lar ruling was made in Railway Co. v. Bland, 34 S. W. 675, recently decided by this court. The insufficiency of the evidence as raised in the twelfth assignment of errors was not called to the attention of the trial court by a motion for new trial. The motion for new trial, insomuch as it complained of the verdict being against the weight of evidence, was too general. Under the facts of the case, if we could hold that the evidence of witness Talbot, objected to, was not admissible, we do not think it was calculated to influence the jury. The injured condition of the cattle and their depreciation in value was clearly shown independent of the evidence objected to. We do not think its admission is reversible error. Judgment affirmed.

MANOR CASINO et al. v. STATE.

(Court of Civil Appeals of Texas. March 18, 1896.)

INJUNCTION—CRIMINAL LAW—PASSAGE OF STATUTE—SPECIAL SESSION.

1. In the absence of a statute, injunction will not lie to enjoin the sale of liquor in violation of law, unless the sale will injuriously affect complainant's property rights.

2. Const. art. 3, § 40, prohibiting the legislature in special session from legislating upon subjects not "presented" to it by the governor, requires that the subject for legislation be presented to the legislature by the governor in writing.

3. Const. art. 3, § 40, providing that, where the legislature shall be convened in special session, there shall be no legislation on subjects other than those designated in the proclamation of the governor calling such session, or presented to them by the governor, is mandatory; and Act May 12, 1888, authorizing the issuance of injunction to restrain the violation of revenue and penal laws, is hence invalid for having been passed in violation thereof.

4. Subsequent approval of an act by the governor does not dispense with requisites which must exist in order to confer authority on the legislature to pass the act.

5. An act passed by the legislature, and signed by its presiding officers, and approved by the governor, may be shown to have been passed in violation of Const. art. 3, § 40, prohibiting legislation at special session on subjects not specified in the proclamation of the governor calling the session, or presented by him to the legislature.

Appeal from district court, Travis county; James H. Robertson, Judge.

Petition by the state against Manor Casino and others for injunction. There was a judgment for plaintiff, and defendants appeal. Reversed.

Geo. S. Walton, A. J. Gibson, and W. M. Walton, for appellants. M. M. Crane, Atty. Gen., and R. R. Lockett, Asst. Atty. Gen., for the State.

FISHER, C. J. Petition for injunction, of the state of Texas on the relation of the county attorney of Travis county, Texas, to restrain Manor Casino, a corporation under the laws of the state of Texas, its officers, agents, and employés, and Chas. A. Finn, as its secretary and individually, and F. A. Finn, as its treasurer and individually, from selling or exchanging or giving away, for the purpose of evading the provisions of the local option law, intoxicating liquor in justice precinct No. 2 of Travis county, Texas, the same being alleged to be a precinct in which local option is in force; and further to restrain said defendants (appellants here), their agents and employés, from engaging in the business of selling malt liquors exclusively without first paying the required taxes, procuring the required license, and filing the required bond; praying for immediate restraining order, and that it be perpetuated on final hearing. Original petition filed May 24, 1894. The appellants (defendants below) jointly and severally answered by general and special exceptions, general denial, and specially denying under oath each and every material allegation and equity of the petition. On October 11, 1894, appellants' exceptions to petition, general and special, were overruled by the court, except those relating to payment of taxes, procuring license, and filing a bond, which were sustained. Exceptions reserved. Final hearing had before the court January 15, 1895. Judgment perpetuating injunction as prayed for. Exceptions by appellants, and notice of appeal given in open court.

The relief asked by the state and that granted by the court below is to restrain by injunction an act characterized by law as a crime. Independent of a statute authorizing such a remedy, we do not believe that a court of equity will restrain the commission of a crime unless in a case in which the threatened act may injuriously affect the property rights of the complainant. City of Austin v. Austin City Cemetery Ass'n, 87 Tex. 336, 28 S. W. 528; 1 High, Inj. (3d Ed.) §§ 20, 68, 272. Therefore we must turn to the statute for authority for the relief granted by the court below. Doing this, we find that the twentieth legislature, at its special session May 12, 1888, passed a law authorizing the state, at the instance of the county or district attorneys or attorney general to pursue the remedy of injunction to restrain the violation of any revenue or penal law; and it is evident that by virtue of that act this action is prosecuted. The point was raised below by demurrer, and is here preserved, that the act in question is unauthorized and void, because the subject of this legislation was not embraced in the call of the executive in convening the legislature in special session, nor was it presented by the governor for its consideration. Section 40, art. 3, of the constitution reads: "When the legislature shall be convened in special session there shall be no legislation upon subjects other than those designated in the proclamation of the governor calling such session or presented to them by the governor." Section 8, art. 4, of the constitution states that the proclamation of the governor

shall state specifically the purpose for which the legislature is convened. If it be conceded that under the first section quoted subjects of legislation may be presented by the executive to the legislature in special session other than those embraced within the proclamation convening that body, we are clearly of the opinion that this must be done by a message or communication in writing by the governor, and that it was not intended that the expression, "presented to them by the governor," would authorize the governor to present subjects of legislation simply based upon a parol request to that effect, made to the legislature. The provisions of the constitution relating to the exercise of the privileges and duties of the governor in communicating officially with the legislature clearly contemplates that these functions must be exercised in written communications,—the method usual in such cases. This is clearly contemplated by section 21, art. 4, of the constitution, that prescribes the duties of the secretary of state. It is there required that he shall keep a fair register of all official acts and proceedings of the governor. These views are expressed in order to combat any possible contention that may be urged that the law in question is valid because it may have been passed by the legislature in response to a communication received from the governor that was not in writing, and the evidences of which were not preserved as an archive of his office or that of the secretary of state, or shown by the proceedings of the legislature. Our views upon this subject are also stated as prefatory to the consideration of the proclamations, messages, and communications that were delivered by the governor to the legislature. The courts will take judicial knowledge of the proclamations, messages, and public communications of the governor to the legislature. Wells v. Railway Co. (Mo. Sup.) 19 S. W. 530; Prince v. Skillin, 71 Me. 367. This being true, we ascertain that the following are the proclamations and communications issued by the governor which in any manner warrant legislation upon subjects submitted to the consideration of the Twentieth legislature in special session:

"Proclamation by the Governor of the State of Texas. To all to whom these presents shall come: Whereas, there is now in the state treasury a larger amount of money than is required for the economical administration of the government, and the near completion of the state capitol building requires that it should be inspected by representatives of the people with a view to its acceptance or rejection, and, if accepted, the proper provisions made for its occupancy, and there is an imperative public necessity for the amendment of the tax laws, so that, if found practicable, the burden of taxation may be lightened from the people; and as the state is indebted for services of school teachers of the public schools to an extent which greatly impairs their usefulness, and which requires such amendment of the school law as may most conduce to the effectiveness of our system of public education; and congress has now before it an act looking to the permanent settlement of the disputed claim of our state to Greer county, which, if it becomes a law, will necessitate prompt legislative action; and these several matters are of such grave importance and general interest as to create an emergency necessitating the convening of the Twentieth legislature in special session: Now, therefore, I, L. S. Ross, governor of Texas, do hereby issue this, my proclamation, convening the Twentieth legislature to meet in their respective halls in the city of Austin, on Monday, the sixteenth day of April, A. D. 1888, in special session, and do hereby designate the following as subjects of legislation, to wit: (1) To provide for the proper distribution of the surplus moneys now in the treasury, by necessary appropriations. (2) To inspect and make such provision for furnishing and preserving the new capitol as may be deemed proper for putting the capitol grounds in condition, and to determine what disposition shall be made of other state property at the seat of government. (3) To make such changes in the laws relating to taxation and revenue as may seem most consonant with the interests of the people, with the view of a more uniform and just assessment and certain collection, and a consideration of the advisability of reducing the present tax rate. (4) To make such alteration in the present law regarding the public education of the youth of our state as may be found necessary, and appropriations to pay any indebtedness that may have accrued by reason thereof; to make appropriations for our various charitable institutions requisite to their more extended usefulness and betterment; and for a geological survey of the state, if demanded by general public interest. (5) To make such changes in subdivision 24 of article 566, Rev. St., as amended by act of March 23, A. D. 1887, as may be deemed wise and expedient to meet the increased demands of the agricultural interest of the state. (6) To make such provision as may be necessary for co-operation with the United States government in the settlement of the boundary, or that portion of the state embracing Greer county. Done at the Executive Office, in the city of Austin, this, the 31st day of March, A. D. 1888, and in the year of our independence the fifty-third. L. S. Ross, Governor of Texas.

"By the Governor: J. M. Moore, Secretary of State."

"Executive Message. Executive Office, Austin, May 8, 1888. To the Honorable Senate and House of Representatives—Gentlemen: I have the honor to inform you that Attorney General Hogg has called my attention to the fact that the state has now pending several important suits involving interests of great magnitude to the general public, which are

likely to suffer loss by reason of the great delay incident to the regular procedure of the courts now provided, and as it is further stated that those representing the interests adverse to the state have signified their desire for a speedy termination of these litigated questions, I respectfully suggest for your consideration the propriety of amending article 1034, Rev. St., relating to practice in the courts, if, in your judgment, the same may be done at this stage of your proceedings without jeopardizing the successful completion of other legislation now being considered by your honorable bodies. L. S. Ross, Governor of Texas."

The matters called to the attention of the legislature in this proclamation and communication do not remotely relate to or embrace the subject of authorizing the state to resort to the remedy of injunction to restrain the violation of a penal statute. This brings us to the consideration of the question whether the law in question is valid, although the subject is not embraced in the proclamations and communications of the governor. The provisions of the constitution quoted are, in our opinion, clearly mandatory, and are limitations upon the authority of the legislature in special session to pass laws. Provisions of the constitution of Missouri, very similar to those under consideration, were construed by the supreme court of that state in Wells v. Railway Co. (Mo. Sup.) 19 S. W. 531, and it was there held that legislation concerning subjects not embraced in the proclamation and communications of the governor was void and unauthorized. This construction seems to us to be proper. The language of our constitution is imperative, and in terms declares that no legislation other than that embraced within the subjects submitted by the governor shall be passed. We are therefore constrained to hold that the act in question under which this suit was instituted was passed in violation of the constitution, and is, therefore, void. The approval of the act by the governor did not give it any vitality, or have the effect of dispensing with the prerequisites that must exist in order to confer upon the legislature the authority to pass the act in question. Wells v. Railway Co. (Mo. Sup.) 19 S. W. 530. The case of Williams v. Taylor (Tex. Sup.) 19 S. W. 156, and others on that line, to the effect that a bill passed by the legislature, and signed by its presiding officers, and approved by the governor, affords conclusive evidence that it was passed according to the procedure prescribed by the constitution, and that the journals of the legislature cannot be looked to in order to impeach the law, are not in point on the question before us. The question here was not as it existed in those cases, where it was sought to defeat the law because not passed in the method prescribed by the constitution; but with us we have the question as to the jurisdiction of the legislature to pass a certain law. One involves the manner of the exercise of authority after jurisdiction has attached, and the other the want of jurisdiction and authority to act at all. With this view of the question discussed, it is not necessary that we should consider the other questions presented. Therefore we are of the opinion that the court erred in not sustaining the demurrers to the petition and dismissing the case. Judgment will be reversed, and cause dismissed, at the cost of appellee. Reversed and dismissed.

MOORE et al. v. JOHNSTON.

(Court of Civil Appeals of Texas. March 18, 1896.)

HOMESTEAD — ABANDONMENT — EVIDENCE — SHERIFF'S DEED—COLLATERAL ATTACK—ACTION TO QUIET TITLE—JUDGMENT.

1. Proof of the acquirement of a new homestead is not essential to show abandonment of a former homestead.

2. A sheriff's deed to a plaintiff in execution who purchased at the sale is not subject to collateral attack in an action by such plaintiff to quiet title under it, because the price paid was grossly inadequate or the notice of sale insufficient.

3. In an action to quiet title on an issue of abandonment of the land as homestead by defendants, it was proper to allow a witness to testify that she understood and believed that defendants' removal was to be permanent, where one of the defendants testified that such witness knew their intentions.

4. In an action against a vendee and wife to quiet title, it was proper to enter judgment against the wife where her demurrer was overruled, but she failed to answer over to the merits, though there was no proof that she was the vendee's wife, or otherwise connecting her with the property.

Appeal from district court, Llano county; W. M. Allison, Judge.

Action by Minnie M. Johnston against W. T. Moore, Jr., and others, to quiet title. From a judgment for plaintiff, defendants appeal. Affirmed.

This is an action of trespass to try title, brought by appellee against W. T. Moore and his wife, Ida Moore, and T. P. Justus, and his wife, A. M. Justus. A general demurrer was filed in the court below by counsel, signing as "Attorneys for Defendants"; and they also filed a general denial and plea of not guilty, signing as "Attorneys for Defendants W. T. and Ida Moore and T. P. Justice." No answer to the merits was filed by A. M. Justice. Judgment was rendered for the plaintiff, and the defendants have appealed.

The trial court filed the following conclusions of fact: "(1) In cause No. 919 in this court, on the 24th day of May, 1894, plaintiff herein recovered a judgment against W. T. Moore, Jr., one of the defendants in this suit, for the sum of $3,145.49, with interest and costs of suit, and said judgment has not been paid. (2) On the 24th day of May, 1894, plaintiff filed an abstract of said judgment in the office of the clerk of the county court of said Llano county, and caused the same to be recorded and indexed, as required by law,