MESSAGE

OF

GOVERNOR CHARLES A. CULBERSON

TO THE

TWENTY-FOURTH LEGISLATURE OF TEXAS

IN SPECIAL SESSION.

1895.

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BEN C. JONES & CO., STATE PRINTERS
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PROCLAMATION BY THE GOVERNOR.

EXECUTIVE OFFICE,
AUSTIN, September 26, 1895.

To whom it may concern:

Whereas, a decision by the presiding judge of the Court of Criminal Appeals lately rendered will embarrass the execution of the laws of the State against prize-fighting and of the associated infractions of good order and the public peace, now imminent and threatened; and

Whereas, there is no certainty of a determination of the soundness of said decision by a court of final resort in time for existing emergencies; and

Whereas, it is proper in avoidance of every pretext for disregarding the laws that all controversy respecting them should be removed by legislation, and all reasonable pacific means resorted to in the first instance to enforce them; and inasmuch as the present Legislature unanimously passed such a prohibitory law on the 16th and 21th days of April, to become effective August 1, 1895, as part of the Penal Code, it should require a session of only a few days at a small cost to remove any possible defect and put the law into immediate operation, an extraordinary occasion has arisen requiring the Legislature to be convened in special session.

Now, therefore, I, Charles A. Culberson, Governor of the State of Texas, by virtue of the authority vested in me by the Constitution thereof, do hereby call a special session of the Twenty-fourth Legislature, to be convened in the city of Austin, beginning at noon Tuesday, October 1, 1895, for the following purposes:

1. To denounce prize-fighting and kindred practices in clear and unambiguous terms, and prohibit the same by appropriate pains and penalties, putting the law into immediate operation, and making necessary provision for its enforcement, so that proposed exhibitions of this character within the State may be prevented, the undoubted will of the people upon the subject respected, and this affront to the moral sense and enlightened progress of Texas averted.

2. To consider and act upon such other matters as may be presented pursuant to section 40, article 3 of the Constitution.

In testimony whereof, I have hereunto set my hand and
[Seal.] caused the seal of State to be affixed, this the 26th day of September, A. D. 1895.

C. A. CULBERSON,
Governor of Texas.

By the Governor.

ALLISON MAYFIELD,
Secretary of State.

MESSAGE.

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 headlines; 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 the 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 29, and were deposited in the State Department May 10. The Criminal Statutes were received in the Executive Office April 25, and were deposited in the State Department May 8. 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 22 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, 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.