of the court of civil appeals in this case is in conflict with the ruling of this court and of another court of civil appeals. Such a conflict of decision gives jurisdiction to this court only in cases in which the judgment of the court of civil appeals is not final, and that court has reversed the judgment of the trial court, and remanded the cause. Railway Co. v. Langsdale (this day decided) 32 S. W. 523.

The application is dismissed for want of jurisdiction.

McMEANS, Tax Collector, v. FINLEY, Comptroller.

BYROM, Tax Collector, v. SAME.

(Supreme Court of Texas. Oct. 24, 1895.)

CONSTITUTIONAL LAW—PLURALITY OF SUBJECTS—COSTS.

1. Act 1895, prohibiting "prize fighting and pugilism," and "fights between men and animals," does not violate Const. art. 3, § 35, prohibiting any bill from containing more than one subject.

2. Under Rev St. art. 1421, providing that the successful party shall recover costs, unless otherwise provided by law, costs must be taxed against one who, in an action under a statute, loses by reason of a repeal of such statute after the action is commenced.

Petitions by H. A. McMeans and R. D. Byrom, tax collectors, respectively, against R. W. Finley, comptroller, for writs of mandamus to compel defendant to issue licenses for prize fights. Writs denied.

Warren W. Moore, for petitioner McMeans. J. W. Parker, Robt. A. John, and West & Cochran, for petitioner Byrom. M. M. Crane, Atty. Gen., and Hogg & Robertson, for respondent.

GAINES, C. J. These cases present substantially the same questions, and will be disposed of in the same opinion. They proceed upon the theory that article 5049 of the Revised Civil Statutes, adopted by the present legislature at its regular session, places a tax upon prize fighting, and licenses it as an occupation. The statutes make it the duty of the tax collector of each county to issue a license for each occupation upon which a tax is levied, upon the application of any person desiring to pursue such occupation, and upon his paying the tax levied thereon; but he is prohibited from issuing such license, except upon a blank furnished by the comptroller for that purpose. It is the duty of the comptroller to furnish him with the blanks, and it would seem that it is his right to demand the performance of that duty, and, upon the comptroller's refusal to comply, to compel such performance by the writ of mandamus.

In the first case the tax collector of Hays county alleges that he has demanded blank licenses for prize fights of the respondent, as comptroller of the state, and that the latter has refused to furnish them. He prays that the latter may be compelled to comply with his demand. In the second case the tax collector of Williamson county alleges that application has been made to him for a license for a prize fight, and that the state and county taxes have been tendered by the applicant; that he has demanded of the comptroller the proper blanks; and that the demand has been refused. He, also, prays for a peremptory writ of mandamus to compel the officer to furnish the blanks. The comptroller in neither case denies the facts alleged, but claims there is no law licensing prize fighting in this state.

Since these suits were instituted the governor of the state has convened the legislature for the purpose of passing a law prohibiting prize fighting, and making it a penal offense. The legislature has met in pursuance of that call, and has passed an act intended to effectuate that object, which, if valid, took effect from its passage. It is conceded that, if this act be operative, the writ of mandamus must be refused in these cases. But it is claimed on behalf of the petitioners for the respective writs that the act is in violation of section 35 of article 3 of the constitution, and is therefore void. This presents the first question for our determination. The constitutional requirement in question reads as follows: "No bill (except general appropriation bills, which may embrace the general subjects and accounts for and on account of which, moneys are appropriated), shall contain more than one subject, which shall be expressed in its title. But if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed." Omitting the emergency clause, inserted for the purpose of giving it immediate effect, the statute under consideration reads as follows:

"An act to prohibit prize fighting and pugilism, and fights between men and animals, and to provide penalties therefor, and to repeal all laws in conflict therewith.

"Section 1. Be it enacted by the legislature of the state of Texas: That any person who shall voluntarily engage in a pugilistic encounter between man and man, or a fight between a man and a bull or any other animal, for money or other thing of value, or for any championship, or upon the result of which any money or any thing of value is bet or wagered, or to see which any admission fee is charged, either directly or indirectly, shall be deemed guilty of a felony, and upon conviction shall be punished by imprisonment in the penitentiary not less than two nor more than five years.

"Sec. 2. By the term 'pugilistic encounter' as used in this act, is meant any voluntary fight or personal encounter by blows by means of the fists or otherwise, whether with or without gloves, between two or more men for money or for a prize of any character, or for any other thing of value, or for

any championship, or upon the result of which any money or anything of value is bet or wagered.

"Sec. 3. That all laws and parts of laws in conflict herewith be and the same are hereby repealed."

It is admitted that the subject is expressed in the title, but the contention is that the act contains more than one subject. It was doubtless intended by section 35 to prevent certain practices sometimes resorted to in legislative bodies to secure legislation contrary to the will of the majority,—one, that of misleading members by incorporating in the body of the act some subject not named in the title; the other, that of including in the same bill two matters foreign to each other, for the purpose of procuring the support of such legislators as could be induced to vote for one provision merely for the purpose of securing the enactment of the other. Similar constitutional requirements are found in the former constitutions of this state, and in many of the constitutions of other states; and in construing them the courts have kept in view the evils intended to be remedied, and have uniformly held that the provision as to one subject does not apply where two matters are incorporated in the act which are germane to each other, and parts of the same general subject-matter. Let us apply this rule to the act in question. Its object is to suppress contests for physical supremacy, whether between man and man, or man and beast, by prohibiting such contests, whether entered into for a prize or a wager, or as a public exhibition. The subject-matter of the act is such physical contests, and it is but one subject, within the meaning and intent of the constitution. The fact that "a pugilistic encounter between man and man" and "a fight between a man and a bull or any other animal," are specified, makes the object of the law, nevertheless, one, in legal contemplation, and the subject-matter single. If the legislature, instead of entering into specifications, had defined the offense in general terms, and had particularized neither fights between men, nor fights between men and beasts, it seems to us there could have been no serious question as to the validity of the law, and yet the effect of the present act is precisely the same. Let us suppose an act were passed making it a felony to steal "any domestic animal," without specifying any animal in particular; could it be doubted that such an act contained but one subject? And yet an act which declared that any person who should steal any horse or cow should be punished by confinement in the penitentiary would be less comprehensive, and could not, therefore, be void, as embracing more than one subject. A contrary construction would render legislation practically interminable, and would convert a wise provision of the constitution into a serious hindrance upon the lawmaking power. For the reasons given, we are clearly of the opinion that the act is valid. The writs of mandamus prayed for in these cases must therefore be refused. If there was any law in force at the time the petitions in these cases were filed which makes it the duty of the comptroller to issue occupation blanks for prize fights, it is repealed, and the officer cannot be commanded to do that which it is not now his duty to do.

But it is insisted that if that part of article 5049 of the New Revised Civil Statutes relating to "fights between man and man" is valid, and was not repealed by that article of the Revised Penal Code which prohibits prize fights, the petitioners were entitled to their remedy at the time the suits were instituted, and that, therefore, they should, in any event, recover their costs. But in this proposition we do not concur. These are suits at law, and in such cases the statute is peremptory. It provides that "the successful party shall recover of his adversary all the costs expended or incurred therein, except when it is or may be otherwise provided by law." Rev. St. 1879, art. 1421. We know of no law that affects this provision, as applied to cases of this character. If it were otherwise, in view of the labors devolved upon the court, we should not be inclined to enter upon the work of determining the intricate questions originally involved in the suits for the purpose of determining a mere issue of costs. Robinson v. State, 87 Tex. 562, 29 S. W. 649; La Coste v. Duffy, 49 Tex. 769; Gordon v. State, 47 Tex. 208. The writs of mandamus prayed for are refused, and each of the petitioners will pay the costs incurred in his suit.

HILLIARD et al. v. WHITE.

(Supreme Court of Texas. Nov. 4, 1895.)

WRIT OF ERROR—PETITION FOR—SUFFICIENCY.

1. Sup. Ct. Rule 1, adopted June 29, 1895 (31 S. W. v.), provides that a petition for writ of error need only contain the statutory requisites, and makes the opinion, statement, and conclusion of the court of civil appeals a part of the petition, so that no matter will be stated in the petition which is stated in them. Rev. St. art. 1011b, as amended by Act May 6, 1895, makes a statement of the "nature" of the case one of the requisites of such a petition. *Held*, that a repetition, in "the statement of the nature" of a case, of facts set out in the opinion, statement, or conclusion of the court of civil appeals, which are not essential to show its "nature," will render the petition defective.

2. The allegation, in a petition for writ of error, of correct propositions of law, applicable to the facts of a case, without alleging error of the court in not sustaining them, is an insufficient assignment of error.

3. A petition for a writ of error which sets out the assignments of error made in the court of civil appeals, with propositions of law supporting them, and, after stating that a motion for a rehearing was made, sets out the grounds of the motion, violates Sup. Ct. Rule 1 (31 S. W. v.), requiring such petition to be as brief as practicable, and to contain only the statutory requisites and all original papers and transcript of the records to accompany the petition.