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HOUSE OF REPRESENTATIVES

DURING THE

FIRST CALLED SESSION TWENTY-FOURTH LEGISLATURE

BEGUN AND HELD AT

THE CITY OF AUSTIN, TEXAS, OCTOBER 1, 1895.

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qualified as a special distri[illegible] of one of the district courts of this state, contrary to the Constitution of Texas; thereby forfeiting their memberships in this body; now, therefore, be it

Resolved, that the matter be referred to the Committee on Privileges and Elections, with instructions to carefully investigate the matters herein contained, and report to this House at as early date as possible.

The resolution was read second time, and

Mr. Moore of Morris offered the following amendment:

Amend by inserting "Judiciary No. 1," instead of "Privileges and Elections."

Mr. Brigance moved to table the amendment, and the motion was lost.

The amendment was adopted.

A division of the question was called for, and the resolution, so far as it referred to Mr. Ward, was lost, and so far as it referred to Mr. Turner, it was adopted.

Mr. Dashiell, chairman, submitted the following report:

Hon. T. S. Smith, Speaker of the House:

Your committee appointed to notify the Governor that the members of the House of Representative have assembled in extra session, a quorum being present, and that they are ready to receive any communication that he may desire to present, have performed their duty, and it is so reported.

DASHIELL,
JENNINGS,
GOUGH.

MESSAGE FROM THE GOVERNOR.

The following message was received from his Excellency the Governor, transmitted through his private secretary, Hon. W. F. Bowman:

To the Senate and House of Representatives:

The extraordinary occasion which made it necessary to call you from your homes and business at this time, with the consequent cost to the public and inconvenience to yourselves, is much regretted, and the step was not taken except upon earnest demand from many sections of the State, and after mature consideration. The people of Texas have ever been ready to protect the honor of the State at whatever cost, and those charged with the duties of government should not hesitate to reflect their will, regardless of personal discomfort.

By an amendment of the laws relating to occupation taxes, approved April 6, 1889, provision was made for taxing "every fight between man and man, * * * $500 for each performance." What consideration was given this subject by the Legislature which enacted the statute is not known, but it is not unreasonable to presume that it received little attention; for besides the usual brutality of such exhibitions, it should offend the sensibilities of an enlightened people that revenue should be the fruit of such social disorders, and that sovereignty should become a party to the frequent homicides attending them by express authorization and immunity from punishment. However this may be, this lamentable error was promptly corrected by the act of March 23, 1891, which denounced and prohibited such encounters.

At the same session of the Legislature, and on the authority contained in section 43, article 3, of the Constitution, provision was made for the appointment by the Governor of three commissioners to revise and digest the laws, civil and criminal. The act provided that the commissioners should adopt such of the Revised Statutes, civil and criminal, as had not been repealed or amended, together with their present arrangement of titles, chapters, articles, marginal references and chapter head lines; that all statutes passed since the adoption of the Revised Statutes in 1879, including those that may have been passed at the time the commissioners should submit their report, should be collated and arranged into their appropriate titles, chapters and articles, and that the commissioners should embody the result of their labors in two bills, one containing the entire body of civil statutes and the other the entire body of statutes relating to criminal law, to be submitted to the Governor, who should cause them to be printed and presented to the succeeding Legislature.

A careful reading of the act makes it plain that the commissioners were not authorized to do more than collect and arrange existing statutes, taking the Revised Statutes of 1879, unrepealed and not amended, as the basis. The two bills were accordingly prepared, printed and submitted to the Twenty-third Legislature. Following the positive direction of the law under which they were acting, without making radical changes in them, to so revise the statutes as to render them concise, plain and intelligible, the commissioners incorporated in the Civil Statutes the act of 1889 and in the Criminal Statutes the act of 1891, referred to, the one as part of article 5049 and the other as article 1005. The Twenty-third Legislature did not adopt the work of the commissioners, but with some changes, though there were none

material made in the statutes under consideration, the two acts were adopted by the Twenty-fourth Legislature, the Civil Statutes finally passing April 23 and the Criminal Statutes April 25, 1895. Neither of the statutes was approved by the Governor. The Civil Statutes were received in the Executive Office April 29th, and were deposited in the State Department May 10th. The Criminal Statutes were received in the Executive Office April 25th, and were deposited in the State Department May 8th. Prize fights being advertised to take place in this State, the Attorney General, on the 13th day of July, rendered an opinion that they were prohibited by the legislation recited, basing his conclusions on the following among other grounds:

(1) That in 1891, with special attention called to the subject, the Legislature denounced and prohibited prize-fighting in this State by express enactment. Manifestly before this policy should be reversed and this law declared repealed, the legislative purpose to repeal should clearly and unmistakably appear. Special provisions applicable only to particular subjects take precedence over general provisions which would otherwise control. In such cases especially, repeals by implication are not favored.

(2) The act providing for a revision of the civil and criminal statutes contemplated one general system of revision, the use of two bills for that purpose being merely for convenience. In such case, assuming that there is an irreconcilable conflict between the civil and penal codes on the subject of prize-fighting the rule is to look to the date of the original enactment for the last expression of the legislative will, and as the penal statute was originally passed subsequent to the license law, it should prevail.

The fundamental canon of statutory construction is to search for and declare the intention of the Legislature. The history of the various enactments establishes with reasonable certainty that in adopting the work of the revisers the Legislature did not intend to change the status of legislation on this subject, and as a consequence the penal statute is in force. This view is supported by the report to the Governor of the commissioners who revised and digested the statutes, where they said: "Any suggestions as to amendments to the laws are omitted for the reason, first, that the act creating the commission does not seem to contemplate it, and such an undertaking would involve a greater responsibility than seems to have been devolved on this board."

Upon this opinion an executive proclamation was issued on the 27th day of July, warning all persons against its violation, and urging the various local authorities to enforce the statute. This proclamation has never been revoked.

On September 22nd the presiding judge of the Court of Criminal Appeals, in habeas corpus proceedings, held, in effect, that the act of 1889, licensing fights between man and man, as brought forward in the Revised Civil Statutes, repealed the criminal statute against such contests incorporated in the revised Penal Code. While it is believed that this decision of a single judge of a court of three members is not final except in the case in which it was rendered, it is that of a jurist of distinguished ability and large experience, and may serve to create an apparent conflict of authority and embarrass the execution of the law. It is not certain that a decision of the question by the Court of Criminal Appeals or the Supreme Court will be rendered in time to meet existing emergencies, and it was deemed proper that all controversy should be removed by legislation. Those who believe that a prohibitory law now exists should not hesitate to cure any possible defect, and those who are of the contrary opinion should support such a measure upon general considerations of its wisdom.

It is submitted that the situation in this State demands the immediate enactment of a statute making prize-fighting, whether with or without gloves, and fights between men and animals, a felony, and that it should be operative from and after its passage. Extended advocacy of a law prohibiting such exhibitions is unnecessary in view of your recent unanimous action on the subject. The concensus of modern opinion is that prize-fighting is brutal and degrading. It is denounced by the legislation of every State in the Union. In Alabama, California, Colorado, Connecticut, Florida, Indiana, Illinois, Iowa, Kansas, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, North Carolina, Ohio, Oregon, Rhode Island, South Dakota, Vermont, Virginia, West Virginia, and Wisconsin, it is a felony. Besides the inherent justice of such penalty, it will in itself be the most effective remedy for the enforcement of the law, and will put an end to local winks at its violation, where it is only a misdemeanor, and arrests and imposition of fines after the offense has been committed.

It may be that no serious opposition will be urged to the passage of such a law, but that resistance will be offered to its becoming immediately operative,

in order to afford protection to prize-fights advertised to take place during the present month, the management of which, it is asserted, has invested large sums of money and incurred heavy obligations by contracts. The suggestion upon which this opposition to an emergency clause in the law is based is not unworthy the defiance of public propriety and good order which is characteristic of such exhibitions. It rests upon the audacious proposition that a free people can forfeit or have bargained away the right to preserve the public peace, the public morals, or the public safety. The Supreme Court of the United States, in Stone v. Mississippi, 101 U. S., 816, said: "No legislature can bargain away the public health or the public morals. The people themselves can not do it, much less their servants. Government is organized with a view to their preservation and can not divest itself of the power to provide for them."

Nor does the fact that contracts have been entered into, if true, abridge the right of the State to prohibit this exhibition. The same court, in New Orleans Gas Company v. Louisiana Light Company, 115 U. S., 672, said: "The constitutional prohibition upon State laws impairing the obligation of contracts does not restrict the power of the State to protect the public health, the public morals, or the public safety, as the one or the other may be involved in the execution of such contracts. Rights and privileges arising from such contracts with a State are subject to regulations for the protection of the public health, the public morals, and the public safety, in the same sense and to the same extent as are all contracts and all property, whether owned by natural persons or corporations."

And in the celebrated case of Mugler v. Kansas, 123 U. S., 669, this court said: "It is true that when the defendants in these cases purchased or erected their breweries the laws of the State did not forbid the manufacture of intoxicating liquors. But the State did not thereby give any assurance, or come under any obligation, that its legislation upon the subject would remain unchanged. Indeed as was said in Stone v. Mississippi, above cited, the supervision of the public health and the public morals is a governmental power continuing in its nature, and to be dealt with as the special exigencies of the moment may require, and that for this purpose the largest legislative discretion is allowed, and the discretion can not be parted with any more than the power itself." So in this instance, if no law now exists, the State does not give any assurance, or come under any obligation, that its legislation upon the subject will remain unchanged.

But these principles need not be here invoked. By proclamation all persons have been given notice that this exhibition would not be permitted, and whatever has been done by its projectors was with full responsibility for the consequences. The public interests require that this exhibition especially should be suppressed. Discountenanced by Mexico and the territories, outlawed and driven from every State, it is proposed to assemble a horde of ruffians and gamblers and offer here this commanding insult to public decency. Against it the instincts and the pride of the people revolt, and your prompt and resolute action will spare them the ignominy and the shame. It will do another thing. It will recall to the great city of the State, inhabited by a manly and generous and enlightened people, the wholesome and assuring truth, now obscured by anger and misconception, for which it will hereafter thank you, that no part of its material prosperity, no part of its social and intellectual and industrial progress, no part of its splendid destiny, is bound up in an endeavor to hold within its limits one of the most disgraceful orgies that ever promised to discredit and dishonor Texas.

Impelled by a sense of duty to exert every executive power to avert this calamity, you have been called in special session, and the responsibility for the consequences is now divided with you. That you will meet it as becomes the representatives of the whole people, anxious and ready to protect the fair name of the State, is not doubted.

C. A. CULBERSON.

Executive Office,
Austin, October 1, 1895.

Mr. Owsley offered the following resolution, which was read second time and adopted:

Whereas, the right of the Hon. R. H. Ward to his seat as a member of the House of Representatives has been challenged and questioned, and objection has been raised to his taking part in the proceedings of this body; and

Whereas, no good and sufficient grounds exist for such challenge; therefore

Be it resolved by the House of Representatives of the Twenty-fourth Legislature, that the said R. H. Ward has not in any manner forfeited any right or privilege belonging to him as a duly elected member of this body, and that he has a perfect right and is in every way entitled to participate in all of the proceedings of this House as one of the

first called session of the Twenty-fourth Legislature, stand adjourned sine die Monday, October 7, 1895, at 12 o'clock noon.

(Signed—Smith of Brazos, Moody, McLemore.)

The resolution was read second time, and

Mr. Peyton offered the following amendment:

Strike out 12 o'clock and insert 11 o'clock a. m.

The amendment was accepted.

On motion of Mr. Gough the resolution was laid on the table subject to call.

Mr. Beall moved to adjourn until 3 o'clock p. m. to-day, and the motion was lost.

MESSAGE FROM THE GOVERNOR.

The following message from his Excellency, the Governor, was received and read:

To the Senate and House of Representatives:

In behalf of the people of Texas I congratulate you upon the prompt and decisive work of yesterday. Accomplished without distinction of party, it is a proclamation by the whole people that brutal and degrading practices thereby inhibited have no place among us, and that there will be no step backward in the progress of the State.

The meaning of section 37, article 3, of the Constitution as to the time within which bills may be passed prior to final adjournment is not entirely clear, but in view of that provision it is respectfully suggested that you should not adjourn prior to Monday next. If this suggestion is accepted and acted upon, attention is called to the following subjects of legislation:

1. At the last session an appropriation of $21,000 for first, second and third classes of public printing and binding, and for printing papers for first and second classes of public printing was made, but in enrollment of the bill there was a clerical error which reduced the sum to $2100, which should be corrected. It also appears that at the last session an appropriation of $720 each year was made for an expert shoemaker and $720 a year for an expert binder and teacher at the Deaf and Dumb Asylum. In the enrollment of the bill these two items were consolidated, making a single appropriation of $720 each year for the two purposes.

2. One of the sources of the available school fund with which the public schools are supported is the interest derived from the investment of the permanent fund in municipal bonds. There is now on hand in the treasury uninvested money belonging to the permanent school fund amounting to about $238,000. This accumulation arises from two causes: (1) The unprecedented foreign demand for Texas municipal securities, by which the State Board of Education, limited to the purchase of bonds which bear at least 5 per cent interest, is practically driven out of the market; and (2) the action of counties in funding their bonds now held by the State, and which bear 6 per cent interest, into 5 per cent bonds, which they sell to foreign investors oftentimes at a premium; the Attorney General holding that the State Board of Education is not authorized to exchange 6 per cent for 5 per cent bonds. It is recommended that existing law on the subject be so amended, with appropriate safeguards, as to authorize the State Board of Education to invest this money in county bonds in competition with foreign investors, for otherwise the money will remain idle in the Treasury. The rate of interest should either be reduced or the requirement that the amount paid for such bonds shall not exceed the par or face value thereof repealed.

3. Under date of September 30, the Commissioner of the Land Office writes me as follows: "Under the 22d section of chapter 99, Acts of 1887, and amendments thereof, authority was conferred on the Commissioner of the General Land Office to sell lands isolated or detached to any person, except to a corporation. Under this provision of the law many thousand acres of land were sold, by both my predecessors in this office, to persons other than actual settlers. The Supreme Court, during your term as Attorney General, decided in the Liberty county cases, that all sales made to others than actual settlers of lands not detached or isolated entirely from other public lands in any manner belonging to the State, were illegal and void. This department was early advised by the Attorney General, upon request of the Commissioner of the Land Office for his opinion, that such sales, being illegal and void, it was his duty to cancel the sales and put the lands on the market for re-sale. This course was pursued for some weeks, when it became evident that these illegal sales were so numerous and their effects so far reaching, and was working so great and irreparable injury on many more purchasers than could possibly have been supposed, that I felt that I would do a better service to the State by suspending the work of cancellation until the Legislature should assemble, in the hope that you might concur in my view, and deem it to the interest of the State to validate

the sales, where other interests have not heretofore intervened.

"At first it was supposed that these sales were only made by my immediate predecessor, and that the purchasers could be reimbursed for moneys expended in the illegal purchases, and the present Legislature in the regular session appropriated $25,000, a part of which was intended to be so used.

"I now have the honor to suggest that these sales are found to have been made all the way through the past eight years, and that to refund all the money to the purchasers would probably require a sum of not less than one hundred to one hundred and fifty thousand dollars; certainly as much as the former amount.

"In view, therefore, of the distressed condition of the treasury, and the great injury it has already done and will do to many persons who have made large and valuable improvements, if the sales are to be cancelled, I would most respectfully and urgently suggest that an act validating these sales would be a wise act, and not only just to purchasers, but in the interest of wholesome economy."

I concur in this recommendation of the Commissioner, and hope it will be promptly acted upon.

C. A. CULBERSON.

Executive Office,
Austin, October 3, 1895.

(Speaker in the chair.)

HOUSE BILLS ON FIRST READING.

By Mr. Dashiell:

House bill No. 5, a bill to be entitled "An act to amend article 3893 of the Revised Civil Statutes, relating to the investment of the permanent school fund."

[Section 1. Be it enacted by the Legislature of the State of Texas, that article 3893 of the Revised Civil Statutes be amended so that hereafter it shall read as follows:

Nothing in the preceding article shall be so construed as to relieve the Comptroller or the Board of Education from the duty of a careful examination of any bonds offered as an investment for the permanent public free school fund of the State, an investigation of the facts tending to show the value and validity thereof, and such Board of Education may decline to purchase the same unless satisfied that they are a safe and proper investment for such funds; and no county bonds shall be purchased as an investment for the permanent public free school fund that do not bear interest at the rate of at least five per centum per annum; and it shall be the duty of the State Board of Education and Comptroller to decline to purchase the bonds of any county whose indebtedness, inclusive of the bonds so offered, shall exceed five per centum of the assessed value of the real estate in such county; and if default be made in the payment of interest when due upon such bonds, the State Board of Education may, at any time prior to the payment of such overdue interest, elect to treat the principal as also due, and the same shall thereupon, at the option of the State Board of Education, become due and payable; and the payment of both such principal and interest shall in all cases be enforced in such manner as is or may be provided by law, and the right to enforce such collection shall never be barred by any law or limitation whatever.

Sec. 2. Emergency clause.]

Read first time and referred to the Committee on Finance.

By Mr. Mills:

House bill No. 6, "An act making an appropriation for public printing."

[Section 1. Be it enacted by the Legislature of the State of Texas, that the sum of twenty thousand dollars, or so much thereof as may be necessary, be and the same is hereby appropriated for the purpose of paying for public printing.

Sec. 2. The fact that there is no appropriation to pay for public printing creates an emergency and an imperative public necessity that this law go into immediate effect, and that the constitutional provision requiring bills to be read on three several days be suspended, and that this act take effect from and after its passage, and it is hereby so enacted.]

Read first time and referred to Committee on Finance.

Mr. Smith of Brazos moved that the clerk be directed to have printed 300 copies of the Governor's recent message, in time to be delivered to the House at 3 o'clock p. m. to-day.

The motion was lost.

On motion of Mr. Beall, the House adjourned until 3 o'clock p. m. to-day.

AFTERNOON SESSION.

The House met at 3 o'clock p. m., pursuant to adjournment.

Speaker Smith in the chair.

Roll called, and the following members present:

Allen of Dallas.	Barron.
Andrews.	Bass.
Armistead.	Beall.
Avery.	Beaird.
Bailey.	Blair.

Cuba in their prolonged struggle for independence has brought them to the notice and entitled them to the admiration of the civilized world: and

Whereas the people of Texas will never look with indifference upon the struggles of an oppressed people for freedom and independence; therefore be it

Resolved, that we extent to the Cuban patriots our sympathy and congratulations in their efforts to throw off the Spanish yoke of despotism.

Be it further resolved, that it is the sense of this House that the United States Government ought to extend to the Cuban revolutionists belligerent rights.

While Mr. Peck was addressing the House on above resolution, the following message was received from his Excellency the Governor:

To the Senate and House of Representatives:

At the urgent request of representatives of certain cities of the State, another matter is called to your attention. By section 16 of the act approved July 4, 1879, General Laws 1879, called session, p. 15, it is provided: "No delinquent taxpayer shall have the right to plead in any court or in any manner rely upon any statute of limitation by way of defense against the payment of any taxes due from him or her either to the State or any county, city or town." This provision was not brought forward by the Commissioners in the Revised Statutes of 1879. It is represented that in many cities of the State a large amount of taxes is now due, upon the collection of which payment of interest upon their bonds largely depends, and that unless such a law as that referred to be passed at this session of the Legislature the municipal authorities will be compelled to cause a multiplicity of suits to be filed against delinquent taxpayers in order to prevent the bar of limitation of two years.

C. A. CULBERSON.

Executive Office,
Austin, October 3, 1895.

By unanimous consent, Mr. Allen of Dallas introduced the following bill:

By Mr. Allen of Dallas:

House bill No. 8, a bill to be entitled "An act to prevent delinquent tax payers from pleading the statute of limitation by way of defense against the payment of any taxes due from him or her either to the State or any county, city or town."

[Sec. 1. Be it enacted by the Legislature of the State of Texas, that no delinquent tax payer shall have the right to plead in any court or in any manner rely upon any statute of limitation by way of defense against the payment of any taxes due from him or her either to the State or any county, city or town.

Sec. 2. Emergency clause.]

Read first time and referred to Judiciary Committee No. 1.

Mr. Peck resumed the floor in advocacy of the resolution relating to the Cuban revolutionists.

After further consideration,

Mr. Mills moved the previous question, which was seconded and the main question was ordered.

Upon the resolution yeas and nays were demanded by Mr. Jennings, Mr. Lillard, and Mr. Bertram.

At this juncture the following message was received from the Senate:

Senate Chamber.
Austin, Texas, Oct. 3, 1895.

Hon. T. S. Smith, Speaker of the House:

I am directed by the Senate to inform the House of the passage by the Senate of the following Senate concurrent resolution No. 1, to-wit:

Be it resolved by the Senate, the House of Representatives concurring, that the special session of the Twenty-fourth Legislature of Texas shall be adjourned sine die at 11 o'clock a. m. on Monday, the 7th day of October, 1895.

Also, the Senate concurs in House amendments to Senate bill No. 3 and Senate bill No. 1.

Also the passage of Senate concurrent resolution No. 2, viz.:

Be it resolved by the Senate, the House concurring, whereas, the indomitable courage and heroism of the patriots of Cuba in their prolonged and determined struggle for independence has entitled them to the admiration of the civilized world;

And whereas, the struggle of the Cuban patriots is similar to that by our forefathers, in that it is directed against monarchical tyranny and oppressive taxation and in favor of a government by the people:

And whereas, the people of Texas remembering their own struggle for liberty never look with indifference upon the struggles of an oppressed people for freedom and independence; therefore be it

Resolved, That we extend to the Cuban patriots our sympathy and congratulations in their heroic efforts to cast off the yoke of oppression and despotism.

Be it further resolved, That it is the sense of the Legislature of Texas that the United States government ought to