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Governor's Message.

Executive Department, So. Ca.,
Columbia, Sept. 4, 1866.

Gentlemen of the Senate
and House of Representatives:

I have convened the General Assembly in extraordinary session, for the purpose of recommending such modifications of existing laws with reference to persons of color as will entitle the tribunals of this State to exercise jurisdiction over them in all cases; such a re-organization of these tribunals as may be best adapted to this end; such enactments as will effect greater certainty, as well as economy, in the punishment of crime amongst all classes; and lastly, such measures of relief as, in my judgment, are necessary, in view of the present condition of the people.

It is a striking anomaly, that more than one half of all the inhabitants of the State are not amenable to trial before the State tribunals, and are exempt from all liability to punishment under State laws. In a majority of the Districts, neither Provost nor freedmen's Courts are in existence, and persons of color perpetrate crime with impunity. Some of their gravest offences against society are tried before Military Commissions, but the long delay in bringing the criminal to justice, the necessity oftentimes of removing him to a remote place, where a Commission is organized for trial, the difficulty of securing the attendance of witnesses, and the expense developed upon the prosecutor, conspire to render such tribunals wholly inefficient in punishing the guilty, or deterring others from perpetrating crime.

Where Provost Courts are organized, the punishments imposed on freedmen for crime are not in conformity to our laws, and are much lighter than punishments imposed by State Courts upon white men for the same offences. The laws of every well-regulated State should operate equally upon all the inhabitants, and if a white man is punishable by death for arson or burglary, there is no justice or propriety in permitting a freedman to escape for a like offence with a fine or light imprisonment. When our laws are so modified that all persons may be tried before the same tribunal, and, upon conviction, subjected to the same punishment for the same class of offences, all reason for the interference of Federal authority with the administration of justice will have ceased, and no impediment will exist to the jurisdiction of the State Courts over all cases, civil and criminal.

In the series of Acts, passed in December last, known as the Code, there are various discriminations against freedmen, which should be repealed, and civil rights and liabilities as to crime should be accorded to all inhabitants alike.

The last section of the Act to establish District Courts provides that "the Judges elected under this Act shall not be commissioned until the Government shall be satisfied that they will be permitted to exercise the jurisdiction committed to them."

The Judges have not been commissioned, having satisfied myself that they would not be permitted by the military authorities to exercise jurisdiction over persons of color, which was the main purpose in establishing the Courts. The District Court may, however, be made invaluable, by increasing its jurisdiction in civil, and restricting it in criminal cases to offences punishable with less than death, thereby relieving the superior Courts of many cases which retard the despatch of more important business.

I therefore recommend that the sittings of the Court be quarterly, or oftener, if necessary; that all misdemeanors and felonies now punishable by fine, imprisonment or whipping, by whomsoever committed, be tried in that Court; that all felonies punishable by death, including the different degrees of homicide, be tried by the Court of General Sessions; that the offices of a grand jury be dispensed with in the District Court, and defendants tried on indictments without presentment or true bill; that, with the consent of the parties in civil cases, or of the defendant in criminal cases, the presiding Judge may hear and determine any cause or indictment without the intervention of a petit jury; that the petit jury shall consist of twelve, and the venire of eighteen; that in case of the acquittal of the defendant, the Judge be authorized to certify, if in his opinion the facts justify it, that the prosecution was frivolous or groundless, and when such certificate is given, that the prosecutor be liable for all the costs incurred; that no other security to prosecute be required by a Magistrate from a complainant than his own recognizance; that the jurisdiction of the Court in civil cases be extended to $200; and that the jury be paid for their services by a fee taxed on each case they may try.

By the thirtieth section of the "Act to establish District Courts" it is provided "that in every case, civil and criminal, in which a person of color is a party, or which affects the person or property of a person of color, persons of color shall be competent witnesses." The accused in such a criminal case, and the parties in every such civil case, may be witnesses, and so may every other person who is a competent witness, etc."

The first paragraph of this section, admitting persons of color to testify in all cases where themselves or their race are directly concerned, and excluding them by implication in all cases where they are not interested, cannot be reconciled with sound policy or just discrimination. They are admitted in that class of cases where their interest, sympathy, association and feelings would be most likely to pervert their consciences and invite to false swearing, and are excluded from testifying in all cases where no motive could exist to swear falsely, except that of a depraved heart. The distinction is illogical and indefensible, and it cannot be denied that it has its foundation in a prejudice against the caste of the negro. If the rules of evidence in all the Courts were so modified as to make all persons and parties competent witnesses in their own and all other cases, no possible danger could result from it. Many of the States of the Union, and several of the civilized countries of the old world, have tried the experiment, and the result proves that the cause of truth and justice has been thereby promoted. The object of every judicial investigation is to ascertain the truth, and when found, to dispense justice in conformity the eto. With intelligent Judges and discriminating juries, correct conclusions will be more certainly attained by hearing every fact, whatever may be the character or color of the witness.

In the second paragraph of the section already quoted, the General Assembly have reached the same conclusion; for in all cases where persons of color are allowed to testify, all persons, including parties, are declared competent witnesses. Would it not be eminently wise to adopt the same rule in all Courts, and extend it to all persons?

In civil cases, the testimony of persons of color is oftentimes requisite to elucidate the facts and secure a just decision. They constitute a majority of the entire population of the State, and of necessity are often sole witnesses of contracts and transactions between white persons. Shall the parties in such cases be denied justice, by excluding the only evidence to secure it, because of an apprehension that it may be in a measure unreliable? Would it not be more in accordance with an established rule, to receive the evidence and weigh its value? In the law of evidence, the character and standing of a witness goes to affect his credibility, and not his competency. Why not, in the case of the person of color, follow this rule to its logical conclusion?

In criminal cases, these considerations weigh with peculiar force. The negro is readily deceived and corrupted, and becomes an easy prey to the machination of depraved white men; and past experience teaches that he is employed to execute the most dishonest purposes, and with impunity to the principal, because of his exclusion as a witness from the Courts of the commission of crime, and they go unwhipped of justice, because the law forbids that the testimony of the negro shall be heard. Does not the exclusion of persons of color make them invaluable accessories to the perpetration of crime? How can society be protected against that large class of infamous crimes, now so prevalent in this State, unless by making the negro a competent witness, we avail ourselves of all accessible evidence to convict the offenders? And will the law of the State continue to offer a reward to the dishonest to further tempt and corrupt the negro? The well-being of the State materially depends upon the elevation of this class of our population, and if there was no other argument in behalf of their admisssability to our Courts, the tendency of snch a measure to elevate their moral and intellectual character would be sufficient.

The dishonest may object to the extension of this right to all cases, because it reduces the field for his nefarious operations, but if the good and virtuous are protected, society is amply compensated for the change. Men of probity and integrity have no reason to apprehend any evil consequences from the change. The discrimination of intelligent Judges and juries will be a shield against unjust charges supported by false swearing, and the same intelligence will bring the really guilty to condign punishment. The great increase of crime among the freedmen, and the inadequate punishment inflicted by existing tribunals, make it a high and important duty devolved on you to so modify existing legislation as will secure a transfer of jurisdiction to the State Courts. If the suggestions I have made do not meet the approval of your judgment, I will cordially co-operate with you in attaining the end in any way which your superior wisdom may indicate.

The prevalence of crime among the whites, as well as blacks, in every part of the State, admonish us that the criminal code is defective, and that the punishments imposed by it are inadequate to deter offenders. The penalties attaching to the crime are fine, imprisonment, whipping, and death. The death penalty is imposed on conviction for murder, arson, burglary and other crimes; but the repugnance of juries to convict and impose that fearful penalty, except for murder and two or three other enormous crimes against society, often enables the guilty to escape under the most trifling pretext; and even when persons are convicted in such cases, the verdict is usually accompanied by recommendation to executive clemency.

There is no proper punishment, under the laws of this State, for high misdemeanors and petty felonies. None of the jails of the State are constructed for work-houses, and convicts sentenced to imprisonment spend their time in idleness. The expense to the State is very great, and, in our impoverished condition, the people cannot well bear the heavy taxation necessary to support these convicts in idleness. There are many convicts who find themselves comfortably housed and well-fed, and who, exempt from all labor, do not regard imprisonment as a punishment. They are vicious, depraved non-producers; and the effort to punish them is really a punishment to the honest tax-payers, whose labor, in part at least, is given to support them in indolence. The number of convicts will hereafter be greatly increased, and, if the present system of punishment be continued, the appropriations to jailors, for dieting prisoners, will be greater than the expenditure for either of the departments of the State Covernment. To remedy all these evils, I respectfully recommend that you provide for the establishment of a penitentiary, at Columbia, and appropriate not less than $20,000 to erect a wall around the penitentiary buildings, and to make cells for convicts. Much of the labor, in erecting the necessary buildings, can be performed by the convicts themselves. If a favorable site should be selected, convenient to sufficient water power to drive all the machinery that may be requisite to carry on manufactures in wood, leather, iron, yarns and cloth, the penitentiary may be made nearly if not quite self-supporting. Punishments may then be imposed according to the enormity of the offence; juries will have no aversion to convicting the guilty, and convicts, while undergoing purgation for their crimes, will be compelled to earn their subsistence.

The completion of the prison and the introduction of the requisite machinery will, of course, be a work of time; but, if proper economy is practised in building and stocking it, the expense will hardly be felt; and, in the meantime, the convicts can be subsisted as cheaply as in the District jails, whilst the labor of such as are not required on the buildings can be devoted to the various manufactures of leather, wood and iron, yielding a fund to the State to meet the expense of their subsistance.

If you should determine to establish a penitentiary, it will be necessary that the punishments now inposed by law be so changed as to conform to the new prison system. Before passing from the subject of the criminal law, I desire to invite your attention to the necessity for more stringent legislation for the suppressian of vagrancy. The law should not only provide for the punishment of idle and dissolute persons, who are permanently domiciled, but should extend to transient persons wandering over the State, and who have no visible means of support; and the duty of enforcing the law should be devolved, under stringent penalties, upon the Clerks, Sheriffs, Magistrates and Constables of the several Districts.

Since your adjournment in December last, the Court of Errors in this State have, with a single dissenting opinion, declared the Stay Law and all amendments thereto unconstitutional. The decision has produced restiveness and dissatisfaction in many parts of the State. Public meetings have been held in several Districts, and the Legislature has been appealed to, to furnish some protection to the debtor class, who anticipate general sueing in the fall term of the Courts.

After a careful examination of the opinion of the able and learned Chief Justice, as well as other authorities, I feel it my duty to say that I concur fully in the opinion of the Court, and believe that their exposition of the constitutional question is unanswerable.

The people of South Carolina have been proverbially law abiding; and when anarchy reigned supreme, after the fall of the Confederacy, lawlessness was universally discouraged by the better classes in every community. Now when civil law is restored and we are remitted to our own laws and Courts to protect rights and redress wrongs; surely no citizen of good repute will advise tumult and violence against the solemn judgment of the highest judicial tribunals in the State.

In view of the circumstances surrounding us—when it is remembered that the State has just emerged from a long and disastrous war, in which not only her sons but her resources were prodigally bestowed; that our banks have all been destroyed; that more than three hundred millions of property have been annihilated; that all the fountains of credit and property have been broken up; that our system of labor has been thoroughly disorganized; that the refreshing and revivifying showers have been withheld from a parched and exhausted soil, and that want, if not famine, will keep ghastly vigils in mansion and in hovel; when it is remembered that nearly all of the merchants of the State have been able to compromise their indebtedness to Northern merchants on most liberal terms—surely, the creditor class will practice forbearance and give their debtors still further indulgence. If compelled to enforce collections, they should, in the same fair and liberal spirit, make compromises with debtors, so as not to drive them and their families from home, kindred and friends.

The existing embarrassments growing out of the indebtedness of the country will, like other evils, produce beneficial results. Debtors will find it to their interest to make final adjustment of their debts, even though they are compelled to surrender their property. As long as their debts remain, interest will be accumulating to culminate in more disastrous bankruptcy. If they surrender their property, now, to creditors, they can resume their occupations and labor with cheerfulness—knowing that its proceeds will, sooner or later, rebuild their broken fortunes.

The debtor who desires to compromise with his creditors has the means of compelling the veriest Shylock to accept fair terms, or exclude him in all share of his estate by assignment, giving liberal creditors the preference, or by voluntary confession of judgment.

Believing that no Stay Law can be passed, embracing antecedent debts, that will not conflict with that clause of the Constitution of the United States declaring that "no State shall pass any law impairing the obligations of contracts," I respectfully recommend for your consideration for the relief of debtors:

1st. That imprisonment for debt, on mense or final process, be abolished, except in case of fraud; and then, as a punishishment for the crime rather than as a means of enforcing payment of the debt.

2d. That no costs be taxed against a defendant, either for the officers of the Court or for the Attorney.

3d. That the Insolvent Debtor's Laws be so extended as that any debtor may, by petition, after due notice, summon in all his creditors, and, upon assigning his estate and effects for their benefit, be discharged from all further liability, not only to sueing, but to all other creditors. Being thus releived from the incubus resting on him, the honest and enterprising debtor will go to work with alacrity and prove himself a useful member to society.

The Congress of the United States has authority, under the Constitution, to pass uniform laws of bankruptcy; but there is no prohibition upon the States, and as Congress has not exercised the authority delegated to them, the States may, with great propriety, pass such laws—and they will continue of force, until Congress adopts a general bankrupt act—which would supercede all State legislation on the subject.

The General Bankrupt Act of 1841, passed by the Congress of the United States, extended its provisions to antecedent debts, and its constitutionality was not controverted by the Courts. No Constitutional obstacle, therefore, would preclude the General Assembly from incorporating the same feature in their legislation.

It is proper here to remark, that if a Stay Law could be passed which could be free from all coustitutional objections, it would not protect debtors from suit in the Federal Courts. A creditor residing in the State who had determined to enforce the payment of his debt, could readily transfer it to a non-resident, and if the sum exceeded five hundred dollars, such non-resident could at once institute suit in the United States Court, recover judgment, issue execution and sell the debtor's property, notwithstanding the existence of a Stay Law. Such a law would not be recognized or enforced in a Federal Court.

The complete disorganization of the labor of the State in 1865, resulted in the production of very short provision crops; and to supply the deficiency, large quantities of breadstuffs have already been imported into the State, at enormous cost. The imperfect organization of the system of free labor, and the unprecedented drought which has prevailed during the months of July and August, throughout the State, as well as an unusually short wheat crop, foreshadow a gloomy future for the people for the next year. Coming as you do from every District, you have the means of making an estimate, approximating accuracy, of the extent of the failure of the provision crop, and what amount of supplies will be needed to save the poor, dependent and helpless from starvation. I invite your earnest and prompt consideration of the subject.

Sound political economy ordinarily condemns the feeding of its population by the Government, as the inevitable consequences are to increase idleness, pauperism and crime. But where the provision crop of a whole country is destroyed by blight, or where production is suspended by long continued drought, and the deficiency is traceable to these causes rather than to the idleness of the population, humanity and sound policy alike justify the Government in lending or giving its means to save the people from starvation—to arrest that increase of crime, which want always produces, and to stay emigration to more favored localities. The present population is insufficient to till the soil of the State, and to develop its resources; and it is a high duty of the Government to remove, as far as possible, the necessity for emigration beyond its borders. The embarrassment of supplying food for the needy will be greatly increased after the first of October, when the Freedmen's Bureau will cease to issue rations for the indigent and helpless whites and freedmen, who have been heretofore furnished with subsistence. You may find it necessary to increase the powers, duties and responsibilities of the Commissioners of the Poor, and to organize such bodies in all Districts of the State. In most of the Districts, land and buildings have heretofore been acquired and erected for the whites, but they must be enlarged, so as to provide accommodations for pauper, idiotic and helpless freedmen.

The failure of the Boards of Commissioners of the Poor to provide for the helpless, is a great crime against humanity, and additional penalties should be imposed by law against such a neglect or refusal to perform properly this philanthropic duty.

The capitation tax imposed by you, at the last session of the Legislature, on freedmen, has not generally been collected. The Comptroller-General, following a suggestion made by me and approved by the Attorney-General, instructed the Tax-Collectors not to issue executions against the freedmen, for the capitation tax, until the present session of the Legislature. This was to avoid all conflict with the military authorities, arising out of the fact that our courts were not used for the protection of the freedmen, and no provision was made for the support of the infirm and helpless. Whenever your legislation remits the custody of persons of color to the State laws, these executions may be issued Proper diligence by the Sheriff's will enforce the satisfaction of most of these executions, and the fund may then be appropriated exclusively to the support of the class from which it is derived.

If you should, in your wisdom, determine to make an appropriation to buy subsistence for the indigent white and colored, the several Boards of Commissioners of the Poor, would be, perhaps, the best agent for its distribution.

To meet any appropriation made, there is no resource available, and the funds can only be raised by issuing and selling State bonds. The credit of the State has heretofore been untarnished, and a reasonable hope is entertained that bonds issued for such a purpose will command nearly par, in the money markets of the United States or Europe.

As the present is a called session, and you may desire to return to your homes at the earliest day compatible with your public duties, I shall defer, until the regular session, bringing to your attention the general financial condition of the State, or making any recommendations for putting it on a safe and satisfactory basis. Under the authority of your Act authorizing the issue of bills receivable, in payment of the indebtedness of the State, the Treasurer had engraved and printed bills to the amount of $390,000, and has paid out, to the public officers and other creditors of the State, only $150,000. Most of the Tax-Collectors have made their returns, and the legal tender United States notes paid into the Treasury, together with the bills receivable not yet issued, will enable its operations to be conducted without embarrassment until your regular session. Of the bills issued, there have already been redeemed, in payment of taxes, $72,000. No appropriation was made to defray the expenses of engraving and printing the bills, but the Treasurer, acting upon my recommendation, advanced the expenses incurred from proceeds of the loan heretofore authorized to be made. The amount paid by him was $4,436.12. I recommend that an appropriation be made to cover this amount.

If the Treasurer had declined to make the payment in advance of the appropriation, the Act could not have been carried into execution, without convening an extra session of the General Assembly.

At the last session os the General Assemsembly, "full power and authority" was given the Governer to make "such regulations as in his opinion might be necessary to prevent the entrance and spread of Asiatic cholera in this State. In February last, I opened a correspondence with Major-General Sickles, with reference to the establishment of a rigid quarantine at all the seaports in the State, which resulted in the military authorities undertaking to establish and enforce proper quarantine regulations. I am happy to say to you that the duties, under orders fron General Sickles, have been well performed, and not a single case of cholera or yellow fever has occurred within the limits of the State.

The work of re-organization and reconstruction is progresssing slowly, but steadily. Our Senators and Representatives have not been admitted to seats in the Federal Congress, and we have received no relaxation from onerous taxation, notwithstanding we have been denied representation. It is believed, however, that our fellow-citizens in the North and West will not much longer permit this flagrant injustice to be continued. The State Government is entirely re-organized—the law Courts held their regulal sessions in the spring, and despatched much business, which has been accumulating for years, and very generally cleared the criminal dockets. The Courts of Chancery have also been regularly held on all the circuits. The machinery of justice is in full operation, and private rights and public wrongs can be enforced and punished.

However much all may deplore that the progress of the State has been retarded, and its prosperity paralyzed by loss of fortune and credit, and by short crops, the wise and manly course for our people is to redouble their energy—banish unavailing regrets—meet adversity with a stout heart and brave hands, and through the approving smiles of gracious Heaven, our venerable mother will again be prosperous, and her children contented and happy.

JAMES L. ORR.

EXECUTIVE DEPARTMENT, Sept. 5, 1866.

A correspondent of the Nation gives an estimate of the value of the famous Bremen rosewine, which in the year 1624 cost $165 per cask, and is now two hundred and forty-two years old. Calculating the original outlay at ten per cent. compound interest, he states that in 1845 the value of each cask was $231,883,905,000, or nearly ninety times the present debt of the United States; whilst each bottle was worth $161,030,499, very nearly the sum realized from duties on imports in the United States last year. Each glass was worth $20,000,000, and each drop $20,000. We should think that this wine has been kept almost too long, and the owners had better "realize" soon, unless they want to lose on it.

A revival is in progress at Palmetto, Campbell county, which has thus far resulted in forty additions to the Methodist church that village. We hope they will all stay converted, and not backslide.