primarily upon whether or not the agency of the state being sued is incorporated or not. If it is incorporated, then the court will allow the suit on the ground that it is not against the state, but against that particular agency. If the agency is not incorporated, then despite the fact that the Legislature has set it up as a proprietary enterprise, it will not be amenable to suit. This conclusion emanates from the theory that an unincorporated agency has no separate existence apart from the state, and therefore a suit against it is one against the state.⁶

The decision in the instant case not only reverses a trend of the jurisprudence, but also adversely affects the Legislature's purpose in authorizing the state penitentiary to sell vegetables and sugar.⁷ As a practical matter, the competitive position of the penitentiary will be greatly weakened, for any potential purchaser will be put on notice that any purchases from the penitentiary will be at his own risk and without warranty. It would seem that the better result would be to hold that the state consents to waive its immunity from suit whenever it engages in proprietary activities, rather than to distinguish between unincorporated agencies which have no separate existence apart from the state and those which are bodies corporate. Furthermore, it is certainly arguable that the Legislature by authorizing the penitentiary to sell certain products evidently intended that it warrant the fitness of products sold and that it or the state should become amenable to suit for breach of such warranty. It is submitted that when the state ceases to govern and enters

5. *Begnaud v. Grubb and Hawkins*, 209 La. 826, 25 So.2d 606 (1946).

6. *But see State ex rel. Shell Oil Co. v. Register of State Land Office*, 193 La. 883, 192 So. 519 (1939), which the court in the instant case distinguished on the basis that it involved only a question of estoppel, but which at least recognized the importance of the distinction between a proprietary function and a governmental function of the state.

7. LA. R.S. 51:692.10 (1950), *as amended*, La. Acts 1954, No. 429, p. 806.

into business it should be subject to all obligations to which individuals in that business are subjected.

Billy H. Hines

TAXATION—PRESCRIPTION—WHEN LOUISIANA INHERITANCE TAX
BECOMES DUE

Twenty-four years after the death of the *de cuius*, her heirs instituted proceedings to be placed in possession of the succession, and sought a rule against the Louisiana Inheritance Tax Collector to determine and fix the amount of state inheritance taxes,¹ if any, which might have been due. The heirs contended that the inheritance taxes were due immediately upon the death of the *de cuius*, or alternatively, that they were due six months after her death; but, that in either case more than three years having elapsed, they had prescribed.² The state, on the other hand, contended that they were not due until the opening of the succession and consequently had not prescribed, or alternatively that, if any prescription had accrued in favor of the heirs, such prescription had been waived or renounced by virtue of their pleadings.³ In the district court, judgment was rendered for the state on the ground that the constitutional amendment establishing uniform prescriptive periods had no application to inheritance taxes.⁴ The court of appeal reversed, and found that the claim had prescribed.⁵ On certiorari, the Supreme Court, *held*, reversed and remanded. State inheritance taxes are not due until a final judgment of the court fixing the amount payable. *Succession of Brower*, 228 La. 785, 84 So. 2d 191 (1955).

In 1921 an act was passed establishing the present state inheritance tax, but no provision was made for prescription.⁶ The act was then amended in 1924 to provide prescriptive periods of three and five years, running from the opening of the succession.⁷ In 1938 a constitutional amendment established a

1. LA. R.S. 47:2401-2423 (1950).

2. Brief for Appellees, p. 21, *Succession of Brower*, 228 La. 785, 84 So.2d 191 (1955).

3. Brief for Appellants, p. 10, *Succession of Brower*, *ibid*.

4. LA. CONST. art. XIX, § 19.

5. *Ibid.* provides: ". . . that all taxes and licenses, other than real property taxes shall prescribe in three years from the 31st day of December in the year in which such taxes or licenses are due."

6. La. Acts 1921 (E.S.), No. 127, p. 323, now LA. R.S. 47:2401-2423 (1950).

7. La. Acts 1924, No. 82, p. 119.