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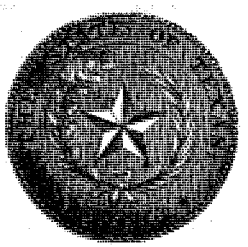
PENAL CODE

OF THE

STATE OF TEXAS

ADOPTED AT THE REGULAR SESSION OF THE
THIRTY-SECOND LEGISLATURE
1911



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A BILL TO BE ENTITLED

"AN ACT to Adopt and Establish a 'PENAL CODE' and a 'CODE OF CRIMINAL PROCEDURE' for the State of Texas."

Section 1. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS, That the following titles, chapters and articles shall hereafter constitute the PENAL CODE of the State of Texas:

THE PENAL CODE

OF THE

STATE OF TEXAS

TITLE 1

GENERAL PROVISIONS RELATING TO THE WHOLE CODE.

Chapter.
1. The General Objects of the Code, Principles on Which It Is Founded, Rules for Its Interpretation.
2. Definitions.
3. Persons Punishable under This Code and the Circumstances Which Excuse, Extenuate or Aggravate an Offense.

CHAPTER ONE.

THE GENERAL OBJECTS OF THE CODE, THE PRINCIPLES ON WHICH IT IS FOUNDED, AND RULES FOR THE INTERPRETATION OF PENAL LAWS.

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Article 1. [1] **Design of the Code.**—The design of enacting this Code is to define in plain language every offense against the laws of this state, and affix to each offense its proper punishment. [P. C. 1.]

Art. 2. [2] **Object of punishment.**—The object of punishment is to suppress crime and reform the offender. [P. C. 2.]

Art. 3. [3] **All penalties must be affixed by written law.**—In order that the system of penal law in force in this state may be complete within itself, and that no system of foreign laws, written or unwritten, may be appealed to, it is declared that no person shall be punished for any act or omission, unless the same is made a penal offense, and a penalty is affixed thereto by the written law of this state. [P. C. 3.]

Punishable offenses. The object of this article was to prohibit prosecution for what was an offense at common law, but not made penal by our statutes. Cain v. State, 20 T., 355; State v. Randle, 41 Id., 292; Johnson v. State, 4 T. Cr. R., 63, overruling Allen v. State, 34 T., 230; State v. Flynn, 35 T., 354. And see Ringo v. State, 54 Id., 561, 114 S. W. R., 119.

Because it fixes minimum penalty only, a penal statute is not vitiated. Meyers v. State, 51 T. Cr. R., 463, 103 S. W. R., 859.

Offenses eo nomine. Under this article an act or omission may be made a penal offense "eo nomine" without being specially defined, provided a penalty is affixed thereto. Smith v. State, 7 T. Cr. R., 286; Robinson v. State, 11 Id., 309.

Sodomy and fabrication of notarial certificate, formerly "not defined," are now punishable offenses. Ex parte Bergen, 14 T. Cr. R., 52; Cross v. State, 17 Id., 476; Rogers v. State, 8 Id., 401; Prindle v. State, 31 Id., 551, 21 S. W. R., 360. So, also, is fornication. Kelley v. State, 32 Id., 579, 25 S. W. R., 425.

Art. 4. [4] **Common law rule of construction, when.**—The principles of the common law shall be the rule of construction, when not in conflict with the Penal Code or Code of Criminal Procedure, or with some other written statute of the state. [Act Feb. 12, 1858, p. 156; P. C. 4.]

See as to rules of construction of the Penal Code and the Code of Procedure. Martin v. State, 40 T., 19; Randle v. State, 41 Id., 292; Wilkerson v. State, 2 T. Cr. R., 255, overruling Smith v. State, 43 T., 643; Nelson v. State, 1 T. Cr. R., 41; Williams v. State, Id., 465.

Art. 5. [5] **Special provisions control general.**—In the construction of this Code each general provision shall be controlled by a special provision on the same subject, if there be a conflict. [P. C. 5.]

Citing the statute as self-explanatory. Cockrum v. State, 24 T., 394. And see Ex parte Woods, 52 T. Cr. R., 575, 108 S. W. R., 1171.

Art. 6. [6] **Unintelligible law not operative.**—Whenever it appears that a provision of the penal law is so indefinitely framed or of such doubtful construction that it can not be understood, either from the language in which it is expressed, or from some other written law of the state, such penal law shall be regarded as wholly inoperative. [P. C. 6.]

Citing the statute as self-explanatory. French v. State, 14 T. Cr. R., 76. And see Ex parte Woods, 52 T. Cr. R., 575, 108 S. W. R., 1171.

Art. 7. [7] **Judges to report defects in the law.**—Whenever a court trying an offense is of opinion that the law is so defective as to have no operation, or when it appears that there has been a failure to provide for any offense, or class of offenses, which ought to be made punishable, the judge of such court shall report the same to the legislature at its next session, after such defect or omission shall have been discovered. [P. C. 7.]

Art. 8. [8] **Prosecuting officers to report defects in the law.**—It is also declared to be the duty of the attorney general to call the attention of the legislature, in his reports which are required by law to be made to the governor, to any defects or omissions in the penal law which he may observe, and in like manner the district and county attorneys shall communicate to the attorney general such suggestions as they may deem important touching the same subject. [P. C. 8.]

Art. 9. [9] **General rule of construction.**—This Code, and every other law upon the subject of crime which may be enacted, shall be construed according to the plain import of the language in which it is written, without regard to the distinction usually made between the construction of penal laws and laws upon other subjects; and no person shall be punished for an offense which is not made penal by the plain import of the words of a law. [Act Feb. 12, 1858, p. 156; P. C. 9.]

Construed as written. This article changes and does away with the strict construction of penal statutes, and substitutes the plain import of the language in which they are written. Randolph v. State, 9 T., 521; Ex parte Gregory, 20 T. Cr., R., 210; Murray v. State, 21 Id., 620, 2 S. W. R., 757; Searcy v. State, 40 Id., 460, 50 S. W. R., 699, 51 Id., 1119, 53 Id., 344; Bowman v. State, 38 Id., 14, 40 S. W. R., 796, 41 Id., 635. And see Ex parte Woods, 52 T. Cr. R., 575, 108 S. W. R., 1171.

Legislative intent. The courts must be controlled by the legislative intent when that can be ascertained. Ex parte Robinson, 28 T. Cr. R., 511, 13 S. W. R., 786; Ex parte Creel, 29 Id., 511, 16 S. W. R., 256; and this over the literal import of

words when the legislative intent can be ascertained. Brooks v. Hicks, 20 T., 666; Rigby v. State, 27 T. Cr. R., 55, 10 S. W. R., 760.

Must be construed according to legislative intent unless such construction contravenes some other potent provision of law. Fowler v. Poor, Dallam, 401; Cain v. State, 20 T. Cr. R., 355; Hanrick v. Wolff, 54 T., 109.

If the conflict or repugnancy be so direct that the acts in pari materia cannot stand together, the one last enacted will control. Cain v. State, 20 T. Cr. R., 355; Chiles v. State, 1 T. Cr. R., 27; Ex parte Segars, 32 Id., 552, 25 S. W. R., 26; Nobles v. State, 38 Id., 330, 42 S. W. R., 978; Ratigan v. State, 33 Id., 301, 26 S. W. R., 407; Ragazine v. State, 47 Id., 407, 84 S. W. R., 832.

When words used in the statute are free from ambiguity or doubt it is needless to look elsewhere. Ex parte Woods, 52 T. Cr. R., 575, 108 S. W. R., 1171.

Where general words follow particular and specific words, the former must be confined to things of the same kind. Ex parte Muckenfuss, 52 T. Cr. R., 467, 107 S. W. R., 1131, following Murray v. State, 21 T. Cr. R., 620, 2 S. W. R., 757.

The presumption obtains that the codifier and the legislature did not intend to change the laws as they formerly stood, and accordingly a statute should be construed in the light of the former law, following Runnels v. State, 45 T. Cr. R., 446, 77 S. W. R., 459. Ex parte Muckenfuss, 52 T. Cr. R., 467, 107 S. W. R., 1131.

Art. 10. [10] **Words specially defined, how understood.**—Words which have their meaning specially defined shall be understood in that sense, though it be contrary to their usual meaning; and all words used in this Code, except where a word, term or phrase is specially defined, are to be taken and construed in the sense in which they are understood in common language, taking into consideration the context and subject matter relative to which they are employed. [P. C. 10 and 28.]

No constructive offenses. Our statutes are wholly intolerant of constructive offenses. Murray v. State, 21 T. Cr. R., 620, 2 S. W. R., 757. The same, of course, of constructive punishments. Id.

If a particular class is spoken of, followed by general words, the first class mentioned is to be taken as the comprehensive one, and the general words treated as referring to matters ejusdem generis with such class. Murray v. State, supra.

Grammatical error. Grammatical errors will not vitiate a law, nor can faulty punctuation affect the intention of the legislature. Murray v. State, 21 T. Cr. R., 620, 2 S. W. R., 757; Rigby v. State, 27 Id., 55, 10 S. W. R., 760; Bradstreet v. Gill, 72 T., 115, 9 S. W. R., 753. Ex parte Rodriguez, 39 T., 705, compared.

Legislative policy immaterial. The courts are not concerned with the policy, expediency, propriety or the wisdom of the law-making power, and will not inquire into such matters. Engelking v. Von Wamel, 26 T., 469; Smith v. State, 18 T. Cr. R., 454.

Art. 11. [11] **Innocence presumed.**—Every person accused of an offense shall be presumed to be innocent until his guilt is established to the satisfaction of those whose province it is to try him. [P. C. 11.]

When burden of proof is on defendant; post, Art. 52.

Presumption of innocence. The presumption of innocence attends the defendant throughout his trial and until conviction, and can be overcome only by evidence which establishes his guilt to the exclusion of any reasonable doubt. Jones v. State, 13 T. Cr. R., 1; Slade v. State, 29 Id., 381, 16 S. W. R., 253; Thompson v. State, 30 Id., 325, 17 S. W. R., 448.

Presumption of innocence and reasonable doubt distinguished. For the distinction between the presumption of innocence and reasonable doubt, see Whart. Cr. Ev., Sec. 322; Jones v. State, 13 T. Cr. R., 1.

On the proposition that the burden of proof never shifts and must overcome presumption of innocence, see Ake v. State, 6 T. Cr. R., 398; Phillips v. State, 26 Id., 228, 9 S. W. R., 557; Slade v. State, 29 Id., 381, 16 S. W. R., 253; Horn v. State, 30 Id., 541, 17 S. W. R., 1094.

Art. 12. [12] **No offense against a law not in force.**—No act or omission

can be punished as an offense unless the law making it penal was in force at the time when such act or omission took place. [P. C. 12.]

Const., Bill of Rights, Secs. 16-19.

Limitation. An offense that was barred by limitation at the time the statute denouncing the act took effect cannot be revived. State v. Sneed, 25 T. Supp., 66; De Cordova v. Galveston, 4 T., 470; State v. Asbury, 1 T., 83; Carr v. State, 36 T. Cr. R., 390, 37 S. W. R., 426.

When the evidence raises the question of limitation it should be submitted by the charge of the court. Richardson v. State, 47 T. Cr. R., 592, 85 S. W. R., 282.

Art. 13. [13] **When laws take effect.**—No law of the legislature defining an offense, or affixing a penalty thereto, shall take effect until after the expiration of ninety days from the day of the adjournment of the session at which such penal law was enacted, unless the legislature shall otherwise determine. [P. C. 13.]

Const., Art. 3, Sec. 39.

Art. 14. [14] **Ignorance no excuse.**—After a law has taken effect, no person shall be excused for its violation upon the ground that he was ignorant of its provisions. [P. C. 13.]

See post, Art. 46.

Ignorance of law is no excuse, and every person is required, at his peril, to take cognizance of it. Chaplin v. State, 7 T. Cr. R., 87; Thompson v. State, 26 Id., 94, 9 S. W. R., 486.

But ignorance of fact is a different matter and may be a defense. Hailes v. State, 15 Id., 93. Compare with Jones v. State, 32 T. Cr. R., 533, 25 S. W. R., 124.

Local custom cannot supersede a law. Lawrence v. State, 20 T. Cr. R., 536, overruling Debbs v. State, 43 T., 650; McNeely v. State, 49 T. Cr. R., 286, 92 S. W. R., 419.

Art. 15. [15] **Effect of modification by subsequent law.**—When the penalty for an offense is prescribed by one law, and altered by a subsequent law, the penalty of such second law shall not be inflicted for a breach of the law committed before the second shall have taken effect. In every such case the offender shall be tried under the law in force when the offense was committed, and if convicted, punished under that law; except that when by the provisions of the second law the punishment of the offense is ameliorated, the defendant shall be punished under such last enactment, unless he elect to receive the penalty prescribed by the law in force when the offense was committed. [P. C. 14.]

Penalty; privilege of election. A defendant's privilege of election as to penalty exists only when the penalty originally attaching to the offense for which he has been tried and convicted has been, since its commission, changed and ameliorated—not when it has been increased. He has no election of trial, but must be tried under the new law, a legal consequence of the change when the penalty is ameliorated, and then he may elect to receive the penalty in force at the time the offense was committed. Maul v. State, 25 T., 166; Wall v. State, 18 Id., 682; Noftsinger v. State, 7 T. Cr. R., 301; McInturff v. State, 20 Id., 335; Blount v. State, 34 Id., 640, 31 S. W. R., 652.

The penalty inflicted may be less than that prescribed at the time of the commission of the offense, but never greater. Maul v. State, supra. See Noftsinger's case, supra, in illustration.

Same. In case of doubt whether the later statute ameliorates the penalty the privilege of election should be accorded. Herber v. State, 7 T., 69.

An ameliorating statute taking effect after the trial has commenced, is not operative in the case. From beginning to end the case must be tried under the law in force when the trial began. Sims v. State, 8 T. Cr. R., 230; Myers v. State, Id., 321.

Art. 16. [16] **Repeal, effect of.**—The repeal of a law, where the repealing statute substitutes no other penalty, will exempt from punishment all per-

sons who may have offended against the provisions of such repealing law, unless it be otherwise declared in the repealing statute. [P. C. 15.]

Repealed laws. The repeal of a law substituting no other penalty, operates to nullify convictions under the repealed statute. Fitze v. State, 13 T. Cr. R., 392; Monroe v. State, 8 Id., 343; Boone v. State, 12 Id., 184; Kenyon v. State, 31 Id., 13, 23 S. W. R., 191; Sullivan v. State, 32 Id., 50, 22 S. W. R., 44. And see Dickenson v. State, 38 Id., 492, 41 S. W. R., 759, 43 Id., 520; Ex parte Coombs, Id., 648, 44 S. W. R., 854; Hall v. State, 52 T. Cr. R., 195, 106 S. W. R., 149.

No application to local option law. But the foregoing rule does not apply to the local option law, nor does the repeal exempt from prosecution those who offended the law while in operation. This statute is constitutional. Ezzell v. State, 29 T. Cr. R., 521, 16 S. W. R., 782.

Repeal of a civil statute repeals its penalties. State v. Robinson, 19 T., 479.

Repeals by implication are not favored by our law. Waters v. Watrous, 8 T., 62; Thouvenin v. Rodriguez, 24 Id., 468; Tunstall v. Wormley, 54 Id., 476; Ex parte Keith, 47 T. Cr. R., 283, 83 S. W. R., 683. And see also generally, Cain v. State, 20 T., 355; Stirman v. State, 21 Id., 734; Ex parte Velasquez, 26 Id., 178.

Unless the conflict is irreconcilable the two statutes should be construed for both to stand, especially if the statute to be affected was intended for the benefit of a defendant. Morales v. State, 36 T. Cr. R., 234, 36 S. W. R., 435.

This rule applies to a subsequent general law and a pre-existing special law—as, for instance, the Terrell election law and the local option law. Ex parte Keith, 47 T. Cr. R., 283, 83 S. W. R., 683; Arrington v. State, 48 Id., 541, 89 S. W. R., 643; Williams v. State, 52 Id., 371, 107 S. W. R., 1171; Joliff v. State, 53 Id., 61, 109 S. W. R., 176.

Special laws and legislation to be made operative by the voters of a particular locality, and laws of kindred character, are not repealed by general laws unless specially mentioned in such general laws, or the purpose to repeal is clearly manifest. Ex parte Neal, 47 T. Cr. R., 441, 83 S. W. R., 831.

Partial repeals. The legislature can repeal a definite part of a section or article by omitting and not re-enacting the repealed part. Such mode is constitutional. Chambers v. State, 25 T., 307. And see Greer v. State, 22 Id., 588, and compare Chaplin v. State, 7 T. Cr. R., 87.

Repeal and amendment. The amendatory act fails when a repealing and an amendatory act, referring to the same law, take effect on the same day. Robertson v. State, 12 T. Cr. R., 541.

Art. 17. [17] **When new penalty is substituted.**—When by the provisions of a repealing statute a new penalty is substituted for an offense punishable under the act repealed, such repealing statute shall not exempt from punishment a person who has offended against the repealed law while it was in force, but in such case the rule prescribed in article 15 shall govern. [P. C. 16.]

Roberts v. State, 17 T. Cr. R., 148; Gill v. State, 30 T., 514.

Art. 18. [18] **Change of definition, effect of.**—If an offense be defined by one law, and by a subsequent law the definition of the offense is changed, no such change or modification shall take effect as to offenses already committed; but all offenders against the first law shall be tried, and their guilt or innocence determined in accordance with the provisions thereof. [P. C. 17.]

Johnson v. State, 28 T. Cr. R., 562, 13 S. W. R., 1005.

Art. 19. [19] **Previous offenses not affected by this Code.**—No offense committed, and no fine, forfeiture or penalty incurred under existing laws, previous to the time when this Code takes effect, shall be affected by the repeal herein of any such existing laws, but the punishment of such offenses, and the recovery of such fines and forfeitures, shall take place as if the law repealed had still remained in force, except that when any penalty, forfeiture or punishment shall have been mitigated by the provisions of this Code, such provision shall apply to and control any judgment to be pronounced after this Code shall

take effect, for any offense committed before that time, unless the defendant elect to be punished under the provisions of the repealed law. [P. C. 18.]

Ante, Art. 15; Chaplin v. State, 7 T. Cr. R., 87; Walker v. State, Id., 245.

Art. 20. [20] **No cumulative penalties.**—No penalty affixed to an offense by one law shall be considered as cumulative of penalties prescribed under a former law, and in every case where a new penalty is prescribed for an offense, the penalty of the first law shall be considered as repealed, unless the contrary be expressly provided in the law last enacted. [P. C. 19.]

Cumulative acts. Quoting Bush v. Rep., 1 T., 455, "a right of qui tam action given by subsequent statutes for an indictable offense is cumulative, and does not repeal the former statute." Roberts v. State, 17 T. Cr. R., 148.

CHAPTER TWO.

DEFINITIONS.

	Article
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Article 21. [21] **Definition of terms.**—The general terms, "whoever," "any person," "any one," and the relative pronouns, "he," and "they," as referring to these terms, include females as well as males, unless there is some express declaration to the contrary. The word "man" is used to signify a male person of any age; and the word "woman" a female person of any age. [P. C. 20.]

Art. 22. [22] **Words expressive of relationship, state, condition, trust, etc., include what.**—The use of any word expressive of "relationship," "state," "condition," "office" or "trust," of any person, as of "parent," "child," "ascendant," "descendant," "minor," "infant," "ward," "guardian," or the like, or of the relative pronouns "he" or "they," in reference thereto, includes both males and females. [P. C. 21.]

Parent. Neither "father" nor "mother" is equivalent to the statutory word "parent" used in defining the sale of intoxicating liquor to a minor. Indictment for that offense must negative consent of both "parents" when there are such. Lantznester v. State, 19 T. Cr. R., 320.

"Child," in aggravated assault, means a male not more than eighteen years old, and a female not more than fourteen. Bell v. State, 18 T. Cr. R., 53.

Art. 23. [23] **Singular includes plural, and masculine feminine.**—The use of the singular number includes the plural, and the plural the singular; and words used in the masculine gender include the femine also, unless, by reasonable construction, it appears that such was not the intention of the language. [P. C. 22.]

Art. 24. [24] **"Person" includes state or any corporation.**—Whenever any property or interest is intended to be protected by a provision of the penal law, and the general term "person," or any other general term, is used to designate the party whose property it is intended to protect, the provision of such penal law, and the protection thereby given, shall extend to the property of the state, and of all public or private corporations. [P. C. 23.]

Art. 25. [25] **"Accused" and "defendant" synonymous.**—The word "accused" is intended to refer to any person who, in a legal manner, is held to answer for any offense, at any stage of the proceeding, or against whom complaint, in a lawful manner, is made, charging the commission of an offense, including all proceedings from the order for arrest to the final execution of the law; and the word "defendant" is used in the same sense. [P. C. 24.]

"Accused" and "defendant" defined. Pierce v. State, 17 T. Cr. R., 232; Brown v. State, 55 T. Cr. R., 572, 118 S. W. R., 139.

Art. 26. [26] **"Criminal action" defined.**—A "criminal action," as used in this Code, means the whole, or any part, of the procedure which the law provides for bringing offenders to justice; and the terms "prosecution," "criminal prosecution," "accusation," and "criminal accusation," are used in the same sense. [P. C. 25.]

"Criminal action" and correlatives defined. Bautsch v. Galveston, 27 T. Cr. R., 342, 11 S. W. R., 414.

Art. 27. [27] **"Convict" defined.**—An accused person is termed a "convict" after final condemnation by the highest court of resort which, by law, has jurisdiction of his case, and to which he may have thought proper to appeal. [P. C. 26.]

Cited as to "convict;" Arcia v. State, 26 T. Cr. R., 193, 9 S. W. R., 685; Woods v. State, Id., 490, 10 S. W. R., 108; Jones v. State, 32 Id., 135, 22 S. W. R., 404.

Art. 28. [28] **"Criminal process" defined.**—The term "criminal process" is intended to signify any capias, warrant, citation, attachment, or other written order issued in a criminal proceeding, whether the same be to arrest, commit to jail, collect money, or for whatever other purpose used. [P. C. 27.]

"Process:" Const., Art. V, Sec. 12; C. C. P., Art. 19; Werbiski v. State, 20 T. Cr. R., 121; Brown v. State, 28 Id., 65, 11 S. W. R., 1022.

Art. 29. [29] **"Preceding" and "succeeding" defined.**—The word "preceding" means the next preceding, and the word "succeeding" the next succeeding, whenever used, to designate any particular article, chapter or title of the Code. [P. C. 29.]

Art. 30. [30] **"Writing" and "oath."**—The word "writing" includes printing; the word "oath" includes affirmation. [P. C. 30.]

Definitions. "Writing" is printing; "oath" is affirmation. Rev. Stats. 1895 (3270); Winn v. State, 5 T. Cr. R., 621; O'Bryan v. State, 27 T. Cr. R., 339, 11 S. W. R., 443.

Art. 31. [31] **"Signature" defined.**—The word "signature" includes the mark of a person unable to write his name. A mark shall have the same effect as a signature, when the name is written by some other person, and the mark made near thereto, by the person unable to write his name. [P. C. 31.]

Signature to document. Not necessary to bind a party to it that a contract or agreement be signed at the end, provided he wrote his name in the body to give it authenticity. Price v. State, 12 T. Cr. R., 238, citing Fulshear v. Randon, 18 T., 275.

CHAPTER THREE.

OF THE PERSONS PUNISHABLE UNDER THIS CODE, AND THE CIRCUMSTANCES WHICH EXCUSE, EXTENUATE, OR AGGRAVATE AN OFFENSE.

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Article 32. [32] **The persons punishable under this Code.**—All persons, whether inhabitants of this state or of the United States, or aliens, are amenable to punishment for offenses which are defined and made punishable under the provisions of this Code. The exceptions to the general rule here laid down are given in the subsequent articles of this title. [Act October 31, 1866, p. 70; P. C. 32.]

Art. 33. [33] **Indians not punishable, except when.**—No act done within the uninhabited portion of the state, by individuals belonging to the several Indian tribes, in their intercourse with each other, or with other tribes, and affecting no other person, is considered an offense against this Code, but in all other respects, such individuals are upon a footing with all other persons, both as to protection and liability to punishment. [Act October 31, 1866, p. 70; P. C. 35.]

Art. 34. [34] **Children not punishable.**—No person shall in any case be convicted of any offense committed before he was of the age of nine years, except perjury, and for that only, when it shall appear by proof that he had sufficient discretion to understand the nature and obligation of an oath; nor of any other offense committed between the years of nine and thirteen, unless it shall appear by proof that he had discretion sufficient to understand the nature and illegality of the act constituting the offense. [Act 1905, p. 83; P. C. 36.]

Discretion. Statutory discretion means more than the minor's knowledge of the difference between good and evil; he must know the nature and illegality of the particular act. Parker v. State, 20 T. Cr. R., 451; Keith v. State, 33 Id., 341, 26 S. W. R., 412; Linehart v. State, Id., 504, 27 S. W. R., 260; Price v. State, 50 Id., 71, 94 S. W. R., 901.

Question for court and not jury. Freiser v. State, 84 S. W. R., 360.

Note discussion of rules governing proof of discretion. Wusnig v. State, 33 T., 651; Carr v. State, 24 T. Cr. R., 562, 7 S. W. R., 328.

Burden of proving non-age rests on defendant (McDaniel v. State, 5 T. Cr. R., 475; Ake v. State, 6 Id., 398), and the age being shown as between nine and thirteen years, state must prove discretion. Wusnig v. State, supra. And see Ingram v. State, 29 T. Cr. R., 33, 14 S. W. R., 457; Wilcox v. State, 32 Id., 284, 22 S. W. R., 1109; Keith v. State, 33 Id., 341, 26 S. W. R., 412; Simmons v. State, 50 Id., 527, 97 S. W. R., 1052.

Art. 35. [35] **Persons under seventeen years not punishable capitally.**—A person, for an offense committed before he arrived at the age of seventeen years, shall in no case be punished with death; but may, according to the nature and degree of the offense, be punished by imprisonment for life, or receive any of the other punishments affixed in this Code to the offense of which he is guilty. [P. C. 37.]

Non-age is a defensive issue with the burden on the defendant. The maxim that the burden never shifts means that it abides with the state until it has made out the specific case by establishing the corpus delicti and the constituent elements of the crime. Ellis v. State, 30 T. Cr. R., 601, 18 S. W. R., 139; Wilcox v. State, 33 Id., 392, 26 S. W. R., 989.

Minor offender. First degree murder by a person under seventeen years of age is not a capital offense and is bailable. Ex parte Walker, 28 T. Cr. R., 246, 13 S. W. R., 861.

The statute is constitutional. Id.

Minor sixteen years old, violating local option law, shown to have discretion, is punishable. Brown v. State, 47 T. Cr. R., 326, 83 S. W. R., 378.

Art. 36. [36] **Married woman, offenses by, etc.**—A married woman who commits an offense by the command or persuasion of her husband shall not, in any case, be punished by death, but may be imprisoned for life, or a term of years, according to the nature and degree of the crime; and, in cases not capital, she shall receive only one-half the punishment to which she would otherwise be liable. [P. C. 38.]

Post, Art. 84.

Art. 37. [37] **Husband, etc., instigating offense, double punishment.**—When it shall appear that a minor was aided or instigated in the commission of an offense by a relation in the ascending line, or by his guardian, or an apprentice under age by his master, or a wife by her husband, such relation, guardian, master or husband shall, at the discretion of the jury, in capital cases, be punished by death, and, in cases not capital, shall receive double the punishment imposed by law in ordinary cases for the same offense. [Act Oct. 31, 1866, p. 71; P. C. 39.]

Art. 38. [38] **"Minor" defined.**—The word "minor" as here and elsewhere used in this Code signifies a person under the age of twenty-one years. [P. C. 40.]

Aggravated assault. Minor cannot be convicted of aggravated assault and battery on a female or child. Schenault v. State, 10 T. Cr. R., 410; Henkle v. State, 27 Id., 510, 11 S. W. R., 671; nor can a minor be held responsible for fraudulent disposition of mortgaged property. Jones v. State, 31 Id., 252, 20 S. W. R., 578.

Art. 39. [39] **Insanity a defense.**—No act done in a state of insanity can be punished as an offense. No person who becomes insane after he committed an offense shall be tried for the same while in such condition. No person who becomes insane after he is found guilty shall be punished for the offense while in such condition. [P. C. 41.]

Insanity; legal test. The legal test of insanity is whether or not accused was laboring under such defects of reason from disease of the mind as to not know the nature and quality of the act he was doing; or, if he did know, he did not know he was doing wrong. In other words, the party's knowledge of right or wrong in respect to the very act with which he is charged, is the criterion. 2 Greenl. Ev., 373; Carter v. State, 12 T., 500; Powell v. State, 37 Id., 348; Thomas v. State, 40 Id., 60; Webb v. State, 5 T. Cr. R., 596; Williams v. State, 7 Id., 163; King v. State, 9 Id., 515; Johnson v. State, 10 Id., 571; Erwin v. State, Id., 700; King v. State, 13 Id., 277; Massengale v. State, 24 Id., 181, 6 S. W. R., 35; Evers v. State, 31 Id., 318, 20 S. W. R., 744, overruling Lyle v. State, 31 Id., 103, 19 S. W. R., 903.

For an elaboration of the rule Leache's case, 22 T. Cr. R., 279, 3 S. W. R., 539, and authorities cited.

Cocaine, morphine, etc. While the statute prescribes no rule for insanity produced by cocaine or morphine, yet the voluntary recent use of such drugs to the extent of producing insanity and destroying the capacity of knowing right from wrong in regard to the particular matter, renders accused incapable of crime. Edwards v. State, 38 T. Cr. R., 386, 43 S. W. R., 112.

**If other causes act in conjunction with the recent use of intoxicating liquors to produce insanity, that condition will not be imputed to liquor alone. Edwards v. State, supra. See Phillips v. State, 50 Id., 481, 98 S. W. R., 868.

Hypothetical questions. On hypothetical questions, medical and non-medical expert witnesses, see Burt v. State, 38 T. Cr. R., 397, 40 S. W. R., 1000.

Reputation. Insanity cannot be proved by general reputation. Ellis v. State, 33 T. Cr. R., 86, 24 S. W. R., 894; Womble v. State, 39 Id., 24, 44 S. W. R., 827.

Temporary insanity. Insanity being established by a judgment of court, it devolves on the state to show its temporary nature. Hunt v. State, 33 T. Cr. R., 252, 26 S. W. R., 206.

When raised by proof as an issue, must be given in charge. Hierhalzer v. State, 47 T. Cr. R., 199, 83 S. W. R., 836; Miller v. State, 52 Id., 72, 105 S. W. R., 502.

Partial insanity. In general insanity, where the party claims total irresponsibility, general proof as to his knowledge of right and wrong is the test. If the issue be partial insanity, the inquiry is to his mental status at the time of, and with respect to, the particular act charged. Carter v. State, 12 T., 500.

This rule applies to the character of evidence to be tendered in the two different cases, and is subordinate to the general test, which is, "a knowledge of right from wrong." Giebel v. State, 28 T. Cr. R., 151, 12 S. W. R., 591. And see Rusk v. State, 53 T. Cr. R., 338, 110 S. W. R., 58.

Same; physical tests. As to physical tests and evidence, especially expert and non-expert, see McLeod v. State, 31 T. Cr. R., 331, 20 S. W. R., 749.

Delusion. There is no difference between delusion and insanity. Boren v. State, 32 T. Cr. R., 637, 25 S. W. R., 775.

Somnambulism is neither insanity nor the indication of insanity. Fisher v. State, 30 T. Cr. R., 502, 18 S. W. R., 90.

Moral insanity; irresistible impulse. Our law recognizes no such independent state or insanity per se as so-called "moral insanity" or irresistible impulse. King v. State, 9 T. Cr. R., 515; Leache v. State, 22 Id., 279, 3 S. W. R., 539.

Kleptomania. The insane propensity to steal, known as kleptomania, is a species of insanity. Looney v. State, 10 T. Cr. R., 520; Harris v. State, 18 Id., 287. Note requisites of charge of court on such defense.

Art. 40. [40] **Proof of insanity according to common law.**—The rules of evidence known to the common law in respect to the proof of insanity shall be observed in all trials where that question is in issue. The manner of ascertaining whether the insanity is real or pretended, when it is alleged that the defendant became insane after the commission of the offense, is prescribed in the Code of Criminal Procedure. [P. C. 42.]

Presumption of sanity obtains until the contrary is shown. Fisher v. State, 30 T. Cr. R., 502, 18 S. W. R., 90, following Webb v. State, 5 Id., 596; s. c., 9 Id., 490; King v. State, 9 Id., 515; Massengale v. State, 24 Id., 181, 6 S. W. R., 35.

Burden of proof to establish insanity by a preponderance of evidence rests on the defendant. Boren v. State, 32 T. Cr. R., 637, 25 S. W. R., 775; following Webb's case, 5 T. Cr. R., 596; s. c., 9 Id., 490; King v. State, 9 Id., 515; Mendiola v. State, 18 Id., 462; Stanfield v. State, 50 Id., 69, 94 S. W. R., 1057; McCulloch v. State, Id., 132, 94 S. W. R., 1056; Fults v. State, Id., 502, 98 S. W. R., 1057.

Expert opinion evidence must be confined to medical experts who have studied the mental condition, or who have heard the whole of the evidence, or to whom has been submitted a hypothetical statement conforming with the whole evidence. Pigg v. State, 43 T., 108; Thomas v. State, 40 Id., 60; Webb v. State, 9 T. Cr. R., 490; Johnson v. State, 10 Id., 571; Leache v. State, 22 T. Cr. R., 279, 3 S. W. R., 539; Betts v. State, 48 Id., 522, 89 S. W. R., 413; Turner v. State, Id., 585, 89 S. W. R., 975.

Non-expert opinion is admissible, but as a prerequisite the facts and circumstances on which the opinion is based must be stated by the witness. Thomas v. State, 40 T., 60; Holcomb v. State, 41 Id., 125; McClackey v. State, 5 T. Cr. R., 320; Webb v. State, Id., 596; Harris v. State, 18 Id., 287; Mendiola v. State, Id., 462; Burton v. State, 33 Id., 138, 25 S. W. R., 782; Adams v. State, 34 Id., 470, 31 S. W. R., 372, overruling Gherke v. State, 13 T. Cr. R., 568.

The non-expert witness should first relate in detail the facts upon which he predicates his opinion before it is given to the jury. Fults v. State, 50 T. Cr. R., 502, 98 S. W. R., 1057; Wells v. State, Id., 499, 98 S. W. R., 851.

Mental condition provable. The condition of the defendant's mind, both before and after the alleged crime, is provable on the issue of insanity. Webb v. State, 5 T. Cr. R., 596; Warren v. State, 9 Id., 619; Leache v. State, 22 Id., 279, 3 S. W. R., 539.

Presumption that derangement or imbecility, being once proved or admitted, continues, obtains until disproved, unless the derangement was accidental, being caused by disease. This presumption, however, is one of fact rather than one of law, or at most of mixed fact and law. The presumption of continuity does not obtain in cases of recurrent, fitful and exceptional attacks of insanity. On the contrary, if the alleged insane person has lucid intervals it is presumed, in the absence of contrary proof, that he committed the offense in a lucid interval. Leache v. State, 22 T. Cr. R., 279, 3 S. W. R., 539; Webb v. State, 5 Id., 596; Smith v. State, 22 Id., 316, 3 S. W. R., 684; Hunt v. State, 33 Id., 252, 26 S. W. R., 206; Sims v. State, 50 Id., 563, 99 S. W. R., 555.

Charge of court, when there is any evidence raising the issue of insanity, must clearly present it whether requested or not, and it is not error for the court to charge that such issue must be "clearly proved." Thomas v. State, 40 T., 60; Erwin v. State, 10 T. Cr. R., 700; Smith v. State, 31 Id., 14, 19 S. W. R., 252; Giebel v. State, 28 Id., 151, 12 S. W. R., 591; Smith v. State, 22 Id., 316, 12 S. W. R., 1084.

Sanity of defendant is an issue under plea of guilty, and evidence on that issue should be introduced in connection with the plea. Burton v. State, 33 T. Cr. R., 138, 25 S. W. R., 782.

The issue of insanity must be tried by the jury, on affidavit, and, before trial, on indictment. Guagando v. State, 41 T., 626.

Art. 41. [41] **Intoxication as a defense.**—Neither intoxication nor temporary insanity of mind, produced by the voluntary recent use of ardent spirits, shall constitute any excuse in this state for the commission of crime, nor shall intoxication mitigate either the degree or the penalty of crime, but evidence of temporary insanity produced by such use of ardent spirits may be introduced by the defendant in any criminal prosecution in mitigation of the penalty attached to the offense for which he is being tried, and, in cases of murder, for the purpose of determining the degree of murder of which the defendant may be found guilty. It shall be the duty of the several district and county judges of this state, in any criminal prosecution pending before them, where temporary insanity is relied upon as a defense and the evidence tends to show that such insanity was brought about by the immoderate use of intoxicating liquors, to charge the jury in accordance with the provisions of this article. [Gen. Laws, 17th Leg., p. 9.]

Intent of the statute is two-fold: To eliminate intoxication altogether as a defense to crime, and to declare temporary insanity produced, no defense, but available in mitigation of penalty, and in murder cases on issue of degree. Delgado v. State, 34 T. Cr. R., 157, 29 S. W. R., 1070; Ward v. State, 19 Id., 664; Williams v. State, 25 Id., 76, 7 S. W. R., 661; Clore v. State, 26 Id., 624, 10 S. W. R., 242; Ex parte Evers, 29 Id., 539, 16 S. W. R., 343; De Albert v. State, 34 Id., 508, 31 S. W. R., 391; Evers v. State, 31 Id., 318, 20 S. W. R., 744, overruling Lyle's case, Id., 103, 19 S. W. R., 903.

Delirium tremens; mania a potu not involved in construction of this statute. Insanity known as "settled" in contradistinction to "temporary" insanity, has always been held an absolute defense to crime. Kelley v. State, 31 T. Cr. R., 216, 20 S. W. R., 357, citing Clore v. State, 26 Id., 624, 10 S. W. R., 242; Evers v. State, 29 Id., 539, 16 S. W. R., 343; Carter v. State, 12 T., 500; Evers v. State, 31 Id., 318, 20 S. W. R., 744.

Evidence of insanity from use of liquor alone or combined with drugs demands charge of court. One slaying under such conditions, should be acquitted. Phillips v. State, 50 T. Cr. R., 481, 98 S. W. R., 868; Miller v. State, Id., 72, 105 S. W. R., 502.

Not available. Intoxication which does not produce temporary insanity is not admissible under this statute on degree in murder. Evers v. State, 31 T. Cr. R., 318, 20 S. W. R., 744; s. c., 29 Id., 539, 16 S. W. R., 343; Delgado v. State, 34 Id., 157, 29 S. W. R., 1070; Gonzales v. State, 31 Id., 508, 21 S. W. R., 253; Ex parte Evers, 29 Id., 539, 16 S. W. R., 343.

As to one whose mind is affected by the recent overuse of morphine, see Moss v. State, 124 S. W. R., 647.

Will not reduce to manslaughter. See Clore v. State, 26 T. Cr. R., 624, 10 S. W. R., 242; Houston v. State, Id., 657, 14 S. W. R., 352; Guitan v. State, 11 Id., 544; nor assault to murder to aggravated assault. Hernandez v. State, 32 T. Cr. R., 271, 22 S. W. R., 972; Mays v. State, 50 Id., 165, 96 S. W. R., 329.

"Settled" insanity is delirium tremens or mania a potu, produced by long, continued habitual drunkenness—a fixed madness, and though controlled by the will, excuses crime. "Temporary" insanity is that condition of the mind directly produced by ardent spirits, carried to the point where the person becomes incapable of realizing the criminal nature of his acts. There is no criminal responsibility in settled insanity; in temporary insanity responsibility never ceases. Evers v. State, 31 T. Cr. R., 318, 20 S. W. R., 744, following Kelley's case, Id., 216, 20 S. W. R., 357, and overruling Lyle's case, 31 Id., 103, 19 S. W. R., 903; Erwin v. State, 10 Id., 700.

Art. 42. [42] **Officer justified, when.**—A person in the lawful execution of a written process or verbal order from a court or magistrate is justified for any act done in obedience thereto. [P. C. 43.]

Art. 43. [43] **Peace officer justified, when.**—A peace officer is in like manner justified for any act which he is bound by law to perform, without warrant or verbal order. [P. C. 44.]

Art. 44. [44] **Duress, a defense, when.**—A person forced by threats or actual violence to do an act is not liable to punishment for the same. Such threats, however, must be—

1. Loss of life or great personal injury.
2. They must be such as are calculated to intimidate a person of ordinary firmness.
3. The act must be done when the person threatening is actually present.

The violence intended by this article must be such actual force as restrains the person from escaping, or such ill treatment as is calculated to render him incapable of resistance. [P. C. 45.]

Duress. The duressing party need not be physically present, but must be so near as to have the party, with the means at his command, under his power and control at the time he applies the duress. Paris v. State, 35 T. Cr. R., 82, 31 S. W. R., 885. And see Booth v. State, 52 Id., 452, 108 S. W. R., 687.

Art. 45. [45] **Accidents excused, when.**—No act done by accident is an offense, except in certain cases specially provided for, where there has been a degree of carelessness or negligence which the law regards as criminal. [P. C. 46.]

Evidence under which this article should have been given in charge. Miller v State, 52 T. Cr. R., 72, 105 S. W. R., 502.

Art. 46. [46] **No mistake of law excuses.**—No mistake of law excuses one committing an offense; but, if a person laboring under a mistake, as to a particular fact, shall do an act which would otherwise be criminal, he is guilty of no offense. [P. C. 47.]

Evidence under which this article should have been given in charge. Cornelius v. State, 54 T. Cr. R., 173, 112 S. W. R., 1050.

Art. 47. [47] **Mistake of fact, excuse, when.**—The mistake as to fact which will excuse, under the preceding article, must be such that the person so acting under a mistake would have been excusable had his conjecture as to the fact been correct; and it must also be such mistake as does not arise from a want of proper care on the part of the person committing the offense. [P. C. 48.]

Mistake of fact. This and its preceding article define the character of mistake available as excuse for acts otherwise criminal, but have no application to such as are criminal only when done with a fraudulent intent. Neely v. State, 8 T. Cr. R., 64.

Court must charge it in cases in which evidence raises mistake of fact. Jackson v. State, 47 T. Cr. R., 85, 80 S. W. R., 631; Mayne v. State, 48 Id., 93, 86 S. W. R., 329; Uloth v. State, Id., 295, 87 S. W. R., 823; Walker v. State, 50 Id., 495, 98 S. W. R., 843; Byrd v. State, 51 Id., 539, 103 S. W. R., 863; Busby v. State, Id., 289, 103 S. W. R., 638.

"Proper care" is a matter controlled by the particular facts and circumstances of the particular case, and when an issue must be determined by the jury on the evidence. Watson v. State, 13 T. Cr. R., 76; Hailes v. State, 15 Id., 93; Gilmore v. State, 37 Id., 178, 39 S. W. R., 105; Patrick v. State, 45 Id., 587, 78 S. W. R., 947, overruling Penn v. State, 43 Id., 608; Williams v. State, 8 Id., 709.

Art. 48. [48] **Act done by mistake, a felony, when.**—If one intending to commit felony, and in the act of preparing for or executing the same, shall, through mistake or accident, do another act which, if voluntarily done, would be a felony, he shall receive the punishment affixed by law to the offense actually committed. [P. C. 49.]

The accidental killing of a third party in an attempt, with express malice, to slay another, is murder of the second degree. Breedlove v. State, 26 T. Cr. R., 445, 9 S. W. R., 768; Music v. State, 21 Id., 69, 18 S. W. R., 95; McConnell v. State, 13 Id., 390; McCoy v. State, 25 T., 33; Angell v. State, 36 Id., 542; Miller v. State, 52 T. Cr. R., 72, 105 S. W. R., 502; Thomas v. State, 53 Id., 272, 109 S. W. R., 155.

It is justifiable homicide when one, acting in necessary self-defense, accidentally slays a third party. Ferrell v. State, 43 T., 503; Clark v. State, 19 T. Cr. R., 495; Plummer v. State, 4 Id., 310.

Art. 49. [49] **Same subject, as to misdemeanor.**—If one intending to commit a felony, and, in the act of preparing for or executing the same, shall, through mistake or accident, do another act which, if voluntarily done, would be a misdemeanor, he shall receive the highest punishment affixed by law to the offense actually committed. [P. C. 50.]

Post. Art. 82.

Art. 50. [50] **Felony committed by mistake, etc., lowest punishment affixed.**—If one intending to commit a misdemeanor, and, in the act of preparing for or executing the same, shall, through mistake, commit an offense which is by law a felony, he shall receive the lowest punishment affixed by law to the offense actually committed. [P. C. 51.]

Post. Art. 82.

Art. 51. [51] **Intention presumed.**—The intention to commit an offense is presumed whenever the means used is such as would ordinarily result in the commission of the forbidden act. [P. C. 52.]

The presumption always obtains that that which is the necessary or even probable consequence of the act is intended unless the contrary appears. McCoy v. State, 25 T., 33; High v. State, 26 T. Cr. R., 245, 10 S. W. R., 238; Wood v. State, 27 Id., 393, 11 S. W. R., 449; Hatton v. State, 31 T. Cr. R., 586, 21 S. W. R., 679; Shaw v. State, 34 Id., 435, 31 S. W. R., 361.

Same. The intent to commit an offense is presumed whenever the means used is such as would ordinarily result in the forbidden act. Wood v. State, 27 T. Cr. R., 393, 11 S. W. R., 449.

This rule in homicide would, ordinarily, require the weapon used to be a deadly weapon. Shaw v. State, 34 T. Cr. R., 435, 31 S. W. R., 361; White v. State, 29 Id., 530, 16 S. W. R., 340; Hatton v. State, 31 Id., 586, 21 S. W. R., 689; Ivory v. State, 48 Id., 279, 87 S. W. R., 699.

Same; charge of court. Because the presumption of innocence outweighs that of guilt arising from the means used, with the burden on the state to establish guilt beyond a reasonable doubt, it would often be improper to give this article in charge. Black v. State, 18 T. Cr. R., 124, following Luera v. State, 12 Id., 257; Jones v. State, 13 Id., 1; Brinkoeter v. State, 14 Id., 67; Thomas v. State, Id., 200; Bell v. State, 17 Id., 538.

Defense of accidental injury being supported by evidence, error to charge this or article 1038 of this Code. Acrey v. State, 51 T. Cr. R., 35, 100 S. W. R., 954.

Same. Ordinarily presumptions of law which are against the defendant should

not be given in charge. Bell v. State, 17 T. Cr. R., 538; Shaw v. State, 34 Id., 435, 31 S. W. R., 361.

The reasonable doubt extends to the entire case, and the presumption of innocence must be overcome before a conviction can be had. The burden of proof is never cast upon the accused in the sense that the state is at any time relieved from proving the degree. Perry v. State, 44 T., 473; Burney v. State, 21 T. Cr. R., 565, 1 S. W. R., 458; McCay v. State, 32 Id., 233, 22 S. W. R., 974; Loggins v. State, Id., 364, 24 S. W. R., 512; Logan v. State, 40 Id., 85, 48 S. W. R., 575; Crockett v. State, Id., 173, 49 S. W. R., 392.

Burden is on defendant to excuse or justify only after the state has established the facts that constitute the offense. Leonard v. State, 7 T. Cr. R., 417; Lewis v. State, Id., 567; Ake v. State, 6 Id., 398; Burney v. State, 21 Id., 565, 1 S. W. R., 458; Leache v. State, 22 T. Cr. R., 279, 3 S. W. R., 539; Jones v. State, 32 Id., 108, 22 S. W. R., 149, following Reynolds v. State, Id., 36, 22 S. W. R., 18.

Presumption of law. In cases where the weapon or means used by the assailant were calculated to effect the purpose of the assault, it is an absolute presumption of law, imperative upon both jury and court, that it was the assailant's intention to effect the purpose indicated, and the court must so charge. Lane v. State, 16 T. Cr. R., 172; Kendall v. State, 8 Id., 569; Jones v. State, 17 Id., 602; Cockran v. State, 28 Id., 422, 13 S. W. R., 651; Floyd v. State, 29 Id., 341, 15 S. W. R., 819; Richardson v. State, 32 Id., 524, 24 S. W. R., 894, approving Jones v. State, 13 Id., 1; Shaw v. State, 34 Id., 435, 31 S. W. R., 361; Lindsey v. State, 39 Id., 468, 46 S. W. R., 929, 1045.

Independent defense; burden of proof. The defendant must assume the burden of proof when he relies upon any distinct, substantive, separate and independent matter not necessarily involved in, and constitutes no part of, the alleged criminal transaction. Ellis v. State, 30 T. Cr. R., 601, 18 S. W. R., 139; Jones v. State, 13 Id., 1; Dubose v. State, 10 Id., 230; Thomas v. State, 14 Id., 200; Leache v. State, 22 Id., 279, 3 S. W. R., 539.

Same rule obtains when the defensive matter is wholly and exclusively within the knowledge of the defendant, and the court should so instruct. Ashcroft v. State, 32 T., 108; Wilcox v. State, 33 T. Cr. R., 392, 26 S. W. R., 989; Skeen v. State, 34 Id., 308, 30 S. W. R., 554; Evans v. State, 40 Id., 54, 48 S. W. R., 194; Bedford v. State, 44 Id., 97, 69 S. W. R., 158.

Charge of court. This article should be given in charge only in those exceptional cases wherein the defensive matter throws the burden of proof on the defendant. Perry v. State, 44 T., 473; Ainsworth v. State, 8 T. Cr. R., 532; Dubose v. State, 10 Id., 230; Richardson v. State, 32 Id., 524, 24 S. W. R., 894, following Jones v. State, 13 T. Cr. R., 1. Also Lucio v. State, 35 Id., 320, 33 S. W. R., 328; Bowman v. State, 38 Id., 14, 40 S. W. R., 796; Snead v. State, 40 Id., 262, 49 S. W. R., 595.

Burden never shifts. Elementary that, in criminal cases, the burden of proof is on the state and never shifts, and court should so charge. Phillips v. State, 26 T. Cr. R., 228, 9 S. W. R., 557; Black v. State, 1 Id., 368; Blackwell v. State, 34 Id., 476, 31 S. W. R., 380; Dent v. State, 46 Id., 166, 79 S. W. R., 525.

General charge on subject being full special charge is properly refused. Huggins v. State, 42 T. Cr. R., 364, 60 S. W. R., 52.

Art. 52. [52] **Burden of proof on defendant, when.**—On the trial of any criminal action, when the facts have been proved which constitute the offense, it devolves upon the accused to establish the facts or circumstances on which he relies to excuse or justify the prohibited act or omission. [P. C. 53.]

Burden of proof rests on defendant in following instances:

To prove non-age: Ellis v. State, 30 T. Cr. R., 601, 18 S. W. R., 139; Ake v. State, 6 Id., 399; Wilcox v. State, 32 Id., 284, 22 S. W. R., 1109; s. c., 33 Id., 392, 26 S. W. R., 989; McDaniel v. State, 5 Id., 475.

On the issue of insanity: Boren v. State, 32 T. Cr. R., 637, 25 S. W. R., 775, following Webb v. State, 5 Id., 596; s. c., 9 Id., 490; King v. State, Id., 515; Johnson v. State, 10 Id., 571; Jones v. State, 13 Id., 1; King v. State, Id., 277; Mendiola v. State, 18 Id., 462; Smith v. State, 19 Id., 95; Fisher v. State, 30 Id., 503, 18 S. W. R., 90; Longrove v. State, 31 Id., 491, 21 S. W. R., 191.

On plea of former acquittal or conviction: Hozier v. State, 6 T. Cr. R., 501; Kain v. State, 16 Id., 282; Willis v. State, 24 T. Cr. R., 586, 6 S. W. R., 857.

To produce legal written consent to sale of liquor to minor: Reynolds v. State, 32 T. Cr. R., 36, 22 S. W. R., 18; Jones v. State, Id., 108, 22 S. W. R., 149.

On habeas corpus for bail: Ex parte Scroggin, 6 T. Cr. R., 546; Ex parte Randon, 12 Id., 145; Ex parte Smith, 23 Id., 100, 5 S. W. R., 99; Ex parte Johnson 30 Id., 279, 17 S. W. R., 410.

To establish any exemption from prosecution for carrying a pistol: Stoneham v. State, 3 T. Cr. R., 594; Lewis v. State, 7 Id., 567; Bridgers v. State, 8 Id., 145; Stilly v. State, 27 Id., 445, 11 S. W. R., 458.

When the defensive matter relied upon is wholly within his knowledge: Caldwell v. State, 5 T., 18; Crow v. State, 41 Id., 468; Forrest v. State, 3 Id., 232; Burton v. State, Id., 408; Leonard v. State, 7 Id., 417.

TITLE 2.

OF OFFENSES AND PUNISHMENTS.

Chapter.
1. Definition and Division of Offenses.
Chapter.
2. Punishments in General.

CHAPTER ONE.

DEFINITION AND DIVISION OF OFFENSES.

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Article 53. [53] **"Offense" defined.**—An offense is an act or omission forbidden by positive law, and to which is annexed, on conviction, any punishment prescribed in this Code. [P. C. 54.]

As to distinct and continuous offenses see Kain v. State, 16 T. Cr. R., 282; Day v. State, 27 Id., 143, 11 S. W. R., 136; Hall v. State, 32 Id., 474, 24 S. W. R., 407. And note article cited in Ringo v. State, 54 Id., 561, 114 S. W. R., 119.

Art. 54. [54] **How divided.**—Offenses are divided into felonies and misdemeanors. [P. C. 55.]

Art. 55. [55] **Felonies and misdemeanors defined.**—Every offense which is punishable by death or by imprisonment in the penitentiary, either absolutely or as an alternative, is a felony; every other offense is a misdemeanor. [P. C. 56.]

Felony. An offense that may, and not necessarily must, be punished by confinement in the penitentiary, is a felony. Ward v. White, 86 T., 170, 23 S. W. R., 981; Campbell v. State, 22 T. Cr. R., 262, 2 S. W. R., 825, overruling Sisk v. State, 19 Id., 190; Woods v. State, 26 T. Cr. R., 490, 10 S. W. R., 108; Kinley v. State, 29 Id., 532, 16 S. W. R., 339; Beard v. State, 45 Id., 522, 78 S. W. R., 348; Flynn v. State, 47 Id., 26, 83 S. W. R., 206.

Seduction was felony prior to the act of 1903, changing the penalty. P. C., Art. 1478. Ex parte Biela, 46 T. Cr. R., 487, 81 S. W. R., 739.

The statute does not provide for the hiring out of convicts for felony, and release cannot be had through habeas corpus because of inability to pay a felony fine. Ex parte Biela, supra.

Art. 56. [56] **Felonies subdivided.**—Felonies are either capital or not capital. An offense for which the highest penalty is death is a capital felony. [P. C. 57.]

Minor not subject. Capital punishment cannot be inflicted on an offender under seventeen years old, and in all such cases the accused is entitled to bail. Ex parte Walker, 28 T. Cr. R., 246, 13 S. W. R., 861; s. c., Id., 503, 13 S. W. R., 860; Wilcox v. State, 32 Id., 284, 22 S. W. R., 1109.

Art. 57. [57] **Petty offenses.**—An offense which a justice of the peace, or the mayor or other officer of a town or city, may try and punish is called a petty offense. [P. C. 58.]

See Bautsch v. Galveston, 27 T. Cr. R., 342, 11 S. W. R., 414; Ward v. White, 86 T., 170, 23 S. W. R., 981.

Art. 58. [58] **Subdivision and classification of offenses.**—Offenses are again subdivided and classed as follows; they are—

1. Offenses against the state, its territory, property and revenue.
2. Offenses affecting the executive, legislative and judicial departments of the government.

3. Offenses affecting the right of suffrage.
4. Offenses which affect the free exercise of religious opinion.
5. Offenses against public justice.
6. Offenses against the public peace.
7. Offenses against public morals, decency and chastity.
8. Offenses against public policy and economy.
9. Offenses against public health.
10. Offenses affecting property held in common for the use of the public.
11. Offenses against trade and commerce, and the current coin.
12. Offenses against the persons of individuals.
13. Offenses against reputation.
14. Offenses against property.
15. Miscellaneous offenses. [P. C. 59.]

CHAPTER TWO.

OF PUNISHMENTS IN GENERAL.

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Article 59. [59] **Punishments.**—The punishments incurred for offenses under this Code are—

1. Death.
2. Imprisonment in the penitentiary for life or for a period of time.

2a. Imprisonment in the house of correction and reformatory.

[Note.—The punishment by imprisonment in the house of correction and reformatory, omitted by the codifiers of 1893, and by the joint committee on amendments to the codes, was created by the act of 1889, and has not been repealed.]

3. Imprisonment in the county jail.
4. Forfeiture of civil or political rights.
5. Pecuniary fines. [P. C. 60.]

Ex parte Wood, 36 T. Cr. R., 7, 34 S. W. R., 965.

Art. 60. [60] **Continuous offenses, suppressed.**—When an offense of which a person is convicted is in its nature continuous, there shall also be judgment for its suppression. [P. C. 61.]

Art. 61. [61] **No forfeiture in capital cases.**—In case of the execution of a convict under sentence of death, or where he is imprisoned for life, there shall be no forfeiture of any kind to the state, nor shall any cost of the prosecution be collected from his estate. [P. C. 62.]

Costs in capital felony. A conviction in a capital felony cannot carry with it a judgment for costs. Lanham v. State, 7 T. Cr. R., 126; Jackson v. State, 25 Id., 314, 7 S. W. R., 872.

Art. 62. [62] **No forfeiture in any criminal case.**—When a convict is imprisoned in the penitentiary, his property shall be controlled and managed in the manner directed by law; but there shall, in no criminal case, be a forfeiture of property of any kind to the state. [P. C. 63.]

Art. 63. [63] **Political rights, what are.**—When the penalty affixed to the commission of an offense is deprivation of political rights, such rights are intended to include the rights of holding office, of serving on juries, and of suffrage. [Act. Feb. 12, 1858, p. 156; P. C. 64.]

Art. 64. [64] **Double punishment, how fixed.**—Whenever a minimum or maximum punishment is fixed by law, and by reason of any aggravation of

the offense, or the existence of any circumstance on account of which the law directs that the punishment be doubled, this shall be construed to mean that the jury shall not inflict less than double the smallest punishment incurred by the law, nor more than double the greatest punishment so incurred. [P. C. 65.]

Post, Arts. 83, 84.

Art. 65. [65] **Double punishment in misdemeanor.**—If fine and imprisonment are the punishments to be incurred for any offense, and it is provided that the punishment be doubled in any particular case, then the jury are to assess not less than double the smallest, and not more than double the largest, fine prescribed by law, and not more than double the longest period of imprisonment, nor less than double the shortest period of imprisonment, so prescribed. [P. C. 66.]

Post, Arts. 83, 84.

Art. 66. [66] **Same subject.**—When an offense is punishable by either fine or imprisonment, and, as an alternative, it is declared that the punishment shall be double in any particular case, the jury are to assess not less than double the amount of the smallest fine, nor more than double the amount of the largest fine, or, as an alternative, they shall not assess less than double the shortest period of imprisonment, nor more than double the longest period. This rule applies where there may be more than two kinds of punishment prescribed as alternatives. [P. C. 67.]

Art. 67. [67] **Increase of punishment one-half.**—Where it is directed by law that in any particular case the punishment shall be increased one-half, it is to be construed to mean that the jury may, beside the punishment ordinarily prescribed by law, assess such additional punishment as shall not be less than one-half the penalty in ordinary cases; and all the rules before prescribed with respect to offenses, which by law incur alternative punishments, are applicable to cases where the penalty is to be so increased. [P. C. 68.]

Art. 68. [68] **Decrease of punishment one-half.**—When it is provided that the punishment in any given case, on account of mitigating circumstances, shall be diminished one-half, the jury shall assess one-half of the penalty fixed by law for the offense under ordinary circumstances, and so with regard to any other proportion in which the penalty is directed to be diminished. [P. C. 69.]

Art. 69. [69] **Diminution of punishment, what rule.**—In the diminution of punishments, the same rule as to two or more penalties, or as to alternative penalties, shall apply which are prescribed with regard to the increase of punishment. [P. C. 70.]

Art. 70. [70] **Capital cases, etc., not included in foregoing rules.**—The foregoing rules as to increase or diminution of punishments have no application to cases where the highest penalty may be death, nor to any case where the penalty is total deprivation of civil or political rights. [P. C. 71.]

Art. 71. [71] **Death, how inflicted.**—The punishment of death is inflicted by hanging, as prescribed in the Code of Criminal Procedure. [P. C. 72.]

Judgment in capital conviction need not recite the mode of execution. Steagald v. State, 22 T. Cr. R., 464, 3 S. W. R., 771.

Art. 72. [72] **Hard labor intended.**—Whenever the penalty prescribed for an offense is imprisonment for a term of years in the penitentiary, imprisonment at hard labor is intended. [P. C. 73.]

Verdict of imprisonment "at hard labor in the state prison" is good. Moore v. State, 7 T. Cr. R., 14; Wilson v. State, 12 Id., 481; Harris v. State, 8 Id., 90.

Art. 73. [73] **Officer to be removed, when.**—Whenever an offense is committed by an officer, and the same appears to the jury to be a wilful violation of duty, they shall so find, and such officer shall be removed from office. [P. C. 75.]

TITLE 3.

OF PRINCIPALS, ACCOMPLICES AND ACCESSORIES.

Chapter.
1. Principals.
2. Accomplices.
3. Accessories.
4. Trial of Accomplices and Accessories.

CHAPTER ONE.

PRINCIPALS.

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Article 74. [74] **Who are principals.**—All persons are principals who are guilty of acting together in the commission of an offense. [P. C. 214.]

Indictment need not allege that the parties impleaded as principals "acted together." No variance where the parties, being indicted as principals, if proof shows that but one of them alone committed the crime. Such one could be convicted under that indictment. Finney v. State, 29 T. Cr. R., 184, 15 S. W. R., 175; Watson v. State, 28 Id., 34, 12 S. W. R., 404; Loggins v. State., 32 Id., 358, 24 S. W. R., 408; Gallagher v. State, 34 Id., 306, 30 S. W. R., 557.

Need not allege the facts constituting accused a principal. If a principal only by reason of his co-operation with the party who actually committed the crime, he may be convicted under an indictment charging him directly as principal. Fuller v. State, 8 T. Cr. R., 501; Mills v. State, 13 Id., 487; Gladden v. State, 2 Id., 508; Davis v. State, 3 Id., 91.

Proper to charge one as the actual perpetrator and the others as present and knowing the unlawful intent, aided, abetted, encouraged, etc. Gladden v. State, 2 T. Cr. R., 508; Davis v. State, 3 Id., 91.

Principal, accomplice and accessory. Proof showing accused to be an accomplice or accessory will not sustain conviction as a principal. Rix v. State, 33 T. Cr. R., 353, 26 S. W. R., 505; Armstrong v. State, 28 Id., 526, 13 S. W. R., 864; Phillips v. State, 26 Id., 228, 9 S. W. R., 557; Trimble v. State, 18 Id., 632; Golden v. State, Id., 637; Bean v. State, 17 Id., 60; Mills v. State, 13 Id., 487; Dawson v. State, 38 Id., 50, 41 S. W. R., 599; Criner v. State, 41 Id., 290, 53 S. W. R., 873; McAllester v. State, 45 Id., 258, 76 S. W. R., 760.

Principal not bodily present. All parties performing their allotted and agreed parts in the accomplishment of the criminal design are principals, whether present or not when the crime is committed. Corn v. State, 41 T., 301; Trimble v. State, 33 T. Cr. R., 397, 26 S. W. R., 727; Mason v. State, 32 Id., 95, 22 S. W. R., 408; s. c., 31 Id., 306, 20 S. W. R., 564; Heard v. State, 9 Id., 1.

Quaere? How, if the crime be committed primarily in a foreign country and consummated in this, would the rule affect the aider and abettor? Fernandez v. St., 25 State, 538, 8 S. W. R., 667.

To constitute one not present at the commission of the offense a principal, he must have done some act at the time of the commission in furtherance thereof. Eddins v. State, 47 T. Cr. R., 529, 84 S. W. R., 828; Talley v. State, 49 Id., 91, 90 S. W. R., 1113.

All parties to the commission of a misdemeanor are principals. Strong v. State, 52 T. Cr. R., 133, 105 S. W. R., 785.

Art. 75. [75] **Same subject.**—When an offense is actually committed by one or more persons, but others are present, and, knowing the unlawful intent, aid by acts, or encourage by words or gestures, those actually engaged in the commission of the unlawful act, or who, not being actually present, keep watch so as to prevent the interruption of those engaged in committing the offense, such persons so aiding, encouraging or keeping watch are principal offenders, and may be prosecuted and convicted as such. [P. C. 215.]

See authorities cited under preceding article "principal, accomplice and accessory" and Lyons v. State, 30 T. Cr. R., 642, 18 S. W. R., 416; Walker v. State, 29 Id., 621, 16 S. W. R., 548; Armstrong v. State, 28 Id., 526, 13 S. W. R., 864; Phillips v. State, 26 Id., 228, 9 S. W. R., 557.

Indictment against the aider or abettor need not allege the acts or words of encouragement. Davis v. State, 3 T. Cr. R., 91.

Art. 76. [76] **Same subject.**—All persons who shall engage in procuring aid, arms or means of any kind to assist in the commission of an offense, while others are executing the unlawful act, and all persons who endeavor at the time of the commission of the offense, to secure the safety or concealment of the offenders, are principals, and may be convicted and punished as such. [P. C. 216.]

Art. 77. [77] **Same subject.**—If any one, by employing a child or other person, who can not be punished, to commit an offense, or by any means, such as laying poison where it may be taken, and with intent that it shall be taken, or by preparing any other means by which a person may injure himself, and with intent that such person shall thereby be injured, or, by any other indirect means, cause another to receive an injury to his person or property, the offender, by the use of such indirect means, becomes a principal. [P. C. 217.]

Indictment. This article does not apply to suicide although the accused may have directly or indirectly furnished the means (poison) to the suicide; and indictment is insufficient which does not negative the idea that deceased voluntarily took the poison and fails to allege deceased's want of knowledge, or that defendant, in some manner, by force, threats or fraud, caused deceased to take the poison. Sanders v. State, 54 T. Cr. R., 101, 112 S. W. R., 68.

Art. 78. [78] **Same subject.**—Any person who advises or agrees to the commission of an offense, and who is present when the same is committed, is a principal thereto, whether he aids or not in the illegal act. [P. C. 218.]

Principal offenders are all those who by acts, words or gestures, being present, participate in the commission of the offense though they took no actual part in it. Blain v. State, 33 T. Cr. R., 236, 26 S. W. R., 63; Lyons v. State, 30 Id., 642, 18 S. W. R., 416; Walker v. State, 29 Id., 621, 16 S. W. R., 548; Fernandez v. State, 25 Id., 538, 8 S. W. R., 667; Mason v. State, 31 Id., 306, 20 S. W. R., 564.

One is not a principal merely because he was present at the commission of the offense, though that is a circumstance which, in connection with other circumstances, may constitute the party a participant. Walker v. State, 29 T. Cr. R., 621, 16 S. W. R., 548; Floyd v. State, Id., 349, 16 S. W. R., 188; Sharp v. State, Id., 211, 15 S. W. R., 176; Burrell v. State, 18 T., 713; Ring v. State, 42 Id., 282.

Knowledge and concealment of the crime do not make the party either a principal or an accomplice. Noftsinger v. State, 7 T. Cr. R., 301; Rucker v. State, Id., 549; Golden v. State, 18 Id., 637; Smith v. State, 28 Id., 309, 12 S. W. R., 1104; Floyd v. State, 29 Id., 349, 16 S. W. R., 188; Prewett v. State, 41 Id., 262, 53 S. W. R., 879; Scott v. State, 46 Id., 536, 81 S. W. R., 294.

To constitute a principal there must be a combination of intent and act—a knowledge of the unlawful intent of the other parties, and an "acting together." Welsh v. State, 3 T. Cr. R., 413; Roundtree v. State, 10 Id., 110.

A party's liability may, however, under certain circumstances depend upon his own act and intent, and not those of the other parties. Trimble v. State, 33 T. Cr. R., 397, 26 S. W. R., 272, following Smith v. State, 21 Id., 107, 17 S. W. R., 552; Blain

v. State, 33 Id., 236, 26 S. W. R., 63; Lyons v. State, Id., 642, 18 S. W. R., 416; Gittle v. State, 35 Id., 96, 31 S. W. R., 677; Chapman v. State, 43 Id., 328, 65 S. W. R., 1098; Franklin v. State, 45 Id., 470, 76 S. W. R., 473.

Confederates in an unlawful undertaking are not liable for a felony committed by one, without their knowledge, and which did not enter into the original design. Mercersmith v. State, 8 T. Cr. R., 211; Harris v. State, Blain v. State, 30 Id., 702, 18 S. W. R., 862.

However, each conspirator is liable for whatever act of his confederates that follows incidentally, or in the natural or probable consequence of the common design though not originally intended. Cox v. State, 8 T. Cr. R., 254; Bowers v. State, 24 Id., 542, 7 S. W. R., 247; McKenzie v. State, 32 Id., 568, 25 S. W. R., 125; Blain v. State, 33 Id., 236, 26 S. W. R., 63; Rix v. State, Id., 353, 26 S. W. R., 505; Smith v. State, 46 Id., 267, 81 S. W. R., 936.

Accessory. Who instigates or agrees with another to commit a certain crime, and the instigated party commits a different crime, but one likely to be caused by, or become the reasonable result of the crime intended, is an accessory before the fact, and, if present at the commission, is a principal. Blain v. State, 30 T. Cr. R., 702, 18 S. W. R., 862.

But the instigator is neither principal nor accessory if the instigated, without his assent, committed a different crime, unless it was the probable result of the crime he instigated. Blain v. State, supra; Isaacs v. State, 36 Id., 505, 38 S. W. R., 40; Schackey v. State, 41 Id., 225, 53 S. W. R., 877; Renner v. State, 43 Id., 347, 65 S. W. R., 1102.

An accessory before the fact is, in reality, an accomplice. Strong v. State, 52 T. Cr. R., 133, 105 S. W. R., 785.

Co-conspirators responsible for all. Each party to a conspiracy to commit a crime is responsible for the acts of any or all pending the consummation of the common design and in furtherance thereof. Burris v. State, 34 T. Cr. R., 387, 30 S. W. R., 785; English v. State, Id., 190, 30 S. W. R., 233; Mason v. State, 32 Id., 95, 22 S. W. R., 144, 408; Blain v. State, 30 Id., 702, 18 S. W. R., 862; Mitchell v. State, 36 Id., 278, 33 S. W. R., 367, 36 S. W. R., 456; Jenkins v. State, 45 Id., 173, 75 S. W .R., 312.

Evidence. Whether indicted and tried jointly or separately as co-defendants and principals the antecedent acts and declarations of each in pursuance of and pending the common design in connection with the conspiracy tending to throw light on the transaction or develop motive and intent, are competent evidence against all and each. And this from the inception to the consummation of the common design. Smith v. State, 21 T. Cr. R., 107, 17 S. W. R., 552; McFadden v. State, 28 Id., 241, 14 S. W. R., 128; Cruit v. State, 41 T., 476; Kennedy v. State, 19 T. Cr. R., 618; Blum v. State, 20 Id., 578; Cook v. State, 22 Id., 511, 3 S. W. R., 749; Williams v. State, 24 Id., 17, 5 S. W. R., 655; Bookser v. State, 26 Id., 593, 10 S. W. R., 219; Clark v. State, 28 Id., 189, 12 S. W. R., 729; Weatherby v. State, 29 Id., 278, 15 S. W. R., 823; Lyons v. State, 30 Id., 642, 18 S. W. R., 416; Rodriguez v. State, 32 Id., 259, 22 S. W. R., 978; Rix v. State, 33 Id., 353, 26 S. W. R., 505; Dungan v. State, 39 Id., 115, 45 S. W. R., 19; Dent v. State, 43 S. W. R., 126.

No accomplice to manslaughter. The law of principals may and can apply to manslaughter, but there can be no accomplice to that offense. Cartwright v. State, 16 T. Cr. R., 473; Ogle v. State, Id., 361.

One who provides means to procure an abortion is a principal and not an accomplice. Watson v. State, 9 T. Cr. R., 237; Willingham v. State, 33 Id., 98, 25 S. W. R., 361.

The maxim, "qui facit per alium, facit per se," obtains no less in criminal than in civil cases. Carlisle v. State, 31 T. Cr. R., 537, 21 S. W. R., 358; Strang v. State, 32 Id., 219, 22 S. W. R., 680; Willingham v. State, 33 Id., 98, T. Cr. R., 246, 25 S. W. R., 745.

CHAPTER TWO.

ACCOMPLICES.

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Article 79. [79] **Accomplice, who is.**—An accomplice is one who is not present at the commission of an offense, but who, before the act is done, advises, commands or encourages another to commit the offense; or,

Who agrees with the principal offender to aid him in committing the offense, though he may not have given such aid; or,

Who promises any reward, favor or other inducement, or threatens any injury in order to procure the commission of the offense; or,

Who prepares arms or aid of any kind, prior to the commission of an offense, for the purpose of assisting the principal in the execution of the same. [P. C. 219.]

Indictment should charge the principal with the crime, and then the accomplice with the statutory prior acts constuting him an accomplice. Posten v. State, 12 T. Cr. R., 408; McKeen v. State, 7 Id., 761; Scales v. State, Id., 361; Simms v. State, 10 Id., 131; Crook v. State, 27 Id., 198, 11 S. W. R., 444.

Distinct crime. Accomplice to crime is a distinct offense. Crook v. State, 27 T. Cr. R., 198, 11 S. W. R., 444; Carlisle v. State, 31 T. Cr. R., 537, 21 S. W. R., 358; P. C., Art. 81.

But to convict the accomplice the state must adduce proof that would convict the principal. Arnold v. State, 9 T. Cr. R., 435; Armstrong v. State, 28 T. Cr. R., 526, 13 S. W. R., 864; Armstrong v. State, 33 Id., 417, 26 S. W. R., 829.

The confession of the principal is admissible in evidence on the trial of the accomplice. Bluman v. State, 33 T. Cr. R., 43, 21 S. W. R., 1027, 26 Id., 75.

Distinguished. The acts constituting an accomplice are auxiliary only, and are performed anterior and as inducement to the crime; the principal not only may perform antecedent acts in furtherance of the crime, but, when it is actually committed, is doing the part of the work assigned him in connection with the plan, and in furtherance of the common design, whether or not he be present when the crime is committed. Cook v. State, 14 T. Cr. R., 96, approving Scales v. State, 7 Id., 361; Cohea v. State, 9 Id., 173; Heard v. State, Id., 1; Hancock v. State, 14 Id., 392; Phillips v. State, 26 Id., 228, 9 S. W. R., 557; Dugger v. State, 27 T. Cr. R., 95, 10 S. W. R., 63; Crook v. State, Id., 198, 11 S. W. R., 444; Dawson v. State, 38 Id., 50, 41 S. W. R., 599; O'Quinn v. State, 55 T. Cr. R., 18.

Accomplice, when applied to evidence, has a broader significance than indicated in this article, and means one who, either as a principal, accomplice or accessory, is connected with the crime by an unlawful act or omission, transpiring before, at the time or after the commission of the offense, and whether or not he was present and participated in the offense. Johnson v. State, 125 S. W. R., 16.

Same. There is no practical difference between accomplice under our Code and the common law accessory before the fact. McKeen v. State, 7 T. Cr. R., 631; Cook v. State, 14 Id., 96; Strong v. State, 52 Id., 133, 105 S. W. R., 785.

Same. One is not an accomplice merely because he conceals his knowledge of a crime. Noftsinger v. State, 7 T. Cr. R., 301; Smith v. State, 23 Id., 357, 5 S. W. R., 219; Smith v. State, 28 Id., 309, 12 S. W. R., 1104; Sharp v. State, 29 Id., 211, 15 S. W. R., 175; Elizando v. State, 31 Id., 237, 20 S. W. R., 560; Alford v. State, Id., 553, 20 S. W. R., 553.

Art. 80. [80] **Precise offense need not be committed.**—To render a person guilty as an accomplice, it is not necessary that the precise offense which he may have advised, or to the execution of which he may have given encourage-

ment or promised assistance, should be committed; it is sufficient that the offense be of the same nature, though different in degree, as that which he so advised or encouraged. [P. C. 220.]

Art. 81. [81] **Punishment.**—Accomplices shall, in all cases not otherwise expressly provided for, be punished in the same manner as the principal offender. [P. C. 220a.]

Carlisle v. St., 31 T. Cr. R., 537; 21 S. W. R., 358.

Art. 82. [82] **Where one offense is attempted and another committed.**—If in the attempt to commit one offense the principal shall by mistake or accident commit some other under the circumstances set forth in articles 48, 49 and 50, the accomplice to the offense originally intended shall, if both offenses are felonies by law, receive the punishment affixed to the lower of the two offenses; but, if the offense designed be a misdemeanor, he shall receive the highest punishment affixed by law to the commission of such misdemeanor, whether the offense actually committed be a misdemeanor or a felony. [P. C. 221.]

Art. 83. [83] **If principal is under 17, punishment doubled.**—If the principal in an offense less than capital be under the age of seventeen years, the punishment of an accomplice shall be increased so as not to exceed, however, double the penalty affixed to the offense in ordinary cases. [P. C. 222.]

Penalty. The punishment for an adult receiver of goods stolen by a minor under sixteen years old is confinement in the penitentiary for from two to ten years. Ramsey v. State, 34 T. Cr. R., 16, 28 S. W. R., 208.

Art. 84. [84] **If accomplice is parent, master, guardian or husband to principal, punishment increased.**—If the accomplice stands in the relation of parent, master, guardian or husband to the principal offender, he shall, in all such cases, receive the highest punishment affixed to the offense, and the same may, in felonies less than capital, be increased by the jury to double the highest penalty which would be suffered in ordinary cases. [P. C. 223.]

Art. 85. [85] **No accomplice in manslaughter or negligent homicide.**—There may be accomplices to all offenses except manslaughter and negligent homicide. [P. C. 224.]

Offenses without accomplice. Manslaughter and negligent homicide are the only offenses to which there can be no accomplice. Ogle v. State, 16 T. Cr. R., 361; Cartwright v. State, Id., 473; Austin v. Cameron, 83 T., 351, 18 S. W. R., 437.

CHAPTER THREE.

ACCESSORIES.

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Article 86. [86] **Who is an accessory.**—An accessory is one who, knowing that an offense has been committed, conceals the offender, or gives him any other aid in order that he may evade an arrest or trial, or the execution of his sentence. But no person who aids an offender in making or preparing his defense at law, or procures him to be bailed, though he afterwards escapes, shall be considered an accessory. [P. C. 225.]

Offense defined—reciting this article: Robertson v. State, 46 T. Cr. R., 441, 80 S. W. R., 1000.

Must render aid in some overt act to be an accessory. Chenault v. State, 46 T. Cr. R., 351, 81 S. W. R., 971.

Indictment. Besides charging the principal as such, indictment must charge the accessory with the statutory acts constituting him such. Poston v. State, 12 T. Cr. R., 408.

Same. Indictment need not negative inclusion of the accused in the latter clause of the article. Smith v. State, 24 T., 285.

Accessory. The mother can not be an accessory to her son in the commission of crime. Gray v. State, 24 T. Cr. R., 611, 7 S.W. R., 339. Nor can the grandmother or brother-in-law be accessory. Adcock v. State, 41 Id., 288, 53 S. W. R., 845.

Same. None of the parties named in this article are immune from prosecution for conveying articles into a jail to aid in the escape of a prisoner charged with a felony. Peeler v. State, 3 T. Cr. R., 533.

Domestic servant is a servant who resides in the house and not one whose service is outside of the house. Waterhouse v. State, 21 T. Cr. R., 663, 2 S. W. R., 889; Petus v. State, 33 Id., 170, 26 S. W. R., 161.

Art. 87. [87] **Who can not be.**—The following persons can not be accessories:

1. The husband or wife of an offender.
2. His relations in the ascending or descending line by consanguinity or affinity.
3. His brothers and sisters.
4. His domestic servants. [P. C. 226.]

Art. 88. [88] **How punished.**—Accessories to offenses shall be punished by the infliction of the lowest penalty to which the principal in the offense would be liable. [P. C. 227.]

CHAPTER FOUR.

TRIAL OF ACCOMPLICES AND ACCESSORIES.

	Article		Article
Accomplice may be tried before principal	89	Can not be witnesses for each other, but may sever	91
Accessory also, unless principal is arrested	90		

Article 89. [89] **Accomplice may be tried before principal.**—An accomplice may be arrested, tried and punished before the conviction of the principal offender, and the acquittal of the principal shall not bar a prosecution against the accomplice, but, on the trial of an accomplice, the evidence must be such as would have convicted the principal. [P. C. 228.]

Trial of accomplice. An accomplice can be tried and convicted before the principal is, and the acquittal of the principal is no bar to the prosecution of the accomplice. However, he can be convicted only upon such evidence as would convict the principal. Arnold v. State, 9 T. Cr. R., 435; Crook v. State, 27 Id., 198, 11 S. W. R., 444; Bluman v. State, 33 Id., 43, 21 S. W. R., 1027, 26 Id., 75; Gibson v. State, 53 Id., 349, 110 S. W. R., 41; Richards v. State, Id., 400, 110 S. W. R., 432.

Art. 90. [90] **Accessory also, unless principal is arrested.**—An accessory may in like manner be tried and punished before the principal, when the latter has escaped; but, if the principal is arrested, he shall be first tried, and, if acquitted, the accessory shall be discharged. [P. C. 229.]

Trial of Principal. If he is in arrest the trial of the principal must precede that of the accessory, and if acquitted the accessory must be discharged. Williams v. State, 27 T. Cr. R., 466, 11 S. W. R., 481; West v. State, Id., 472, 11 S. W. R., 482.

Same. Should the principal die before he has been tried the accessory cannot be tried. McDaniel v. State, 41 T., 229.

Trial of accessory can be had before that of the principal when the latter is at large through escape after arrest. McDaniel v. State, supra.

Will not abate prosecution. Confinement in the penitentiary of the principal will not abate the prosecution of the accessory. Herandez v. State, 5 T. Cr. R., 425.

As predicate for the conviction of an accomplice or accessory, the guilt of the principal must be established. Arnold v. State, 9 T. Cr. R., 435; Posten v. State, 12 Id., 408; Crook v. State, 27 Id., 198, 11 S. W. R., 444; Isaacs v. State, 36 Id., 505, 38 S. W. R., 40.

Art. 91. [91] **Can not be witnesses for each other, but may sever.**—Persons charged as principals, accomplices or accessories, whether in the same indictment or by different indictments, can not be introduced as witnesses for one another, but they may claim a severance; and, if any one or more be acquitted, they may testify in behalf of the others. [P. C. 230.]

Evidence. Co-defendants under indictment for the same offense cannot testify for each other. Helm v. State, 20 T. Cr. R., 41; Blain v. State, 24 Id., 626, 7 S. W. R., 239; Scroggin v. State, 30 Id., 92, 16 S. W. R., 651.

The receiver of stolen property is not a qualified defense witness on the trial of the thief. Crutchfield v. State, 7 T. Cr. R., 65.

When competent. A co-defendant who has been acquitted, or been relieved by the dismissal of case against him, is competent to testify for the other. Warfield v. State, 35 T., 736.

Or when the judgment against him was a fine and the same has been paid. Tilley v. State, 21 T., 200; Ellege v. State, 24 Id., 78.

Competent if not indicted. Brooks v. State, 26 T. Cr. R., 87, 9 S. W. R., 355; Scroggins v. State, 30 Id., 92, 16 S. W. R., 651.

An accomplice examined on an important fact by the state may be cross-examined by the defense. Duffy v. State, 41 T. Cr. R., 391, 55 S. W. R., 176.

Same. Conspiracy must be proved aliunde before the acts and declarations of the principal can be used against the accomplice or accessory. Arnold v. State, 9 T. Cr. R., 435. And see Blain v. State, 33 Id., 236, 26 S. W. R., 63.

TITLE 4.

OF OFFENSES AGAINST THE STATE, ITS TERRITORY, PROPERTY AND REVENUE.

Chapter.
1. Treason.
2. Misprison of Treason.
3. Misapplication of Public Money.
4. Illegal Contracts Affecting the State.
5. Collection of Taxes and Other Public Money.
6. Occupation Tax on Soliciting Orders in Local Option Districts; Cold Storage and C. O. D. Shipments.
7. Occupation Tax on Dealers in Non-Intoxicating Malt Liquor.
8. Dealing in Fraudulent Land Certificates.
9. Dealing in Public Land by Officers.
10. Personal Property of the State.

CHAPTER ONE.

TREASON.

"Treason" defined ..... Article 92 | Punishment ..... Article 93

Article 92. [92] **"Treason" defined.**—Treason against the state shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort. [Const., Art. 1, Sec. 22; P. C. 231.]

Art. 93. [93] **Punishment.**—If any citizen of this state shall be guilty of treason he shall suffer death, or imprisonment in the penitentiary for life, at the discretion of the jury. [P. C. 232.]

CHAPTER TWO.

MISPRISION OF TREASON.

"Misprision of treason" defined..... Article 94 | Punishment ..... Article 95

Article 94. [94] **"Misprision of treason" defined.**—Whoever shall know that any person has committed treason, or is intending so to do, and shall not, within five days from the time of his having come to such knowledge, give information of the same to the governor, or to some magistrate or peace officer of the state, shall be deemed guilty of misprision of treason. [P. C. 233.]

Art. 95. [95] **Punishment.**—The punishment for misprision of treason is confinement in the penitentiary for a term of not less than two nor more than seven years. [Act Feb. 12, 1858, pp. 157-8; P. C. 234.]

CHAPTER THREE.

MISAPPLICATION OF PUBLIC MONEY.

	Article
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Article 96. [96] **Officer fraudulently taking or misapplying public money.**—If any officer of the government, who is by law a receiver or depositary of public money, or any clerk or other person employed about the office of such officer, shall fraudulently take, or misapply, or convert it to his own use, any part of such public money, or secrete the same with intent to take, misapply or convert it to his own use, or shall pay or deliver the same to any person, knowing that he is not entitled to receive it, he shall be punished by confinement in the penitentiary for a term not less than two nor more than ten years. [Act Feb. 12, 1858, p. 158; P. C. 235.]

Indictments may charge conjunctively in one count the several ways the offense may be committed. Dill v. State, 35 T. Cr. R., 240, 33 S. W. R., 126; Howell v. State, 29 Id., 592, 16 S. W. R., 533; Willis v. State, 34 Id., 148, 29 S. W. R., 787; Laroe v. State, 30 Id., 374, 17 S. W. R., 934; Comer v. State, 26 Id., 509, 10 S. W. R., 106.

Same; descriptive averments. It is sufficient if the indictment generally describes money by name, kind, quantity, number and ownership. Lewis v. State, 28 T. Cr. R., 140, 12 S. W. R., 736.

Art. 97. [97] **Using public funds.**—Within the term, "misapplication of public money," are included the following acts:

1. The use of any public money, in the hands of any officer of the government, for any purpose whatsoever, save that of transmitting or transporting the same to the seat of government, and its payment into the treasury.

2. **Exchanging public funds.**—The exchange, by any officer, of one character of public funds in his hands, for those of another character; the purchase of bank checks, or postoffice orders, in exchange, for transmission to the treasury, is not included in this class.

3. **Depositing public funds elsewhere than in treasury.**—The deposit, by any officer of the government, of public money in his hands, at any other place than the treasury of the state, when the treasury is accessible and open for business, or permitting the same to remain on deposit at such forbidden place, after the treasury is open.

4. **Officer purchasing warrants.**—The purchase of state warrants, or other evidence of state indebtedness, by any officer of the government, with public money in his hands.

5. **Retaining funds after notice from comptroller.**—The retention in his hands, by any collector of taxes, of any funds belonging to the state, for

thirty days after receiving notice from the comptroller of public accounts to pay the same over to the treasurer.

6. **Failing to pay into treasury at proper time.**—The wilful failure of any officer to pay into the state treasury, at the time prescribed by law, whatever funds he may have on hand.

7. **Other cases.**—The special enumeration of cases of misapplication above set forth shall not be understood to exclude any case which, by fair construction of language, comes within the meaning of the preceding language; provided, that this article shall not be construed to prevent collectors of taxes from paying warrants drawn by the comptroller in favor of officers living in their district or county, as may be provided by law.

Venue.—The offenses defined in subdivisions 5 and 6 of this article, when committed in any county in this state, may be prosecuted in the district court of Travis county, or in the county where the money was received. [Acts 1879, ch. 150, p. 165.]

Art. 98. **Donation of taxes to City of Galveston.**—For a period of fifteen years, commencing with the fiscal year beginning September 1, 1903, there be and hereby are donated and granted by the state of Texas to the city of Galveston, the net amounts of money collected from the following taxes:

1. The state ad valorem taxes collected upon property and from persons in the county of Galveston, including the rolling stock belonging to railroad companies, which shall be ascertained and apportioned as now provided by law.

2. Three-fourth of all moneys collected from state occupation taxes received from persons, firms, companies or associations of persons doing business in the county of Galveston.

3. All state poll taxes collected from persons in the county of Galveston, except that belonging to the public school fund. [Act 1903, p. 10.]

Art. 99. **Diversion of same a misapplication of public money.**—The moneys herein and hereby granted and donated to the city of Galveston are declared to be a trust fund for the purpose of aiding the city of Galveston in paying the interest and sinking fund upon an issue or issues of bonds, the proceeds of which bonds are to be used exclusively for the elevation and raising of the streets, avenues, alleys, sidewalks and lots in said city above calamitous overflows, and for securing and protecting such filling. The use or diversion of such moneys for any other purpose whatsoever is hereby prohibited; provided, that whenever the moneys in the hand of the city treasurer, received from the state under the provisions of this or any previous law, shall exceed the sum of one year's interest, and two per cent sinking fund, on the bonds herein referred to that have been issued and are then outstanding, such excess shall be invested by said city in the purchase of said bonds, or bonds of the United States, the state of Texas, or the bonds of any county, city or town, of the state of Texas, bearing interest at a rate of not less than four per cent per annum; and provided, further, that the entire sinking fund, when received by the city treasurer of said city, shall be invested by the municipal authorities of said city, as received, in the bonds herein referred to, or bonds of the United States, the state of Texas, or the bonds of any county, city or town of the state of Texas, bearing interest at a rate of not less than four per cent per annum. A violation of the provisions of this section shall constitute a misapplication of public money, and the person or persons so offending shall be punished as provided for in article 96 of this Code. [Act 1903, p. 10.]

Art. 100. [98] **What not included.**—Nothing in the two preceding articles contained shall apply to the sale or exchange of one kind of money for another by the financial officers of the state, when done in pursuance of law. [Act March 15, 1875, p. 180.]

Art. 101. [99] **Receiving or concealing misapplied public money.**—If any person shall knowingly and with fraudulent intention receive or conceal any public money which has been taken, converted or misapplied by any officer or employe as set forth in the two preceding articles, he shall be punished by confinement in the penitentiary for a term not less than two nor more than five years. [Act Feb. 5, 1875, p. 12; P. C. 236.]

Art. 102. [100] **"Officer of the government" defined.**—Under the term, "officer of the government," as used in this chapter, are included the state treasurer and all other heads of departments who by law may receive or keep in their care public money of the state; tax collectors, and all other officers who by law are authorized to collect, receive or keep money due to the government. [P. C. 237.]

"Officer." Within the purview of the statute defining embezzlement of public money, a deputy sheriff is an officer. State v. Brooks, 42 T., 62.

And so, likewise, is a justice of the peace. Crump v. State, 23 T. Cr. R., 615, 5 S. W. R., 182.

Art. 103. [101] **State treasurer improperly receiving private funds.**—If the treasurer of this state shall knowingly keep or receive into the building, safes or vaults of the treasury, any money, or the representative of money, belonging to any individual, except in cases expressly provided for by law, he shall be punished by confinement in the penitentiary for a term not less than two nor more than five years. [Act May 3, 1873, pp. 61-2.]

Art. 104. [102] **Diverting special funds.**—If any person shall knowingly and wilfully borrow, withhold or in any manner divert from its purpose, any special fund, or any part thereof, belonging to or under the control of the state, which has been set apart by law for a specific use, he shall be punished by confinement in the penitentiary for a term not less than two nor more than ten years. [Const., Art. 8, § 7.]

Art. 105. [103] **Misapplication of county or city funds.**—If any officer of any county, city or town in this state, or any clerk or other person employed by such officer, shall fraudulently take, misapply or convert to his own use any money, property or other thing of value belonging to such county, city or town, that may have come into his custody or possession by virtue of his office or employment, or shall secrete the same with intent to take, misapply or convert it to his own use, or shall pay or deliver the same to any person knowing that he is not entitled to receive it, he shall be punished by confinement in the penitentiary for a term not less than two nor more than ten years.

Construed. County treasurer's relation to the county is not, under this article, that of a debtor, nor is it, under the Revised Statutes, that of a bailee. He is the bonded custodian of the county funds, and failure from any cause to produce is a breach of his bond. Poole v. State, 97 T., 77, 76 S. W. R., 425.

He cannot be removed from his office under this article until he has been convicted on a trial before a jury. Bland v. State, 38 S. W. R., 252.

A subordinate police officer or jailer, not being an officer contemplated by this article, cannot be prosecuted for embezzlement under it. Hartnett v. State, 56 T. Cr. R., 281, 119 S. W. R., 855.

Indictment for misapplication of public funds need not describe the money embezzled, though the better practice is to describe it generally by name, kind and ownership. State v. Brooks, 42 T., 62; Lewis v. State, 28 T. Cr. R., 140, 12 S. W. R., 736.

Indictment charged defendant as an officer and as clerk and employe of an officer, defendant being the assistant financial agent of penitentiaries. Held, that the allegations are not repugnant. Busby v. State, 51 T. Cr. R., 289, 103 S. W. R., 638.

Same; ownership of the money must be alleged in the county, city or town, and if a city, that it was incorporated; that defendant received the money by virtue of his office, and converted it to his own use. Crane v. State, 26 T. Cr. R., 482, 9 S. W.

R., 773; Steiner v. State, 33 Id., 291, 26 S. W. R., 214; Hartnett v. State, 56 Id, 281, 119 S. W. R., 855.

Same. County judge not being authorized to receive public school money cannot be indicted for its conversion. Warswick v. State, 36 T. Cr. R., 63, 35 S. W. R., 386.

Same. Time and venue. The omission of the words "then and there" after the word "did" in the charging part of the indictment is sufficiently supplied by the words "did unlawfully, wilfully and fraudulently, take and misapply," etc. Butler v. State, 46 T. Cr. R., 287, 81 S. W. R., 743.

Charge of court was not too restrictive that the defendant, as treasurer, was "only authorized to receive on behalf of, and pay to the county, legal tender metallic coin or legal tender notes, and current money of the United States of America." Butler v. State, 46 T. Cr. R., 287, 81 S. W. R., 743.

Art. 106. [104] **Fraudulently receiving misapplied county or city funds.**—If any person shall, knowingly and with fraudulent intention, receive or conceal any money or property which has been taken, misapplied or converted by any officer or employe, as set forth in the preceding article, he shall be punished by confinement in the penitentiary for a term not less than two nor more than five years.

Art. 107. **Officer failing to pay over public money.**—Every tax collector, or other officer or appointee, authorized to receive public moneys, who shall wilfully and negligently fail to account for all moneys in their hands belonging to the state, and pay the same over to the state treasurer whenever and as often as they may be directed so to do by the comptroller of public accounts, and all tax collectors and other officers or appointees authorized to receive public moneys, who shall fail to account for all moneys in their hands belonging to their respective counties, cities or towns, and pay the same over to the respective county treasurers, or city treasurers, whenever and as often as they may be directed so to do by the respective county judges, or county commissioners, courts, or mayor or board of aldermen, shall be deemed guilty of a felony, and shall be punished by imprisonment in the penitentiary for not less than three nor more than ten years; provided, that tax collectors shall have thirty days from the date of such direction within which to comply with the same. [Acts 1879, extra session, ch.8, §§ 4, 5 and 6.]

Art. 108. **Venue.**—Prosecutions for failing to account for, and pay over money belonging to the state, under the provisions of the preceding article, shall be conducted in Travis county; and prosecutions for failing to account for, and pay over, moneys belonging to the counties, cities and towns, shall be conducted in the county to which such money may belong, or in the county where such city or town is situated.

Art. 109. [105] **Collector failing to pay.**—The collectors of taxes shall, at the close of each month, pay over to the state treasurer all moneys collected by them during the month for the state, excepting such amounts as they are allowed by law to pay in the counties, reserving only their commissions on the same; and to enable them to do so, they may, at their own risk, secure and send the same to the treasurer by express, or in postoffice orders, at not more than the usual rate of exchange, to be paid by the state; that the collectors of taxes shall pay over to the state treasurer all balances in their hands belonging to the state, and finally adjust and settle their accounts with the comptroller on or before the first day of May of each year; that the treasurer, whenever he may receive from the collectors of taxes postoffice orders, shall collect the same and pay the money so collected into the treasury on the deposit warrant of the comptroller, and the money when so deposited shall be a credit to the tax collector. It shall be the duty of the comptroller to enforce a strict observance of the provisions of this article, but no public moneys shall be paid to the comptroller except such as are made payable directly to him as collector of the same under existing statutes, and expressly provided by law to be paid to him as receiver of taxes; and, in addi-

tion to the reports required by law to be made by tax collectors, they shall make a monthly statement under oath, on forms to be provided by the comptroller, showing the amounts collected each month and the funds to which they belong. Any collector of taxes failing to comply with the provisions of this article shall be fined in a sum not less than five hundred and not more than one thousand dollars, and each failure to make the required report shall constitute a separate offense; and it shall be the duty of the comptroller to notify the county attorney, or district attorney, of the county in which the collector resides, and the sureties on the bond of said collector, of any failure to comply with the provisions of this law. [Act March 30, 1887, p. 67.]

Art. 110. **Fees that may be retained by any officer.**—The maximum amount of fees of all kinds that may be retained by any officer mentioned in this article as compensation for services shall be as follows: County judge, an amount not exceeding two thousand dollars per annum; clerk of the county court, an amount not exceeding two thousand dollars per annum; county attorney, an amount not exceeding two thousand dollars per annum; district attorney, an amount not exceeding two thousand five hundred dollars per annum, inclusive of the five hundred dollars allowed by the Constitution and paid by the state; clerk of the district court, an amount not exceeding two thousand dollars per annum; collector of taxes, an amount not exceeding two thousand dollars per annum; assessor of taxes, an amount not exceeding two thousand dollars per annum; justices of the peace, an amount not exceeding fifteen hundred dollars per annum; constables, an amount not exceeding twelve hundred dollars per annum; and, in addition thereto, one-fourth of the excess of fees collected by the said officers, respectively; provided, that this act shall not apply to justices of the peace and constables, except those holding office in cities of more than fifteen thousand inhabitants; provided, that up to 1902, in counties in which there were cast at the last presidential election as many as five thousand votes, and thereafter any counties shown by the last national census to contain as many as twenty-five thousand inhabitants, the following amounts shall be allowed, viz: County judge, an amount not exceeding two thousand two hundred and fifty dollars per annum; clerk of the county court, an amount not exceeding two thousand two hundred and fifty dollars per annum; county attorney, an amount not exceeding two thousand two hundred and fifty dollars per annum; district attorney, an amount not exceeding two thousand five hundred dollars per annum, inclusive of the five hundred allowed by the Constitution and paid by the state; clerk of the district court, an amount not exceeding two thousand two hundred and fifty dollars per annum; collector of taxes, an amount not exceeding two thousand two hundred and fifty dollars per annum; assessor of taxes, an amount not exceeding two thousand two hundred and fifty dollars per annum; and in addition thereto one-fourth of the excess of the fees collected by the said officers, respectively; provided, further, that in counties containing a city of over twenty-five thousand inhabitants, or in which there were cast at the last presidential election as many as seven thousand five hundred votes, or by the last census shall contain as many as thirty-seven thousand five hundred inhabitants, the following amounts of fees shall be allowed, viz: County judge, an amount not exceeding two thousand five hundred dollars per annum; clerk of the county court, an amount not exceeding two thousand five hundred dollars per annum; county attorney, an amount not exceeding two thousand five hundred dollars per annum; district attorney, an amount not exceeding two thousand five hundred dollars per annum, inclusive of the five hundred dollars allowed by the Constitution and paid by the state; clerk of the district court, an amount not exceeding two thousand five hundred dollars per annum; collector of taxes, an amount not exceeding two thousand five hundred dollars per annum; assessor of taxes, an amount not exceeding two thousand five hundred dollars per an-

num; in addition thereto one-fourth of the excess of the fees collected by the officers, respectively; provided, that the county attorney in those counties having no district attorney, where he performs the duties of district attorney, may receive the same compensation as provided for the district attorney; provided, the maximum fixed for the compensation of the district attorney shall be construed to be the amount which that officer is authorized to retain of fees allowed such officers in his district, whether composed of one or more counties; provided, that in counties where a county judge acts as superintendent of public instruction, he shall receive such other salary as may be provided by the commissioners' court, not to exceed the sum of six hundred dollars per annum. The last United States census shall govern as to the population of the cities and counties. [Act 1897, 1st S. S., p. 43.]

Art. 111. **Fees of district clerk.**—The clerks of the district court shall hereafter receive the following fees for the following services: For recording return of any writs when any such return is required by law to be recorded, the amount of fifty cents; when the return exceeds three hundred words, for each one hundred words in excess of three hundred words, ten cents. Id., p. 43.]

Art. 112. **Fees of county clerk.**—The clerks of the county court shall hereafter receive for the following services the following fees: For recording return of any writ, when any such return is required by law to be recorded, fifty cents; where the return exceeds three hundred words, for each one hundred words in excess of three hundred words, ten cents. [Id. p. 43.]

Art. 113. **Penalty for failing to charge up fees, to make report, or to receive back any part allowed deputy.**—Any officer named in the three preceding articles, and also the sheriff, who shall fail to charge up the fees or costs that may be due under existing laws, or who shall remit any fee that may be due under the laws, or who shall fail to make the report required by this law, or who shall pay his deputy or assistant a less sum than the amount specified in his sworn statement, or receive back any part of such compensation allowed such deputy or assistant, as a rebate, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not less than twenty-five dollars nor more than five hundred dollars. Each act forbidden in this article shall constitute a separate offense. [Act 1897, 1st S. S., p. 5.]

Art. 114. **Clerk issuing attachment or subpoena without authority.**—Any district clerk who shall issue any attachment or subpoena for any witness, except upon an order of court or upon the written application, signed and sworn to by the defendant or state's counsel, stating that such witness is believed to be a material witness, shall be deemed guilty of a misdemeanor, and, upon conviction, fined in any sum not less than twenty-five dollars and not more than five hundred dollars. [Id. p. 5.]

Art. 115. **Amounts allowed officers may be retained; state or county not responsible for fees or compensation, when; officers to make sworn statements of fees collected, inform party for whom collected and pay over same.**—The amounts allowed to each officer mentioned in articles 110, 111 and 112 may be retained out of the fees collected by him under existing laws; but in no case shall the state or the county be responsible for the payment of any sum when the fees collected by any officer are less than the maximum compensation allowed by this law, or be responsible for the pay of any deputy or assistant. Each officer mentioned in article 110, and also the sheriff, shall, at the close of each fiscal year, make to the district court of the county in which he resides a sworn statement, showing the amount of fees collected by him during the fiscal year and the amount of fees charged and not collected, and by whom due, and the number of deputies and assistants employed by him during the year, and the amount paid or to be paid each; and all fees collected by officers named in article 110 during the fiscal year in

excess of the maximum amount allowed and of the one-fourth of the excess of the maximum amount allowed for their services, and for the services of their deputies or assistants hereinafter provided for, shall be paid to the county treasurer of the county where the excess accrued; provided, that any officer in article 110 who does not collect the maximum amount of his fees for any fiscal year and who reports delinquent fees for that year, shall be entitled to retain, when collected, such part of such delinquent fees as is sufficient to complete the maximum compensation for the year in which delinquent fees were charged, and also to retain the one-fourth of the excess belonging to him, and the remainder of the delinquent fees for that fiscal year shall be paid as hereinbefore provided for when collected; provided, that in all counties in this state having more than one judicial district, the district clerks thereof shall in no case be allowed fees in excess of the maximum fees allowed clerks in counties having only one district court. [Act. 1907, p. 50.]

It shall be the duty of every county and precinct officer in the state of Texas who shall, in his official capacity, collect or receive any money or fees belonging to any witness, officer or other person, to inform such person of the collection of such money or fees, and to promptly pay the same over on demand to the person entitled thereto, taking receipt therefor, which shall be entered or noted in the fee book of such officer. [Id.]

Art. 116. **Officers to make quarterly statements of moneys in their hands uncalled for.**—On or before the second Mondays in February, May, August and November of each year, said officers shall make report in writing and under oath to the commissioners' court of their respective counties of all such moneys and fees so collected by them during the quarter last preceding and remaining in their hands uncalled for, giving the number and the style of each cause in which said moneys or fees accrued and the name of the person entitled thereto, which report shall be filed with the county clerk of said county, and the same shall be by him kept and preserved for future reference and examination. [Id., p. 120.]

Art. 117. **Moneys not called for to be paid over to county treasurer.**—Every officer collecting or having the custody of any money or fees embraced within the provisions of this law at the expiration of four years from the time of collecting or receiving such money or fees, in all cases where the same have not been paid over to the person or persons entitled thereto, shall pay the same to the county treasurer of his respective county, accompanying the same by an itemized statement, as provided in Article 115 hereof, which statement shall be filed and kept by said treasurer, and said money or fees shall be by him placed to the credit of the road and bridge fund of the county; and the treasurer shall issue to the said officer his receipt for said money or fees, itemizing the same as above provided, which receipt shall be filed by said officer with the county clerk of his respective county; provided, that any officer, upon retiring from office, having any money or fees in his hands embraced within the provisions of this law, and which are not due to be turned over to the county treasurer as herein provided, shall turn the same over to his successor in office, together with an itemized list of the same as hereinbefore provided, taking proper receipt therefor, and his successor shall report and pay over the same to the county treasurer in accordance with the provisions hereof. [Id., p. 120.]

Art. 118. **Penalty for violating three preceding articles.**—Any person violating any of the provisions of the three preceding articles shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars. [Id., p. 120.]

CHAPTER FOUR.

OF ILLEGAL CONTRACTS AFFECTING THE STATE.

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Such officers or employes shall not use or receive provisions, clothing, merchandise or other articles furnished by the state; penalty for so doing.....	122

Article 119. [106] **Contract to charge the state, without authority.**—If any person or officer in this state shall contract with any other person for his services or labor, or for any property of any kind, with intent to charge the state of Texas with the same, and to do which, such person or officer has no authority by law, he shall be fined in any sum not less than one hundred dollars and not more than two thousand dollars. [Act May 4, 1874, pp. 221-2.]

Art. 120. **State purchasing agent shall not be interested in any contract with state, or accept or receive from any person to whom contract has been awarded, rebate, gift, money, etc.; penalty for.**—The state purchasing agent shall not be interested in, or in any manner connected with, any contract or bid for furnishing supplies or articles of any kind to any of the institutions, or to any other department or institution of the state, or with any person, firm or corporation, who is interested in, or in any manner connected with, any kind of contract with the state or any of its institutions and departments, nor shall he collect or be paid his salary, or any part thereof, while he is in any manner or degree indebted to the state, or in arrears in his accounts and reports as such agent. Neither shall said agent accept or receive from any person, firm or corporation, to whom any contract may be awarded, directly or indirectly, by rebate, gift or otherwise, any money or other thing of value whatever, nor shall he receive any promise, obligation or contract for future reward or compensation from any such party; provided, that should said purchasing agent violate any of the provisions of this law, or should he receive any rebate, drawback, profit or benefit from any contract, he shall be deemed guilty of a felony, and, upon conviction, shall be punished by confinement in the penitentiary not less than two nor more than five years. [Act 1899, p. 138.]

Art. 121. **Storekeepers and accountants, appointment of; shall not sell or be concerned in sale of merchandise or supplies to institutions or departments of state, or have interest in bid or contract therewith; providing penalty.**—There shall be appointed by the superintendents, with the advice and consent of the boards of managers, of said institutions, storekeepers and accountants, one for each of said institutions, who shall hold their offices for two years from date of qualification, or until their successors shall have qualified, unless sooner removed by the boards of managers, at the suggestion of the superintendent or upon the complaint of the purchasing agent, for inefficiency, incompetency, neglect of duty or other adequate cause affecting their faithful and satisfactory performance of duty. Said storekeepers or accountants shall receive a compensation not to exceed the sum of nine hundred dollars per annum, to be charged and paid as part of the current expenses of said institutions, and they shall not be entitled to charge, collect or receive any other compensation or commutation or commission, unless their own individual board and lodging, if they shall be required to reside within the institutions to which they are attached. Each of said storekeepers or accountants shall, before entering upon the performance of his duties, make and file with

the comptroller of public accounts a bond in the sum of ten thousand dollars, payable to the state of Texas, to be approved by the governor and filed with the comptroller, which bond shall be conditioned for the full, faithful, accurate and honest performance of his duties, and it shall not be lawful for said storekeepers or accountants to sell, or be in any way concerned in the sale of, any merchandise, supplies or other articles to any of the institutions herein named, or to have any interest in any bid or contract therewith or with any other institution or department of the state government. The offices or positions of steward, quartermaster or other similar position heretofore existing in any and all of said named institutions are hereby abolished, and said storekeepers or accountants shall hereafter perform all the duties, except such as may be inconsistent with the provisions of this act, heretofore imposed upon such abolished officers or employes, as well as such other duties as may be required of them by the management of said institutions. They shall also keep the purchasing agent constantly advised as to the amount and character of supplies on hand, and the amount and character required in order to keep the institutions constantly provided for. They shall also furnish any other information respecting such matters as may be desired by the said purchasing agent. Any person violating any of the provisions of this article shall be deemed guilty of a felony, and, upon conviction thereof, be punished by confinement in the state penitentiary not less than two nor more than five years. [Id., p. 138.]

Art. 122. **Such officers and employes shall not use or receive provisions, clothing, merchandise or other articles furnished by state; penalty for so doing.**—No officer or employe created by this law shall ever use or receive for their own use any provisions, clothing, merchandise, or other articles furnished by the state, but that the salaries fixed by law shall be their only compensation; and any person who violates this provision shall, upon conviction, be punished by confinement in the penitentiary for a term not less than two nor more than ten years. [Id., p. 138.]

CHAPTER FIVE.

COLLECTION OF TAXES AND OTHER PUBLIC MONEY.

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Article 123. [107] **Collector extorting excessive taxes, etc.**—If any person authorized to collect or receive taxes or other money due the state shall extort or attempt to extort from any one a larger sum than is due, or shall receive any sum of money or other reward as a consideration for granting any delay in the collection of such dues, or for doing any illegal act, or omitting to do any legal act, in relation to the collection of such money, he shall be punished by fine not exceeding five hundred dollars. [P. C. 238.]

Art. 124. [108] **Tax officer exacting usury.**—If any assessor or collector of taxes shall advance for a person owing taxes to the government the amount of money so due, and shall charge therefor a rate of interest greater than ten per centum per annum, he shall be punished in the manner provided in the preceding article. [P. C. 239.]

Art. 125. [109] **Tax officer assuming taxes for reward.**—Within the meaning of the preceding article is included the case of any assessor or collector who fails to collect taxes due and assumes to be responsible to the government therefor, and receives for such act any compensation or reward. [P. C. 240.]

Art. 126. [110] **Collector failing to forward transcript.**—The collector of taxes shall keep a book of such size and character as may be necessary, in which shall be entered quarterly, at the following dates, to-wit, January 1, April 1, July 1 and October 1, or within ten days thereafter, in which to require the returns to be made under the provisions of this article, the several amounts as shown by such returns for which and upon which any person, firm or association of persons is or may be liable to a tax upon occupation under this act, and within fifteen days from the time of receiving and making up the several amounts and the sums due upon such amounts as occupation tax, the collector shall forward to the comptroller of public accounts a transcript or duplicate of the return and the amounts as shown by his record, this transcript and the record from which it is taken to show the amount of such quarterly returns, and the tax due thereon, from every person, firm or association of persons liable to such tax; and any collector, failing to forward such transcript or duplicate, taken from the pages of such collector's record herein provided for, or who shall forward a false or pretended transcript of such account, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty nor more than five hundred dollars; provided, that nothing contained in this article is intended to affect the liability which, in the absence of this statute, would be incurred under any penal enactment of this state. [Acts 1879, ch. 134.]

Indictment held bad because it did not conform to the amendment to the article. Taylor v. State, 50 S. W. R., 343.

Art. 127. [110a] **Collector issuing occupation tax receipt without affidavit, etc.**—If any tax collector shall issue any occupation tax receipt without first taking or filing the affidavit required by law, he shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than ten nor more than one hundred dollars. [Act 1895, p. 18.]

Art. 128. [110b] **Wrong license no protection.**—No occupation tax receipt or license taken out by a merchant of a lower class than the one to which he properly belongs, shall be any protection against a prosecution and conviction for knowingly pursuing that of a higher class and failing to pay the occupation tax due therefor.

Art. 129. [111] **Obstruction of tax collections.**—If any person shall, by force or threats of force, prevent, or attempt to prevent, the collection of taxes or other money due the state by an officer authorized to enforce such collection, he shall be punished by a fine not less than one hundred nor more than five hundred dollars, and by imprisonment in the county jail not less than three months nor more than one year. When the means used to prevent the collection are such as to amount to a riot, or unlawful assembly, the punishment shall be that which is prescribed in article 452 of this Code.

Art. 130. [112] **Pursuing taxable occupation without license.**—Any person who shall pursue or follow any occupation, calling or profession, or do any act taxed by law, without first obtaining a license therefor, shall be fined in any sum not less than the amount of the taxes due, and not more than double that sum.

"Occupation" is the vocation, trade or business one follows principally for a living or profit. Stanford v. State, 16 T. Cr. R., 331; Love v. State, 31 Id., 469, 20 S. W. R., 978; Robbins v. State, 57 Id., 462, 123 S. W. R., 695.

The following of such occupation without license is the gravamen of the offense. La Norris v. State, 13 T. Cr. R., 33; Williams v. State, 23 Id., 499, 5 S. W. R., 136. See Kennedy v. State, 127 S. W. R., 204.

Retail liquor dealers. The article applies especially to retail liquor dealers, and was intended to enforce prompt payment of their occupation tax. A liquor dealer operating his business a single day without posting his license violates the law at his peril. Schwartz v. State, 32 T. Cr. R., 387, 24 S. W. R., 28; Maroney v. State, 49 Id., 337, 92 S. W. R., 844.

Local option districts. The local option law, when put into operation, supersedes in such territory occupation tax laws on the sale of liquors. Gibson v. State, 34 T. Cr. R., 218, 29 S. W. R., 1085.

Acts unconstitutional. The act of the 29th legislature, page 207, imposing an occupation tax on certain persons, etc., procuring assignments and transfers of wages not due, etc., is unconstitutional. Owens v. State, 53 T. Cr. R., 105, 112 S. W. R., 1075

Act of 30th legislature levying an occupation tax on all firms, persons, corporations, etc., selling non-intoxicating liquors in local option territory, is unconstitutional. Ex parte Woods, 52 T. Cr. R., 575, 108 S. W. R., 1171. And see post, art. 157.

The act of the 30th legislature, page 275, regulating the practice of barbering, is unconstitutional. Jackson v. State, 55 T. Cr. R., 557, 117 S. W. R., 818.

Traveling salesmen. Subdivision 3 of article 5049 of the Revised Civil Statutes of 1895, levies an occupation tax on salesmen of medicines, exempting salesmen of wholesale drug houses. Held, that the exemption does not protect a traveling salesman of a wholesale house who sells at retail. The act is constitutional. Needham v. State, 51 T. Cr. R., 248, 103 S. W. R., 857.

A valid receipt for the occupation tax will operate as a license. Fouts v. State, 51 T. Cr. R., 3, 101 S. W. R., 223.

Art. 131. **Plumber conducting business without license; penalty for.**—Any person, whether as master plumber, employing, or journeyman plumber, en-

gaged in, working at, or conducting the business of plumbing without license, as provided by law, shall be guilty of a misdemeanor, and, on conviction thereof, shall pay a fine of not less than twenty nor more than two hundred and fifty dollars. [Act 1897, p. 236.]

Art. 132. [113] **Penalty not exclusive.**—The preceding articles shall not be construed so as to affect any civil remedy to enforce the collection of taxes.

Art. 133. [114] **Payment of tax bars prosecution.**—Any person prosecuted under article 130 of the Penal Code of the state of Texas shall have the right at any time before conviction to have such prosecution dismissed upon payment of the tax and all costs of said prosecution, and procuring the license to pursue or follow the occupation for the pursuing which, without license, the prosecution was instituted; and no prosecution shall be commenced against any person after the procuring of said license, notwithstanding they may have followed such occupation, calling or profession before procuring said license; provided, said license shall cover the time said person has actually followed said occupation, calling or profession. The county clerk shall be entitled to ten cents for issuing the license, to be paid by the person to whom it is issued. [Act March 15, 1881, pp. 34-5.]

Dismissal of prosecution. It was improper for the officer to issue the license until both tax and costs were paid, but the court erred in charging the jury to convict if the defendant paid the tax before trial but did not pay the costs then accrued. Rogers v. State, 35 T. Cr. R., 543, 34 S. W. R., 634.

Constitutional law. Previous laws of same tenor have been held constitutional. Harris v. State, 4 T. Cr. R., 131, following Higgins v. Rinker, 47 T., 393; Tonella v. State, 4 T. Cr. R., 325; Fahey v. State, 27 Id., 146, 11 S. W. R., 108; Floeck v. State, 34 Id., 314, 30 S. W. R., 794.

Indictment must allege positively the following of the occupation and the tax due. Archer v. State, 9 T. Cr. R., 78; Rather v. State, 15 Id., 556; Sheffield v. State, 14 Id., 238.

It is not necessary to allege the name of the person to whom the liquor was sold. Mansfield v. State, 17 T. Cr. R., 468.

Social clubs. Bona fide social clubs are not liable to the occupation tax in selling to its members and non-resident visitors, if the sales are not for profit.

Druggists. The law does not require druggists in local option districts to obtain license to sell such intoxicants. Gibson v. State, 34 T. Cr. R., 218, 29 S. W. R., 1055; Rathburn v. State, 88 T., 281, 31 S. W. R., 189.

Posting license is required in order to enforce prompt payment of the occupation tax. Schwartz v. State, 32 T. Cr. R., 387, 24 S. W. R., 28.

Employe, following the occupation, is equally liable with the principal. La Norris v. State, 13 T. Cr. R., 33; Davidson v. State, 27 T. Cr. R., 262, 11 S. W. R., 371.

Evidence. Proof of a single sale will not sustain allegation of pursuing the occupation. Stanford v. State, 16 T. Cr. R., 331; Merritt v State, 19 Id., 435; Halfin v. State, 18 Id., 410.

Payment of the United States special revenue tax is prima facie evidence of the following of the occupation, which payment may be shown by a copy of the entries in the books of the Internal Revenue office. Floeck v. State, 34 T. Cr. R., 314, 30 S. W. R., 794; Gersteman v. State, 35 Id., 318, 33 S. W. R., 357; Monford v. State, Id., 237, 30 S. W. R., 351.

Art. 134. [115] **Refusal to render or swear to assessment.**—If any person shall refuse or neglect to make out and render a list of his taxable property, when called upon in person by the assessor of taxes or his deputy, or shall fail or refuse to qualify to the truth of his statement of taxable property, or shall fail or refuse to subscribe to any oath or affirmation required by law in the rendition of taxable property, he shall be fined in any sum not less than twenty nor more than one thousand dollars. [Act. Aug. 19, 1876, pp. 196-7.]

Statute construed; indictment. This article must be construed in connection with the civil statutes regulating the rendition of property for assessment, and the in-

dictment must allege the year for which the defendant refused to render and swear to his tax list. Berry v. State, 10 T. Cr. R., 315.

For requisites of such indictment see Caldwell v. State, 14 T. Cr. R., 171.

But a prosecution under this statute which precedes a strict compliance with the requirements of article 4716 of the Revised Civil Statutes of 1895, is premature. Mock v. State, 11 T. Cr. R., 56; Galbreath v. State, 33 Id., 331, 26 S. W. R., 502.

Rendition by fiduciary holder. This article includes all holdings of taxable property held as agent, trustee or in other fiduciary capacity. Downes v. State, 22 T. Cr. R., 393, 3 S. W. R., 242.

Recognizance on appeal, reciting the offense in the alternative and failing to recite that appellant owned taxable property in said school district, is fatally defective. Whitehead v. State, 35 T. Cr. R., 437, 34 S. W. R., 114.

Art. 135. **Officers of national bank required to furnish tax assessor sworn statement.**—If any president, vice president, or cashier, of any national bank shall fail or refuse to furnish the tax assessor or deputy tax assessor, when called upon to do so by such tax assessor or deputy tax assessor, a sworn statement, showing:

1. A list of the names of all the shareholders of the stock of such national bank.
2. The number and amount of the shares owned and held by each shareholder of stock in such national bank.
3. The place of residence of each stockholder in such bank, if known. (If not known, that fact shall be so stated.)
4. The amount or amounts of notes issued by such national bank and circulating as money, or that is intended to circulate as money (stating such amounts in dollars.)
5. The amount of money on hand or in transit, or in the hands of other banks, bankers, brokers or others, subject to draft, whether the same be in or out of the state.
6. The amount of indebtedness of such bank and how such indebtedness is evidenced.
7. The amount of paper evidencing indebtedness owned by such bank, which was acquired by such bank, either at par or at a discount.

They shall be deemed guilty of a dismemeanor, and, upon conviction thereof, shall be punished by fine of not less than one hundred dollars nor more than one thousand dollars, and by confinement in jail not less than ten days nor more than thirty days. [Act 1897, p. 157.]

Art. 136. **Money and notes defined.**—By the term money and notes, mentioned in the preceding article, is meant all money owned and on hand by such bank, whether on deposit or otherwise. [Id., p. 157.]

Art. 137. [116] **Pretended sale or transfer of coin, notes or bonds.**—Any evasion by any means of artifice, or temporary or fictitious sale, exchange or pretended transfer upon any bank book, of gold and silver coin, bank notes, or other notes or bonds, subject to taxation under the laws of this state, for United States non-taxable treasury notes, or any notes or bonds not so subject to taxation, and any such pretended sale, exchange or transfer not made in good faith, and by actual exchange and delivery of the funds so sold, exchanged or transferred, and made only by entry on bank books, or by any express or implied understanding not to immediately make a bona fide and permanent sale, shall be deemed prima facie to be a fraud upon the public revenue of this state. [Act March 23, 1891, p. 39.]

Art. 138. **Penalty for such pretended sale.**—The president, cashier or secretary of any banking or other corporation, or any person that may be a party or privy to such fraudulent sale, exchange or transfer, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than ten dollars nor more than one hundred dollars, and in addition thereto

shall be confined in the county jail not less than ten days nor more than thirty days. [Act March 23, 1891, p. 39.]

Art. 139. **False affidavit.**—All assessors of taxes in this state shall require all taxpayers, when assessed by them, to make oath as to any such sale, exchange or transfer made by them, on the first day of January, or within sixty days before said first day of January of any year for which any such assessment is made, as to the good faith and bona fide business transaction of any such sale, exchange or transfer, as above set forth, if any such should have been made by them; and if it should be disclosed that any such pretended sale, exchange or transfer has been made for the purpose of evading taxation, then, and in that event, the assessor shall list and render against such person the coin, bank notes or other notes or bonds subject to taxation under the laws of this state; provided, that if any person shall make a false affidavit as to any of the foregoing facts, he shall be deemed guilty of perjury and be punished as is now provided by law. [Act March 23, 1891, p. 40.]

Art. 140. [117] **Failure to collect occupation taxes.**—It shall be the duty of the tax collector to make an affidavit before any justice of the peace against any person, firm or association of persons engaging in or pursuing any occupation on which, under the laws of this state, a tax is imposed, who fails or refuses to pay the same. And any collector of taxes who shall knowingly permit any person, firm or association of persons to engage in or pursue any occupation on which, by the laws of this state, a tax is imposed, without first paying all legal taxes assessed against such person, firm or association of persons, for such occupation, for state and county purposes, shall be fined in any sum not less than fifty nor more than five hundred dollars for every such offense; provided, that evidence that such collector of taxes has made the affidavit herein required immediately against such person, firm or association of persons, so pursuing an occupation in violation of law, shall be a defense against all prosecutions under this article. [Act April 2, 1887, p. 128.]

Art. 141. [118] **Failure of dealer to post occupation license.**—1. Any person, firm or corporation, required by the statutes of this state to pay an occupation tax as a retail liquor dealer, shall post and keep posted in a conspicuous place in his or their place or places of business, his or their occupation license for the tax due the state, county and city, on the occupation in which they are engaged. Said occupation license shall be posted as above specified before any person, firm or corporation, subject to the occupation tax, shall engage in business.

2. Any person, firm or corporation failing, neglecting or refusing to post or keep posted their occupation license, as required in section one of this article, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in double the amount of their occupation tax for each offense, and each day any person, firm or corporation shall violate the provisions of this article shall constitute a separate offense.

3. If from any cause any certificate of occupation license shall be lost or destroyed, it shall be the duty of the clerk, upon application of the person, firm or corporation who formerly had such license, to furnish a new certificate for the remainder of the term covered by the license lost or destroyed. [Act April 4, 1887, p. 132.]

Gravamen of the offiense is pursuing the occupation without having paid the occupation tax and posting the license. Schwartz v. State, 32 T. Cr. R., 387, 24 S. W. R., 28; Maroney v. State, 49 Id., 337, 92 S. W. R., 844.

Each day's failure is a separate offense. Schwartz v. State, supra. The law is constitutional. Bell v. State, 28 T. Cr. R., 96, 12 S. W. R., 410.

Art. 142. **Penalty.**—Any person violating the provisions of this article may be arrested without warrant by any peace officer and carried before the nearest justice of the peace for trial; and any peace officer who shall fail or refuse to

arrest such person on his own knowledge, or upon information from some credible person, shall be punished by fine not exceeding five hundred dollars.

Art. 143. [119] **Officer purchasing property sold for taxes.**—If any sheriff, or collector of taxes, of any county in this state, deputy sheriff or deputy collector, or any employe of such sheriff or collector authorized by him to collect or receive taxes, or to assist in any way in making sales for the collection of taxes, shall, in the county where he resides, bid for, purchase or attempt to purchase, or be in any way interested in the purchase of any property, either real or personal, at any sale of such property, made or attempted to be, for the collection of state and county taxes, or either, he shall be fined not less than ten nor more than one thousand dollars, and any such officer so offending shall be deemed guilty of official misconduct, and, upon conviction, shall be removed from office. [Act February 9, 1883, p. 7.]

Art. 144. [119a] **Tax collector failing to perform certain duties.**—If at the end of any month the collector of taxes shall fail to make to the comptroller of public accounts his itemized monthly report of taxes collected, or if he shall fail at the end of any month to make to the commissioners' court his itemized monthly report of all tax collections for the county, or if he shall fail at the end of any month, or within three days thereof, to promptly remit to the state treasurer the amount due by him to the state, or pay over to the county treasurer the amount due by him to the county, or if he shall fail to make out and post, between April 1 and 15 of each year, a list of delinquent or insolvent taxpayers, he shall be deemed guilty of a misdemeanor, and, upon conviction, fined in a sum not less than three hundred nor more than one thousand dollars, and each failure shall constitute a separate offense. [Act of 1893, p. 91.]

Art. 145. [119b] **Tax collector issuing unauthorized tax receipt.**—Any collector of taxes in this state, who shall issue an occupation tax receipt upon any blank paper, or blank of any kind whatever other than the blank occupation tax receipt furnished to him as required by law, shall be deemed guilty of a misdemeanor, and each receipt so unlawfully issued shall constitute a separate offense, and, upon conviction in any court of competent jurisdiction, shall be punished by fine of not less than one hundred dollars nor more than five hundred dollars. [Id.]

Art. 146. [119c] **Clerk failing to make certain certificates.**—If the county clerk shall fail to examine the monthly reports of the collector of taxes, and within two days after the presentation to him of said reports by the collector, to certify to their correctness as regards names, dates and amounts, or shall fail to file the report intended for the commissioners' court, together with the tax receipt stubs in his office for the next regular meeting of the commissioners' court, he shall be deemed guilty of a misdemeanor, and, upon conviction, fined in a sum not less than fifty nor more than two hundred dollars, and each failure shall constitute a separate offense. [Id., p. 92.]

Art. 147. **Corporations liable for occupation tax failing to make report.**—If the comptroller has reason to believe, or does believe, that any individual, company, corporation, association, receiver or receivers, subject to the provisions of the law providing for the levy of occupation taxes, has made a false return, or has failed or omitted to make a full return of gross receipts, or other statement of business done, required by any of the provisions of said law, he shall report the same in writing to the governor, and it shall be the duty of the governor to immediately require the revenue agent of the state of Texas to examine any books, papers, documents, or other records or evidence showing or tending to show such unlawful act or omission. Said revenue agent shall check the report made with such books, papers, documents or other records or evidence, and make his report to the comptroller; and, if it appears from said report that any false or incorrect return has been made, or that any individual, or the president, treasurer or superintendent of any company, corporation or association, or any member of any firm required by this act to make re-

ports, has failed or omitted to make a full return, as required by law, then the comptroller shall notify such individual, or the president, treasurer or superintendent of any company, corporation or association, or receiver or receivers of any company, corporation or association, or any member of any firm, to make forthwith an additional or supplemental report; and if any such individual or the president, treasurer or superintendent of any company, corporation or association, or any member of a firm, or any receiver or receivers of any company, corporation or association making said original report, shall fail or refuse to make said additional or supplemental report, he shall be guilty of a misdemeanor, and, on conviction, shall be fined in any sum not less than two hundred nor more than five hundred dollars; and venue of such prosecution is hereby fixed in Travis county, Texas. [Act 1907, p. 500.]

Art. 148. **Persons or corporations liable for franchise tax failing to make report.**—Every person required by the law prescribing franchise taxes to be paid by corporations to make any annual report to the secretary of state, who shall, for a longer period than five days, and every person who shall, for more than ten days after the mailing by the secretary of state demand upon him for any other report, which the secretary of state is by this law authorized to require, fail or refuse to make such report, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than fifty dollars and not more than two hundred dollars; and each day of such failure or refusal after the expiration of said five days or said ten days, as the case may be, shall constitute a separate offense. The secretary of state shall keep a record of the mailing of any and all notices and demands for reports provided for by this law. [Id., p. 500.]

Art. 149. **Charter or right to do business of corporations forfeited, right of officers to do business in corporate name ceases.**—In any and all cases in which the charter or right to do business of any private domestic corporation, heretofore or hereafter chartered under the laws of this state, or the permit of any foreign corporation or its right to do business within this state, shall have been, or shall hereafter be, forfeited, it shall be unlawful for any person or persons who were or shall be stockholders, or officers of such corporation at the time of such forfeiture to do business within this state in or under the corporate name of such corporation, or to use signs or advertisements of such corporation or similar to the signs or advertisements which were used by such corporation before such forfeiture; and each and every person who may violate any of the provisions of this article shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than one hundred dollars and not more than one thousand dollars; provided, the inhibition and penalties prescribed by this article shall not apply where the right of such corporation to do business within this state has been revived in the manner provided by law and is at the time in good standing. [Id., p. 488.]

CHAPTER SIX.

OCCUPATION TAX ON SOLICITING ORDERS IN LOCAL OPTION DISTRICTS, COLD STORAGE AND C. O. D. SHIPMENT OFFICES.

	Article
Persons, firms or corporations soliciting orders for intoxicating liquor	150
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Clerk required to make report of all licenses issued	153
Providing penalty for violation	154
Persons, firms or corporations maintaining office for C. O. D. intoxicating liquor shipments	155
Penalty for maintaining such office without paying tax	156

Article 150. **Persons, firms or corporations soliciting orders for intoxicating liquor.**—In all counties, justice precincts, towns, cities or other subdivisions of a county, where the qualified voters thereof have, by a majority vote, determined that the sale of intoxicating liquors shall be prohibited therein, there is hereby levied upon all firms, persons, association of persons and, corporations that pursue the business of selling or offering for sale any intoxicating liquors by soliciting or taking orders therefor, in any quantities whatsoever, in any such county, justice precinct, town, city or other subdivision of a county, an annual state tax of four thousand dollars; and each county, and also each incorporated city or town, may levy an annual tax not exceeding two thousand dollars in any such county or incorporated city or town where such business is pursued. [Act 1909, p. 53.]

Art. 151. **Persons, firms or corporations operating cold storage.**—In all counties, justice precincts, towns, cities or other subdivisions of a county, where the qualified voters thereof have, by a majority vote, determined that the sale of intoxicating liquors shall be prohibited therein, there is hereby levied upon all firms, persons, association of persons and corporations that pursue the business of keeping, maintaining or operating what is commonly known as a "cold storage," or any place by whatever name known, or whether named or not, where intoxicating or non-intoxicating liquors or beverages are kept on deposit for others, or where any such liquors are kept for others under any kind or character of bailment, an annual state tax of two thousand dollars. Counties, incorporated cities and towns, where such business is located, may each levy an annual tax of not exceding one thousand dollars upon each such place so kept, run, maintained or operated. [Id., p. 53.]

Art. 152. **Persons, firms or corporations desiring to engage in either business to file application and pay tax.**—Each person and each firm and each corporation and each association of persons, desiring to engage in the business mentioned in articles 150 and 151 in said local option territory, before engaging in same, shall file with the county clerk of the county in which the business is to be pursued, an application in writing for a license to engage therein, and shall state the county or portion of the county in which the business is to be pursued, and, if within the corporate limits of any incorporated city or town, that fact shall be so stated, and any such person or firm or corporation or association of persons shall pay to the tax collector of the county the entire amount of annual tax levied for the state and the entire amount of the annual tax upon such business as may be levied by the commissioners' court of said county, and, if the business is to be pursued in an incorporated city or town, shall pay to the collector of taxes of such city or town the tax that may be levied on such business by said city or town; and all such taxes shall be paid in advance, and no license shall be issued by the county clerk until the person or firm or corporation or association of persons, applying therefor, shall exhibit receipts showing the payment of all taxes levied and authorized by this law, and the county clerk shall be entitled to charge a fee of twenty-five cents for the issuance of such license. [Id., p. 53.]

Art. 153. **Clerk required to make report of all licenses issued.**—The county clerk shall be and is hereby required to make report of all licenses issued by authority of this law as in other cases. [Id., p. 53.]

Art. 154. **Providing penalty for violation.**—Any person, or any member of a firm, or any member of an association of persons, or any officer or representative of a corporation, who shall pursue or engage in or aid or assist in any manner in said business, mentioned in articles 150 and 151, in said local option territory, without there having been issued to said person or firm or association of persons or corporaton license therefor as provided for, shall each be guilty of a misdemeanor, and, on conviction therefor, shall be fined in any sum not less than the amount of the tax due and not more than double that sum, and shall in addition be imprisoned in the county jail not less than ninety days nor more than six months. [Id., p. 53.]

See Ex parte Woods, 52 T. Cr. R., 575, 108 S. W. R., 1171.

Art. 155. **Persons, firms or corporations maintaining office for C. O. D. intoxicating liquor shipments.**—Any person, firm or corporation, doing business in this state, shall, at each office or place kept, operated or maintained by such person, firm or corporation, at which intoxicating liquors legally deliverable are delivered upon payment of purchase money therefor, commonly designated as shipments C. O. D., pay annually for each office or place so kept an annual occupation tax to the state of Texas of five thousand dollars, and any county, or any incorporated city or town, wherein such office or place is located, may levy an annual occupation tax upon such person, firm or corporation herein referred to for each of said offices, not to exceed one-half of the amount hereby levied by the state, such tax to be due and payable annually. [Act 1907, p. 2.]

Art. 156. **Penalty for maintaining such office without paying tax.**—The maintaining or operating such office or offices, place or places, by any person, firm or corporation in this state, without paying the occupation tax required in article 155, shall subject such person, firm or corporation so operating and maintaining such office or offices, place or places, to pay to the state of Texas the sum of fifty dollars, and to the county and any incorporated city or town in which said offices or places are located, each the sum of fifty dollars for each day such office or offices, place or places, may be maintained or operated, and for each office or place so operated; and the state or county, or any incorporated city or town, may sue for and recover, either jointly or severally, each the said sum, for each day that each of said offices or places may be maintained and operated without prepayment of the aforesaid occupation tax. [Id., p. 2.]

CHAPTER SEVEN.

OCCUPATION TAX ON DEALERS IN NON-INTOXICATING MALT LIQUORS.

	Article
Persons selling non-intoxicating malt liquor as a beverage	157
To file application for license and pay collector the tax	158
Clerk required to make report of all licenses issued	159
Providing penalty for violation	160

Article 157. **Persons selling non-intoxicating malt liquors as a beverage.**—There is hereby levied upon all firms, persons, associations of persons and corporations, selling non-intoxicating malt liquors, an annual state tax of two thousand dollars. Counties, incorporated cities and towns, where such sales are made, may each levy an annual tax of not exceeding one thousand dollars upon all such persons, firms or corporations; provided, that this article shall not prevent the sale of such proprietary remedies as "malt extract," "malt medicine" and "malt and iron," manufactured and used exclusively as medicine and not as a beverage, when sold upon the prescription of a regular practicing physician; provided, further, that not more than one sale shall be made upon any one prescription. [Act 1909, p. 51.]

Art. 158. **To file application for license and pay collector the tax.**—Each person, and each firm, and each corporation, and each association of persons, desiring to engage in the business mentioned in the preceding article, before engaging in same, shall file, with the county clerk of the county in which the business is proposed to be pursued, an application in writing for a license to engage therein, and shall state the place or house in which said business is to be pursued, and, if within the corporate limits of any incorporated city or town, that fact shall be so stated; and any such person or firm or corporation or association of persons shall pay to the tax collector of the county the entire amount of annual tax levied by the state, and the entire amount of the annual tax upon such business as may be levied by the commissioners' court of said county, and, if the business is to be pursued in an incorporated city or town, shall pay to the collector of taxes of such city or town the tax that may be levied on such business by said city or town, and all such taxes shall be paid in advance; and no license shall be issued by the county clerk until the person or firm or corporation or association of persons applying therefor shall exhibit receipts showing the payment of all taxes levied and authorized by this law; and the county clerk shall be entitled to charge a fee of twenty-five cents for the issuance of such license, and it shall be unlawful to carry on business under said license in more than one place at the same time, or in any place other than that named in said application for said license, unless the party carrying on said business shall first file with the county clerk of the county in which said business is carried on a written statement, showing such change of place of business. [Id., p. 397.]

Art. 159. **Clerk to make report of all licenses issued.**—The county clerk shall be and is hereby required to make report of all licenses issued by the authority of this law as in other cases. [Id., p. 52.]

Art. 160. **Providing penalty for violation.**—Any person, or any member of a firm, or any member of an association of persons, or any officer or representative of a corporation, who shall pursue or engage in, or aid or assist in any manner, in said business mentioned in article 157, without there having been issued to said person, or firm, or association of persons, or corporation, license therefor, as provided for in this law, shall each be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine in any sum not less than one hundred dollars nor more than five hundred dollars, and by imprisonment in the county jail for a period of not less than twenty days nor more than ninety days. [Id., p. 52.]

See Ex Parte Woods, 52 T. Cr. R., 575, 108 S. W. R., 1171.

CHAPTER EIGHT.

DEALING IN FRAUDULENT LAND CERTIFICATES.

	Article
Purchasing, selling, locating or surveying fraudulent certificates	161
Surveyors locating unapproved certificates	162
Handling land office files without authority	163

Article 161. [120] **Purchasing, selling, locating or surveying fraudulent certificates.**—If any person shall purchase or sell any fraudulent or forged certificate for land, or locate or survey, or cause to be located or surveyed, any such certificate, or be in any manner directly or indirectly concerned in the purchasing, selling, locating or surveying of any such certificate for land, knowing the same to be fraudulent or forged, he shall be punished by confinement in the penitentiary for a term not less than two nor more than five years. [P. C. 242.]

Art. 162. [121] **Surveyor locating unapproved certificates.**—It shall not be lawful for any district or deputy surveyor to locate any certificate for land, or to survey any land for any person holding a headright certificate of the first or second class, unless it be certified under the hand and seal of the clerk of the county court of the county where the certificate was issued, or the county where it is proposed to be located, or under the hand and seal of the commissioner of the general land office, that the same has been reported by the commissioners appointed under an act of congress to detect fraudulent land certificates, etc., passed January, 1840, as a genuine and legal claim against the government of Texas; and any surveyor offending against the true intent and meaning of this article shall be guilty of a high misdemeanor, and, on conviction, shall be fined in any sum not more than five thousand dollars. [P. C. 243.]

Art. 163. [122] **Handling land office files without authority.**—If any person shall handle or examine any of the papers, files or records in the general land office, without the consent of the commissioner or chief clerk, or without the presence and superintendence of a clerk in said office, he shall be fined not less than one dollar nor more than five hundred dollars. [Act June 2, 1873, p. 180.]

Intrusion. It is an offense under this article to handle or examine the records of the general land office without the permission of the commissioner. Anderson v. Rogan, 93 T., 182, 54 S. W. R., 242.

CHAPTER NINE.

DEALING IN PUBLIC LANDS BY OFFICERS.

	Article		Article
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Officers not to purchase mineral lands..	166		

Article 164. [123] **Officers not to deal in public lands.**—If any person who is an officer or clerk in the general land office, or a district surveyor, or deputy district surveyor, or county surveyor, or his deputy, shall, directly or indirectly, be concerned in the purchase of any right, title or interest in any public land, in his own name or in the name of any other person, or shall take or receive any fee or emolument for negotiating or transacting any business connected with the duties of his office, other than the fees allowed by law, he shall be fined in a sum not exceeding five hundred dollars. [P. C. 244.]

Art. 165. [124] **Clerks in the land office not to give information.**—Any clerk or other employe in the general land office, who shall accept or receive from any person or persons, money, or other thing of value, in consideration of services performed in the designation of vacant land, or in discovering or making known to such person or persons any defects in any file or files, or any paper or document in said office, or who shall perform any work out of office hours, or receive extra compensation in money or otherwise for any work performed in office hours, or who shall handle or interfere with the records and files of said office, except in office hours, shall be fined in any sum not less than one hundred nor more than five hundred dollars; and, in addition thereto, it shall be the duty of the commissioner of the general land office to immediately discharge such clerk or employe from said office. [Act June 2, 1873, p. 182.]

Art. 166. [124a] **May not purchase mineral lands.**—It shall be unlawful for the commissioner of agriculture, insurance, statistics and history, or any person employed by him or connected with his office, to purchase all or any part of any mine or mineral lands, or be in any manner interested in such purchase, during the term of his office or employment. Any person violating the provisions of this article shall be punished by fine as provided in the Penal Code. [Sen. Jour., 1895, p. 478.]

Art. 167. **Board of regents of university to have made mineral survey of lands, publish information obtained, and providing penalty for communicating such information until published.**—1. The board of regents of the university of Texas are authorized and directed, as soon as practicable, to have made a mineral survey of all the lands belonging to the public schools, university, asylums, or of the state.

2. Said board shall employ for that purpose persons skilled, and who have had at least five years experience, in the science of mineralogy, geology and chemistry, who shall conduct said survey under the direction of said board.

3. Said board shall publish annually, for free distribution among the people of the state, all practical information collected in the prosecution of said survey as the same progresses; but the information obtained by a survey of the public school, university, asylum or state lands shall not be communicated by said board, or by the person or persons making said survey, to any person whomsoever until said information is published for the benefit of the general public; and anyone violating this provision shall, upon conviction, be fined in any sum not exceeding one thousand dollars, or by imprisonment not to exceed two years in jail. [Act 1901, p. 32.]

CHAPTER TEN.

PERSONAL PROPERTY OF THE STATE.

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Sworn copy of such inventory to be forwarded to secretary of state, duplicate of same forwarded to comptroller	169
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Officers taking possession of such property shall require their predecessors to list and inventory same	172
Failure to make such inventory or perform duties required, penalty therefor	173
Sale, disposal of, or secreting arms of militia	173a

Article 168. **Personal property belonging to state shall be inventoried by person having possession of same.**—It shall be the duty of every official or other person, who has in his possession or under his control, or for which he is in anywise responsible, any personal property belonging to the state of Texas, or in which it has an interest, to immediately make out in triplicate a correct and full list and inventory of all such personal property which is or was in his possession when he assumed charge of such office or position, or had under his control, or for which he is in any way responsible, and which inventory shall contain the name of the article or articles of such personal property, the cost thereof, a fair and reasonable estimate of the present value thereof, a statement of the present condition of the same, how long said property has been in use, and the extent of the probable service, use and benefit that such property will be to the state in future; and, if sold during his term of office, or while in his possession, or under his control, he shall state the selling price thereof, and the disposition of the proceeds. [Act 1899, p. 307.]

Art. 169. **Sworn copy of such inventory to be forwarded to the secretary of state, duplicate of same forwarded to comptroller.**—A copy of said list and inventory, duly sworn to, shall be, by such person charged with keeping said property, or who has the same under his control, management, or who is responsible for the same, transmitted by him by registered letter to the secretary of state at Austin, Texas, whose duty it shall be to enter such list and inventory on a book to be kept by him for the purpose under its appropriate heading; and said secretary of state is hereby authorized to purchase such book or books as shall be necessary to record all such lists and inventories so made to him, and he shall be responsible for the correct entry of all said articles in such book or books, and shall be responsible for the safe keeping of the original sworn report from each of the persons named in this act, including the governor of this state, comptroller of public accounts, treasurer, attorney general, adjutant general, commissioner of insurance, statistics and history, superintendent of public buildings and grounds, the commissioner of the general land office, chief justice of the supreme court, court of criminal appeals, and the several courts of civil appeals, and the clerks thereof, the managers of each and every asylum in the state of Texas, superintendents and assistant superintendents of the penitentiaries and reformatories, superintendents and managers of all state farms, superintendents and managers of the university and the several branches thereof, normal schools, all the officers and employes of either branch of the legislature, having personal property belonging to the state in their possession, and each and every other person holding any personal property in trust for the state of Texas, or having the same under his control, or in his possession, or for which he is in any wise responsible, all of whom are included in this act and subject to its provisions. A duplicate of said list and inventory, so sent to the secretary of state, shall be forwarded to the comptroller of public accounts, who shall carefully preserve the same in his office; and it is made the duty of the person, so making out the list, to retain in his possession, for his successor in office, a true copy thereof, and whose duty it shall be to deliver same to such

successor within three days after his qualification and assuming charge of such position, office or agency. [Id., p. 307.]

Art. 170. **Report shall be made at beginning of term of office.**—Upon qualification at the beginning of the terms of office of any of the persons named herein, after each succeeding general election, and within thirty days after taking charge of any personal property as herein named, it shall likewise be his duty to make said report as herein required, and to forward same to the officers herein named, who shall receive them, and who shall continue to keep the registration of said reports, lists and inventories, as herein required of the secretary of state under the foregoing section hereof, and who shall, when said lists are received, make comparisons with former reports and note all articles of property not included in former lists, or which were included in former lists, but are not in the list last filed, and shall designate all such articles which are either dropped from or added to those of former lists and inventories. [Id., p. 307.]

Art. 171. **Person in charge of public institution responsible for such property and the full value thereof.**—Every person herein named or referred to, in charge of any public institution of Texas, or having under his control any personal property belonging to the state of Texas, is hereby made responsible for the same and the full value thereof; and all persons, hereafter coming into any of the offices or positions herein enumerated, shall at once become and shall remain responsible for the preservation and safe keeping of all personal property herein named or referred to, whether such persons be under official bonds or not; and all official bonds made by any of the persons herein named or referred to, shall be intended as security to the state of Texas for the full value of all such personal property in any such institution or department, or otherwise belonging to the state, over which such person is in control, or for which he is by this law made responsible. [Id., p. 307.]

Art. 172. **Officers taking possession of such property shall require their predecessors to list and inventory same.**—Hereafter, when any of the officers named in this law, or who are hereby referred to and required to take charge of any of the properties of the state, shall take charge of same, they shall require of their predecessors in such positions, whose duty it is hereby made to furnish same, to make out for them a full list and inventory as above mentioned, of all properties in their possession or under their control and management, or for which they are in any wise responsible, belonging to the state of Texas; and such outgoing and incoming officers shall together check up said list and inventory and ascertain that the same and each article in said list named is then on hand or duly accounted for; said incoming officer shall give his receipt to his said predecessor in office for all of such property before he shall be entitled to possession of the same, and said receipt shall be by him delivered to said secretary of state for registration in his office, and a copy of the same shall be likewise delivered to the comptroller of public accounts for preservation in his office. [Id., p. 307.]

Art. 173. **Failure to make such inventory or perform duties required, penalty therefor.**—Should any of the officers, persons or employes named herein fail to make out said list and inventory, or fail to perform any of the duties herein required of him, he shall become immediately responsible to the state of Texas for the value of any and all articles of furniture, implements, goods, wares, merchandise, live stock and all other personal property which have come into his hands, or for which he may be responsible, and be subject to suit in the name of the state of Texas for the value of the same; and should he fail to do or perform any of the acts and things required of him by this law, he shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in a sum not less than one hundred nor more than five hundred dollars; and for each thirty days that he fails to comply with the provisions of this law in any respect shall be considered a separate offense. The jurisdiction for all suits or prosecutions under this act shall be either in the county court of Travis county,

or in the county where such officer shall reside at the time of the institution of said suit or prosecution, or where such property may be situated. [Id., p. 307.]

Art. 173a. **Sale, disposal of or secreting arms, etc., of militia.**—Any person who shall secrete, sell, dispose of, offer for sale, purchase, retain after demand made by a commissioned officer of the active militia of this state, or in any manner pawn or pledge, any arms, uniforms, equipments or other military property, issued under the provisions of this act, or of the military regulations of this state, and any person who shall wear any uniform, or part thereof, or device, strap, knot or insignia of any design or character used as a designation of grade, rank or office, such as are by law or by general regulations duly promulgated, prescribed for the use of the active militia of this state or similar thereto, except members of the army of the United States or the active militia of this state or any other state, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than fifty nor more than two hundred dollars, and in addition thereto shall forfeit to this state one hundred dollars for each offense, to be sued for in the name of the state of Texas by a judge-advocate, district or county attorney. All money recovered by any action or proceeding under this section shall be paid to the adjutant general, who shall apply the same to the use of the active militia of this state. [Act 1905, p. 183.]

TITLE 5.

OFFENSES AFFECTING THE EXECUTIVE, LEGISLATIVE AND JUDICIAL DEPARTMENTS OF THE GOVERNMENT.

Chapter.
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2. Lobbying.
3. Drunkenness in Office and in Public Place.

CHAPTER ONE.

BRIBERY.

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Article 174. [125] **Bribery of certain officers.**—If any person shall bribe or offer to bribe any executive, legislative or judicial officer after his election or appointment, and either before or after he shall have been qualified or entered upon the duties of his office, with intent to influence his act, vote, opinion, decision or judgment on any matter, question, cause or proceeding which may be then pending or may thereafter by law be brought before such officer in his official capacity, or do any other act or omit to do any other act

in violation of his duty as an officer, he shall be punished by confinement in the penitentiary for a term not less than two nor more than five years. [Act Feb. 12, 1858, p. 159; P. C. 250.]

Indictment need not allege that accused offered to bribe the officer to do or omit to do an act in violation of his duty as such officer. The offense is complete when the offer to bribe is made for the purpose and with the intent to influence the officer in his official capacity. Rath v. State, 35 T. Cr. R., 142, 33 S. W. R., 229.

Not necessary that the indictment allege the kind or value of the money offered as a bribe. Leeper v. State, 29 T. Cr. R., 154, 15 S. W. R., 411.

Tender. An actual tender is not essential to complete the offense of offering to bribe. O'Brien v. State, 6 T. Cr. R., 665.

If the officer suggests that he would accept a bribe, and the accused accedes, he does not thereby incriminate himself. O'Brien v. State, 7 T. Cr. R., 181. But if accused made the offer to bribe no subsequent action of the officer would exculpate him. Id.

Recognizance on appeal, to be sufficient, must state that the bribe was offered with one or the other intents named in the statute. Hardin v. State, 35 T. Cr. R., 460, 37 S. W. R., 735.

Art. 175. [126] **Officers accepting bribe.**—Any legislative, executive or judicial officer who shall accept a bribe or consent to accept a bribe under an agreement or with an understanding that his act, vote, opinion or judgment shall be done or given in any particular manner or upon a particular side of any question, cause or proceeding which is or may thereafter by law be brought before him, or that he shall make any particular nomination, appointment, or do any other act or omit to do any act in violation of his duty as an officer, shall be punished by confinement in the penitentiary not less than two nor more than ten years. [Act Feb. 12, 1858, p. 159; P. C. 251.]

Indictment against a county commissioner for accepting a bribe to do a certain official thing at a future time is sufficient without stating the specific time the official action was to be taken. Note allegation held sufficient. Ruffin v. State, 36 T. Cr. R., 565, 38 S. W. R., 169.

Offense is complete when the bribe has been accepted and received with the understanding that the consideration is to be performed, even though it never is. Ruffin v. State, supra.

Art. 176. [127] **Officers specified.**—Under the name of executive, legislative and judicial officers are included the governor, lieutenant-governor, comptroller, secretary of state, state treasurer, commissioner of the general land office, commissioner of agriculture, insurance, statistics and history, superintendent of public instruction, members of the legislature, aldermen of all incorporated cities and towns in this state, judges of the supreme, district and county courts and of the courts of appeals, attorney general, district and county attorneys, justices of the peace, mayors and judges of such city courts as may be organized by law, county commissioners, school trustees, and all other city, county and state officials. [Act March 30, 1885, p. 69; amended Act 1907, p. 127.]

Art. 177. [128] **Bribery of clerks, etc., of legislative and executive departments.**—If any person shall bribe, or offer to bribe, any clerk or other officer of either branch of the legislature, or any clerk or employe in any department of the state government, with the intent to influence such officer to make any false entry in any book or record pertaining to his office, or to mutilate or destroy any part of such book or record, or to violate any other duty imposed upon him as an officer, he shall be punished by confinement in the penitentiary not less than two nor more than five years. [Act Feb. 12, 1858, p. 159; P. C. 253.]

Art. 178. [129] **Accepting bribe by same.**—If any officer named in the preceding article shall accept a bribe so offered, or consent to accept the same,

he shall be punished by confinement in the penitentiary not less than two nor more than five years. [Act Feb. 12, 1858, p. 159; P. C. 254.]

Art. 179. [130] **Bribery of auditor, juror, etc.**—If any person shall bribe, or offer to bribe, any auditor, juror, arbitrator, umpire or referee, with intent to influence his decision, or bias his opinion in relation to any cause or matter which may be pending before, or may thereafter by law be submitted to, such auditor, juror, arbitrator, umpire or referee, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years. [Act Feb. 12, 1858, p. 161; P. C. 299.]

Art. 180. [131] **Acceptance of bribe by same.**—If any juror, auditor, arbitrator, umpire or referee shall accept, or agree to accept, a bribe offered for the purpose of biasing or influencing his opinion or judgment, as set forth in the preceding article, he shall be punished by confinement in the penitentiary not less than two nor more than five years. [Act Feb. 12, 1858, p. 161; P. C. 300.]

Art. 181. [132] **Offense complete, when.**—To complete the offenses mentioned in the two preceding articles, it is not necessary that the auditor, umpire, arbitrator or referee shall have been actually selected or appointed; it is sufficient if the bribe be offered or accepted with a view to the probable appointment or selection of the person to whom the bribe is offered, or by whom it is accepted. Nor is it necessary that the juror shall have been actually summoned; it is sufficient if the bribe be given or accepted in view of his being summoned as a juror, or selected as such, to sit in any particular case, civil or criminal. [P. C. 301.]

Art. 182. [133] **Bribery of attorneys.**—If any person shall bribe, or offer to bribe, any attorney at law, charged with the prosecution or defense of a suit, with intent to induce him to divulge any secret of his client, or any circumstance which came to his knowledge as counsel, to the injury of his client, or with intent to induce him to give counsel, or in any way advise or assist the opposite party, to the injury of his client in any cause, civil or criminal, or to neglect the interests of his client, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years. [Act Feb. 12, 1858, p. 161; P. C. 302.]

Bribery of attorney. Indictment for offering to bribe an attorney is sufficient without alleging the specific acts to be done or not be done by him (Reed v. State, 43 T., 389) except it be the district (or county) attorney, when the character or the duty in which he was engaged should be alleged, with averments to show that the offer was to bribe him with respect to his official duties. Collins v. State, 25 T. Supp., 202.

Art. 183. [134] **Aceptance of bribe by same.**—If any attorney at law charged, as above stated, with the management of any cause, civil or criminal, shall accept, or agree to accept, a bribe offered to induce him to divulge any secret of his client, or any circumstance which came to his knowledge as counsel, to the injury of his client, or to give counsel or in any way advise or assist the opposite party, to the injury of his client, or to neglect the interests of his client, he shall be punished in the manner provided in the preceding article. [P. C. 303.]

Art. 184. [135] **Bribery of clerks of courts.**—If any person shall bribe, or offer to bribe, any clerk or deputy clerk of any court of record, to induce such officer to alter, destroy or mutilate any book, record or paper pertaining to his office, or to surrender to the person offending any book, record or paper for any unlawful purpose, he shall be punished by imprisonment in the penitentiary for a term not less than two nor more than five years. [Act Feb. 12, 1858, p. 161; P. C. 304.]

Art. 185. [136] **Acceptance of bribe by same.**—If any clerk, or deputy clerk, of any court of record in this state shall accept, or agree to accept, a

bribe offered for the purposes enumerated in the preceding article, he shall be punished by imprisonment in the penitentiary for a term not less than two nor more than five years. [Act Feb. 12, 1858, p. 161; P. C. 305.]

Art. 186. [137] **Bribery of same to do any official act.**—If any person shall bribe, or offer to bribe, any officer named in article 184 to do any other act not enumerated in said article, in violation of the duties of his office, or to omit to do any other act incumbent on him as an officer, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years. [Act Feb. 12, 1858, p. 161; P. C. 306.]

Art. 187. [138] **Bribery of sheriffs and peace officers.**—If any person shall bribe, or offer to bribe, any sheriff or other peace officer to permit any prisoner in his custody to escape, he shall be punished by imprisonment in the penitentiary for a term not less than two nor more than five years. [Act Feb. 12, 1858, p. 162; P. C. 307.]

Arrest. To constitute the offense defined by this article it must be shown that the arrest of the prisoner was a legal arrest. Moore v. State, 44 T. Cr. R., 159, 69 S. W. R., 521; Ex parte Richards, Id., 561, 72 S. W. R., 838.

"Officer." A private citizen asked to guard a prisoner until he could execute a bail bond is not a peace officer within the meaning of the statute, and an offer to bribe him is no offense. Messer v. State, 37 T. Cr. R., 635, 40 S. W. R., 488.

Offer. A prisoner's query of the officer, "how much would you take to turn me loose and let me go and get away?" did not amount to an actual offer to bribe the officer. Evans v. State, 48 T. Cr. R., 620, 89 S. W. R., 1080.

Evidence. Sufficient for the state to prove that the alleged incumbent of the office was the de facto officer at the time. Florez v. State, 11 T. Cr. R., 102.

The manner in which the prisoner came into the custody of the de facto officer is not subject to question. Florez v. State, supra.

Art. 188. [139] **Same subject.**—If any person shall bribe, or offer to bribe, any sheriff or other peace officer, in any case, civil or criminal, to make a false return upon any process, directed to him, or fail to return any such process, or summon, or fail to summon, any one to serve on a jury, with a view to produce a result favorable to a particular side in any cause, civil or criminal, he shall be punished by confinement in the penitentiary not less than two nor more than five years. [Act Feb. 12, 1858, p. 162; P. C. 308.]

Art. 189. [140] **Same subject.**—If any person shall bribe, or offer to bribe, a sheriff or any other peace officer to do any other act not heretofore enumerated, contrary to his duty as an officer, or to omit to do any duty incumbent upon him as an officer, he shall be punished by confinement in the penitentiary not less than two nor more than five years. [Act Feb. 12, 1858, p. 162; P. C. 309.]

"Wilfully" and "corruptly" are not descriptive elements of the offense. Garner v. State, 50 T. Cr. R., 364, 97 S. W. R., 98.

A prisoner does not violate this article by appealing to the sheriff to intercede for him in the disposition of cases against him, if he does not attempt to get that officer to default in his duty. Garner v. State, supra.

Art. 190. [141] **Acceptance of bribe by sheriffs, etc.**—If any sheriff or other executive or peace officer shall accept, or agree to accept, a bribe offered, as mentioned in articles 187, 188 and 189, he shall receive the same punishment as is affixed to the offense of giving or offering a bribe in the particular case specified. [P. C. 310a.]

Accepting bribe. A peace officer prosecuted for accepting a bribe to release a prisoner cannot impeach the legality of the prisoner's arrest. Moseley v. State, 25 T. Cr. R., 515, 8 S. W. R., 652.

Art. 191. [142] **Bribery of witness.**—If any person shall bribe, or offer to bribe, any witness in any case, either civil or criminal, to disobey a subpoena

or other legal process, or to avoid the service of the same by secreting himself, or by any other means, he shall be punished by confinement in the penitentiary not less than two nor more than five years. [Act Feb. 11, 1860, p. 95; P. C. 310b.]

Evidence. "I will assist you pay your fine," and "I would rather pay your fine than mine," stated by one co-defendant to another, imports no offer to bribe the other to absent himself from the trial. Peacock v. State, 37 T. Cr. R., 418, 35 S. W. R., 964.

Verdict. Indictment contained a good and a bad count and the court submitted both to the jury. Held, that the verdict, because uncertain upon which count it was rendered, cannot stand. Peacock v. State, supra.

Accomplice. The sister of the defaulting witness, as a witness on the trial of the defendant, testified that the money furnished her by defendant for the purpose, she gave the witness to leave the country, and it was shown that at no time and place did defendant personally offer to bribe the witness. Held, that the sister was an accomplice, and the court should have charged the law of accomplice testimony. Humphries v. State, 40 T. Cr. R., 59, 48 S. W. R., 184.

A witness who sought and accepted a bribe from the defendant to leave the state, but did so to secure testimony to convict defendant, did not come within the category of an accomplice so as to require charge on accomplice testimony. Chitester v. State, 33 T. Cr. R., 635, 28 S. W. R., 683.

Art. 192. [143] **Acceptance of bribe by witness.**—If any witness in any case, civil or criminal, shall accept, or agree to accept, a bribe offered for the purpose or purposes mentioned in the preceding article, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years. [Act Feb. 11, 1860, p. 95; P. C. 310b.]

Art. 193. [144] **"Bribe" defined.**—By a "bribe," as used throughout this Code, is meant any gift, emolument, money or thing of value, testimonial, privilege, appointment or personal advantage, or the promise of either, bestowed or promised for the purpose of influencing an officer or other person, such as are named in this chapter, in the performance of any duty, public or official, or as an inducement to favor the person offering the same, or some other person. [P. C. 255; Const., Art. 16, § 41.]

Defined. Charge of court defining "bribe" in the language of this article is proper and sufficient. Lee v. State, 47 T. Cr. R., 85 S. W. R., 804.

Actual tender not necessary; any expression of ability to produce the bribe, sufficient to constitute the offense. Lee v. State, supra.

Art. 194. [145] **Bribe need not be direct.**—The bribe, as defined in the preceding article, need not be direct; it may be hidden under the semblance of a sale, wager, payment of a debt, or in any other manner designed to cover the true intention of the parties. The bribe, or the promise thereof, must precede the act which it is intended to induce the person bribed to perform. [P. C. 256.]

CHAPTER TWO.

LOBBYING.

	Article		Article
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Persons privately soliciting vote of member of legislature guilty of	196	Persons prohibited from going on floor of either house of the legislature	199
Provisions shall not apply, when	197		

Article 195. **Defining lobbying.**—If any person having any direct interest, or the president or any other officer of any corporation having any direct interest, in any measure pending before, or thereafter to be introduced in, either branch of the legislature of this state, shall, at any place in this state, in any manner, privately attempt to influence the action of any member of the legislature of this state during his term of office concerning such measure, except by appealing to his reason, he shall be deemed guilty of lobbying. [Act 1907, p. 162.]

Art. 196. **Persons privately soliciting vote of member of legislature guilty of.**—That if any paid or employed agent, representative or attorney of any person, association or corporation, shall, at any place in this state, after the election and during the term of office of any member of the legislature of this state, privately solicit the vote, or privately endeavor to exercise any influence, or offer anything of value or any other inducements whatever, to any such member of the legislature, to influence his action concerning any measure then pending, or thereafter to be introduced, in either branch of the legislature of this state, he shall be deemed guilty of lobbying. [Id., p. 162.]

Art. 197. **Provisions shall not apply, when.**—The provisions of this law shall not be held to apply to the governor or a member of the legislature of this state, nor to prohibit any person either in person, or by his agent or attorney, or any corporation by representatives, agents or attorneys, from exercising the right of petition to the legislature, or from collecting facts, preparing petitions, procuring evidence and submitting the same, together with arguments, to either branch of the legislature, when in session, or to any committee thereof, in the interest of any measure in which he or it may be interested; but in such case the agency and the interest in the measure, or the person so appearing, shall be fully disclosed. [Id., p. 162.]

Art. 198. **Providing penalty.**—That lobbying, as hereinbefore defined, shall be unlawful, and the same is hereby prohibited; and any person who shall be convicted of lobbying, shall, upon such conviction, be punished by fine of not less than two hundred dollars nor more than two thousand dollars, and in addition may, at the discretion of the jury, be imprisoned in the penitentiary for a term not less than six months nor more than two years; and any violation of this law may be prosecuted in the county where the offense is committed, or in Travis county. [Id., p. 162.]

Art. 199. **Persons prohibited from going on floor of either house of the legislature.**—To prevent lobbying and to promote the orderly dispatch of business, it is hereby made unlawful for any person employed in any manner to represent the interest in legislation of any person, association or corporation to go upon the floor of either house of the legislature, reserved for members thereof, while in session, except upon invitation of such house; and any person violating the provisions of this article shall be punished by a fine not to exceed one hundred dollars. [Id., p. 162.]

CHAPTER THREE.

DRUNKENNESS IN OFFICE AND IN PUBLIC PLACE.

	Article		Article
State or district officers guilty of drunkenness	200	"Drunkenness" defined	203
"State or district officer" defined	201	Drunkenness in public place, how punished	204
County or municipal officer guilty of drunkenness	202	Drinking intoxicating liquor on railway passenger train	205

Article 200. [146] **State or district officer guilty of drunkenness.**—Any state or district officer in this state who shall be guilty of drunkenness shall be subject to removal from office in the manner provided by law; and, upon conviction thereof, in any court of competent jurisdiction, shall be fined in any sum not less than ten nor more than two hundred dollars. [Act July 31, 1876, pp. 76-7.]

Jurisdiction. The "official misconduct" contemplated by the Revised Civil Statutes is not "drunkenness in office," and the latter offense is within the jurisdiction of the county court. Craig v. State, 31 T. Cr. R., 29, 19 S. W. R., 504.

See Trigg v. State, 49 T., 645, for comprehensive discussion of drunkenness as ground for ouster of a public officer.

Art. 201. [147] **"State or district officer" defined.**—Within the term "state or district officer" are included the governor, lieutenant-governor, the heads of the several executive departments at the capital, and their chief clerks, the judges of the supreme court, courts of appeals, and the district courts, district attorneys, members and officers of the senate and house of representatives, and all other officers who derive their appointment directly from state authority.

Art. 202. [148] **County or municipal officer guilty of drunkenness.**—Any county or municipal officer who shall be guilty of drunkenness shall, for the first offense, be fined in any sum not less than five and not more than fifty dollars; upon a second conviction for the same offense, he shall be fined not less than fifty nor more than one hundred dollars; and upon a third conviction for the same offense, he shall be fined not less than one hundred nor more than three hundred dollars, and be subject to removal from office in the manner provided by law. [Act July 31, 1876, pp. 76-7.]

Art. 203. [149] **"Drunkenness" defined.**—Drunkenness, as used in this chapter, is the immoderate use of any spirituous, vinous or malt liquors to such an extent as to incapacitate an officer from the discharge of the duties of his office, either temporarily or permanently. [Act July 31, 1876, p. 76.]

Art. 204. [150] **Drunkenness in public place, how punished.**—Any person who shall get drunk, or be found in a state of intoxication, in any public place, shall be deemed guilty of a misdemeanor, and, on conviction before a court of competent jurisdiction, shall be fined in a sum of not more than one hundred dollars for each and every such offense. [Act to adopt and establish P. C. and C. of C. P., passed Feb. 21, 1879.]

Void law. A city ordinance that is identical with an existing penal statute is void, and will not support a trial or conviction. Ex parte Wickson, 47 S. W. R., 643.

Public place is not merely a place devoted to public use, but a place which in fact is public as distinguished from private; a place visited by many persons and usually accessible to the public. Murchison v. State, 24 T. Cr. R., 5 S. W. R., 508.

A grand jury room, while the grand jury is in session, is a public place. Murchison v. State, supra.

A room in a hotel, assigned to and appropriated by a guest is not, for the time being, a public place. Bordeaux v. State, 31 T. Cr. R., 37, 19 S. W. R., 603.

A private residence, during an exclusive entertainment of invited guests, is not a public place. Pugh v. State, 55 T. Cr. R., 462.

Whether a place is a public place is a question of fact, or a question of mixed

law and fact, and should go to the jury under proper instructions. Elsbury v. State, 41 T., 158.

Information charged: "In a certain public place, to wit, in the town of H., near the H. and H. public road, known as the old Grove mill." Held, insufficient on motion to quash. Murray v. State, 48 T. Cr. R., 219, 87 S. W. R., 349.

Charge of court should have confined the jury to the public place alleged in the information. Murray v. State, supra.

Art. 205. **Drinking intoxicating liquors on railway passenger train.**—It shall be unlawful for any person to drink intoxicating liquors of any kind in or upon any railway passenger train, or coach, or closet, vestibule thereof, or platform connected therewith, while the said passenger train or coach is in the service of passenger transportation within this state. Provided, that nothing in this article shall be construed to prevent the use of intoxicating liquors as stimulant in case of actual sickness of the person using said stimulant.

Any person violating this article shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than ten dollars nor more than one hundred dollars. [Act 1907, p. 51.]

TITLE 6.

OF OFFENSES AFFECTING THE RIGHT OF SUFFRAGE.

Chapter.
1. Bribery and Undue Influence.
2. Offenses by Persons, Judges and Other Officers of Election.
3. Riots and Unlawful Assemblies at Elections, and Violence Used or Menaced Towards Electors.
4. Miscellaneous Offenses Affecting the Right of Suffrage.
5. Primary Elections.

CHAPTER ONE.

BRIBERY AND UNDUE INFLUENCE.

Article
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Elector accepting bribe..... 210
Furnishing money for election purposes 211

Art. 206. [152] **Bribery of any person to influence voter.**—Any person who lends or contributes, or offers or promises to lend or contribute or pay any money or other valuable thing to any voter, to influence the vote of any other person, whether under the guise of a wager or otherwise, or to induce any voter to vote or refrain from voting at an election for or against any person or persons, or for or against any particular proposition submitted at an election, or to induce such voter to go to the polls or to remain away from the polls at an election, or to induce such voter or other person to place or cause to be placed his name unlawfully on the certified list of qualified voters that is required to be furnished by the county tax collector, is guilty of a felony, and, on conviction, shall be punished by confinement in the penitentiary not less than one year nor more than five years, and in addition shall forfeit any office to which he may have been elected at the election with reference to which such offense may have been committed, and is rendered incapable of holding any office under the state of Texas. [Act 1905, p. 559.]

Indictment should have alleged the offer to bribe the elector to vote for a candidate for nominee for representative to the Congress of the United States—there being no such office as "congress." Allison v. State, 45 T. Cr. R., 596, 78 S. W. R., 1065.

Art. 207. [153] **Bribery of election officers.**—If any person shall bribe, or offer to bribe, any manager, judge or clerk of a public election, or any officer attending the same, as a consideration for some act done or omitted to be done, or to be done or omitted contrary to his official duty in relation to such election, he shall be punished by fine not exceeding five hundred dollars. [P. C. 259.]

Art. 208. [154] **Election officer accepting a bribe.**—If any manager, judge or clerk of an election, or officer attending thereon, shall accept a bribe offered as set forth in the preceding article, he shall be punished in the same manner as is provided in reference to the persons offering the bribe. [P. C. 260.]

Art. 209. [155] **Bribery of elector.**—Any person who gives, or offers to give, any office, employment or thing of value, or promises to secure any office, thing of value or employment to or for any voter or to or for any other person, to vote or refrain from voting at an election for or against any per-

son, or for or against any proposition submitted at an election, or to obtain his certificate of exemption, is guilty of a felony, and, upon conviction, shall be punished by confinement in the penitentiary not less than three nor more than five years, and in addition shall forfeit any office to which he may have been elected, and becomes ineligible to any office to which he may have been elected, and becomes ineligible to any other public office. [P. C. 260; Amend Act 1905, p. 559.]

Art. 210. **Elector accepting bribe.**—The penalty prescribed in the last preceding article against those who violate any of its provisions shall be imposed on any one who receives or agrees to receive any money, gift, loan or other thing of value, for himself or any other person, for voting or agreeing to vote, for going or agreeing to go to the polls on election day, or for remaining away or agreeing to remain away from the polls on election day, or for refraining or agreeing to refrain from obtaining his poll tax receipt or certificate of exemption, or for obtaining or agreeing to obtain the same, or for voting or agreeing to vote for or against any particular person or proposition submitted to a vote of the people. [Act 1905, p. 559.]

Art. 211. [156] **Furnishing money for election purposes.**—If any person shall furnish money to another to be used for the purpose of promoting the success or defeat of any particular candidate, or of any particular question submitted to a vote of the people, he shall be punished by a fine not exceeding two hundred dollars. [P. C. 262.]

CHAPTER TWO.

OFFENSES BY PERSONS, JUDGES AND OTHER OFFICERS OF ELECTIONS.

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Article 212. [157] **Sundry offenses by election officers.**—If any manager, judge or clerk of an election shall knowingly make or consent to any false

entry on the list of voters, or put into the ballot box, or permit to be put in, any ballot not given by a voter, or take out of such box, or permit to be taken out, any ballot deposited therein, except in the manner prescribed by law, or change any ballot given by an elector, or make any false return as to the number of votes given for or against any particular candidate, the person so offending shall be punished by fine not less than one hundred nor more than one thousand dollars. [P. C. 264.]

Art. 213. **Judge may require voter to answer under oath.**—Any judge may require a citizen to answer under oath before he secures an official ballot, whether he has been furnished with any paper or ballot on which is marked the names of any one for whom he has agreed or promised to vote, or for whom he has been requested to vote, or has such paper or marked ballot in his possession, and he shall not be furnished with an official ballot until he has delivered to the judge such marked ballot or paper, if he has one. And any person who gives, receives or secures, or is interested in giving or receiving, an official ballot, or any paper whatever, on which is marked, printed or written the name or names of any person or persons for whom he has agreed or proposed to vote, or for whom he has been requested to vote, or has such paper marked, written or printed in his possession as a guide or indication by which he could make out his ticket, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not less than one hundred dollars nor more than five hundred dollars, and confinement in the county jail for thirty days. [Act 1905, p. 559.]

Art. 214. [158] **Election officer opening ballot, etc.**—Any manager or other officer of election who shall unfold or examine any ballot, or who shall examine the indorsement on any ballot by comparing it with the list of voters when the votes are counted or being counted, or who shall examine or permit to be examined by any other person the ballots subsequent to their being received into the ballot box, except in the manner prescribed by law, shall be punished by confinement in the penitentiary for a term not less than one nor more than two years. [Act Aug. 23, 1876, p. 308, § 16; Acts 1879, ch. 112, p. 119.]

Art. 215. [159] **Election officer divulging vote.**—Any presiding officer, judge, clerk or other officer of an election who shall divulge how any person has voted at such an election, from an inspection of the tickets, unless in a judicial investigation, shall be fined in any sum not less than one hundred nor more than five hundred dollars. [Acts Aug. 23, 1876, p. 309, § 16; Acts 1879, ch. 112, p. 120.]

Art. 216. [160] **Officer corruptly refusing vote.**—If any manager or judge of an election shall corruptly refuse to receive the vote of any qualified elector who shows by his own oath that he is entitled to vote, when his vote is objected to, such manager or judge shall be punished by fine not exceeding two hundred dollars. [P. C. 266.]

Art. 217. [162] **Intimidation by election officer.**—Any manager, judge or clerk of an election who shall, while in discharge of his duties as such, by violence or threats of violence, attempt to influence the vote of an elector for or against any particular candidate, shall be punished by fine not exceeding one thousand dollars. [P. C. 268.]

Art. 218. [163] **Presiding officer failing to deliver ballots.**—Any presiding officer of any election precinct who shall fail, immediately after such election, to securely box, in the mode prescribed by law, all the ballots cast thereat, and within five days thereafter to deliver the same to the county clerk of his county, shall be fined not less than fifty nor more than five hundred dollars, and, in addition thereto, may be imprisoned in the county jail for a period not exceeding six months. [Acts Aug. 25, 1876, p. 308; April 19, 1879, p. 119; April 4, 1881, p. 97; April 9, 1883, pp. 50-1.]

Art. 219. **Official ballot to be posted.**—It shall be the duty of the county clerk of each county to post in a conspicuous place in his office, for the inspec-

tion and information of the public, the names of all candidates that have been lawfully certified to him to be printed on the official ballot, for at least ten days before he orders the same to be printed on said ballot, and he shall order all the names of the candidates so certified printed on the official ballot as herein otherwise provided; and in case the county clerk refuses or wilfully neglects to comply with this requirement, he shall be guilty of a misdemeanor, and shall be punished by a fine of not less than two hundred dollars nor more than five hundred dollars, or to hard labor on the public roads of the county in which the offense was committed for any period of time not less than sixty days nor more than one year or both such penalties. [Act 1905, p. 557.]

Art. 220. **Penalty for misdemeanor under this law.**—Any person who is found guilty of a misdemeanor under the succeeding articles of this chapter shall be subject to a fine of not less than two hundred dollars nor more than five hundred dollars, or to hard labor on the public roads of the county in which the offense was committed for any period of time not less than sixty days nor more than one year, or to both such penalties. [Id., p. 558.]

Art. 221. **Voting or attempting to vote more than once.**—Any person who, at a general, special or primary election, wilfully votes or attempts to vote in any other name then his own, or who votes or attempts to vote more than once, is guilty of a misdemeanor. [Id., p. 558.]

Art. 222. **Doing any act in violation of this law.**—Any person who fraudulently or wilfully does anything in violation of this law to affect the result of any primary, special or general election, is guilty of a misdemeanor unless some other penalty for such act is specially provided for. [Id., p. 558.]

Art. 223. **List of qualified voters.**—Any person who, being an officer, clerk or employe of the county collector of taxes, precinct judge or clerk of election, who knowingly puts in the certified list of qualified voters of a precinct any other number than that written when the poll tax receipt or certificate of exemption was issued, or who knowingly delivers to, or receives from, any voter any poll tax receipt or certificate of exemption on which is placed any other name than that first written when it was issued, is guilty of a misdemeanor. [Id., p. 558.]

Art. 224. **Poll tax receipts.**—Any collector of taxes, or any one in his employ, who wilfully fails or refuses to transcribe correctly from the original poll tax receipt or certificate of exemption and insert in the duplicate retained in the collector's office the name and other description of the citizen required by law to be given by him, or who fails to transcribe correctly from the duplicate kept in the collector's office and insert in the list of qualified voters of a precinct the name and description of the citizen as contained in said duplicate, or who issues a poll tax receipt after the first day of February in any year, bearing a date prior to the first day of February, or who wilfully fails to keep said original duplicate securely locked up when the same are not being used, or permits them to be mutilated, defaced, lost or destroyed, or who conceals, alters or destroys them, is guilty of a misdemeanor. [Id., p. 558.]

Art. 225. **Making false canvass.**—Any judge or clerk of an election, chairman or member of a party executive committee, or officer of a primary, special or general election, who wilfully makes any false canvass of the votes cast at such election, or a false statement of the result of a canvass of the ballots cast, is guilty of a felony, and, upon conviction, shall be punished by confinement in the penitentiary not less than two years nor more than five years. [Id., p. 558.]

Art. 226. **Officers, failure of duty.**—Any judge, clerk, chairman or member of an executive committee, collector of taxes, county clerk, sheriff, county judge or judge of an election, president or member of a state convention, or secretary of state, who wilfully fails or refuses to discharge any duty imposed on him by this law, is guilty of a misdemeanor, unless the particular act under some other section of the law is made a felony. [Id., p. 558.]

Art. 227. **Permitting illegal voting.**—Any judge of an election or primary, who wilfully or knowingly permits a person to vote, whose name does not appear on the list of qualified voters of the precinct, and who fails to present his poll tax receipt or certificate of exemption, or makes affidavit of its loss or that it was misplaced or inadvertently left at home, except in cases where no certificate of exemption or tax receipt is required, is guilty of a misdemeanor. [Id., p. 558.]

Art. 228. **Influencing voter.**—Any judge, clerk, supervisor or other person who may be in the room where an election, either primary, special or general, is being held, who there indicates by word, writing, sign or token how he desires a citizen to vote or not to vote, shall be fined not less than two hundred nor more than five hundred dollars, and shall, in addition, be confined in jail or worked as a convict on the public road not less than ten nor more than thirty days. [Id., p. 559.]

Art. 229. **Agent obtaining poll tax receipt.**—Any person who knowingly becomes agent to obtain a poll tax receipt or certificate of exemption, except as provided by this act, or any one who gives money to another to induce him to pay his poll tax, is guilty of a misdemeanor. [Id., p. 559.]

Art. 230. **Suppressing, opening or reading ballot.**—If any person intrusted with the transmission to the precinct election judge of official ballots, sample cards, instruction cards, distance markers or other election supplies, or who, being entrusted with the same, wilfully fails to deliver or return the same, or does any act to defeat the delivery or return of the same, or being a person to whom may be legally entrusted the ballots cast at an election, shall open and read a ballot, or permit it to be done, is guilty of a misdemeanor. [Id., p. 559.]

Art. 231. **Electioneering near polls.**—Any person who shall do any electioneering or loitering within one hundred feet of the entrance of the place where the election is to be held, or who shall hire any vehicle for the purpose of conveying voters to the polling place, or shall wilfully remove any ballots from the polling place, except as permitted by law, except when in marking, or who, being a voter, shall show his ballot so as to reveal the vote cast by him, or marks it otherwise than is required by law for identification, or who, being a voter, shall deliver to the precinct judge of election any other ballots than the one delivered to him by the judge at the polling place, is guilty of a misdemeanor. [Id., p. 559.]

Art. 232. **Failure of candidate to file statement.**—Any candidate for any public office who fails to file with the county judge of his county, within ten days after the date of a primary or general election, an itemized statement of all money or things of value paid or promised by him before or during his candidacy for such office, including his traveling expenses, hotel bills and money paid to newspapers, and make affidavit to the correctness of such account, showing to whom paid or promised, whether he was elected or not, is guilty of a misdemeanor, and, on conviction, shall be fined not less than two hundred nor more than five hundred dollars, may be sentenced to work on the county roads not less than thirty days nor more than twelve months. [Id., p. 559.]

Art. 233. **Candidate or person paying poll tax.**—Any candidate for office or other person who pays or procures another to pay the poll tax of a citizen, except as is permitted by law, is guilty of a felony, and shall be punished by confinement in the penitentiary not less than two nor more than five years. [Id., p. 559.]

Art. 234. **Parties required to testify.**—When two persons are parties to the same act in violating any provisions of the election laws of this State, either party may be required to testify regarding the same, but the one testifying shall not thereafter be prosecuted for such illegal act. [Id., p. 560.]

Art. 235. **Judges to charge grand jury.**—The offenses and penalties described in this act shall be given specially in charge by district judges to grand juries, and whenever this duty is neglected by a district judge, it shall be the duty of the next grand jury to make a formal report of such neglected duty to the court. District judges shall, in every charge to a grand jury, emphasize the importance of pure elections as necessary to preserve free government and direct them to search diligently and to present all infractions of the election laws of this state. [Id., p. 560.]

Art. 236. **Political advertising.**—Anything published in a newspaper, pamphlet or printed journal in favor of or in opposition to any candidate for any public office, or in favor of or in opposition to the success or defeat of any political party, or any proposition submitted to a vote of the people, when the same is published in consideration of the receipt or promise of money or thing of value, shall be known as political advertising; and any editor, publisher, manager or agent of any newspaper, pamphlet or printed journal, who shall publish political advertising other than as advertising matter, which shall be labeled at the beginning or end thereof with the word "advertisement," or who shall knowingly and wilfully demand or receive, for the publication of such political advertising, money or other thing of value in excess of the sum or sums due for such service at the regular advertising rates of such newspaper, pamphlet or printed journal, or any person who shall pay, or offer to pay the editor, publisher, manager or agent of any newspaper, pamphlet or printed journal for such service any money or other thing of value in excess of the sum or sums due at regular advertising rates, or any person who shall pay or offer to pay any editor, publisher, manager or agent of a newspaper, pamphlet or printed journal any money or thing of value for the publication of political advertising, except as advertising matter, shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, and sentenced to imprisonment in the county jail or to work on the county road not less than ten nor more than thirty days; provided, however, that nothing herein contained shall be construed as applying to announcements of candidates for office. [Id., p. 560.]

Art. 237. **Editors or managers of newspapers.**—If any editor or manager of a newspaper or printed journal, or if any person or persons having control thereof, shall demand or receive any money, thing of value, reward or promise of future benefit for publishing anything as editorial matter in advocacy of or opposition to any candidate, or for or against any proposition submitted to a vote of the people, he or they, and also the individual or parties offering such reward, shall be punished as in the last preceding section, and if the offense be committed by the president of any corporation, or by any officer thereof, with the knowledge or consent of its president, in addition to punishment of the individual, its charter shall be forfeited. Either party to a violation of this and the preceding section may be compelled to testify regarding thereto, but shall not be punished for any act regarding which he may have been required to testify. [Id., p. 560.]

Art. 238. **Collector delivering tax receipt.**—Any tax collector who shall deliver a tax receipt or certificate of exemption to anyone except the one entitled thereto, and at the time when the tax is paid or the certificate of exemption is applied for, except as specially permitted by this act, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, and shall be removed from office. [Id., p. 561.]

Art. 239. **Loaning money to pay poll tax.**—Any person who loans or advances money to another knowingly to be used for paying the poll tax of such other person is guilty of a misdemeanor. [Id., p. 561.]

Art. 240. **Voting at primary elections.**—Any person who votes or offers to vote at a primary election or convention of a political party, having voted

at a primary election or convention of any other party on the same day, is guilty of a misdemeanor. [Id., p. 561.]

Art. 241. **Election judges permitting removal of ballots.**—Any judge of election who wilfully permits the removal of ballots before the closing of the polls, or refuses to receive a ballot after a citizen has legally folded and returned same, or refuses to deliver to a citizen entitled to vote under the law an official ballot, or wilfully fails to keep order within the polling place, or permits any person, except the clerks and judges of election or those who enter for the purpose of voting, to come within the guard rail, or knowingly permits anyone to remove, alter or deface a stamp number or signature legally placed on a ballot for future identification, is guilty of a misdemeanor. [Id., p. 561.]

Art. 242. **False certificate by chairman.**—Any chairman of a county executive or district or state executive committee who is charged with the duty of certifying the names of the candidates selected by a primary convention or primary election or elections, who wilfully omits to certify the name of any candidate legally chosen, or who certifies falsely regarding anyone chosen or defeated, is guilty of a misdemeanor. [Id., p. 561.]

Art. 243. **Defacing election booths.**—Any person who, during an election, wilfully defaces or injures an election booth or compartment, or wilfully removes any of the supplies provided for elections, or, before the closing of the polls, wilfully defaces or destroys any list of candidates to be voted for at an election which has been posted in accordance with law, is guilty of a misdemeanor. [Id., p. 562.]

Art. 244. **Employes permitted to go to polls.**—Any person or corporation who refuses to an employe entitled to vote the privilege of attending the polls, or subjects such employe to a penalty or deduction of wages because of the exercise of such privilege, is guilty of a misdemeanor. [Id., p. 562.]

Art. 245. **Keeping open saloon.**—If any person shall open or keep open any barroom, saloon or wholesale liquor house, where vinous, malt, spirituous or intoxicating liquors are sold, during any portion of the day on which an election is held for any purpose or office in the voting precinct, town or city where such election is held, or shall in such voting precinct, village, town or city, sell, barter or give away any vinous, malt, spirituous or intoxicating liquor during the day of such election, or if any person shall carry or cause to be carried to the polling place on the day of election any such liquor for the purpose of sale, gift or drinking the same, or if any person shall find and take possession of any liquor at or near the polling place, or inform another of its whereabouts, he shall be deemed guilty of a misdemeanor; provided, that such liquors may be sold on election day by a drug store to fill a prescription of a physician, who shall at the time certify in writing on honor that it is needed by his sick patient, leaving such certificate with the druggist. [Id., p. 562.]

Art. 246. **Falsely personating another.**—Any person who attempts to falsely personate at an election another person, and vote, or attempt to vote, on the authority of a poll tax receipt or certificate of exemption not issued to him by the county tax collector, is guilty of a felony, and shall be punished by hard labor within the walls of a penitentiary not less than three nor more than five years. [Id., p. 562.]

Art. 247. **Making false affidavit.**—If any person shall make a false affidavit that his poll tax receipt or certificate of exemption has been lost or mislaid, or wilfully and corruptly induce another to make such affidavit, he shall be punished by imprisonment in the penitentiary not less than three nor more than five years. [Id. p. 562.]

Art 248. **Altering or obliterating ballot.**—If any person shall wilfully alter or obliterate, suppress or destroy any ballots, election returns or certificates of election, he shall be deemed guilty of a felony, and shall be

punished by imprisonment in the state penitentiary not less than three nor more than five years. [Id. p. 562.]

Art. 249. **Delivering poll tax receipt to fictitious person.**—Any collector of taxes, who shall knowingly or wilfully issue and deliver a poll tax receipt or certificate of exemption to a fictitious person, shall be punished by confinement in the state penitentiary not less than three nor more than five years. [Id. p. 562.[

Art 250. **Refusing to return poll tax receipt.**—Anyone to whom a poll tax receipt or certificate of exemption may be intrusted for safe keeping, who refuses on the demand of the owner to return the same to the owner thereof, before any primary election day or primary convention day and before any general election day, shall be deemed guilty of a misdemeanor. [Id. p. 563.]

Art. 251. **Obtaining money on poll tax receipt.**—Any person who shall sell, pledge, loan or deposit his poll tax receipt or certificate of exemption for money or any other thing of value shall be deemed guilty of a misdemeanor; and the person who purchases, borrows or obtains possession of the same, by way of pledge or loan, is guilty of a misdemeanor. Either of the parties to such wrongful act may be compelled to appear and testify in a proceeding against the other, but he shall not thereafter be arrested or punished for his participation in such wrongful act. [Id. p. 563.]

Art. 252. **Ballots, poll tax receipts, etc.; protection of.**—If any person intrusted with the transmission to the precinct election judges of official ballots, poll tax receipts and exemption certificate rolls, sample cards, instruction cards, and all supplies required to conduct an election, or who, being intrusted with the transmission of election returns, or election boxes, wilfully fails to deliver within the time required by this law, or wilfully does any act to defeat the delivery thereof, or, not being a person intrusted therewith, shall do any act to defeat the due delivery of such election returns, election supplies, election boxes, or who, being an officer or person with whom may be legally intrusted the ballots cast at an election, shall open or read any ballot, or permit it to be done, except as provided by law in the discharge of his duty, shall be guilty of a misdemeanor. [Id. p. 563.]

Art. 253. **Failure to keep ballot box.**—Any person who fails to keep securely any ballot box containing ballots voted at an election, when committed to his charge by one having authority over the same, shall be guilty of a misdemeanor. [Id. p. 563.]

Art. 254. **Candidate filing false statement.**—Any person who wilfully fails or refuses to file, within ten days after an election, with the county clerk of the county of his residence, any report or itemized statement required by this law, or who knowingly files a false or incomplete statement thereof, shall be guilty of a misdemeanor. [Id. p. 563.]

Art. 255. **Failure to place name of candidate on ballots.**—Any county clerk or other officer, charged by this act with the duty of preparing or having printed the official ballot at any general or special election, and any county chairman or a member or members of the county executive committee of any political party hereby charged with the duty of preparing or having printed the official ballot to be used at any primary election of such party, who fails or refuses, except in cases permitted by law, to have the name of any candidate or candidates, whose nominations have been certified to him, placed or printed on such official ballot, shall be guilty of a felony, and, upon conviction, shall be punished by confinement in the penitentiary for not less than one nor more than five years. [Id. p. 563.]

Art. 256. **Person in military service attempting to influence voter.**—Any person in the civil or military service of the United States in this state who, by threats, bribery, menace or other corrupt means, attempts to control or controls the vote of an elector, or annoys, injures or punishes him for the man-

ner in which he exercises his elective franchise in any election, is guilty of a misdemeanor, and may be arrested and tried at any future time when he may be found in Texas. [Id. p. 563.]

Art. 257. **Corporations furnishing money.**—Any corporation or officer thereof who, directly or indirectly, furnishes, loans or gives any money or thing of value to aid those who manage the political campaign of any candidate or candidates, or to any campaign manager, or to any particular candidate or person, to promote the success of such candidate for public office, shall be guilty of a misdemeanor, and, if a corporation, if the act was done with the approval or connivance of its president, financial agent or treasurer, forfeits its charter. It shall be the duty of the attorney general to institute proceedings for such forfeiture whenever it is made known to him by the affidavit of a reputable man that in his opinion such offense has been committed. The officers, agents and employes of such corporation, as also the candidate, and all persons connected with his political headquarters, shall be competent witnesses, and may be compelled to attend court and testify, and those shall not be subject to prosecution who reveal facts showing a violation of this section. [Id. p. 563.]

Art. 258. **Judges of election assisting voter to prepare ballot.**—Any judge of an election or an interpreter who, in assisting a voter to prepare his ballot, shall prepare the same otherwise than the way the voter himself shall direct, shall be deemed guilty of a misdemeanor. [Id. p. 564.]

Art. 259. **Person or employe of State using his authority.**—Any officer or employe of the state, or of a political subdivision thereof, who, directly or indirectly, uses his authority or official influence to compel or induce any officer, clerk or employe of the state, or any political subdivision thereof, to subscribe, pay or promise to pay, any political assessment, shall be guilty of a misdemeanor. [Id. p. 564.]

Art. 260. **Person holding public office.**—Any person who, while holding a public office, or seeking a nomination or appointment thereof, corruptly uses or promises to use, directly or indirectly, any official authority, or influence possessed or anticipated, in any way, to aid any person in securing an office or public employment, or any nomination, confirmation, promotion, appointment or increase of salary, upon consideration that the vote or political influence or action of the person so to be benefited, or any other person, shall be given or used in behalf of any candidate, officer or party, or upon any other corrupt consideration, is guilty of a misdemeanor. [Id. p. 564.]

Art. 261. **Officers or heads of departments demanding contributions.**—Any head of any of the departments of state, or other public officer, who shall demand or receive any money or thing of value from any clerk or other person in his office, for his election expenses, or to reimburse him for money already expended, or who shall remove from any office any competent clerk who declines to make such contribution, shall be deemed guilty of a misdemeanor. [Id., p. 564.]

Art. 262. **Certificate of naturalization.**—Any person who knowingly and wilfully procures from any court, clerk or other officer a certificate of naturalization, which has been allowed, signed or sealed in violation of the laws of the United States, or of this state, with intent to enable him or any other person to vote at any election, when he or such person is not entitled by the laws of the United States to become a citizen or to exercise the elective franchise, is guilty of a felony, and, upon conviction, shall be punished by confinement in the penitentiary not less than five nor more than ten years. [Id. p. 564.]

Art. 263. **National banks and other corporations, contributions by.**—That it shall be unlawful for any national bank, or any other corporation organized by authority of any law of congress, and doing business in this state, or authorized to do business in this state, or any other corporation

organized by the authority of the laws of this state, or of any foreign country, or any corporation authorized by the authority of the laws of any other state of the United States, doing business in this state, or authorized to do business in this state, to make any money contribution, or its equivalent, or to offer to pay at any future time any money, or its equivalent, directly or indirectly, for the purpose of aiding or defeating the election of any candidate for the office of representative in congress, or presidential or vice presidential electors from this state, or any candidate for any state, district, county or precinct office in this state, or the success or defeat of any political measure submitted to a vote of the people of this state.

Every corporation which shall make, or offer to make, any contribution in violation of the foregoing provisions of this article shall be subject to a fine of not less than five thousand nor more than ten thousand dollars for each offense; and every officer or director of any corporation who shall consent to any contribution, as above provided, by the corporation in violation of the foregoing provisions shall, upon conviction, be punished by a fine of not less than five hundred nor more than one thousand dollars, or by imprisonment in the penitentiary for a term of not less than two nor more than five years, or by both such fine and imprisonment. [Act 1907, p. 169.]

Art. 264. [164] **Officer giving false certificate.**—If any officer authorized by law to give a certificate of election shall, knowingly and corruptly, give any false certificate thereof, he shall be punished by fine not exceeding three hundred dollars, and, in addition thereto, may be imprisoned in the county jail for a term not less than one month nor more than one year. [P. C. 269.]

CHAPTER THREE.

RIOTS AND UNLAWFUL ASSEMBLIES AT ELECTIONS, AND VIOLENCE USED OR MENACED TOWARD ELECTORS.

	Article		Article
Riots at elections	265	Intimidation of electors	268
Unlawful assemblies to prevent	266	Carrying arms about election	269
Tumults, mobs and disturbances	267		

Article 265. [165] **Riots at elections.**—If any riot be committed at the place of holding a public election, or within one mile of such place, with a design to disturb or influence such election, every person engaged therein shall be punished by fine not exceeding one thousand dollars. [P. C. 271.]

Indictment to sufficiently charge riot must show for what purpose the roiters assembled, and that they unlawfully assembled; and further, set out the illegal act which was the object of the meeting. Blackwell v. State, 30 T. Cr. R., 672, 18 S. W. R., 676.

Art. 266. [166] **Unlawful assemblies to prevent.**—If any unlawful assembly meets at the place of holding an election or within a mile thereof, for the purpose of preventing the holding of such election, all persons engaged in such unlawful assembly shall be punished by fine not exceeding five hundred dollars. [P. C. 272.]

Art. 267. [167] **Tumults, mobs and disturbances at elections.**—If any person shall disturb any election by inciting or encouraging a tumult or

mob, or shall cause any disturbance in the vicinity of any poll or voting place, he shall be punished by fine of not less than one hundred nor more than five hundred dollars, and, in addition thereto, may be imprisoned in the county jail for a period not exceeding one month. [Act Aug. 23, 1876, p. 311, § 25.]

Art. 268. [168] **Intimidation of electors.**—If any person shall, by force or intimidation, obstruct or influence, or attempt to obstruct or influence, any voter in the free exercise of the elective franchise, he shall suffer the punishment prescribed in the preceding article. [Act Aug. 23, 1876, p. 311, § 25.]

Art. 269. [169] **Carrying arms about elections.**—If any person, other than a peace officer, shall carry any gun, pistol, bowie knife or other dangerous weapon, concealed or unconcealed, on any day of election, during the hours the polls are open, within the distance of one-half mile of any poll or voting place, he shall be punished as prescribed in article 167 of this Code. [Act. Aug. 23, 1876, p. 311, § 25.]

Officer. A special constable appointed by a county commissioner, who is a magistrate, is exempt from the operation of this article. Gonzales v. State, 53 T. Cr. R., 430, 110 S. W. R., 740.

CHAPTER FOUR.

MISCELLANEOUS OFFENSES AFFECTING THE RIGHT OF SUFFRAGE.

	Article
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Article 270. [170] **Illegal arrest of voter.**—If any magistrate or peace officer shall knowingly cause an elector to be arrested in attending upon, going to, or returning from an election, except in cases of treason, felony, or breach of the peace, he shall be punished by fine not exceeding three hundred dollars. [P. C. 270.]

Art. 271. [171] **Illegal voting.**—If any person knowing himself not to be a qualified voter shall, at any election held, vote for any officer to be then chosen, or for or against any measure or proposition to be determined by said election, he shall be punished by confinement in the penitentiary not less than two nor more than five years. [O. C. 275, amended by Act March 23, 1887, p. 37.]

Indictment for illegal voting is not required to allege the specific authority for the election, nor the authority of the officers, nor the names of the candidates. Gallagher v. State, 10 T. Cr. R., 469.

Same. Voting Place sufficiently alleged in averment "election authorized by law at Prairie Hill school house, in voting precinct No. 10." May v. State, 43 T. Cr. R., 54, 63 S. W. R., 132.

If, where the election was held was the usual voting place in the precinct and had been so used by the voters, the election would be a legal one if no other place had ever been designated. May v. State, supra.

Alleging that the election was "then and there held for the purpose of electing various county and precinct officers of Texas," indictment sufficiently designated the character of the election. May v. State, supra.

Same. Illegal voting. Gist of the offense is that the accused voted illegally at a legal election, and not that he voted for or against any particular candidate or proposition. It was not essential for the indictment to charge how he voted. May v. State, supra.

Evidence. The disqualification charged being the minority of the defendant, the question was one for the jury on the evidence. May v. State, supra.

Knowledge of disqualification. Previous conviction of felony is a disqualification to vote, and the trial court did not err in charging that if accused had been previously convicted of assault to murder he knew the fact, which was equivalent to knowing that he was not a qualified voter. Held, further, that he was chargeable with knowledge that assault to murder is a felony, and that one of the consequences of conviction therefor is disqualification to vote. Thompson v. State, 26 T. Cr. R., 94, 9 S. W. R., 486.

False swearing and illegal voting, though they occur contemporaneously, are distinct offenses, and may be prosecuted as such. Arrington v. State, 48 T. Cr. R., 541, 89 S. W. R., 643.

Repeal by implication. The Terrell election law does not repeal this article by implication by requiring a certificate of the payment of a poll tax as pre-requisite to the right to vote. Arrington v. State, supra.

Art. 272. [173] **Official ballot.**—All ballots shall be printed with black ink on clear white paper of sufficient thickness to prevent the marks thereon to be seen through the paper, and of uniform style. The tickets of each political party shall be placed or printed on one ballot, arranged side by side in columns separated by parallel rule. The space which shall contain the title of the office and the name of the candidate (or candidates, if more than one is to be voted for for the same office) shall be of uniform style and type in said tickets. At the head of each ticket shall be printed the name of the party. When a party has not nominated a full ticket, the titles of those nominated shall be in position opposite to the same office in a full ticket; and title of the offices shall be printed in the corresponding position in spaces where no nominations have been made. In the blank columns and independent columns, the titles of the offices shall be printed in all blank spaces to correspond with a full ticket. When presidential electors are to be voted on, their names shall appear at the heads of their respective tickets. When a constitutional amendment or other propositions are to be voted on, the same shall appear once on each ballot in uniform style and type. When a voter desires to vote a ticket straight, he shall run a pencil or pen through all other tickets on the official ballot, making a distinct marked line through such ticket not intended to be voted; and when he shall desire to vote a mixed ticket, shall do so by running a line through the names of such candidates as he shall desire to vote against in the ticket he is voting, and by writing the name of the candidate for whom he desires to vote in the blank column and in the space provided for such office, same to be written with black ink or pencil, unless the names of the candidates for whom he desires to vote appear on the ballot, in which event, he shall leave the same not scratched.

When a constitutional amendment or other question submitted by the legislature is to be voted on, the form in which it is submitted shall be described by the governor in his proclamation in such terms as to give the voter a clear idea of the scope and character of the amendment, and printed once at the bottom of each ballot as described by this act the words, "for" and "against" under it; provided, the legislature has failed to prescribe a

form. If a proposition or question is to be voted on by the people of any city, county or other subdivision of the state, the form in which such proposition shall be voted on shall be prescribed by the local or municipal authority submitting it. [Act 1905, p. 531.]

Depositing ballots folded together.—Any person who shall deposit any ballot, except as provided in this article, or shall deposit two or more tickets folded together, at any election in this state, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding one hundred dollars. [Act April 18, 1879, p. 119.]

Art. 273. [174] **Instigating illegal voting.**—Every person who shall procure, aid, assist, counsel or advise another to give his vote at any election, knowing that the person is not duly qualified to vote, or shall procure, aid, assist, counsel or advise another to give his vote more than once at such election, shall be fined in a sum not less than one hundred nor more than five hundred dollars, and may, in addition thereto, be imprisoned in the county jail for a period not exceeding one month. [O. C. 276, and act Aug. 23, 1876, p. 311, § 25.]

Art. 274. [175] **False swearing by voter.**—If any person challenged as unqualified shall be guilty of wilful and corrupt false swearing, in taking any oath prescribed by law, he shall be punished by confinement in the penitentiary not less than two nor more than five years. [O. C. 278.]

Art. 275. [176] **Procuring voter to swear falsely.**—Every person who shall wilfully and corruptly procure any person to swear falsely, as prescribed in the preceding article, shall be punished by confinement in the penitentiary for any time not exceeding three years, or by fine not exceeding three thousand dollars. [O. C. 279.]

Art. 276. [178] **Failing to deliver returns.**—If any person intrusted with the transmission of an election return, shall wilfully do any act that shall defeat the delivery thereof or shall wilfully neglect to deliver the same as directed by law, he shall be punished by a fine not exceeding one thousand dollars. [P. C. 281.]

Art. 277. [179] **Preventing delivery of returns.**—If any person shall take away such election return from any person intrusted therewith, either by force or in any other manner, or shall wilfully do any act that shall defeat the due delivery thereof, as directed by law, he shall be punished by fine not exceeding two thousand dollars. [P. C. 282.]

Art. 278. [180] **Officer opening ballots.**—Any officer or person with whom may be legally deposited the ballots cast in an election, who shall open and read any ballot, or who shall permit it to be done, except in cases provided for by law, shall be punished by fine not less than fifty nor more than five hundred dollars, and may, in addition thereto, be imprisoned in the county jail not to exceed six months. [Act Feb. 12, 1858, p. 160; P. C. 269a; Acts of 1879, ch. 112, p. 120.]

Art. 279. [181] **County clerk failing to keep ballot boxes securely.**—If any clerk of the county court in this state shall fail, neglect or refuse to securely keep any ballot box containing tickets of election committed to his custody by the presiding officer of any election precinct, he shall be punished by fine not less than fifty nor more than five hundred dollars, and, in addition thereto, he may be imprisoned in the county jail for a period not exceeding six months. [Act Aug. 23, 1875, p. 308, § 16.]

Art. 280. [182] **County clerk failing to destroy ballots.**—If any clerk of the county court in this state shall fail, after the expiration of one year from the date of any election, to destroy, by burning, all the ballots cast at such election, which may have come to his custody, he shall be punished as prescribed in the preceding article. [Act Aug. 23, 1876, p. 308, § 16.]

Art. 281. [183] **Not applicable in cases of contest.**—The provisions of the foregoing article shall not apply to cases in which a contest may have grown

out of any election, within one year after the date of such election. [Act Aug. 23, 1876, p. 308, § 16.]

Art. 282. [184] **Wilful neglect of official duty.**—If any officer on whom a duty is enjoined, in any statute relating to elections, shall be guilty of a wilful neglect of such duty, or shall act corruptly or with partiality in the discharge of such duty, in any manner not provided for in this title, he shall be fined in a sum not less than one hundred nor more than one thousand dollars. [P. C. 283.]

Art. 283. [187] **Elector voting without legal qualifications.**—Any elector voting at any election who does not possess the legal qualification shall be punished as now provided by law for illegal voting; and any person swearing falsely as to his own qualifications, or those of a challenged elector shall be punished as now provided by law for false swearing. [Act March 30, 1891, p. 47.]

Art. 284. [188] **Penalty for illegal registration.**—Any person who shall illegally register as a qualified voter of any city shall be deemed guilty of felony, and, upon conviction in any court of competent jurisdiction, shall be punished by confinement in the penitentiary for not less than one year nor more than two years. [Act 22d Leg., called session, p. 13, § 14.]

Art. 285. [189] **Registrar to administer oaths; penalty for false swearing.**—The registrar is hereby authorized and empowered to administer all necessary oaths to applicants for registration, and also to all witnesses touching the qualifications of applicants for registration; and any person who shall swear falsely about his own qualifications as a voter of the city, or any person who shall, as a witness for the applicant for registration, swear falsely about the qualifications of such applicant, shall be deemed guilty of false swearing, and, upon conviction in any court of competent jurisdiction, shall be punished as is provided by law for the punishment of false swearing in other cases. [Act April 12, 1892, chap. 13, p. 13, 22d Leg., called session, § 15.]

Art. 286. [190] **Penalty for issuing illegal certificates.**—Any registrar who shall knowingly issue a registration certificate to any person not legally entitled to register, or who shall knowingly issue, or cause to be issued, a certificate of registration to any imaginary or fictitious person, shall be deemed guilty of a felony, and, upon conviction in any court of competent jurisdiction, shall be punished by confinement in the penitentiary for not less than one year, nor more than two years for each and every such registration certificate so issued. [Id., § 22.]

Art. 287. [191] **Election officer disclosing vote or giving information.**—Any officer upon whom a duty is imposed by an act to provide for the registration of all voters in all cities containing ten thousand inhabitants or more, who shall disclose to any person the name of any candidate for whom any elector has voted, or gives any information by which it can be ascertained for whom any elector has voted, or any person who shall remove any ballot from any polling place, or any person who shall knowingly apply or receive any ballot in any polling place other than that in which he is entitled to vote, or any person who shall show his ballot after it is marked to any person in such a way as to reveal the contents thereof, or the name of the candidate or candidates for whom he marked his ballot, or any person who shall, contrary to this act, examine his ballot or solicit the voter to show the same, or person other than an officer of election who shall deliver any ballot to an elector, or any elector who shall deliver a ballot to the presiding officer to be voted, except the one he received from the election officer, or any elector or any one who shall, contrary to the provisions of this act, place any mark upon or do anything to his ballot by which it may afterwards be identified as the one voted by any particular individual, upon conviction, shall be punished by a fine not less than fifty dollars and not more than five hundred dollars, or

by imprisonment in the county jail not less than three months nor more than one year, or both, in the discretion of the court. [Act April 12, 1892, ch. 13, p. 13, 22d Leg., called session, § 28.]

Construed. This article does not repeal or control articles 1694 and 1697 of the Revised Statutes of 1895, which prescribe that all ballots shall be numbered, and that ballots not numbered shall not be counted. State v. Conner, 86 T., 133, 23 S. W. R., 1103.

Art. 288. [192] **Other offenses declared and penalty prescribed.**—Any judge or clerk of election who shall wilfully disregard any of the provisions of this act, or who shall negligently fail to enforce any of the provisions of this act, or who shall, in counting the ballot or making the returns thereof, wilfully disregard any of the directions or requirements of this act, or any person who shall wilfully alter or destroy any ballot cast at an election or any of the returns of an election regulated by this act, or who shall introduce among the genuine ballots a fraudulent ballot, or any person who shall falsely write the initials of the presiding officer or any writing upon the ballot purporting to be written by the clerk or presiding officer, or any person who shall steal any of the ballots or returns, or wilfully or fraudulently hinder or delay the delivery of any election returns to the county clerk, or wilfully break open any of such sealed returns of any election regulated by this act, upon conviction, shall be punished by imprisonment in the penitentiary not less than one year nor more than three years, or by fine of not less than five hundred dollars nor more than two thousand dollars, or by both such fine and imprisonment. [Id., § 29.]

CHAPTER FIVE.

PRIMARY ELECTIONS.

	Article		Article
Penalty for illegal voting at primary election	289	Bribery, or attempt, of officer of election	293
Procuring an illegal vote	290	Bribery, or attempt, of voter	294
Officer making false return	291	Open saloon on election day, and drinking liquor by election officers	295
Officer divulging votes	292		

Article 289. [192a] **Penalty for illegal voting at primary election.**—Any person voting at any primary election, called and held by authority of any political party for the purpose of nominating candidates of such political party for any public office, who is not qualified to vote, in the election precinct where he offers to vote at the next state, county or municipal election, or who shall vote more than once at the same or different precincts or polls on the same day, or different days in the same primary election, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding sixty days, or by both such fine and imprisonment. [Act 1895, p. 40.]

Art. 290. [192b] **Procuring an illegal vote.**—Every person who shall knowingly procure any illegal vote to be cast at any such primary election shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished as provided in the preceding article. [Id.]

Art. 291. [192c] **Officer making false return.**—Any presiding officer, manager, judge or clerk of any primary election, called and held by authority of

any political party in this state, who shall knowingly make or return, or cause to be made or returned, a false statement of the result of any such primary election, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding sixty days, or by both such fine and imprisonment. [Id.]

Art. 292. [192d] **Officer divulging votes.**—Any presiding officer, judge, clerk or other officer of an election who shall divulge how any person voted at such primary election, from an inspection of the tickets, unless in a judicial investigation, shall be fined in any sum not less than one hundred nor more than five hundred dollars. [Id.]

Art. 293. [192e] **Bribery or attempted bribery of officer of election.**—If any person shall bribe, or offer to bribe, any presiding officer, manager, judge or clerk of any primary election, called and held by authority of any political party for the purpose of nominating candidates of such political party for public office, as a consideration for some act done or omitted to be done, or to be done or omitted contrary to his duty in relation to such primary election, he shall be punished by fine not exceeding five hundred dollars. [Id.]

Art. 294. [192f] **Bribery or attempted bribery of voter.**—If any person shall bribe, or offer to bribe, any voter for the purpose of influencing his vote at any primary election, called and held by authority of any political party for the purpose of nominating candidates of such political party for any public office, upon conviction thereof, [he] shall be punished by fine not exceeding five hundred dollars. [Id.]

Art. 295. **Open saloon on election day, and drinking liquor by certain officers.**—The law prohibiting the sale of intoxicating liquor on election day applies to primary elections with all its prohibitions and penalties; and the officers of primary elections shall not, on primary election day, partake of spirituous, vinous, malt or intoxicating liquors after the polls are open. [Act 1905, p. 552.]

TITLE 7.

OF OFFENSES WHICH AFFECT THE FREE EXERCISE OF RELIGIOUS OPINION.

Chapter.
1. Disturbance of Religious Worship.
Chapter.
2. Sunday Laws.

CHAPTER ONE.

DISTURBANCE OF RELIGIOUS WORSHIP.

Article
Disturbance of congregation in any manner 296
Article
Offender may be bound over..... 297
Double penalty for second offense..... 298

Article 296. [193] **Disturbance of congregation in any manner.**—Any person who, by loud or vociferous talking or swearing, or by any other noise or in any other manner, wilfully disturbs any congregation, or part of a congregation, assembled for religious worship and conducting themselves in a lawful manner, or who wilfully disturbs in any manner any congregation assembled for the purpose of conducting or participating in a Sunday school, or to transact any business relating to or in the interest of religious worship or a Sunday school, and conducting themselves in a lawful manner, shall be fined in any sum not less than twenty-five nor more than one hundred dollars. [O. C. 284, amended by Act April 23, 1873, p. 43, and by Act Feb. 28, 1883, p. 17, amended Act 1897, p. 102.]

Indictment charged: "Heretofore, to wit, on the first day of December, A. D. 1876, in the county of H, State of T, did wilfully disturb a congregation assembled for religious worship and conducting themselves in a lawful manner, by loud and vociferous talking." Held, sufficient as to time, place and manner. Bush v. State, 5 T. Cr. R., 64, citing Corley v. State, 3 Id., 412.

While the indictment must charge the means or manner of disturbance, it is not essential that it enter into details—overruling Kindred v. State, 33 T., 67. Thompson v. State, 16 T. Cr. R., 159; Nash v. State, 32 T. Cr. R., 368, 26 S. W. R., 412, distinguishing McGee's case, 7 Id., 99, McKay's case, 8 Id., 672 and Mullinix's case, 32 Id., 116, 26 S. W. R., 412.

Complaint that did not begin with the constitutional requirement, "in the name and by the authority of the State of Texas," held absolutely void. Ex parte Jackson, 50 T. Cr. R., 324, 95 S. W. R., 1047.

Failing to allege that the congregation disturbed were "conducting themselves in a lawful manner," indictment was fatally defective. Kizzia v. State, 38 T. Cr. R., 319, 43 S. W. R., 86.

A complaint is an indispensable pre-requisite to an information. McVea v. State, 35 T. Cr. R., 1, 26 S. W. R., 834, 28 S. W. R., 469.

Disturbance. The offense is complete if but one member of the congregation is disturbed. McVea v. State, supra.

Gist of offense is that the congregation was "wilfully" disturbed, that is, with evil intent or legal malice, or without reasonable grounds to believe the act lawful, and "wilfulness" must be proved. Richardson v. State, 5 T. Cr. R., 470; Wood v. State, 16 Id., 574; Finney v. State, 29 Id., 184, 15 S. W. R., 175; Holmes v. State, 39 T. Cr. R., 231, 45 S. W. R., 487.

Evidence must show conclusively both that the congregation, or a part thereof, was disturbed, and that the disturbance was wilful. Richardson v. State, 5 T. Cr. R., 470.

Conviction for disturbing religious worship cannot be had upon proof of the disturbance of a Sunndany school. Hubbard v. State, 32 T. Cr. R., 389, 24 S. W. R., 30.

Testimony that defendant's conduct "caused general confusion, excitement and disturbance among the people there assembled," was a statement of fact and not opinion evidence. Lewis v. State, 33 T. Cr. R., 618, 28 S. W. R., 465.

On trial for disturbing religious worship, it was error to admit evidence that parties had quit attending Sunday school on account of the acts of the defendant. Deskin v. State, 49 T. Cr. R., 93 S. W. R., 742.

Indictment charged the religious service held at a house; proof showed it was held in an arbor attached to the house. Held, sufficient. Blackwell v. State, 30 T. Cr. R., 416, 17 S. W. R., 1061.

Charge of court. Proper for the court to instruct that the disturbance of but one member of the congregation completes the offense. McVea v. State, 35 T. Cr. R., 1, 26 S. W. R., 834, 28 S. W. R., 469.

Not error to charge defendant guilty if he disturbed the congregation in or out of the house. Clark v. State, 78 S. W. R., 1078.

Erroneous charge as to penalty immaterial when the lowest penalty was assessed. Clark v. State, supra.

Recognizance on appeal which fails to recite or omits any one of the constituent elements of the offense—this not being an offense eo nomine, is fatally defective. Mullinix v. State, 32 T. Cr. R., 116, 22 S. W. R. 407; Nash v. State, Id., 368, 26 S. W. R., 412, distinguishing Mullinix's case, supra, and McGee's case, 7 Id., 99, and McKay's case, 8 Id., 672; Morgan v. State, Id., 413, 23 S. W. R., 1107.

Verdict of conviction by four jurors agreed to by the parties is a nullity. Archer v. State, 51 T. Cr. R., 46, 100 S. W. R., 769.

Disturbing Sunday School is a distinct offense from disturbing religious worship, and proof of one will not sustain charge of the other. Hubbard v. State, 32 T. Cr. R., 389, 24 S. W. R., 30.

Art. 297. [194] **Offender may be bound over.**—If complaint be made to any magistrate that a person has committed the offense mentioned in the preceding article, he may be, at the discretion of the magistrate, bound over to keep the peace and to refrain from like disturbance for the term of one year. [P. C. 285.]

Art. 298. [195] **Double penalty for second offense.**—Double the punishment prescribed in article 296 shall be imposed for any subsequent offense of the same kind. [P. C. 286.]

CHAPTER TWO.

SUNDAY LAWS.

	Article		Article
Working on Sunday	299	Selling goods on Sunday	302
Not applicable, when	300	Exceptions from operation of preceding article	303
Horse racing, gaming, etc., on Sunday	301		

Article 299. [196] **Working on Sunday.**—Any person who shall hereafter labor, or compel, force, or oblige his employes, workmen or apprentices to labor on Sunday, or any person who shall hereafter hunt game of any kind whatsoever on Sunday, within one-half mile of any church, school house or private residence, shall be fined not less than ten nor more than fifty dollars. [Act April 2, 1887, p. 108.]

The steward for a club, opening and conducting its business on Sunday, and selling two bottles of beer, is not guilty, under this article, of laboring on Sunday. Benson v. State, 47 T. Cr. R., 609, 85 S. W. R., 800.

Art. 300. [197] **Not applicable, when.**—The preceding article shall not apply to household duties, works of necessity or charity; nor to necessary work on farms or plantations in order to prevent the loss of any crop; nor to the running of steamboats and other water crafts, rail cars, wagon trains, common carriers, nor to the delivery of goods by them or the receiving or storing of said goods by the parties or their agents to whom said goods are delivered; nor to stages carrying the United States mail or passengers; nor to foundries, sugar mills, or herders who have a herd of stock actually gathered and under herd; nor to persons traveling; nor to ferrymen or keepers of toll bridges, keepers of hotels, boarding houses and restaurants and their servants; nor to keepers of livery stables and their servants; nor to any person who conscientiously believes that the seventh or any other day of the week ought to be observed as the Sabbath, and who actually refrains from business and labor on that day for religious reasons. [Act Dec. 2, 1871, p. 62.]

Term defined. "Necessity," in the purview of this article, does not mean a physical and absolute necessity, but a moral fitness or propriety of the work or labor under the circumstances of the particular case. Nor can "necessity" be limited to the emergencies of life, health or property beyond human control. On the contrary, the necessity may grow out of, or appertain directly to, a particular trade or calling. The operation of an ice factory on Sunday comes within the exception. Hennersdorff v. State, 25 T. Cr. R., 597, 8 S. W. R., 926. And, likewise, does the shoeing of a stage horse. Nelson v. State, Id., 599, 8 S. W. R., 927.

Art. 301. [198] **Horse racing, gaming, etc., on Sunday.**—Any person who shall run, or be engaged in running, any horse race, or who shall permit or allow the use of any nine or ten pin alley, or who shall be engaged in match shooting, or any species of gaming for money or other consideration, within the limits of any city or town on Sunday, shall be fined not less than twenty nor more than fifty dollars. [Act Dec. 2, 1871, p. 62.]

Indictment, to be sufficient, must allege the name of the person or persons with whom the accused gamed or played the game of cards. Shook v. State, 25 T. Cr. R., 345, 8 S. W. R., 329.

Gaming in a house outside, but proximate to the city limits, cannot be punished under this article. Borders v. State, 66 S. W. R., 1102.

Art. 302. [199] **Selling goods on Sunday.**—Any merchant, grocer, or dealer in wares or merchandise, or trader in any business whatsoever, or the proprietor of any place of public amusement, or the agent or employe of any such

person, who shall sell, barter, or permit his place of business or place of public amusement to be open for the purpose of traffic or public amusement on Sunday, shall be fined not less than twenty nor more than fifty dollars. The term, place of public amusement, shall be construed to mean circuses, theaters, variety theaters and such other amusements as are exhibited and for which an admission fee is charged; and shall also include dances at disorderly houses, low dives and places of like character, with or without fees for admission. [Act April 2, 1887, p. 108.]

Constitutional law. Justices courts are creatures of the Constitution, and the legislature cannot withdraw or destroy their jurisdiction and bestow it upon municipal courts. Ex Parte Ginnochio, 30 T. Cr. R., 584, 18 S. W. R., 82.

This, and the immediately following article, do not come within the category of class legislation. The legislature is authorized, under its police power, to exempt certain articles of merchandise as common necessities, from the inhibition of sale. Searcy v. State, 40 T. Cr. R., 460, 50 S. W. R., 699.

Sunday laws are constitutional as within the police power of the State. A barber does not come within the exceptions. Ex Parte Kennedy, 42 T. Cr. R., 148, 58 S. W. R., 129. And see Gabel v. Houston, 29 T., 335; Bohl v. State, 3 T. Cr. R., 683; Usener v. State, 8 Id., 177; Ex Parte Sundstrum, 25 Id., 133, 8 S. W. R., 207; Ex Parte Brown, 61 S. W. R., 396.

Municipal ordinances authorizing the opening of saloons and sales of liquor in a city on Sunday, except certain hours, are invalid and in contravention of the State law. Fay v. State, 44 T. Cr. R., 381, 71 S. W. R., 603.

The Sunday law is not violative of article 16, section 20, of the Constitution, formerly known as the Local Option section, nor was the law suspended as to a licensed liquor dealor. Bennett v. State, 49 T. Cr. R., 294.

The council of an incorporated town of less than 1000 inhabitants has the power to enact the State Sunday law into its ordinances, and in any event the mayor of such town would have jurisdiction under article 528 of the Revised Statutes of 1895 to hear and determine Sunday law violations. Ex Parte Abram, 34 T. Cr. R., 10, 28 S. W. R., 818, distinguishing Grace's case, 9 Id., 381, and Flood's case, 19 Id., 584.

Statute construed. This article means the entire day, from Saturday midnight to Sunday midnight. Different performances would not constitute separate offenses. Muckenfuss v. State, 55 T. Cr. R., 229, 116 S. W. R., 51.

Indictment or information for selling or keeping open for traffic on Sunday may charge both modes of violation and in the same count, and, the offenses being misdemeanors, the State cannot be required to elect upon which it will proceed. Brown v. State, 38 T. Cr. R., 597, 44 S. W. R., 176; Hall v. State, 41 Id., 423, 55 S. W. R., 173; Herod v. State, Id., 597, 56 S. W. R., 59.

Information was insufficient in not alleging that the defendant was the employe or clerk of his employer and sold the liquor belonging to his said employer as his employe or clerk. Behrens v. State, 42 T. Cr. R., 629, 62 S. W. R., 568.

Indictment not invalid because it charges that, as liquor dealer or keeper of a bar-room, defendant permitted his saloon to be opened on Sunday for traffic. Hoffheintz v. State, 45 T. Cr. R., 117, 74 S. W. R., 310.

Not necessary to specify the particular business defendant was engaged in, and allegation that he was a dealer in wares and merchandise is sufficient. The further allegation that he permitted his place of business to be opened for traffic on Sunday, can be sustained without proof of a specific sale. Griffith v. State, 48 T. Cr. R., 575, 89 S. W. R., 832. Armstrong v. State, 47 Id., 510, 84 S. W. R., 826.

And see on indictment: Albrecht v. State, 8 T. Cr. R., 313; Archer v. State, 10 Id., 482; Moseley v. State, 18 Id., 311; Brink v. State, Id., 344; Day v. State, 21 Id., 213, 17 S. W. R., 262.

Defendant delivered the whiskey and declined to receive the proffered payment, but did not protest when the money was left at a usual place on the counter, or offer to return it. Proof of sale was sufficient. Morris v. State, 48 T. Cr. R., 562, 89 S. W. R., 832.

Competent for State to prove by defendant that he was an habitual violator of the Sunday law. Morris v. State, supra.

Defendant admitting on cross-examination that he had no license, there was no reversible error in admitting in evidence a stub book kept by the clerk. Ward v. State, 55 T. Cr. R., 362, 116 S. W. R., 1154.

Evidence showing the club room was a subterfuge, conviction was proper. Ward v. State, supra.

Impeachment. The credibility of a witness cannot be attacked by asking him if he is not afflicted with a loathsome disease. Herod v. State, 41 T. Cr. R., 597, 56 S. W. R., 59.

A defendant may be cross-examined about any matter affecting his credibility. Herod v. State, supra.

Partnership. Though a member of a firm, with one or a number of partners, a party guilty of violating the Sunday law, is amenable in his individual capacity. Morris v. Stote, 48 T. Cr. R., 562, 89 S. W. R., 832.

Statutes construed. "Open," as used in this article, means that the house must be closed against all traffic. Whitcomb v. State, 30 T. Cr. R., 269, 17 S. W. R., 258.

The statute includes any person in the employ of the merchant or dealer, in any capacity about the particular business, even though not as salesman, and an employe of any kind, though he did not in fact make the sale as agent, if he aided in it, is a principal. Burnett v. State, 42 T. Cr. R., 600, 62 S. W. R., 1063.

A sale of goods, wares or liquors on Sunday is not a violation of law, unless brought within the inhibition of this article, and must be by a "merchant, grocer, or dealer in wares or merchandise, or trader in any business," etc. Meeks v. State, 32 T. Cr. R., 420, 24 S. W. R., 98; Johnson v. State, 34 Id., 106, 29 S. W. R., 472.

Defendant, a bar-tender, being present and in control of the porter, he was liable for the sale, though the porter waited on the customer. Collins v. State, 34 T. Cr. R., 95, 29 S. W. R., 274.

A party named in this article is guilty if he sells on Sunday, or if he keeps his place of business open for traffic, whether he makes a sale or not. Brown v. State, 38 T. Cr. R., 597, 44 S. W. R., 176.

The licensed keeper of a drug store who sells liquor on Sunday for medicinal purposes on a physician's prescription, may interpose that fact in defense, even in local option territory. Watson v. State, 46 T. Cr. R., 138, 79 S. W. R., 31.

A hotel or restaurant keeper, though authorized to pursue his occupatinon on Sunday, is not thereby authorized to violate any prohibitory law. Whether the beer served with the meal was a gift or sale, properly submitted to the jury. Savage v. State, 50 T. Cr. R., 199, 88 S. W. R., 351.

An assembling of persons on Sunday to unlawfully open a theater would not be a violation of this article, unless an admission fee was charged. Ex Parte Jacobson. 55 T. Cr. R., 237, 115 S. W. R., 1193.

Judgment against plural defendants prosecuted to conviction for misdemeanors must be several and not joint. Whitcomb v. State, 30 T. Cr. R., 269, 17 S. W. R., 258.

On the question of increased penalty, the court properly admitted in evidence memoranda orders of a corporation court showing a previous conviction for a similar offense, and it was not necessary to show that such judgment was formally entered by the corporation court. Muckenfuss v. State, 55 T. Cr. R., 216, 117 S. W. R., 853.

Nor was it necessary that the memoranda judgments show a conviction for a similar offense of the identical class; sufficient if it showed conviction for violating the Sunday law in any of the prescribed modes. Muckenfuss v. State, supra.

This article is not affected by nor is it in conflict with any of the provisions of the Baskin-McGregor law, regulating the sale of intoxicating liquors. Ex Parte Wright, 56 T. Cr. R., 504, 120 S. W. R., 868.

The purpose of the Baskin-McGregor law is to punish one selling intoxicating liquors without a license at any time, whether on Sunday or week day. The general Sunday law punishes infractions by sales on Sunday, whether with or without license. Id.

Art. 303. [200] **Exceptions from operation of preceding article.**—The preceding article shall not apply to markets or dealers in provisions as to sales of provisions made by them before 9 o'clock a. m., nor to the sale of burial or shrouding material, newspapers, ice, ice cream, milk, nor to the sending of

telegraph or telephone messages at any hour of the day, nor to keepers of drug stores, hotels, boarding houses, restaurants, livery stables, bath houses, or ice dealers, nor to telegraph or telephone offices. [Act April 13, 1891, p. 173.]

Exemptions. This article specifically exempts druggists selling drugs and medicines (Todd v. State, 30 T. Cr. R., 667, 18 S. W. R., 642), or intoxicants under the local option law. Watson v. State, 79 S. W. R., 31.

TITLE 8.

OF OFFENSES AGAINST PUBLIC JUSTICE.

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2. Of False Swearing.
3. Of Subornation of Perjury and False Swearing.
4. Offenses Relating to the Arrest and Custody of Prisoners.
5. False Certificate and Authentication or Entry by an Officer.
6. Miscellaneous Offenses.
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(4. Nepotism.)
(5. Failure of Duty.)
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(7. Compounding Crime.)
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(11. General Provisions.)

CHAPTER ONE.

OF PERJURY.

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Article 304. [201] **"Perjury" defined.**—Perjury is a false statement, either written or verbal, deliberately and wilfully made, relating to something past or present, under the sanction of an oath, or such affirmation as is by law equivalent to an oath, where such oath or affirmation is legally administered, under circumstances in which an oath or affirmation is required by law, or is necessary for the prosecution or defense of any private right, or for the ends of public justice. [P. C. 287.]

Perjury; constituent elements: 1. A false statement, either written or verbal. 2. Must have been deliberately and wilfully made. 3. Must relate to something past or present. 4. Must be made under the sanction of an oath or its equivalent affirmation. 5. The oath or affirmation must have been administered under circumstances in which it is required by law, or is necessary for the prosecution or defense of a private right, or for the ends of public justice. West v. State, 8 T. Cr. R., 119; Brown v. State, Id., 171; State v. Peters, 42 T., 7.

"Wilful" means with evil intent or legal malice, or without legal ground to believe the act lawful, and so the jury must be instructed. Windom v. State, 119 S. W. R., 309.

Art. 305. [202] **Not perjury, when.**—A false statement made through inadvertence, or under agitation, or by mistake, is not perjury. [P. C. 288.]

Inadvertence, etc. The inadvertence, mistake, or agitation contemplated is defensive matter. Brown v. State, 9 T. Cr. R., 171; Brookin v. State, 27 Id., 701, 11 S. W. R., 645, Schoenfeld v. State, 56 Id., 103, 119 S. W. R., 101.

Art. 306. [203] **Oath must be legally administered.**—The oath or affirmation must be administered in the manner required by law, and by some person duly authorized to administer the same in the matter or cause in which such oath or affirmation is taken. [P. C. 289.]

The oath, to constitute perjury, must have been administered by some person authorized to administer it in the manner in which it was taken, and in the manner

required by law. State v. Powell, 28 T., 627; State v. Peters, 42 Id., 7; Stewart v. State, 6 T. Cr. R., 184.

It is not necessary, however, that the indictment allege that the party making the false statement knew it was false when he made it—overruling State v. Powell, supra on this point. Ferguson v. State, 36 T. Cr. R., 60, 35 S. W. R., 369.

Affidavit not required by law, and not made for use in court, is extra-judicial, and such cannot be prosecuted as perjury, though it may be, as for marriage license, false swearing. Davidson v. State, 22 T. Cr. R., 372, 3 S. W. R., 662; Steber v. State, 23 Id., 176, 4 S. W. R., 880.

Person duly authorized, etc. So far as concerns capacity of a justice of the peace to administer oath, indictment sufficiently alleges that he was "a justice of the peace" and "then and there duly and fully authorized by law to administer oaths." Waters v. State, 284, 17 S. W. R., 411; State v. Peters, 42 T., 7; Bradberry v. State, 7 T. Cr. R., 375.

County attorneys are authorized and qualified to administer oaths to complaints in justice courts, and to affidavits on which to base informations. Bradberry v. State, supra.

Foreman of the grand jury is a person qualified to administer oaths to witnesses before that body. Massie v. State, 5 T. Cr. R., 81.

Reference matter. Indictment charging affirmatively that the perjury assigned relates to a past event, not necessary that charge of court should notice that requirement. Kitchen v. State, 26 T. Cr. R., 165, 9 S. W. R., 461.

Art. 307. [204] **And about something past or present.**—The false statement must be of something past or present; oaths of office, or any other promissory oaths, are therefore not included in the definition of perjury, except that part of the official oath prescribed by the constitution which relates to dueling. [P. C. 289.]

Art. 308. [205] **In what sort of proceeding.**—All oaths or affirmations legally taken in any stage of a judicial proceeding, civil or criminal, in or out of court, or before a grand jury, are included in the description of this offense. [Act March 15, 1875, p. 170; P. C. 290a.]

Assignable as perjury. Whether in a proper judicial proceeding the accused testifies legally or otherwise, or voluntarily or otherwise, his false statement under oath is perjury—except where he has been forced to testify to facts that would tend to inculpate himself in crime. Pipes v. State, 26 T. Cr. R., 318, 9 S. W. R., 318.

An oath differing both in form and substance from that which the officer is authorized to administer will not support perjury. State v. Perry, 42 T., 238.

Materiality of matter assigned as perjury is a question for the court and not the jury. Washington v. State, 23 T. Cr. R., 336, 5 S. W. R., 119; Jackson v. State, 15 Id., 579; Smith v. State, 27 Id., 50, 10 S. W. R., 751.

But it may become at times so mingled with facts that the court should submit it to the jury with proper instructions upon the law. Washington v. State, supra; Foster v. State, 32 Id., 39, 22 S. W. R., 21.

False testimony is material not only when direct on the issue, but when it tends to increase or diminish damages, or imports greater credit to substantial parts of the evidence, the degree of materiality being unimportant. Lawrence v. State, 2 T. Cr. R., 479; Williams v. State, 28 T. Cr. R., 12 S. W. R., 1103.

False testimony being material to one of several facts sought to be proved, materiality is sufficient. State v. Lindenberg, 13 T., 27; State v. Webb, 41 Id., 67; Williams v. State, 28 T. Cr. R., 301, 12 S. W. R., 1103.

If alleged to be material, or it so appeared from the facts stated, it is so deemed if it could have influenced the tribunal in which it was made. Martin v. State, 33 T. Cr. R., 317, 26 S. W. R., 400; Williams v. State, 28 Id., 301, 12 S. W. R., 1103.

May be material if it affects only a collateral issue, as the credibility of a witness. Washington v. State, 22 T. Cr. R., 26, 3 S. W. R., 228.

The subject-matter under investigation is the measure of materiality. Weaver v. State, 34 T. Cr. R., 554, 31 S. W. R., 400.

Allegations of materiality must be proved. Garrett v. State, 37 T. Cr. R., 198, 38 S. W. R., 1017.

Such being the fact, it was proper for the court to instruct the jury that the matter assigned was material. Scott v. State, 35 T. Cr. R., 11, 29 S. W. R., 274.

Art. 309. [206] **Immaterial statement not perjury.**—The statement of any circumstance wholly immaterial to the matter in respect to which the declaration is made is not perjury. [P. C. 291.]

Immaterial matter cannot be assigned as perjury. Martinez v. State, 7 T. Cr. R., 394; Mattingly v. State, 8 Id., 345; Agar v. State, 29 Id., 605, 16 S. W. R., 761; Meeks v. State, 32 Id., 420, 24 S. W. R., 98; Miesener v. State, 34 Id., 588, 31 S. W. R. 858.

If the matter being investigated is innocent of the law, the statement should not be held materially false, though in fact it was untrue. Weaver v. State, 34 T. Cr. R., 554, 31 S. W. R., 400.

Self-serving perjury. While no one, under the Bill of Rights, can be compelled to give evidence against himself, he can waive the right, and subject himself by false testimony. Mattingly v. State, 8 T. Cr. R., 345.

An ex-convict, testifying in his own behalf, does so subject to the penalties of perjury. Williams v. State, 28 T. Cr. R., 301, 12 S. W. R., 1103; Shannon v. State, Id., 474, 13 S. W. R., 599; Murphy v. State, 33 Id., 314, 26 S. W. R., 395.

Quantum of evidence. To support conviction, the falsity of the statement assigned must be shown by two credible witnesses, or one credible witness strongly corroborated by other evidence. Whitaker v. State, 37 T. Cr. R., 479, 36 S. W. R., 253; and to the same effect the rule is statutory. C. C. P., Art. 816.

It is not the character of the proof required by the statute, but the number and character of the witnesses. Plummer v. State, 35 State, 202, 33 S. W. R., 228; and see also, Beach v. State. 32 Id., 240, 22 S. W. R., 976; Kitchen v. State, 29 Id., 45, 14 S. W. R., 392; Kemp v. State, 28 Id., 519, 13 S. W. R., 869.

Charge of court. The Code of Criminal Procedure requires that, in cases where, by law, two witnesses, or one strongly corroborated are necessary, in the event they are not forthcoming, it is fundamental error for the court to fail to instruct for acquittal. Waters v. State, 30 T. Cr. R., 284, 17 S. W. R., 411; Kitchen v. State, 29 Id., 45, 14 S. W. R., 392; Smith v. State, 22 Id., 196, 2 S. W. R., 542; Gabrielsky v. State, 13 Id., 428; Cox v. State, Id., 479; Hernandez v. State, 18 Id., 134.

Materiality of matter assigned is a question of law and should not be submitted to the jury. Jackson v. State, 15 T. Cr. R., 579.

It may, however, become so mingled with facts as to require its submission, with proper instructions upon the law. Washington v. State, 23 T. Cr. R., 336, 3 S. W. R., 228; Foster v. State, 32 Id., 239, 22 S. W. R., 21.

Error to refuse to instruct that if the jury believe that one of two prosecuting witnesses who was impeached in two or more methods, was not a credible witness they should disregard his testimony. Smith v. State, 22 T. Cr. R., 196, 2 S. W. R., 542.

The testimony of an accomplice or particeps criminis for the state requires of the court a charge on accomplice testimony. Anderson v. State, 20 T. Cr. R., 312.

Accused cannot complain of a charge which, though erroneous, was manifestly in his favor. Kitchen v. State, 26 T. Cr. R., 165, 9 S. W. R., 461.

Proper for the court in its charge to select from several that assignment which alone was material and submit it to the jury. Sisk v. State, 28 T. Cr. R., 432, 13 S. W. R., 647.

Acts and declarations of third parties. Perjury was assigned on defendant's testimony before the grand jury concerning theft by other parties. Held, that the confessions of those parties, though made in the absence of defendant, were properly admitted on the question of materiality and of falsity. Martin v. State, 33 T. Cr. R., 317, 26 S. W. R., 400.

Same; judgment. The appellate court will not exercise its power to conform the judgment or sentence, or both, to the verdict when there is any uncertainty about the import of the latter. O'Bryan v. State, 27 T. Cr. R., 339, 11 S. W. R., 443.

Art. 310. [207] **Punishment.**—The crime of perjury, except as in cases provided for in article 311 of the Penal Code, shall be punished by imprisonment in the penitentiary for a term not more than ten years nor less than two years. [P. C. 292, amended 1897, p. 146.]

O'Bryan v. State, 27 T. Cr. R., 339, 11 S. W. R., 443.

Art. 311. [208] **Perjury in capital case.**—When the perjury is committed on a trial of a capital felony, and the person guilty of such perjury has, on the trial of such felony, sworn falsely to a material fact tending to produce conviction; and the person so accused of the capital felony is convicted and suffers the penalty of death, the punishment of the perjury so committed shall be death. [P. C. 293.]

CHAPTER TWO.

OF FALSE SWEARING.

	Article
"False swearing," definition of	312
Past or present	313
Officer falsely reporting collections of public moneys	314
False swearing in relation to quarantine matters	315
Witness before grand jury divulging proceedings, etc	316
False swearing to enlistment paper	317

Article 312. [209] **"False swearing," definition of.**—If any person shall deliberately and wilfully, under oath or affirmation legally administered, make a false statement by a voluntary declaration or affidavit, which is not required by law or made in the course of a judicial proceeding, he is guilty of false swearing, and shall be punished by imprisonment in the penitentiary not less than two nor more than five years.

Perjury and false swearing distinguished. If the false statement be made in an oath or affidavit "required by law" or made in the course of a judicial proceeding, the offense is perjury; if, being a false voluntary oath or affirmation, not required by law or made in the course of a judicial proceeding, it is false swearing. Langford v. State, 9 T. Cr. R., 283.

Constitutional law. Section 5 of Article 1 of the Constitution does not conflict with this article. The first refers to witnesses giving testimony; the latter to matters in which oaths or affirmations are made and taken when not required by law. Campbell v. State, 43 T. Cr. R., 602, 68 S. W. R., 513.

Art. 3 of the Revised Statutes of 1895 does not repeal or conflict with this article, and article 4 of the same revision refers to oaths and affirmations required by law, and this article to those not required by law. Campbell v. State, 43 T. Cr. R., 602, 68 S. W. R., 513.

Generally. A false affidavit to procure marriage license is false swearing and not perjury. Harkreader v. State, 35 T. Cr. R., 243, 33 S. W. R., 117; Aguerre v. State, 32 Id., 518, 21 S. W. R., 256; Steber v. State, 23 Id., 176, 4 S. W. R., 880; Davidson v. State, 22 Id., 372, 3 S. W. R., 662.

A public free school teacher's affidavit for his salary is an oath "required by law," and a false one is therefore perjury and not false swearing. O'Bryan v. State, 27 T. Cr. R., 339, 11 S. W. R., 443.

Change of venue. Judicial discretion conferred upon courts to change venue upon their own motion within or beyond their own judicial districts, is a judicial and not a personal discretion, and will be revised on appeal only when it has been abused to the prejudice of defendant. Woodson v. State, 24 T. Cr. R., 153, 6 S. W. R., 184.

Indictment need not, as to each and every minor allegation, allege that "the grand jurors do say." Campbell v. State, 43 T. Cr. R., 602, 68 S. W. R., 513.

May charge as many false statements as the pleader may insert, and proof of either will be sufficient. Campbell v. State, supra.

If what are thought to be contradictory averments are explanatory one of the other, making more fully the description of the matters at issue, this would be no

contradiction and would not render the indictment vague or indefinite. Campbell v. State, supra.

Evidence. Affidavit for marriage license recited the willingness of the bride's mother to the marriage, and it developed that, at that time, the mother had been dead two years. The court permitted a witness who stood in loco parentis to the bride, to testify for the state that he did not consent. Held, error. Steber v. State, 23 T. Cr. R., 176, 4 S. W. R., 880.

An exception to the rule that the best or primary evidence must be produced or accounted for before resort can be had to secondary evidence, is the official character of a public officer, which need not be proved by commission, except in an issue directly between the officer and the public. Witness was properly permitted to testify that he was the justice of the peace who administered the oath. Woodson v. State, 24 T. Cr. R., 153, 6 S. W. R., 184.

Proper to permit parents of the alleged minor bride to testify that they objected to the marriage, such evidence controverting the affidavit's statement that there was no legal objection to said marriage. Harkreader v. State, 35 T. Cr. R., 243, 33 S. W. R., 117.

Proper to exclude as immaterial that, pending engagement to marry, defendant made many presents to the young lady which she still retained, with the knowledge and consent of her parents. Harkreader v. State, supra.

One witness is sufficient to establish the oath and what was sworn to, but the falsity of the matter must be established by two witnesses, etc. Aguerre v. State, 31 T. Cr. R., 519, 21 S. W. R., 256.

Officer. A county judge is an officer authorized to take affidavits in the body of his county. O'Bryan v. State, 27 T. Cr. R., 339, 11 S. W. R., 443.

The county clerk's authority to administer oaths and affidavits appertains to his office and belongs to his official duties, and this authority appertains equally to his deputy. Harkreader v. State, 35 T. Cr. R., 243, 33 S. W. R., 117; Mahon v. State, 46 Id., 234, 79 S. W. R., 28.

A minor is eligible to the office of deputy county clerk. Harkreader v. State, supra.

A notary public has authority to swear persons, whether it be to necessary affidavits and those required by law, or those which are purely voluntary. Campbell v. State, 43 T. Cr. R., 602, 68 S. W. R., 513.

Charge of court. As in perjury, it is the duty of the court to instruct on the quantum of proof necessary to convict of false swearing. Aguerre v. State, 31 T. Cr. R., 519, 21 S. W. R., 256.

Failure of the charge to define and properly instruct on the terms "deliberately" and "wilfully," is reversible error. Steber v. State, 23 T. Cr. R., 176, 4 S. W. R., 880. Error without prejudice, however, when supplied by a special instruction. Woodson v. State, 24 Id., 153, 6 S. W. R., 184; Mahon v. State, 46 Id., 234, 79 S. W. R., 28.

Requested charges that are essentially incorrect are properly refused. Aguerre v. State, 31 T. Cr. R., 519, 21 S. W. R., 256.

Evidence raising question of accomplice, failure of charge to embrace accomplice testimony was error. Smith v. State, 37 T. Cr. R., 488, 36 S. W. R., 586.

Special instructions substantially embraced in the general charge are properly refused. Campbell v. State, 43 T. Cr. R., 602, 68 S. W. R., 513.

Error to refuse a requested charge on a phase of case raised by the evidence, and insufficiently covered by the general charge. Porter v. State, 48 T. Cr. R., 301, 88 S. W. R., 359.

Art. 313. [210] **Past or present.**—The false swearing must, as in regard to perjury, be relative to something past or present.

Art. 314. [211] **Officer falsely reporting collection of public moneys.**—If any officer of this state, or of any district or county thereof, who is charged by law with the duty of receiving or collecting public moneys, other than taxes, for the use of the state or counties, and reporting the same, under oath, to the district, county or commissioners' court of any county, shall falsely report the amount of such collections, or any part thereof, he shall be deemed guilty of false swearing, and, upon conviction, shall be punished as prescribed in article 209. [Act May 1, 1874, pp. 182-3.]

Art. 315. [212] **False swearing in relation to quarantine matters.**—Any person suspected of violating any quarantine law or regulation, and who, upon being sworn by any one authorized to administer an oath by the provisions of any law of this state, shall knowingly swear falsely about any matter concerning which the quarantine laws and regulations permit examination, shall be deemed guilty of false swearing, and shall, on conviction in a court of competent jurisdiction, be punished by imprisonment in the penitentiary not less than two nor more than five years. [Act March 21, 1883, p. 27.]

Art. 316. [213] **Witness before grand jury divulging proceedings, etc.**—Any grand juror, or any person who shall appear before any grand jury in this state, and who, after being sworn according to law as a witness before said grand jury, shall afterwards divulge, either by word or sign, any matter about which said witness may have been interrogated, or any proceeding or fact said witness may have learned by reason of being said witness, shall be guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than one hundred nor more than one thousand dollars, and may be in addition thereto imprisoned in the county jail not exceeding six months; provided, this act shall not apply to persons required to testify to any of the aforesaid matters before a judicial tribunal. [Act April 4, 1887, p. 131.]

Charge of court defined offense in language of statute. Held, sufficient, and that, desiring bill of particulars applying that definition, defendant should have requested special charge. Higdon v. State, 46 T. Cr. R., 198, 79 S. W. R., 546.

"Wilfully" and "intentionally" not being elements of the offense, the court charged sufficiently in submitting the defense of non-responsibility from the use of morphine. Higdon v. State, supra.

Art. 317. **False swearing to enlistment paper.**—Every person who enlists or re-enlists in the active militia of this state shall sign and make oath to an enlistment paper, which shall be filed in the office of the adjutant general. Such oath shall be taken and subscribed to before a field officer, or the commanding officer of a signal corps, troop, battery or company, who are hereby authorized to administer such oaths; and such oaths may be taken before any officer authorized by the laws of this state to administer oaths. A person making a false oath to any statement contained in such enlistment paper shall, upon conviction, be deemed guilty of false swearing and punished accordingly. [Act 1905, p. 179.]

CHAPTER THREE.

OF SUBORNATION OF PERJURY AND FALSE SWEARING.

	Article		Article
Subornation of perjury, or false swearing	318	Attempt at subornation of perjury	319

Article 318. [214] **Subornation of perjury, or false swearing.**—If any person shall designedly induce another to commit perjury or false swearing, he shall be punished as if he had himself committed the crime.

Art. 319. [215] **Attempt at subornation of perjury.**—If any person shall, by any means whatever, corruptly attempt to induce another to commit the offense of perjury or false swearing, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years.

CHAPTER FOUR.

OFFENSES RELATING TO THE ARREST AND CUSTODY OF PRISONERS.

	Article		Article
Officer wilfully permitting escape in capital cases	320	Telegraph operator divulging process	335
Same in ordinary felonies	321	Preventing execution of civil process	336
Same in misdemeanors	322	Offenses complete without actual escape	337
Negligently permitting escape in capital cases	323	County convict escaping from employer	338
Same in ordinary felonies	324	Person resisting officer in felony	339
Same in misdemeanors	325	Same in misdemeanor	340
Officer refusing to arrest in felonies	326	Same in civil cases	341
Same in cases of misdemeanor	327	Resisting improvement commissioners and engineers	342
Private person appointed to execute same as officer	328	Resisting navigation and canal commissioners and engineers	343
Conveying arms, disguises, etc., into jail to aid felon	329	Accused resisting process	344
Same in misdemeanor	330	Process must be legal	345
Breaking into jail to rescue prisoner	331	"Accusation" defined	346
Aiding prisoner charged with felony to escape from officer	332	"Legally confined in jail" defined	347
Same in case of misdemeanor	333	"Jail" defined	348
Assisting inmate of state institution for correction of juveniles to escape	334	"Officer" defined	349
		"Arms" defined	350
		Refusing to aid officer	351

Article 320. [216] **Officer in charge of prisoner wilfully permitting escape in capital case.**—Any officer, jailer or guard, having the legal custody of any person accused or convicted of a capital offense, who wilfully permits such person to escape, or to be rescued, shall be punished by confinement in the penitentiary not less than two nor more than ten years. [P. C. 312.]

As to jurisdiction see post, Art. 322.

"Escape," as used in this statute, means that the prisoner has "actually and completely withdrawn himself from custody," and has "got free and gone at large." Loyd v. State, 19 T. Cr. R., 137.

The term "escape" should receive its ordinary and popular meaning. Loyd v. State, supra.

Voluntary escape is where the officer in charge gives the prisoner his liberty with intent to save him from his trial and sentence. To permit the prisoner to go at large

on his promise to appear at an appointed time, is voluntary escape. Porter v. State, 34 T. Cr. R., 364, 30 S. W. R., 791.

Negligent escape is a distinct offense from voluntary escape and carries a different penalty. State v. Dorsett, 21 T., 656.

An officer on trial for permitting an escape cannot question the legality of the arrest. Moseley v. State, 25 T. Cr. R., 515, 8 S. W. R., 652.

No offense to advise a prisoner to escape or aid him in any manner not prohibited by the statute. White v. State, 13 T., 134.

When a judgment consigns a prisoner to jail, the officer having him in charge, who permits him to remain out of jail, is guilty of permitting escape. Ex parte Wyatt, 29 T. Cr. R., 398, 16 S. W. R., 301. And see Luckey v. State, 14 T., 400.

Art. 321. [217] **In felonies.**—Any officer, jailer or guard, who has the legal custody of any person accused or convicted of a felony less than capital, who wilfully permits such person to escape, or to be rescued, shall be punished by imprisonment in the penitentiary for a term not less than two and not exceeding five years. [P. C. 313.]

Art. 322. [218] **In misdemeanors.**—Any officer, jailer or guard, having the legal custody of a person accused or convicted of a misdemeanor, who wilfully permits such person to escape, or to be rescued, shall be fined not exceeding one thousand dollars. [P. C. 314.]

Jurisdiction. Negligently permitting the escape of a prisoner is official misconduct within the meaning of the statute, and is triable in the district and not in the county court. Hatch v. State, 10 T. Cr. R., 515, overruling Watson v. State, 9 Id., 212.

Indictment need not aver that escape was made without and against consent of employer, nor that the convict was hired to be kept in the county. Carter v. State, 29 T. Cr. R., 5, 14 S. W. R., 350.

Art. 323. [219] **Negligently permitting escape in capital case.**—Any officer, jailer or guard, who has the legal custody of a person accused or convicted of a capital offense, and who negligently permits such person to escape or to be rescued, shall be punished by a fine not exceeding two thousand dollars. [P. C. 315.]

Indictment under this article (and any article of this chapter) need not allege that the arrest of the prisoner was legal, or that he had been legally placed in the custody of the officer; and to allege the particulars of the crime, arrest or trial of the prisoner would be surplusage. State v. Hedrick, 35 T., 485.

Evidence must show that the escape was permitted knowingly and intentionally by the officer. Barthelow v. State, 26 T., 175.

Art. 324. [220] **In felonies.**—Any officer, jailer or guard, who has the legal custody of a person accused or convicted of a felony less than capital, and who negligently permits such person to escape or to be rescued, shall be punished by fine not exceeding one thousand dollars. [P. C. 316.]

Art. 325. [221] **In misdemeanors.**—Any officer, jailer or guard, who has the legal custody of a person accused or convicted of a misdemeanor, and who negligently permits such person to escape or to be rescued, shall be punished by fine not exceeding five hundred dollars. [P. C. 317.]

Art. 326. [222] **Officer refusing to arrest or receive in felony.**—Any sheriff or other officer, who wilfully refuses or fails from neglect to execute any lawful process in his hands requiring the arrest of a person accused of felony, whereby such person escapes, or wilfully refuses to receive in a jail under his charge, or to receive into his custody, any person lawfully committed to such jail and ordered to be confined therein on an accusation of felony, or lawfully committed to his custody on such accusation, shall be fined not exceeding two thousand dollars. [Act Feb. 11, 1860, p. 96; P. C. 318.]

Art. 327. [223] **Same in cases of misdemeanor.**—Any sheriff or other officer, who wilfully refuses or fails from neglect to execute any lawful process in his hands requiring the arrest of a person accused of a misdemeanor, whereby the accused escapes, or who wilfully refuses to receive into a jail under his charge, or to receive in his custody any person lawfully committed to such jail on an accusation of misdemeanor, or lawfully committed to his custody on such accusation, shall be punished by fine not exceeding five hundred dollars. [Act Feb. 11, 1860, p. 96; P. C. 319.]

Art. 328. [224] **Private person appointed to execute, same as officer.**—If any private person, appointed with his own consent to execute a warrant of arrest, shall be guilty of any one of the offenses heretofore enumerated in this chapter, he shall be punished in the same manner as an officer in a like case. [P. C. 320.]

Art. 329. [225] **Conveying arms, disguises, etc., into jail to aid felon.**—If any person shall convey, or cause to be conveyed, into any jail, any disguise, instrument, arms, or any other thing useful to aid any prisoner in escaping, with intent to facilitate the escape of a prisoner lawfully detained in such jail, on an accusation of felony, or shall, in any other manner calculated to effect the object, aid in the escape of a prisoner legally confined in jail, he shall be punishd by imprisonment in the penitentiary not less than two nor more than five years. [Act Feb. 12, 1858, p. 162; P. C. 321.]

Indictment, substituting the word "furnish" for the statutory word "convey," is bad. Francis v. State, 21 T., 280.

"Counsel and advice" is not the physical aid contemplated by the statute. White v. State, 13 T., 133.

Indictment subject to criticism for tautology and surplusage, but held sufficient. Clayton v. State, 4 T. Cr. R., 515.

Failing to allege that accused did the acts with the intent to aid the escape of a prisoner lawfully confined, indictment was insufficient. Jenkins v. State, 49 T. Cr. R., 470, 93 S. W. R., 554.

Jail includes all space attached to the building used for safe-keeping prisoners. Welch v. State, 25 T. Cr. R., 580, 8 S. W. R., 657.

Exemptions. The statute exempting the husband, wife, sister or lineal relations of the offender does not apply to this statute. Peeler v. State, 3 T. Cr. R., 533.

Evidence. The escaped prisoner, though he used the tools, was neither particeps criminis nor accomplice ir conveying the tools into the jail, and therefore not affected as a witness by the rule governing accomplice testimony. Peeler v. State, 3 T. Cr. R., 533.

Must correspond to the allegations in the indictment. White v. State, 13 T., 133.

That the accused was long confined in jail with the escaped prisoner, was admissible on question of motive and intent. Watson v. State, 32 T. Cr. R., 80, 22 S. W. R., 46.

Conspiracy must be proved before declarations of an accomplice in the absence of the accused can be admitted. Martin v. State, 25 T. Cr. R., 557, 8 S. W. R., 682.

Expert pharmacist may testify to contents of bottles and satisfy himself by practical tests. Watson v. State, 32 T. Cr. R., 80, 22 S. W. R., 46.

Art. 330. [226] **Same in misdemeanor.**—If any person shall, by any of the means contemplated in the preceding article, aid in the escape of a person legally confined in jail upon an accusation for a misdmeanor, he shall be fined not exceeding five hundred dollars. [P. C. 323.]

Post, Art. 337.

Art. 331. [227] **Breaking into jail to rescue prisoner.**—If any person shall break into any jail for the purpose of effecting the rescue or escape of a prisoner therein confined, or for the purpose of aiding in the escape of any prisoner so confined, he shall be punished by imprisonment in the

penitentiary for a term not less than two nor more than six years. [P. C. 322, 324.]

Post, Art. 337.

Indictment need not include terms "wilful" and "force." Loggins v. State, 32 T. Cr. R., 358, 24 S. W. R., 408.

Evidence. Unbolting unlocked door and entering lower room of jail, and coercing jailer with a pistol, is sufficient evidence of a statutory "breaking." Williams v. State, 24 T. Cr. R., 17, 5 S. W. R., 655.

Art. 332. [228] **Aiding prisoner charged with felony to escape from officer.**—If any person shall wilfully aid in the escape of a prisoner from the custody of an officer, by whom he is legally held in custody on an accusation of felony, by doing any act calculated to effect that object, he shall be punished by imprisonment in the penitentiary not less than two nor more than seven years; and if, in aiding in the escape, he shall make use of arms, he shall be punished by imprisonment in the penitentiary for a term not less than two nor more than ten years. [Act Feb. 12, 1858, p. 162; P. C. 325.]

Post, Art. 337.

Art. 333. [229] **Same; aid in case of misdemeanor.**—If any person shall wilfully aid a prisoner to escape from the custody of an officer by whom he is legally detained in custody after conviction of a misdemeanor, or while being so detained in custody on an accusation for misdemeanor, by doing an act calculated to effect that object, he shall be punished by fine not exceeding five hundred dollars; and if, in aiding in the escape, he shall make use of arms, he shall be punished by fine not exceeding one thousand dollars. [P. C. 326; amended Act 1905, p. 377.]

Post, Art. 337, 346.

Information charging that defendant made an attempt to aid a prisoner to escape charges no offense against the laws of this State. Blanchett v. State, 125 S. W. R., 26.

Art. 334. [230] **Assisting inmate of state institution for correction of juveniles to escape.**—Any person who shall knowingly assist any inmate lawfully confined in the state institution for the training of juveniles to escape, or who shall knowingly conceal such inmate, or advise or abet the escape of such inmate, or who shall furnish such inmate with money, arms, or any character of means to escape, with the purpose of facilitating the escape of such inmate, shall be deemed guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary for a term of not less than two nor more than five years. [O. C.]

Art. 335. [231] **Telegraph officer divulging process.**—Any executive officer, director, superintendent, manager, operator, clerk, messenger or other party in the employ of a telegraph company, who shall wilfully divulge, or in any manner make known, except to the proper authority, the contents of any warrant, affidavit or telegram relating to any crime already committed, or for the prevention of the same, shall, upon conviction, be fined in a sum not less than five hundred dollars nor more than one thousand, or be imprisoned in the state penitentiary for a term not less than two years nor more than five years. [Act April 17, 1871, p. 40, § 7.]

Art. 336. [232] **Preventing execution of civil process.**—If any person shall prevent or defeat the execution of any process in a civil cause, by any means not amounting to actual resistance, but which are calculated to prevent the

execution of such process, he shall be punished by fine not exceeding five hundred dollars; evading the execution of such process is not an offense under this article. [P. C. 327.]

Post Art. 340.

Indictment must allege the particular mode in which the offense was committed, and that the accused knew the capacity in which the officer was acting. Horan v. State, 7 T. Cr. R., 183.

Art. 337. [233] **Offenses complete without actual escape.**—The offenses enumerated in articles 329, 330, 331, 332 and 333 are complete without the actual escape of the prisoner; and a person accused of any of said offenses may be prosecuted and tried, although the person escaping be retaken, and although after being retaken he is brought to trial and acquitted. [P. C. 328-9.]

Art. 338. [234] **County convict escaping from employer.**—Any person who has been convicted of a misdemeanor or petty offense, and afterwards hired under authority of law, who shall escape from his employer or person hiring him during the term of which he may have been hired, shall be punished by imprisonment in the county jail for a term not exceeding two years. [Act Aug. 21, 1876, p. 229, § 4.]

Indictment need not allege that the escape was without and against consent of employer, nor that the convict was hired to be kept in the county. Carter v. State, 29 T. Cr. R., 5, 14 S. W. R., 350.

Sufficient in charging accused to be a "county convict" instead of alleging that he had been "convicted of a misdemeanor," etc. Porter v. State, 34 T. Cr. R., 364, 30 S. W. R., 791.

Art. 339. [235] **Person resisting officer in case of felony.**—If any person shall wilfully oppose or resist an officer in executing or attempting to execute any lawful warrant for the arrest of another person in a case of felony, he shall be punished by confinement in the penitentiary for a term not less than two nor more than five years; and, if arms be used in such resistance, he shall be punished by imprisonment in the penitentiary not less than two nor more than seven years. [Act Feb. 12, 1858, p. 163; P. C. 331.]

Post, Art. 345.

Indictment must show that the warrant sufficiently charged accused with felony, and that it was legally issued. Toliver v. State, 32 T. Cr. R., 444, 24 S. W. R., 286; Pierce v. State, 17 Id., 232; McGrew v. State, Id., 613; Horan v. State, 7 Id., 183; Hill v. State, 43 T., 329.

Warrant of arrest by justice of the peace to be executed in another county. Toliver v. State, 32 T. Cr. R., 444, 24 S. W. R., 286.

Such warrant is without authority in another county, unless indorsed as required by law. Ledbetter v. State, 23 T. Cr. R., 247, 5 S. W. R., 226; Peter v. State, Id., 684, 5 S. W. R., 228.

Sheriff is not authorized to execute warrant of arrest or capias beyond the limits of his county. Jones v. State, 26 T. Cr. R., 1, 9 S. W. R., 53.

Evidence. On trial for murder of an officer while resisting illegal arrest, proof of the issuance of a capias in another county for defendant's arrest for burglary, was inadmissible. Miers v. State, 34 T. Cr. R., 161, 29 S. W. R., 1074.

Incompetent on such trial, where deceased's character had not been attacked, to prove that he was a good man, and error to permit a state's witness to testify that, shortly before the killing, he told the deceased that defendant was a dangerous man. Miers v. State, supra.

Right to resist. An officer is not authorized to execute an illegal warrant of arrest, and the person named in it need not submit, provided his resistance is not unwarrantable and illegal. Toliver v. State, 32 T. Cr. R., 444, 24 S. W. R., 286.

Unlawful arrest is a continuous aggravated assault, and may be resisted as long as the unlawful detention continues, not only by the person unlawfully detained, but

by another in his behalf, and with the necessary force to release the person detained, and homicide resulting from such force is not culpable. Alford v. State, 8 T. Cr. R., 545.

An attempted unlawful arrest is provocation enough to reduce murder to manslaughter. Jones v. State, 26 T. Cr. R., 1, 9 S. W. R., 53; Meuly v. State, Id., 274, 9 S. W. R., 563; Miller v. State, 31 Id., 609, 21 S. W. R., 925; Miller v. State, 32 Id., 319, 20 S. W. R., 1103.

A person illegally arrested, though he acquiesced, may use such force as may be necessary to regain liberty, and may shoot in self-defense if it reasonably appears that the arresting officer intends to shoot to prevent escape. Miers v. State, 34 T. Cr. R., 161, 29 S. W. R., 1074.

An officer in making arrest can resort to deadly weapons only when the conduct of the party compels him. English v. State, 34 T. Cr. R., 190, 30 S. W. R., 233. And see James v. State, 44 T., 314.

Art. 340. [236] **In cases of misdemeanors.**—If any person shall wilfully oppose or resist an officer in executing or attempting to execute any lawful warrant for the arrest of another person in a case of misdemeanor, or in arresting or attempting to arrest any person without a warrant, where the law authorizes or requires the arrest to be made without a warrant, he shall be punished by a fine of not less than twenty-five nor more than five hundred dollars; and, if arms be used, by a fine of not less than fifty nor more than one thousand dollars. [P. C. 220, amended by Act of April 4, 1881, p. 108.]

Post Art. 345.

Complaint and information insufficient which fail to allege an arrest under or without a warrant, and only that accused was drunk in a public place in the presence of an officer. Harless v. State, 53 T. Cr. R., 319, 109 S. W. R., 934.

Art. 341. [237] **In civil cases.**—If any person shall wilfully resist or oppose an officer in executing, or attempting to execute, any process in a civil cause, he shall be fined not exceeding five hundred dollars; and, if arms be used in such resistance, the punishment shall be doubled. [P. C. 333.]

Ante, Art. 336 and note.

Indictment must show that the warrant was one for arrest and that it was delivered to an officer in a criminal case. McGrew v. State, 17 T. Cr. R., 613.

And that it was a valid and legal warrant of arrest. Toliver v. State, 32 T. Cr. R., 444, 24 S. W. R., 286.

Resistance. See authorities cited under article 339, ante; and further, Carter v. State, 30 T. Cr. R., 551, 17 S. W. R., 1102; English v. State, 34 Id., 190, 30 S. W. R., 233.

Art. 342. **Resisting improvement commissioners and engineers.**—The improvement commissioners of any district and the civil engineer, from time of their appointments, are hereby authorized to go upon any lands or water courses lying within said districts or bordering thereon, for the purpose of examining the same, and locating all levees and other improvements, making plans, surveys, maps and profiles, together with all necessary teams, help and instruments, without subjecting themselves to an act of trespass; and any person or persons, firm or corporation, who shall wilfully prevent or prohibit any of such officers from entering any land for such purposes, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding twenty-five dollars for each day he, they or it shall so prevent or hinder such officer from entering upon such land; and any justice of the peace of the county shall have jurisdiction in all such offenses. [Act 1909, p. 152.]

Art. 343. **Resisting navigation and canal commissioners and engineers.**—The navigation and canal commissioners of any district and the engineers from the time of their appointment are hereby authorized to go upon any lands

lying within said district for the purpose of examining the same, making plans, surveys, maps and profiles, together with all necessary teams, help, tools and instruments, without subjecting themselves to action or [for] trespass; and any person who shall wilfully prevent or prohibit any such officer from entering any land for such purposes, shall be guilty of a misdemeanor, and, upon conviction, may be fined in any sum not exceeding twenty-five dollars for each day he shall so prevent or hinder such officer from entering upon any land; and any justice of the peace in the county shall have jurisdic- of all such offenses. [Id., p. 43.]

Art. 344. [238] **Accused resisting process.**—If the party against whom a legal warrant of arrest is directed, in any criminal case, resist its execution, when attempted by any person legally authorized to execute the same, he shall be fined not exceeding five hundred dollars; and, if arms be used in making the resistance, in such manner as would make him liable for assault and battery or assault with intent to murder, or any other offense against the person, he shall receive the highest penalty affixed by law for the commission of such offense in ordinary cases. [P. C. 334.]

Art. 345. [239] **Process must be legal.**—To render a person guilty of any of the offenses included within the meaning of articles 339 and 340, the warrant or process must be executed, or its execution attempted, in a legal manner. [P. C. 335.]

See Toliver v. State, 32 T. Cr. R., 444, 24 S. W. R., 286.

Art. 346. [240] **"Accusation" defined.**—The word "accusation," as used here, and in every part of this Code, means a charge made in a lawful manner against any person, that he has been guilty of some offense which subjects him to prosecution in the name of the state. A person is said to be "accused" of an offense from the time that any "criminal action" shall have been commenced against him.

A legal arrest without warrant;

A complaint to a magistrate;

A warrant legally issued; and indictment, or an information, are all examples of "accusations," and a person proceeded against by either of these is said to be "accused." [P. C. 336.]

Indictment. For essential averments see Pierce v. State, 17 T. Cr. R., 232.

Art. 347. [241] **"Legally confined in jail" defined.**—A person is "legally confined in jail," or "legally detained in custody," when he has been committed or arrested upon a legal warrant, or arrested in any of the modes pointed out in the Code of Criminal Procedure. [P. C. 337.]

Art. 348. [242] **"Jail" defined.**—The word "jail" means any place of confinement used for detaining a prisoner. [P. C. 338.]

Jail includes space attached to a building used for safe-keeping prisoners; it may be a pen or enclosure. Welch v. State, 25 T. Cr. R., 580, 8 S. W. R., 657.

Art. 349. [243] **"Officer" defined.**—By "officer," as used in this chapter, is meant any peace officer, as sheriff, deputy sheriff, constable of a beat, marshal, constable or policeman of a city or town, any jailer or guard, or any person specially authorized by warrant to arrest. [P. C. 339.]

Art. 350. [244] **"Arms" defined.**—The term "arms," as used in this chapter, includes any deadly weapon.

Art. 351. [245] **Refusing to aid an officer.**—If any person, being called on by a magistrate, or peace officer, shall fail or refuse to aid such officer in any matter in which, by law, he may be rightfully called on to aid or assist in the execution of a duty incumbent upon such magistrate or peace officer, he shall be punished by fine not exceeding one hundred dollars. [Act Feb. 12, 1858, p. 163; P. C. 339a.]

CHAPTER FIVE.

FALSE CERTIFICATE, AUTHENTICATION OR ENTRY BY AN OFFICER.

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Article 352. [246] **Commissioner of deeds giving false certificate.**—If any person, being a commissioner of deeds and depositions, who is residing out of this state, and acting as such commissioner under authority of a law of the state, shall fraudulently certify to the execution of any instrument of writing which was never in fact acknowledged or proved before him, as the same purports to have been acknowledged or proved, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years. [P. C., 340.]

Art. 353. [247] **"Instrument of writing" defined.**—By "instrument in writing" is meant any deed, conveyance, transfer, release, obligation or other written instrument of any kind or description whatever, which such commissioner is, by law, authorized to authenticate for record. [P. C. 341.]

For venue see Art. 249, C. C. P., and also post, Art. 359.

Art. 354. [248] **Commissioner certifying falsely to deposition.**—If any such commissioner shall falsely certify to any deposition purporting to have been taken before him, and to be used in any cause pending in a court of this state, he shall be punished in the same manner as is prescribed in article 352. [P. C. 342.]

Art. 249, C. C. P., post, Art. 359.

Art. 355. [249] **Same as to affidavit.**—If any such commissioner shall falsely certify to any affidavit purporting to have been made before him, and which, by law, he is authorized to take, he shall be punished as prescribed in article 352. [P. C. 343.]

Art. 356. [250] **Clerks of court making false entry.**—If any clerk of a court in this state shall knowingly make any false entry upon the records of his court, which may prejudice or injure the rights of any person, he shall be punished by confinement in the penitentiary not less than two nor more than five years. [P. C. 344.]

"Person," as used in this article, includes the "state" and also a "corporation." Ante, Art. 24; Martin v. State, 24 T., 61.

Art. 357. [251] **Giving false certificate.**—If any such clerk shall give a false certificate, stating that any person has done any act whatever, to which he has a right to certify, or that such person is entitled to any right whatever, when such clerk may by law give such certificate if the same were true, he shall be punished as directed in the preceding article. [P. C. 345.]

Art. 358. [252] **Notary public giving false certificate.**—If any notary public, or other officer authorized by law, shall give a false certificate for the purpose of authenticating any instrument of writing for registration, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years. [P. C. 346.]

Art. 359. [253] **Officer giving blank certificate.**—If any officer, authorized by law to take depositions or administer oaths in this state, shall falsely certify

that any depositions was sworn to before him, or any oath made, or shall with fraudulent intent place his certificate, signature or seal to any affidavit which is drawn with blanks as to any other matter of substance, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years. Within the meaning of this article, shall be included the case of an officer who, with design that the same may be filled up and used for fraudulent purposes, attaches his signature or seal of office to any paper wholly blank. [Act Feb. 12, 1858, p. 163; P. C. 347.]

Art. 360. [254] **Failing to keep a record of acknowledgments.**—Any county clerk, justice of the peace, notary public, or any other officer in this state authorized by law to take acknowledgments or proof of instruments required or permitted by law to be placed on record, who shall wilfully fail, neglect or refuse to enter and record in a well-bound book a short statement of each acknowledgment or proof taken by him and sign the same officially, shall be fined in any sum not less than one hundred nor more than five hundred dollars. [Act April 28, 1874, p. 156.]

Art. 361. [255] **Requisites of such record.**—By "short statement," as used in the preceding article, is meant that such statement shall recite the true date on which such acknowledgment or proofs were taken, the name of the grantor and grantee of such instrument, its date, if proved by a subscribing witness, the name of the witness, the known or alleged residence of the witness, and whether personally known or unknown to the officer; if personally unknown, this fact shall be stated, and by whom such person was introduced to the officer, if by any one; and the known or alleged residence of such person. Such statement shall also recite, if the instrument is acknowledged by the grantor, his then place of residence, if known to the officer; if unknown, his alleged residence, and whether such grantor is personally known to the officer; if personally unknown, by whom such grantor was introduced, if by any one, and his place of residence. If land is conveyed or charged by the instrument, the name of the original grantee shall be mentioned, and the county where the same is situated; and a failure to comply with any one of the requirements shall be punished as prescribed in the preceding article. [Act April 28, 1874, p. 156.]

Art. 362. [255a] **False certificate as to corporate indebtedness, etc.**—If any mayor, county judge, tax assessor, or other officer or person, for the purpose of securing the certificate of the attorney general, provided for in the issuance and sale of bonds by any county, city or town in the state of Texas, shall knowingly make, or be concerned in making or forwarding, to the attorney general, a false certificate as to the amount of the taxable value of the property in such county, city or town, as shown by the last official assessment, or knowingly and falsely certify as to the amount of indebtedness of such county, city or town, or the rate of tax levied to provide interest and sinking fund for such indebtedness, or other facts required by the attorney general, he shall be guilty of felony, and, upon conviction therefor, shall be punished by confinement in the penitentiary not less than one nor more than five years. [Act 1893, p. 85.]

CHAPTER SIX.

MISCELLANEOUS OFFENSES UNDER THIS TITLE.

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1. EXTORTION.

Article 363. [256] **Extortion by officers.**—If any officer or person, authorized by law to demand or receive fees of office, shall wilfully collect any fee or fees due him by law in excess of the fee or fees allowed by law for such service, or for fees not allowed by law, he shall be punished by imprisonment in the state penitentiary not less than two nor more than five years for each offense. [P. C. 340, amended by Act of Feb. 9, 1883, p. 5; amended 1907, p. 307.]

Prosecution for extortion, unless fees were allowed by law for the service rendered, and the demand was for higher than the allowed fees, can not be maintained. Smith v. State, 10 T. Cr. R., 413; Miller v. Douglas, 42 T., 288.

Defined. "Demand," under this article, means "a requisition or request to do a particular thing specified under a claim of right." A county judge's certified account for fees in criminal cases "tried and disposed of," is such a "demand." Brackenridge v. State, 27 T. Cr. R., 513, 11 S. W. R., 630.

A criminal action dismissed is not "tried and disposed of." Brackenridge v. State, supra.

Extortion is not an offense eo nomine, and indictment or recognizance on appeal, to be sufficient, must set out the essential ingredients of the offense. Brackenridge v. State, supra; Schoonmaker v. State, 37 T. Cr. R., 424, 35 S. W. R., 969; Johnson v. State, 38 Id., 26, 40 S. W. R., 976, 982.

Demanding fees not allowed by law is "official misconduct" under our law. Brackenridge v. State, supra.

Condonation of offense. An offense committed between the re-election of an officer and the date of his qualification under re-election does not come within the purview of the article of the Revised Statutes barring prosecution for acts committed prior to election. Brackenridge v. State, supra.

Indictment fatally defective in failing to charge directly the receiving of a fee when entitled to none for the service. Poole v. State, 22 T. Cr. R., 685, 3 S. W. R., 476.

Art. 364. **Officers demanding illegal fees.**—If any officer or other person, authorized by law to demand or receive fees of office, shall wilfully make out his account for fees in excess of those allowed by law, or for fees not allowed by law, and shall present or file such account with the proper officer with whom the law requires the same to be presented or filed, he shall be punished by a fine of not less than twenty-five or more than two hundred and fifty dollars for each offense. [Act 1907, p. 307.]

Art. 365. [257] **Applies to all officers.**—The two preceding articles apply to all persons holding any office to which fees are attached, and to the heads of the departments of the government in whose offices fees may be charged. [P. C. 353.]

2. CONVERSION.

Art. 366. [258] **Conversion by sheriff, etc.**—If any sheriff, or other officer, having collected money for any party to a suit, shall, without the consent of such party, unlawfully convert the same, or any part thereof, to his own use, he shall be punished in the same manner as if he had committed theft of such money. [Act Feb. 12, 1858; P. C. 354a.]

Art. 367. [259] **Appropriation of trust funds.**—If any officer of any court who has the legal custody of any money, evidence of debt, scrip, instrument of writing or other article, that may have been deposited in court to abide the result of legal proceedings, shall appropriate the same to his own use, he shall be punished as if he had committed theft of such money, evidence of debt, scrip, instrument of writing or other article. [Act May 19, 1876, p. 7]

Art. 368. [260] **Officer failing to deposit trust funds, etc.**—Any officer of any court having the custody by law of any money, evidence of debt, scrip, instrument of writing or other article that may have been deposited in court to abide the result of any legal proceedings, who shall fail to seal up in a secure package the identical money or other article received by him, and deposit the same in some iron safe or bank vault; or who, when such money or other article is so deposited, shall fail to keep it always accessible and subject to the control of the proper court; or who shall fail to keep, in a well-bound book, a correct statement showing each and every item of money or other article so received or deposited, on what account received, and what disposition has been made of the same, shall be punished by fine not less than ten nor more than two hundred dollars, or by imprisonment in the county jail for a period not exceeding three months; and may, in addition thereto, be punished by the proper court for contempt. [Act May 19, 1876, p. 7.]

Art. 369. [261] **Failing to turn over funds, etc., to successor.**—Any officer, such as is enumerated in the preceding article, who shall fail or refuse to turn over to his successor in office, on the expiration of his own term of office, the record of trust funds therein specified, together with the packages of money

or other articles in his possession or control, shall be punished as prescribed in the preceding article. [Act May 19, 1876, p. 7.]

3. PECULATION.

Art. 370. [262] **State officer buying claims against state.**—Any officer of this state who shall trade for, buy or be in any way concerned in the purchase of any claim or demand against the state shall be fined in the sum of one thousand dollars. [Act May 3, 1873, p. 62.]

Art. 371. [263] **"State officer" defined.**—By the term, "officer of this state," as used in the preceding article, is meant the governor, lieutenant governor, the heads or employes of any of the executive departments, members and officers of both houses of the legislature, the judges of the several courts, district and county attorneys, sheriffs, tax collectors and tax assessors.

Art. 372. **Officers and employes of state penitentiary.**—No officer or employe of the state penitentiaries shall be permitted to purchase any goods or merchandise or other property from the state or penitentiary system, except such surplus fruits, vegetables, ice, water, steam and lights as may be produced or manufactured on the premises of the penitentiary, or to appropriate to his private use or employment the labor, services or use of any state penitentiary convict, or of any animal, vehicle or other personal property belonging to the state, unless it be by the express consent of the penitentiary board, had by an order to that effect entered of record on the minutes of said board, providing for the amount to be paid by such officer or employe for the use, employment and services of such convict or convicts, or the use of any personal property belonging to the state; and no employe or officer using any of the state property shall be allowed to use same in keeping boarders for profit, unless such boarder or boarders be in the employ of the state penitentiary system; and no penitentiary sergeant, guard or other officer or employe of the penitentiary shall accept or receive any salary or other compensation from any person or corporation hiring or otherwise employing state convicts. Any such officer or employe who shall violate any of the provisions of this article shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any court of competent jurisdiction, shall be punished by dismissal from his office or employment, and by a fine of not less than twenty-five nor more than two hundred dollars; and, if the conviction be for accepting or receiving any salary or compensation from a hirer or employer of state convicts, the party so convicted shall, in addition to the penalty above described, be confined in the county jail not less than one month nor more than one year.

Any person, co-partnership or firm, or any member of such co-partnership or firm, or any agent, servant or representative of such person, co-partnership or firm, or any officer, agent, servant or representative of any corporation, hiring or employing state convicts by contract with the state or penitentiary system of hire, lease, or for any share or portion or per cent of the crops or other products of the labor of such convicts, who shall pay, or promise or offer to pay, either directly or indirectly, to any sergeant, guard or other employe of the state having such convicts in charge or under his control, either in whole or in part, any money or other valuable thing, shall be guilty of a felony, and, on conviction thereof, shall be punished by confinement in the penitentiary for two years. [Act 1903, p. 161.]

Art. 373. [264] **County or city officer trading in claims.**—Any officer of any county in this state, or of any city or town therein who shall contract, directly or indirectly, or become in any way interested in any contract for the purchase of any draft or order on the treasurer of such county, city or town, or for any jury certificate or any other debt, claim or demand for which said county, city or town may or can in any event be made liable, shall be pun-

ished by a fine of not less than ten nor more than twenty times the amount of the order, draft, jury certificate, debt, claim or liability so purchased or contracted for. [Act March 30, 1874, p. 47.]

Indictment charging * * * "unlawfully acquired jury scrip," held insufficient. State v. Smith, 44 T., 443. And see Robinson v. State, 2 T. Cr. R., 390.

Evidence failing to establish official status of accused insufficient to support conviction. Huff v. State, 23 T. Cr. R., 291, 4 S. W. R., 890.

Art. 374. **Mayor and members of city council.**—It shall be unlawful for the mayor or any member of any city council or board of aldermen, of any city or town in this state, to accept, directly or indirectly, any frank, privilege, free light or water, or sewerage service, or other service, or a lower rate therefor than the regular rate established by said council or board of aldermen, or any gift or anything of value from any water, gas, light and sewer companies, corporations or persons. The servants, agents, officers or employes, or any person acting, directly or indirectly, in behalf of any of said companies, corporations or persons mentioned, who shall, directly or indirectly, give or grant any privilege, frank, free water, light, gas, sewerage service or free service of any kind, or any gift of anything of value to any mayor, or to a member of any such city council, board of aldermen, or any such mayor, or a member of any such council or board of aldermen, who shall receive, accept or enjoy such free light, water, gas, or sewerage service, or other free service, or a lower rate than the regular rate, or any gift of anything of value, as prohibited herein, shall be guilty of a misdemeanor, and, upon conviction therefor, shall be fined in any sum not less than one hundred dollars nor more than one thousand dollars, or by confinement in the county jail not exceeding twelve months, or by both such fine and imprisonment. [Act 1907, p. 218.]

Art. 375. [265] **Ex-officers included, when.**—Within the term "officer," as used in the preceding article, are included ex-officers until they have made a final settlement of their official accounts. [Act March 30, 1874, p. 47.]

Art. 376. [266] **County or city officers becoming interested in contracts.**—If any officer of any county in this state, or of any city or town therein, shall become in any manner pecuniarily interested in any contracts made by such county, city or town, through its agents or otherwise, for the construction or repair of any bridge, road, street, alley or house, or any other work undertaken by such county, city or town, or shall become interested in any bid or proposal for such work or in the purchase or sale of anything made for or on account of such county, city or town, or who shall contract for or receive any money or property, or the representative of either, or any emolument or advantage whatsoever in consideration of such bid, proposal, contract, purchase or sale, he shall be fined in a sum not less than fifty nor more than five hundred dollars. [Act March 30, 1874, p. 47.]

Official peculation. This article inhibits any officer of a county, city or town from entering into, on his own account, any kind of a financial transaction with the corporation, and this covers the sale of a mule to the county by a county commissioner. Rigby v. State, 27 T. Cr. R., 10 S. W. R., 760.

Removal from office. A county officer cannot be ousted under this article for the violation of a penal statute before conviction of such offense by a jury. Bland v. State, 38 S. W. R., 252.

Art. 377. **County judges, commissioners or members of navigation board.**—Neither the county judge nor any county commissioner, nor member of the navigation board, nor the navigation and canal commissioners or engineer, shall be, directly or indirectly, interested for themselves or as agents for anyone else in the contract for the construction of any work to be performed by such

navigation district; and, if said officers, or either of them, shall, directly or indirectly, become interested in any contract for such work, or in any fee paid by such navigation district whereby he or others shall receive any money consideration or other thing of value, except in payment of services as provided by law, he shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by imprisonment in the county jail for not less than six months nor more than one year. [Act 1909, p. 45.]

Art. 378. **County judge, commissioner or improvement engineer.**—Neither the county judge, nor any county commissioner, nor the improvement engineer, nor the improvement commissioner shall be, directly or indirectly, interested for themselves or as agents for any one else in the contract and construction of any work to be performed by such improvement district; and, if any of said officers or either of them shall, directly or indirectly, become interested in any contracts for such work or any fee paid by such improvement district whereby he shall receive any money consideration or other thing of value, other than such fees and compensation allowed by law, he shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by imprisonment in the county jail for not less than six months nor more than one year. [Act 1909, p. 154.]

Art. 379. **Director or officer of irrigation district.**—No director or any other officer named under the law providing for irrigation, drainage or levee improvement districts, shall in any manner be interested, directly or indirectly, in any contract awarded or to be awarded by the board, or in the profits to be derived therefrom; and, for any violation of this provision, such officer shall be deemed guilty of a misdemeanor; and such conviction shall work a forfeiture of his office, and he shall be punished by a fine not exceeding five hundred dollars, and by imprisonment in the county jail not exceeding six months. [Act 1905, p. 250.]

Art. 380. [267] **Purchase of witness fees by officer.**—Any county judge, clerk or deputy clerk of any district or county court, sheriff or his deputy, justice of the peace or constable, who shall purchase or otherwise acquire from the party interested any fee or fees coming to any witness in any proceeding whatever, either before the district or county court, or the court of any justice of the peace, or before any coroner's inquest, shall be punished by fine not exceeding one hundred dollars. [Act Feb. 12, 1858, p. 164; P. C. 354b.]

4. NEPOTISM.

Art. 381. **"Nepotism" defined.**—Subject to the exceptions set forth in article 384, it shall hereafter be unlawful for any officer of this state, or for any officer of any district, county, city, precinct, school district or other municipal subdivision of this state, or for any officer or member of any state, district, county, city, school district or other municipal board, or judge of any court, created by or under authority of any general or special law of this state, to appoint, or to vote for, or to confirm, the appointment to any office, position, clerkship, employment or duty, of any person related within the second degree by affinity or within the third degree by consanguinity to the person so appointing or so voting, or to any other member of any such board or court of which such person so appointing or voting may be a member, when the salary, fees, wages, pay or compensation of such appointee is to be paid for, directly or indirectly, out of or from public funds or fees of office of any kind or character whatever. [Act 1909, p. 85.]

Art. 382. **Officers included.**—The inhibitions declared by and set forth in this law shall apply to and include the governor, lieutenant governor, speaker of the house of representatives, railroad commissioners, heads of departments of the state government, judges and members of any and all

boards and courts established by or under authority of any general or special law of this state, mayors, commissioners, recorders, aldermen and members of school boards of incorporated cities and towns, public school trustees, officers and members of boards of managers of the state university, and of its several branches, and of the various state educational institutions and of the various state eleemosynary institutions, and of the penitentiaries; but this enumeration is not intended and shall not be construed or held to exclude from the operation and effect of this law any person included within its general provisions. [Id., p. 85.]

Art. 383. **Persons within second or third degree.**—It shall be unlawful for any officer or other person included within any of the provisions of this law to appoint or vote for appointment or for confirmation of appointment to any such office, position, clerkship, employment, or duty of any person whose services are to be rendered under his direction or control and to be paid for, directly or indirectly, out of any such public funds or fees of office, and who is related by affinity within the second degree or by consanguinity within the third degree to any such officer or person included within any of the provisions of this law, in consideration, in whole or in part, that such other officer or person has theretofore appointed, or voted for the appointment or for the confirmation of the appointment, or will thereafter appoint or vote for the appointment, or for the confirmation of the appointment, to any such office, position, clerkship, employment or duty, of any person whomsoever related within the second degree by affinity or within the third degree by consanguinity to such officer or other person making such appointment. [Id. p. 85.]

Art. 384. **Exceptions.**—Nothing in this law shall apply to any appointment to the office of notary public or to confirmation thereof. [Id., p. 85.]

Art. 385. **Shall not approve account.**—No executive, legislative, judicial or ministerial officer or other person included within any of the provisions of article 381 shall approve any account or authorize the drawing of or drawing warrant or order, or pay any salary, fee, wages, or compensation of such ineligible officer or person, knowing him to be so ineligible. [Id., p. 85.]

Art. 386. **Penalty.**—Any violation of any of the provisions of this law shall constitute a misdemeanor involving official misconduct, and shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars. [Id., p. 85.]

Art. 387. **District judge appointing stenographer.**—Nothing in this law shall be held or deemed to permit any district judge within this state to appoint as official stenographer of his district any person related within the third degree to the judge or district attorney of such district, but any such appointment is hereby declared unlawful under the provisions of this law and subject to the penalties herein provided. [Id., p. 85.]

5. FAILURE OF DUTY.

Art. 388. [268] **Officer refusing to issue or execute process, etc.**—Whenever any officer who is by law charged with the issuance or execution of process, either in civil or criminal actions, corruptly and wilfully refuses to issue or execute such process, or corruptly or wilfully refuses to perform any other duty enjoined upon him by law, he shall, when the act or omission is not otherwise provided for or punished, be deemed guilty of a misdemeanor, and shall be fined not exceeding five hundred dollars, and may, in the discretion of the jury, be imprisoned in the county jail not exceeding one year. [P. C. 348.]

Art. 389. [269] **Failure to arrest offender.**—If any justice of the peace, sheriff or other peace officer shall wilfully neglect to return, arrest or prosecute any person committing a breach of the peace or other crime or misde-

meanor which has been committed within his view or knowledge, or shall wilfully and knowingly absent himeslf from any place where such crime or misdemeanor is being committed, or is about to be committed, for the purpose of avoiding seeing or having a knowledge of the same, he shall be guilty of a misdemeanor, and, on conviction, shall be fined not less than seventy-five dollars nor more than five hundred dollars. [P. C. 354.]

Art. 390. **Refusal of sheriff or constable.**—Any sheriff or constable who refuses or neglects to perform any duty imposed upon him by the law for the organization of the militia, or to execute any lawful process which shall have been issued by the governor or proper officer of a court martial, shall, upon conviction thereof in the district court, be deemed guilty of a misdemeanor, and shall be fined not more than five hundred dollars, and may, in the discretion of the jury, be imprisoned in the county jail not exceeding one year. [Act 1905, p. 203.]

Art. 391. **Refusal of district or county attorney.**—Any district or county attorney who refuses to perform any duty imposed upon him by the law for the organization of the militia, shall, upon conviction thereof in the district court, be deemed guilty of a misdemeanor, and shall be fined not more than five hundred dollars, and may, in the discretion of the jury, be imprisoned in the county jail not exceeding one year. [Id., p. 203.]

Art. 392. **County clerk marking "exempt."**—Any county clerk who marks "exempt" any person enrolled as liable to military duty, whom he knows not to be exempt, shall, upon conviction, be deemed guilty of a misdemeanor, and shall be fined not more than five hundred dollars, and may in the discretion of the jury, be imprisoned in the county jail not exceeding one year. [Id., p. 203.]

Art. 393. [270] **Officers of old county failing to deliver records to new.**—Any district or county clerk, sheriff, justice of the peace, county treasurer or surveyor, or any other officer of a county to which some other unorganized or disorganized county is attached for judicial or other purposes, who shall fail, neglect or refuse to turn over to the proper officers of such unorganized or disorganized county, on demand, and after the organization of such unorganized or disorganized county and the qualification of its officers, all books, records, maps, and all other property belonging to said county so organized that may be in his possession, shall be fined in a sum not less than one hundred nor more than one thousand dollars, or be confined in the county jail for a period not exceeding one year. [Act May 1, 1874, p. 188.]

Art. 394. [271] **Approval of bond when security is non-resident.**—Any officer whose duty it may be to pass upon and approve the official bond of a sheriff, or other county officer, who shall approve such bond, when any surety thereon is not a resident of the county of such sheriff or other officer, shall be punished by fine not less than one hundred nor more than five hundred dollars. [Act April 14, 1874, p. 93.]

Art. 395. [272] **Officer failing to report collections for state.**—Any district attorney, sheriff, deputy sheriff, constable, or other officer, whose duty it may be to collect money, other than taxes, for the use of the state, who shall fail to report to the district court of his county, in writing and under oath, on the first day of each term thereof, the amount of money that may have come into his hands for the use of the state since the last term of said court, from whom the same was collected, and by virtue of what process, shall be punished by fine not less than twenty nor more than two hundred dollars. [Act May 1, 1874, p. 182.]

See C. C. P., Arts. 1045 to 1050 inclusive.

Art. 396. [273] **Officer failing to report callections for county.**—Any officer, such as is named in the preceding article, whose duty it may be to

collect money, other than taxes, for the use of any county, who shall fail to report in writing, and under oath, to the commissioners' court of such county at each regular term thereof, the amount of money that may have come into his hands for the use of such county since the last term of said court, from whom the same was received, and by virtue of what process, shall be punished as prescribed in the preceding article. [Act May 1, 1874, p. 182.]

See C. C. P., Arts. 1056 to 1059 inclusive.

Indictment must specifically allege that the officer was authorized to collect the money, and that the money had come into his hands for the use of the state or county, as the case may be. Addison v. State, 41 T., 462.

And further, the collection of the money by the officer and his failure to report same. Edwards v. State, 2 T. Cr. R., 525.

And if the officer has made no collection he must so report. C. C. P., Art. 1056.

Justice of the peace is not, under the two preceding articles, a ministerial officer (Edwards v. State, supra), but he is a "county" officer within the purview of Art. 105 of the Penal Code, and as such expressly included in Section 24 of Article V of the Constitution. Note this case distinguished from Edwards v. State, supra. Crump v. State, 23 T. Cr. R., 615, 5 S. W. R., 182.

Art. 397. [274] **Town or city officer failing to report collections.**—Any town or city marshal, or constable, or other officer or person who may collect money other than taxes, for the use of such town or city, who shall fail to report in writing, and under oath, to the mayor and board of aldermen, or common council, of such town or city, on the first Monday of each month, the amount of money that may have come into his hands during the month preceding such report, for the use of such town or city, from whom the same was collected, and by virtue of what process, shall be punished as prescribed in article 395. [Act May 1, 1874, p. 182.]

See C. C. P., Arts. 1055 to 1058 inclusive.

Art. 398. [275] **Justices shall report jury service, etc.**—Justices of the peace shall report to the county clerk, on the first Monday in each month, the names of the persons who have served as jurors in his court for the preceding month, and the number of days and fractions of days that they have served respectively, and the number of cases in which they have served respectively on each of said days or fractional days; and it shall be the duty of the county clerk to issue his warrant against the county treasurer in favor of each of the persons so serving as jurors. Every justice failing to make and file such report shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than twenty-five nor more than two hundred and fifty dollars. [Act March 15, 1881, p. 32, § 2.]

Art. 399. [276] **Commissioners' court failing to make a tabular statement, etc.**—If the commissioners' court of any county in this state shall wilfully fail, neglect or refuse to make, or cause to be made, a tabular statement of the assets, expenditures and indebtedness of such county at each regular term of the said court, specifying therein the names of creditors and the items of indebtedness, with their respective dates of accrual, and also the names of persons to whom moneys have been paid, with the amounts paid each during the quarter for which such statement is prepared, or shall wilfully fail, neglect or refuse to publish an exhibit, showing the aggregate receipts and disbursements of each separate fund for the quarter, in some newspaper published in the county (or if there be no newspaper, then by posting such exhibit in at least four public places in the county), immeddiately after the first regular term in each calendar year, or shall wilfully fail, neglect or refuse to post such exhibit made at the third regular meeting of said court in each calendar year, at the court house door, and at least three other public places in the county, the members of the court so

failing, neglecting or refusing shall be fined in any sum not less than twenty nor more than one hundred dollars. [Amended by Act April 13, 1891, p. 91.]

Art. 400. **County tax assessor failing to report.**—The commissioner of agriculture shall collect and publish statistics and such other information regarding such industries of this state and of other states as may be considered of benefit in developing the agricultural resources of this state. He shall cause a proper collection of agricultural statistics to be made annually, and, to this end, he shall furnish blank forms to the tax assessors of each county before the first of January of each year, including forms as to the acreage in cotton, grain and other leading products of the state, to be filled out by persons assessed for taxes, together with such instructions as will properly direct said assessor in filling them out. It is hereby made the duty of said tax assessor to return said blanks, with accurate answers, to the commissioner of agriculture on or before the first day of June following. It is further made the special duty of the said tax assessor to forward by registered mail to the commissioner of agriculture lists of the names and addresses of all ginners within their counties when asked to do so by the commissioner. Failure upon the part of any county tax assesor to make such reports as are required shall be deemed a misdemeanor, and, upon conviction thereof, such tax assessor shall be punished by a fine of not less than fifty dollars nor more than two hundred and fifty dollars. [Act 1907, p. 129.]

Art. 401. **County judge, commissioner or clerk.**—When the commissioners' court has compared and examined the quarterly report of the treasurer and found the same correct, it shall cause an order to be entered upon the minutes of the court, stating the approval thereof, which order shall recite separately the amount received and paid out of each fund by the treasurer since the preceding treasurer's quarterly report, and the balance of such fund, if any, remaining in the treasurer's hands, and shall cause the proper credit to be made in the accounts of the treasurer in accordance with said order; and the said court shall actually inspect and count all the actual cash and assets in the hands of the treasurer belonging to the county at the time of the examination of his said report; and, prior to the adjournment of each regular term of the court, the county judge and each of the commissioners shall make affidavit in writing that the requirements of this article have been in all things fully complied with by them at said term of said court, and that the cash and other assets mentioned in the said county treasurer's quarterly report made by said treasurer to said court, and held by him for the county, have been fully inspected and counted by them, giving the amount of said money and other assets in his hands; which affidavit of the members shall be filed with the county clerk of the county, and by him recorded in the minutes of the said county commissioners' court of the term at which the same were filed; and the same shall be published in some newspaper published in the county, if there be a newspaper published in the county, for one time, to be paid for at the same rate as other legal notices.

And any county judge, county commissioner or county clerk in this state who shall negligently or intentionally fail or refuse to comply with the requirements of this article, shall be deemed guilty of a misdemeanor, and, upon conviction thereof in a court of competent jurisdiction, shall be fined in any sum not less than twenty-five nor more than five hundred dollars. [Act 1897, p. 27.]

Art. 402. [277] **Commissioners failing to attend court.**—Should any member of the county commissioners' court of any county in this state wilfully fail or refuse to attend any regular meeting or term of said court at which the business or question of levying a county tax for any purpose is to be acted on, he shall be guilty of a misdemeanor, and, upon conviction thereof,

shall be fined in any sum not less than two hundred nor more than five hundred dollars. [Act March 25, 1885, p. 51.]

Art. 403. [278] **County treasurer failing to report.**—If any county treasurer in this state shall fail, neglect or refuse to furnish to the commissioners' court of his county, upon demand, a tabular statement of the amount of county funds by him received from any given time, the amount on hand, the amounts paid out, to whom paid, on what account, from what fund taken, and the kinds of funds received and disbursed, he shall be fined in any sum not less than one hundred nor more than five hundred dollars, and, in addition thereto, he may be punished for contempt by said commissioners' court. [Act March 8, 1873, p. 14.]

Art. 404. [279] **Clerk failing to keep indexes.**—Any clerk of the county or district court in this state who shall fail to provide and keep in his office, as part of the records thereof, well-bound alphabetical indexes and cross-indexes of the names of the parties to all suits disposed of or pending in his court, together with a reference opposite each party's name to the page of the minute book upon which is entered the final judgment in each case, shall be punished by fine not less than fifty nor more than one hundred dollars for each offense. Each month's failure shall constitute a separate offense. [Act June 21, 1876, p. 25.]

Art. 405. [280] **Clerk permitting withdrawal of deeds when records are burned.**—If the clerk of the county court of any county in this state, the land records or records of titles in which, have been burned or otherwise destroyed, or any deputy of such clerk, shall permit any deed filed for record in his office to be withdrawn within twelve months after the same is filed, he shall be fined not less than one hundred nor more than five hundred dollars, and may, in addition thereto, be imprisoned in the county jail for a period of time not to exceed one year. [Act Aug. 21, 1876, p. 252.]

Art. 406. [281] **To what deeds not applicable.**—The preceding article shall not apply to deeds executed or purporting to have been executed subsequent to the destruction of such land records or records of titles. [Act Aug. 21, 1876, p. 252.]

Art. 407. [282] **County judge practicing in inferior courts.**—Any county judge in this state, who shall practice, or offer or attempt to practice as an attorney or counselor at law, in any county court or court of a justice of the peace, shall be fined not less than one hundred nor more than five hundred dollars. [Act Aug. 19, 1876, p. 616.]

Art. 408. [283] **May practice law in certain counties.**—County judges, in those counties wherein the civil or criminal jurisdiction of the county courts has been or may hereafter be diminished, shall have the right to practice as attorneys in all justices' and county courts in cases wherein the courts over which they preside have neither original nor appellate jurisdiction; provided they are licensed lawyers. [Acts 1879, extra session, ch. 16.]

Art. 409. [284] **Issuing marriage license to minor, etc.**—If the clerk of any county court, or other officer authorized by law to issue a license for marriage, shall, without the consent of the parent or guardian of the party applying, issue a marriage license to a male person under the age of twenty-one years, or to a female under the age of eighteen years, he shall be fined not exceeding one thousand dollars. [Act Feb. 11, 1860, p. 101; P. C. 791a.]

Art. 410. [285] **Father's consent sufficient, when.**—Where both parents of any minor may be alive, the consent of the father alone shall be sufficient to authorize the issuance of license to the minor. [Act Feb. 12, 1858, p. 186; P. C. 791b.]

For cases of false swearing to procure marriage license see note "Generally" to ante Art. 312; O'Bryan v. State, 27 T. Cr. R., 339, 11 S. W. R., 443.

Art. 411. **Performing marriage without license.**—Should any person authorized by law to celebrate the rites of matrimony in this state perform the marriage ceremony without a license first having been issued as required by law, such person shall be guilty of a misdemeanor, and, on conviction, shall be punished by fine of not less than fifty nor more than five hundred dollars. [Act 1899, p. 307.]

Art. 412. [286] **Surveyor failing to return corrected field-notes.**—If any district or county surveyor in this state, who has been paid his fees for making and recording a survey, shall fail or unnecessarily delay to correct the field-notes of such survey, upon the request of the commissioner of the general land office, or of the party interested, and return the same to the general land office when such field-notes have been returned to him by such commissioner for correction, shall be fined in a sum not less than double nor more than four times the amount of the fees originally paid him for such survey. [Act Oct. 24, 1871, p. 12.]

Art. 413. [287] **Surveyor failing or refusing to make survey on homestead application, etc.**—Any district or county surveyor who shall fail or refuse to make a survey upon a homestead application, within one month after such application is made, or who shall fail to record the field-notes of such survey and forward certified copies thereof and all other papers relating thereto to the general land office within one month after such survey is made, or who shall fail to correct any field-notes of such surveys that may be returned to him for correction by the commissioner of the general land office, within ten days after receipt thereof, or who shall charge, demand or receive higher fees than those allowed by law for making, recording and certifying to such survey, shall be fined not less than ten and not more than one hundred dollars for each offense. [Act May 26, 1873, p. 102.]

Art. 414. [288] **Not applicable, when.**—No surveyor shall be punishable criminally for a failure or refusal to make a survey upon a homestead application, or for a failure to record and return the field-notes of any such survey, unless the fees allowed by law for such services shall have been first tendered him.

Art. 415. [289] **Surveyor wilfully altering lines.**—If any surveyor or other person shall, without authority of law, wilfully destroy, deface, alter or change any established line, corner or line or bearing tree of any legal survey, or shall wilfully make any new line or corner on any established legal survey, without authority of law, he shall be fined not less than one hundred nor more than five hundred dollars. [Act May 4, 1874, p. 220.]

Art. 416. **Destroying or defacing corner or lines.**—Should any person in this state destroy or deface any mark or object fixed or established as a line, corner or bearing of any survey, or any permanent mark or any bench mark made or set by the topographical surveyors, he shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than one hundred dollars nor more than one thousand dollars. [Act 1907, p. 286.]

Art. 417. [289a] **Failure of surveyor to survey mining claim.**—Upon receiving the application for the survey of any mining claim and fee provided by law, the surveyor shall record the application, together with the affidavit; and he shall thereupon forwith proceed to survey said claim, and forward the field-notes to the commissioner of the general land office within thirty days after filing the application, in default of which he shall pay the aggrieved party such damages as he may sustain, and, in addition thereto, shall be deemed guilty of a misdemeanor, and, on conviction, fined not less than twenty dollars nor more than one hundred dollars; and it shall be the duty of the applicants to see that the field-notes are so returned. [Act 1895, p. 198.]

Art. 418. [289b] **Parents, etc., refusing to answer questions of school trustees.**—In taking the scholastic census provided for by law, the trustees

(district school trustees) are hereby authorized and empowered to administer all oaths necessary to obtain a full, complete, and correct census of all children residing in their respective districts; and said trustees may require each parent, guardian, or other person having in charge any child or children to answer under oath as to the names and ages of such child or children; and any person refusing to answer such questions under oath shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than five nor more than twenty-five dollars. [Act 1893, p. 199.]

Art. 419. **Preventing use of text-books in public schools.**—Any school trustee who shall prevent, or aid in preventing, the use, in any public school in this state, of the books, or any of them as adopted by the state text-book board, or any teacher in this state who shall wilfully fail to or refuse to use the books adopted by said board, shall be guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than five dollars nor more than fifty dollars for such offense; and each day of such wilful failure or refusal of said teacher or wilful prevention of the use of the books by said school trustee shall constitute a separate offense. [Act 1905, 1st S. S. p. 23.]

Art. 420. **Tax assessor and equalization board.**—Any county tax assessor who shall violate or in any respect fail to comply with any of the provisions of the law creating the state tax board, and any member of any board of equalization, and any county tax assessor, who shall modify or change, or vote to modify or change, in any manner whatsoever the finding, valuation or apportionment of any intangible assets as so fixed, determined, declared and certified by said state tax board, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred nor more than one thousand dollars. [Act 1907, p. 467.]

6. BARRATRY.

Art. 421. [290] **"Barratry" defined and punished.**—If any person shall wilfully instigate, maintain, excite, prosecute or encourage the bringing of any suit or suits at law or equity in any court of this state in which such person has no interest, with the intent to distress or harass the defendant therein, or shall wilfully bring or prosecute any false suit or suits at law or equity, of his own, with the intent to distress or harass the defendant therein, or, if any attorney at law shall seek or obtain employment in any suit or case at law, or in equity, to prosecute or defend the same by means of personal solicitation of such employment, or by procuring another to solicit for him employment in such cause, or who shall, by himself or another, seek or obtain such employment by giving to the person from whom the employment is sought money or other thing of value, or who shall, directly or indirectly, pay the debts or liabilities of the person from whom such employment is sought, or who shall loan or promise to give, loan or otherwise grant money or other valuable thing to the person from whom such employment is sought, before such employment, in order to induce such employment, whether the same shall be done directly by him or through another, shall be deemed guilty of barratry, and shall, upon conviction, be punished by fine in any sum not to exceed five hundred dollars, and may in addition thereto be imprisoned in the county jail not exceeding three months. The term attorney at law shall include counselor at law; and any attorney at law violating any of the provisions of this law, shall, in addition to the penalty hereinbefore provided, forfeit his right to practice law in this state, and shall be subject to have his license revoked and be disbarred in the manner provided by law for dishonorable conduct or malpractice, whether he has been convicted for violating this law or not. [Act Aug. 21, 1876, p. 227; amended 1901, p. 125.]

Champerty. Attorneys may, in good faith, contract for a contingent interest in the subject-matter of suit as compensation. Stewart v. Railway Co., 62 T., 246, citing Bentinck v. Franklin, 38 Id., 458.

7. COMPOUNDING CRIME.

Art. 422. [291] **Agreeing with offenders not to prosecute.**—If any person has knowledge that an offense against the penal laws of this state has been committed, and shall agree with the offender, either directly or indirectly, not to prosecute or inform on him in consideration of money or other valuable things, paid, delivered or promised to him by such offender, or other person for him, he shall be fined not less than one hundred nor more than one thousand dollars.

Information held sufficient to charge compounding crime. Loessin v. State, 46 T. Cr. R., 553, 81 S. W. R., 715.

Compounding crime. To forego a threat to prosecute for an offense in consideration of a deed to land or other valuable, is to compound crime. Medearis v. Freeman, 84 S. W. R., 1070; Grey v. Freeman, Id., 1105. And see Robertson v. State, 46 T. Cr., R., 441, 80 S. W. R., 1000; Chenault v. State, Id., 351, 81 S. W. R., 971.

The fact that one compounds a felony does not make such party an accessory to the felony compounded. Chenault v. State, supra, overruling Gatlin v. State, 40 T. Cr. R., 116, 49 S. W. R., 67.

8. MALICIOUS PROSECUTION.

Art. 423. [292] **"Malicious prosecution" defined and punished.**—If any person in this state, for the purpose of extorting money from another, or the payment or security of a debt due him by such other person, or with intent to vex, harass or injure such person, shall institute, or cause to be instituted, any criminal prosecution against such other person, he shall be deemed guilty of malicious prosecution, and, upon conviction, shall be fined not less than one hundred nor more than one thousand dollars, or be imprisoned in the county jail not less than one month nor more than one year.

Malicious prosecution is not supported by evidence showing that the accused had probable cause upon which to base his action, even though legal malice be shown. Following Dempsey v. State, 27 T. Cr. R., 269, 11 S. W. R., 372. Johnson v. State, 32 Id., 58, 22 S. W. R., 43.

Information need not allege that prosecution against the injured party had ended before the information was presented. Dempsey v. State, 27 T. Cr. R., 269, 11 S. W. R., 372.

Evidence must show that the alleged malicious prosecution was actuated by malice, and with a want of probable cause. Dempsey v. State, supra.

Legal malice is "any unlawful act done wilfully and purposely to the injury of another." Dempsey v. State, supra.

Verdict of acquittal in the case alleged as malicious prosecution is not admissible in evidence. Reed v. State, 29 T. Cr. R., 449, 16 S. W. R., 99.

Probable cause means "the existence of such facts and circumstances as would excite belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the offense for which he was prosecuted." Dempsey v. State, 27 T. Cr. R., 269, 11 S. W. R., 372.

Charge of court is erroneous which embraces other matters than the specific offense charged; requires the jury to believe the accused not guilty, omits to define the term "malice" or fails to instruct on probable cause. Reed v. State, 29 T. Cr. R., 449, 16 S. W. R., 99.

9. FALSE PERSONATION.

Art. 424. [293] **Falsely pretending to be an officer.**—Any person who shall falsely assume or pretend to be a judicial or executive officer of this state, or a justice of the peace, sheriff, deputy sheriff, constable or any other

judicial or ministerial officer of any county in the state, and shall take upon himself to act as such, shall be punished by imprisonment in the county jail for a term not exceeding six months, or by fine not exceeding five hundred dollars. [Act Nov. 12, 1866, p. 201.]

Statute construed. Criminal intent and guilty knowledge are constituent elements of this offense. Brown v. State, 43 T., 478.

Indictment charged the name of the officer as falsely assumed, but the proof only showed that accused assumed the official status of that officer. Held, that the variance is fatal. Butts v. State, 47 T. Cr. R., 494, 84 S. W. R., 586, and authorities cited.

Indictment is fatally defective that fails to negative that defendant was the officer he assumed to be. Young v. State, 43 T., 478.

10. BADGES, UNLAWFUL WEARING.

Art. 425. **Badges, unlawful wearing.**—Any person who shall wilfully and without due authority use or wear the badge, label or button or other emblem of the United Confederate Veterans, United Sons of Confederate Veterans, United Daughters of the Confederacy, Grand Army of the Republic, Women's Relief Corps, the Benevolent and Protective Order of Elks of the United States of American, the Ancient, Free and Accepted Masons, the Independent Order of Odd Fellows, the Knights of Pythias, the Woodmen of the World, any labor organization, or any order, society or organization in the state of Texas, or who shall use or wear the same to obtain aid or assistance or patronage thereby within this state, unless he shall be entitled to use or wear the same under the rules and regulations of the United Confederate Veterans, United Sons of Confederate Veterans, the United Daughters of the Confederacy, Grand Army of the Republic, Women's Relief Corps, the Benevolent and Protective order of Elks of the United States of America, the Ancient, Free and Accepted Masons, the Independent Order of Odd Fellows, the Knights of Pythias, the Woodmen of the World, any labor organization, or any order, society or organization in the state of Texas, whose badge, label or button or other emblem was so used or worn, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding fifty dollars, or imprisonment for a term not exceeding sixty days, or both, at the discretion of the court or jury trying the case. [Act 1909, p. 134.]

11. GENERAL PROVISIONS.

Art. 426. [294] **Wilful neglect of official duty.**—If any officer of the law shall wilfully or negligently fail to perform any duty imposed on him by the Penal Code or Code of Criminal Procedure he shall, when the act or omission is not otherwise defined, be deemed guilty of a misdemeanor, and be punished as prescribed in the succeeding article. [Act May 26, 1864, pp. 7, 8; P. C. 348a.]

Art. 427. **Drawing jurors in certain counties; duty of officers.**—Between the first and fifteenth day of August every two years, in all counties in this state having a city or cities therein containing a population aggregating twenty thousand or more people, as shown by the last United States census, the tax collector, or one of his deputies, and the tax assessor, or one of his deputies, and the sheriff, or one of his deputies, and the county clerk, or one of his deputies, and the district clerk, or one of his deputies, shall meet at the court house of the county and select from the qualified jurors of the county the jurors for service in the district and county courts in such county for the ensuing two years, in the manner provided by the Revised Civil Statutes of Texas for the selection of jurors in all counties in Texas, having a city or cities therein, which city or cities contain a population aggregating twenty thousand or more people.

If any of the officers mentioned in this article shall wilfully or negligently fail to serve as herein provided, or if any of the said officers shall wilfully or negligently fail to designate one of their deputies for such service, or if, after such designation, such deputy shall wilfully or negligently fail to serve, the officer so failing to serve or to designate a deputy, or the deputy so failing to serve, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty nor more than five hundred dollars.

Art. 428. **Putting in or taking names from wheel illegally.**—If any person shall put into the wheel or take from the wheel, except at the times and in the manner provided for by law, a card or cards bearing the name or names of any person, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty nor more than five hundred dollars. [Act 1909, p. 271.]

Art. 429. **Providing penalty.**—If any person shall violate any of the provisions of said law, or shall wilfully or negligently fail or neglect to perform any duty therein required of him, then, where no penalty is specifically imposed by the terms of said law, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than fifty nor more than five hundred dollars. [Id., p. 271.]

Art. 430. [295] **General penalty, in the absence of any other.**—Whenever, in the Penal Code or Code of Criminal Procedure, it is declared that an officer is guilty of an offense on account of any particular act or ommission, and there is not in the Penal Code any punishment assigned for the same, such officer shall be deemed guilty of a misdemeanor, and shall be fined not exceeding two hundred dollars. [Act March 5, 1863, p. 12; P. C. 349.]

Statute construed. This and article 426 embrace as offenses only acts of omission. State v. Kingsbury, 37 T., 158.

Failure or neglect to perform a duty imposed by law is an act of omission, and as such is a misdemeanor punishable as provided by this article, unless a specific penalty is affixed. Baldwin v. State, 39 T., 155; Gordon v. State, 2 T. Cr. R., 154.

Art. 431. [296] **Malfeasance, when not otherwise designated.**—All offenses committed by officers of the law, when not otherwise designated, are known under the general term of malfeasance in office. [P. C. 350.]

Art. 432. [297] **"Officer" defined.**—By an "officer of the law" as used in the preceding article is meant any magistrate, peace officer or clerk of a court. [P. C. 351.]

Art. 433. [298] **Sheriff failing to make report to adjutant general.**—1. Hereafter it shall be the duty of each sheriff in this state, upon the close of any regular term of the district court in his county, or within thirty days thereafter, to make out and forward by mail to the adjutant general of this state a certified list of all persons who, after indictment for a felony, have fled from said county. Such lists shall contain the full name of each of such fugitives, with a description giving his age, height, weight, color and occupation, the complexion of skin and the color of eyes and hair, and any peculiarities in person, speech, manner or gait that may serve to identify such fugitive, so far as the sheriff may be able to give them, and shall state the offense with which such person is charged.

2. The adjutant general shall prescribe, have printed and forward to the sheriffs of the several counties the necessary blanks upon which are to be made the lists herein required.

3. Any sheriff in this state failing or refusing to make out and forward said certified lists, within the time and according to the forms herein provided for, shall be deemed guilty of official misconduct, and, upon conviction, shall be fined not less than ten nor more than one hundred dollars. [Act March 25, 1887, p. 44.]

Art. 434. **Sheriff appointing deputies not allowed by law.**—Any sheriff of any county of this state who shall appoint any more deputies than are provided for by law, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars; provided, further that this law shall not apply to counties having more than one district court. [Act 1903, p. 160.]

TITLE 9.

OF OFFENSES AGAINST THE PUBLIC PEACE.

Chapter.
1. Unlawful Assemblies.
2. Riots.
3. Affrays and Disturbances of the Peace.
4. Unlawfully Carrying Arms.

CHAPTER ONE.

UNLAWFUL ASSEMBLIES.

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Article 435. [299] **"Unlawful assembly" defined.**—An "unlawful assembly" is the meeting of three or more persons with intent to aid each other by violence, or in any other manner either to commit an offense, or illegally to deprive any person of any right, or to disturb him in the enjoyment thereof. [P. C. 355.]

Construed. This article contemplates that something is done to other parties than those assembled, disturbing them in some manner, or interfering with their rights or bringing about a disturbance of the peace. Ex parte Jacobson, 55 T. Cr. R., 237, 115 S. W. R., 1193.

Public amusements, such as theaters, are not in the category of such offenses. Id.

The meeting and co-operation of two or more persons to prevent the conductor of a railway train from running it, is an unlawful assembly under this article. McGehee v. State, 23 T. Cr. R., 330, 5 S. W. R., 222.

Indictment held sufficient to charge unlawful assembly. McGehee v. State, 23 T. Cr. R., 330, 5 S. W. R., 222.

Art. 436. [300] **To prevent elections.**—If the purpose of the unlawful assembly is to prevent the holding of any public election, or to prevent any particular person or number of persons from voting at a public election, the punishment shall be that which is prescribed in article 266. [P. C. 356.]

Art. 437. [301] **To prevent execution of law, etc.**—If the purpose of the unlawful assembly be to oppose or prevent the execution or enforcement of any law of the state, or the lawful decree or judgment of a court in a civil action, the punishment shall be a fine not exceeding five hundred dollars. [P. C. 357.]

Art. 438. [302] **To effect the rescue of capital felon.**—If the purpose of the unlawful assembly be to effect the rescue of a prisoner lawfully convicted of a capital offense, the punishment shall be a fine not exceeding one thousand dollars. [P. C. 358.]

Art. 439. [303] **To effect the rescue of a felon.**—If the purpose of the unlawful assembly be to effect the rescue of any person lawfully convicted of a felony less than capital, the punishment shall be a fine not exceeding five hundred dollars. [P. C. 359.]

Art. 440. [304] **To rescue one accused of capital felony.**—If the purpose

of the unlawful assembly be to rescue any person arrested or imprisoned for a capital offense before trial, the punishment shall be a fine not exceeding five hundred dollars. [P. C. 360.]

Art. 441. [305] **To rescue one accused of lesser felony.**—If the purpose of the unlawful assembly be to rescue any person lawfully arrested or imprisoned for any felony less than capital, the punishment shall be a fine not exceeding three hundred dollars. [P. C. 361.]

Art. 442. [306] **To rescue one accused of misdemeanor.**—If the purpose of the unlawful assembly be to rescue a person accused of a misdemeanor, the punishment shall be a fine not exceeding two hundred dollars. [P. C. 362.]

Art. 443. [307] **To prevent the sitting of any tribunal.**—If the purpose of the unlawful assembly be to prevent or oppose the sitting of any lawful court, board of arbitrators or referees, the punishment shall be a fine not exceeding one thousand dollars. [P. C. 362a.]

Art. 444. [308] **To prevent the collection of taxes.**—If the purpose of the unlawful assembly be to prevent the collection of taxes, or other money due the state, the punishment shall be a fine not exceeding five hundred dollars. [P. C. 363.]

Art. 445. [309] **To prevent any person from pursuing his labor.**—If the purpose of the unlawful assembly be to prevent any person from pursuing any labor, occupation or employment, or to intimidate any person from following his daily avocation, or to interfere in any manner with the labor or employment of another, the punishment shall be by fine not exceeding five hundred dollars.

Indictment. See McGehee v. State, 23 T. Cr. R., 333, 5 S. W. R., 222.

In a prosecution under Art. 1021 for intimidation of another to prevent him from performing the duties of his lawful employment, it was held that the indictment must set out the "lawful employment." Luter v. State, 32 T. Cr. R., 69, 22 S. W. R., 140.

Art. 446. [310] **To frighten any one by disguise.**—If the purpose of the unlawful assembly be to alarm and frighten any person by appearing in disguise, so that the real persons so acting and assembling cannot be readily known, and by using language or gestures calculated to produce in such person the fear of bodily harm, the punishment shall be by fine not exceeding five hundred dollars. [Act Nov. 6, 1871, p. 19; P. C. 363a.]

Art. 447. [311] **To disturb families.**—If the purpose of the unlawful assembly be to repair to the vicinity of any residence, and to disturb the inmates thereof by loud, unusual or unseemly noises, or by the discharge of firearms, the punishment shall be by fine not exceeding five hundred dollars. A residence may be either a public or private house.

See Ex parte Jacobson, 55 T. Cr. R., 237, 115 S. W. R., 1193.

Art. 448. [312] **To effect any other illegal object.**—If the purpose of the unlawful assembly be to effect any illegal object other than those mentioned in the preceding articles of this chapter, all persons engaged therein shall be liable to fine not exceeding two hundred dollars. [P. C. 364.]

Art. 449. [313] **Lawful meetings not included.**—No public meeting for the purpose of exercising any political, religious or other lawful rights, no assembly for the purpose of lawful amusement or recreation, is within the meaning of this chapter. [P. C. 365.]

See Ex parte Jacobson, 55 T. Cr. R., 237, 115 S. W. R., 1193.

Art. 450. [314] **Lawful meetings included if unlawful purpose is afterward agreed on.**—Where the persons engaged in any unlawful assembly, met at first for a lawful purpose, and afterward agreed upon an unlawful purpose, they are equally guilty of the offense defined in article 435. [P. C. 376.]

CHAPTER TWO.

RIOTS.

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Article 451. [315] **"Riot" defined.**—If the persons unlawfully assembled together do or attempt to do any illegal act, all those engaged in such illegal act are guilty of riot. [P. C. 366.]

See post, Art. 466, and McGehee v. State, 23 T. Cr. R., 330, 5 S. W. R., 222.

Riot is a compound offense—there must be both an unlawful act to be done and an unlawful assembly of more than two persons. Blackwell v. State, 30 T. Cr. R., 672, 18 S. W. R., 676.

Indictment must charge the purpose for which the rioters assembled, and state the illegal act which was the object of the assemblage. Id.

Defective in this case in not alleging that the parties "did unlawfully assemble together," or that, having lawfully assembled they afterwards joined in the commission of an unlawful act. Id.

Art. 452. [316] **To prevent collection of taxes.**—If the purpose of a riot be to prevent the collection of taxes or other money due the state, any person engaged therein shall be punished by fine not less than two hundred dollars and not exceeding one thousand dollars, although the purpose of the riot be not effected; and if such illegal purpose be effected, in addition thereto, imprisonment in the county jail not exceeding two years may be added. [P. C. 367.]

See Blackwell v. State, 30 T. Cr. R., 672, 18 S. W. R., 676, which, with reference to essentials of indictment, applies to Arts. 465, 466, 469, 470 and 472.

Art. 453. [317] **Execution of law.**—If any person, by engaging in a riot, shall prevent the execution or enforcement of any law of the state, or the lawful decree or judgment of any court in a civil cause, he shall be punished by imprisonment in the county jail not exceeding two years, and by fine not less than two hundred nor more than one thousand dollars. [P. C. 368.]

Art. 454. [318] **Rescue of felon under sentence of death.**—If any person, by engaging in a riot, shall rescue another, lawfully convicted or under lawful sentence of death, he shall be punished by imprisonment in the penitentiary not less than five nor more than ten years. [P. C. 369.]

Art. 455. [319] **Rescue of felon less than capital.**—If any person, by engaging in a riot, shall rescue any prisoner, lawfully convicted of felony less than capital, or lawfully under sentence for such offense, he shall be punished by imprisonment in the penitentiary not less than two nor more than seven years. [P. C. 370.]

Art. 456. [320] **Rescue of one convicted of misdemeanor.**—If any person, by engaging in a riot, shall rescue any prisoner, lawfully convicted of a misdemeanor, he shall be punished by imprisonment in the county jail not less than six months nor more than two years.

Art. 457. [321] **Rescue of one imprisoned for capital felony.**—If any person, by engaging in a riot, shall rescue any prisoner, lawfully arrested or im-

prisoned for a capital felony, he shall be punished by confinement in the penitentiary not less than two nor more than seven years. [P. C. 371.]

Art. 458. [322] **Felony less than capital.**—If any person, by engaging in a riot, shall rescue any prisoner, lawfully arrested or imprisoned for a felony less than capital, he shall be punished by confinement in the penitentiary not less than two nor more than seven years. [Act Feb. 12, 1858, p. 164; P. C. 372.]

Art. 459. [323] **Misdemeanor.**—If any person, by engaging in a riot, shall rescue any prisoner, lawfuly arrested or imprisoned for a misdemeanor, he shall be punished by confinement in the county jail not less than six nor more than twelve months.

Art. 460. [324] **Preventing any person from labor.**—If any person, by engaging in a riot, shall prevent any other person from pursuing any labor, occupation or employment, or intimidate any other person from following his daily avocation, or interfere in any manner with the labor or employment of another, he shall be punished by confinement in the county jail not less than six months nor more than one year.

Art. 461. [325] **Disturbing residence.**—If any person, by engaging in a riot, shall disturb the inmates of any residence by loud, unusual or unseemly noises, or by the discharge of fire-arms in the immediate vicinity of such residence, he shall be punished by fine not less than fifty nor more than five hundred dollars. A residence may be either a public or private house.

Art. 462. [326] **Committing any other illegal act.**—If any person, by engaging in a riot, shall commit any illegal act other than those mentioned in the ten preceding articles, he shall, in addition to receiving the punishment affixed to such illegal act by other provisions of this Code, be also punished by confinement in the county jail not exceeding one year, or by fine not exceeding one thousand dollars. [P. C. 373.]

Art. 463. [327] **Half penalty when object not accomplished.**—When the purpose of the riot was to effect any of the illegal acts mentioned in the preceding articles of this chapter, and such unlawful object is not effected, the punishment may, in the discretion of the jury, be diminished to half the penalty affixed to such riot where the illegal purpose was effected. [P. C. 374.]

Art. 464. [328] **All participants guilty.**—A person engaged in any riot, whereby an illegal act is committed, shall be deemed guilty of the offense of riot, according to the character and degree of such offense, whether the said illegal act was in fact perpetrated by him, or by those with whom he is participating. [P. C. 375.]

Art. 465. [329] **Where assembly was at first lawful.**—Where the assembly was at first lawful, and the persons so assembled afterward agree to join in the commission of an act which would amount to riot, if it had been the original purpose of the meeting, all those who do not retire when the change of purpose is known are guilty of riot. [P. C. 377.]

Art. 466. [330] **One may be prosecuted before others are arrested.**—Any one person engaged in an unlawful assembly or riot may be prosecuted and convicted before the others are arrested, but the indictment or information must state, and it must be proved on the trial, that three or more persons were assembled, and their names given, if known; if not known, it must be so alleged. [P. C. 378.]

Art. 467. [331] **Indictment, requisites of.**—The indictment or information must likewise state the illegal act which was the object of the meeting, or which they proceeded to do, if the assembly was originally lawful. [P. C 379.]

Art. 468. [332] **Duty of officers in case of riot.**—If any persons shall be unlawfully or riotously assembled together, it shall be the duty of any magistrate or peace officer, so soon as it may come to his knowledge, to go to the place of such unlawful or riotous assembly and command the persons as-

sembled to disperse; and all who continue so unlawfully assembled, or engaged in a riot, after being warned to disperse, shall be punished by the addition of one-half the penalty to which they would otherwise be liable, if no such warning had been given. [P. C. 380.]

CHAPTER THREE.

AFFRAYS AND DISTURBANCES OF THE PEACE.

	Article		Article
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Disturbance of the peace	470	Shooting in public place	473
Vulgar or profane language over telephone	471	Horse racing on public road or street	474

Article 469. [333] **"Affray" defined.**—If any two or more persons shall fight together in a public place, they shall be punished by fine not exceeding one hundred dollars. [O. C. 381.]

Construed. It is not the "fighting" but the "fighting in a public place" that constitutes affray. Saddler v. State, Dallam, 610.

There must be actual fighting between two or more persons, and it must occur in a public place. Pollock v. State, 32 T. Cr. R., 29, 22 S. W. R., 19.

Indictment. Otherwise good, the indictment was sufficient in charging that, at a time and place stated, being a public place, the parties "did unlawfully and willingly fight together." State v. Billingsley, 43 T., 93.

Held, in Shelton v. State, 30 T., 431, that it is sufficient to charge the fighting in a public place without describing it; but compare Tummins v. State, 18 T. Cr. R., 13, and Darley v. State, 27 Id., 596, 11 S. W. R., 936, holding that unless the place is among those enumerated in the statute the facts constituting it a public place should be alleged. And see notes to post, Art. 472.

Art. 470. [334] **Disturbance of the peace.**—If any person shall go into or near any public place, or into or near any private house, and shall use loud and vociferous or obscene, vulgar or indecent language, or swear or curse, or yell or shriek, or expose his person, or rudely display any pistol or other deadly weapon, in a manner calculated to disturb the inhabitants of such public place or private house, he shall be fined in any sum not exceeding one hundred dollars. [Amended by Act Feb. 19, 1883, p. 12.]

Construed. Those occupying residences abutting a public street are inhabitants of such street. Keller v. State, 25 T. Cr. R., 325, 8 S. W. R., 275.

Holding a pistol in the hand and firing it into the air is "rudely" displaying it. Gozy v. State, 34 T. Cr. R., 146, 29 S. W. R., 783.

This article does not refer to those occupying a private residence, one of whom disturbes the others, but designs to protect the inhabitants from disturbance by others than themselves. McIver v. State, 34 T. Cr. R., 214, following Hall v. State, 16 Id., 6.

Indictment fatally defective which substitutes "wilfully" for the statutory word "rudely," and describes the deadly weapon as a "club of wood." Fuller v. State, 48 T. Cr. R., 300, 87 S. W. R., 832.

Should allege that the gun displayed was a deadly weapon. Jones v. State, 50 T. Cr. R., 210, 96 S. W. R., 29.

Need not set out the abusive language used, overruling Elkins v. State, 26 T. Cr. R., 220, 9 S. W. R., 491; Foreman v. State, 31 Id., 479, 20 S. W. R., 1109.

Allegation "in a manner calculated to disturb the inhabitants of said public place" avers that people were there assembled. Parsons v. State, 33 T. Cr. R., 540, 28 S. W. R., 204.

Art. 471. **Vulgar or profane language over telephone.**—If any person shall use any vulgar, profane, obscene or indecent language over or through any telephone in this state, he shall be guilty of a misdemeanor, and, on conviction, shall be fined in any sum not less than five dollars nor more than one hundred dollars. [Act 1909, p. 87.]

Art. 472. [335] **"Public place" defined.**—A public place, within the meaning of the two preceding articles, is any public road, street or alley of a town or city, or any inn, tavern, store, grocery or workshop, or place at which people are assembled, or to which people commonly resort for purposes of business, amusement, recreation or other lawful purpose. [Amended by Act Feb. 19, 1883, p. 12.]

Public place. Indictment, unless the place is among those enumerated in the article, must allege the facts constituting it a public place. A "gin" is not per se a public place. Darley v. State, 27 T. Cr. R., 569, 11 S. W. R., 637.

Nor is a livery stable. Metzger v. State, 31 T. Cr. R., 11, 19 S. W. R., 254.

Nor a private room in a hotel. Bordeaux v. State, 31 T. Cr. R., 37, 19 S. W. R., 603.

A grand jury room during the session of the grand jury is a public place. Murchison v. State, 24 T. Cr. R., 8, 5 S. W. R., 508.

As to places of public assemblies and amusement, see Parsons v. State, 33 T. Cr. Rr., 540, 28 S. W. R., 204; Gozy v. State, 34 Id., 146, 29 S. W. R., 783.

The public street of a town is a public place. King v. Brown, 100 T., 109, 94 S. W. R., 328. And see notes under Art. 555 post. A private residence may become a public place by throwing it open to the public generally for a single entertainment. Austin v. State, 57 T. Cr. R., 611, 124 S. W. R., 639.

Art. 473. [336] **Shooting in public place.**—If any person shall discharge any gun, pistol or fire-arms of any description, or shall discharge any cannon cracker or torpedo on or across any public square, street or alley in any city, town or village, or in any street, or within one hundred yards of any business house, in this state, he shall be fined in any sum not exceeding one hundred dollars. [Act Nov. 12, 1886, p. 210; Amended Act 1901, p. 300.]

City ordinance authorizing the shooting by police of unmuzzled dogs found at large is unconstitutional. Lynn v. State, 33 T. Cr. R., 152, 25 S. W. R., 779.

A city policeman shooting an unmuzzled dog on the street, notwithstanding a city ordinance, violates this article. Lynn v. State, supra.

Art. 474. [337] **Horse racing on public road and street.**—Any person who shall run, or be in any way concerned in running any horse race in, along or across any public square, street or alley in any city, town or village, or in, along or across any public road within this state, shall be fined in a sum not less than twenty-five nor more than one hundred dollars. [Act May 19, 1873, pp. 83, 84.]

Indictment should allege that the racing parties ran together. State v. Catchings, 43 T., 654.

CHAPTER FOUR.

UNLAWFULLY CARRYING ARMS.

	Article		Article
Unlawfully carrying arms	475	Not applicable to whom	478
Not applicable, when, and to whom	476	Arrest without warrant; officer failing to arrest, punishable	479
Carrying arms in church or other assembly	477	Not applicable to frontier counties	480

Article 475. [338] **Unlawfully carrying arms.**—If any person in this state shall carry on or about his person, saddle, or in his saddle bags, any pistol, dirk, dagger, slung shot, sword cane, spear, or knuckles made of any metal or any hard substance, bowie knife, or any other knife manufactured or sold for purposes of offense or defense, he shall be punished by fine of not less than one hundred dollars nor more than two hundred dollars, or by confinement in the county jail not less than thirty days nor more than twelve months, or by both such fine and imprisonment. [Amended by Act Jan. 30, 1889; amended 1905, p. 56.]

Constitutional law. This article is constitutional. English v. State, 35 T., 473; State v. Duke, 42 Id., 455.

The right under the constitution to keep or bear arms in self-defense or in the defense of the state, is no defense to an indictment for unlawfully carrying prohibited weapons. Lewis v. State, 7 T. Cr. R., 567.

Construed. This article inhibits the carrying only of such weapons as it specifically designates. Lahue v. State, 51 T. Cr. R., 159, 101 S. W. R., 1008.

Following are violations: Carrying deadly weapons into the woods while hunting stock. Baird v. State, 38 T., 598.

Carrying such weapon on the range to shoot a beef, though accused had no other means of killing it. Reynolds v. State, 1 T., 616.

Carrying it off carrier's own premises while hunting. Titus v. State, 42 T., 578.

Habitually carry it between the places of residence and business. Chambers v. State, 34 T. Cr. R., 293, 30 S. W. R., 357.

Following are not violations: Carrying it to a shop for repair and carrying it home again. Pressler v. State, 19 T. Cr. R., 52; Mangum v. State, 90 S. W. R., 31.

Carrying it home from place of purchase. West v. State, 21 T. Cr. R., 427, 2 S. W. R., 810; Christian v. State, 37 T., 475.

Resident of country purchasing pistol in town, carrying it from store to store in quest of ammunition for it and carrying it home fifteen miles. Waddell v. State, 37 T., 357.

Carrying the detached barrel of a pistol. Pressler v. State, 19 T. Cr. R., 52.

Carrying it in pursuit of thieves in possession of stolen property. Lyle v. State, 21 T. Cr. R., 153, 17 S. W. R., 425.

Carrying it in a wagon. Cathey v. State, 23 T. Cr. R., 492, 5 S. W. R., 137; Sanderson v. State, Id., 520, 5 S. W. R., 145.

No less an offense under this article that the pistol was carried at a religious gathering. Veal v. State, 125 S. W. R., 919.

Indictment need not allege that the pistol was "unlawfully" carried. Pickett v. State, 10 T. Cr. R., 290.

Need not negative exemptions. Lewis v. State, 7 T. Cr. R., 567; Zallner v. State, 15 Id., 23.

May be insufficient to charge carrying pistol into a public assembly yet sufficient to charge carrying under this article. Pickett v. State, 10 T. Cr. R., 290.

That * * * "did have about his person a certain pistol," is equivalent to charging that he "did carry" it about his person. State v. Carter, 36 T., 89.

"In his hand" is "about his person." Woodward v. State, 5 T. Cr. R., 296.

Art. 476. [339] **Not applicable, when, and to whom.**—The preceding article shall not apply to a person in actual service as a militiaman, nor to a peace officer or a policeman, or person summoned to his aid, nor to a revenue or other civil officer engaged in the discharge of official duty, nor to the carrying of

arms on one's own premises or place of business, nor to persons traveling, nor to one who has reasonable ground for fearing an unlawful attack upon his person, and the danger is so imminent and threatening as not to admit of the arrest of the party about to make such attack, upon legal process. [Act April 12, 1871, p. 25.]

Exceptions as to officers. Deputy sheriff of one county may carry pistol into another county. Clayton v. State, 21 T. Cr. R., 343, 17 S. W. R., 261; Irvine v. State, 18 Id., 51.

An illegal appointment will not protect a purported deputy sheriff in carrying pistol into another county. Blair v. State, 26 T. Cr. R., 387, 9 S. W. R., 890.

A special deputy's appointment expires with the process he was charged to execute. O'Neal v. State, 32 T. Cr. R., 42, 22 S. W. R., 25.

A person legally summoned as one of a posse to assist in executing a legal process is not liable for carrying arms. O'Connor v. State, 40 T., 27.

Peace officers include the following: A de facto marshal of an incorporated town. Rainey v. State, 8 T. Cr. R., 62.

A penitentiary guard on duty. West v. State, 26 T. Cr. R., 99, 9 S. W. R., 485.

A civil officer in discharge of official duty. Love v. State, 32 T. Cr. R., 85, 23 S. W. R., 140.

A soldier of the United States army when in the actual discharge of his duties as such, and only then. Lann v. State, 25 T. Cr. R., 495, 8 S. W. R., 650.

Not included. A city attorney is not. Featherston v. State, 35 T. Cr. R., 612, 34 S. W. R., 276, 938.

A deputy postmaster whose duties are confined to the postoffice building, is not. Love v. State, 32 T. Cr. R., 85, 2 S. W. R., 140.

Mere appointment as a state ranger, without subsequent enlistment and qualification, will not exempt. Ringer v. State, 33 T. Cr. R., 180, 26 S. W. R., 69.

"Traveler;" who is: One going several miles into another county for pork. Smith v. State, 42 T., 464.

One driving stock to market in another state. Rice v. State, 10 T. Cr. R., 288.

One going from his temporary to his permanent home in another county. Campbell v. State, 28 T. Cr. R., 44, 11 S. W. R., 832.

Who is not: A fugitive from justice. Shelton v. State, 27 T. Cr. R., 443, 11 S. W. R., 457.

One going from his home in the country to the county seat to return next day. Darby v. State, 23 T. Cr. R., 407, 5 S. W. R., 90.

Exemption fails when the traveler stops over night on his journey and carries his pistol into a gambling house or other resort. Stilly v. State, 27 T. Cr. R., 445, 11 S. W. R., 458; Ratigan v. State, 33 Id., 301, 26 S. W. R., 407.

Premises and place of business. The particular locality appropriated for local business, such as the farm, store, shop or dwelling place. Baird v. State, 38 T., 600.

A person's temporary residence is, for the time being, his "home," and it is no offense to carry a pistol from the temporary to the permanent home. Campbell v. State, 28 T. Cr. R., 44, 11 S. W. R., 832.

Defense of one's own premises cannot avail when the premises are occupied by a tenant under an unexpired lease containing no reservation to the proprietor to enter thereupon. Zallner v. State, 15 T. Cr. R., 23. And see Brannon v. State, 23 Id., 428, 5 S. W. R., 132.

"Imminent danger," to be available defense, must be so pressing and threatening as not to admit of the arrest upon legal process of the party threatening and about to make the attack. O'Neal v. State, 32 T. Cr. R., 22 S. W. R., 25.

It must appear that the imminent danger existed at the time the party armed himself. Brownlee v. State, 30 S. W. R., 1043.

Danger can be imminent without the threatening party being present when the pistol was found on the defendant. Short v. State, 25 T. Cr. R., 379, 8 S. W. R., 281.

Jurisdiction. A city ordinance on the subject, prescribing a lower penalty than the statute, is void, and the mayor's court is without jurisdiction under such ordinance. McLain v. State, 31 T. Cr. R., 558, 21 S. W. R., 365.

Art. 477. [340] **Carrying arms in church or other assembly.**—If any person shall go into any church or religious assembly, any school room or other place where persons are assembled for amusement or for educational or sci-

entific purposes, or into any circus, show, or public exhibition of any kind, or into a ballroom, social party, or social gathering, or to any election precinct on the day or days of any election, where any portion of the people of this state are collected to vote at any election, or to any other place where people may be assembled to muster, or perform any other public duty, or to any other public assembly, and shall have or carry about his person a pistol or other fire-arm, dirk, dagger, slung shot, sword cane, spear, brass knuckles, bowie knife, or any other kind of a knife manufactured and sold for the purposes of offense and defense, he shall be punished by fine not less than fifty nor more than five hundred dollars. [Act April 12, 1871, p. 25.]

See notes, ante, Art. 476.

Construed. Intent is an essential element of this offense. Hann v. State, 25 T. Cr. R., 495, 8 S. W. R., 650. Note facts held insufficient on question of intent. Brooks v. State, 15 Id., 88.

Jurisdiction. Justices of the peace are without jurisdiction over pistol cases. Const. Art. V, Sec. 19; Anderson v. State, 18 T. Cr. R., 17; C. C. P., Art. 105.

Art. 478. [341] **Not applicable to whom.**—The preceding article shall not apply to peace officers or other persons authorized or permitted by law to carry arms at the places therein designated. [Act April 12, 1871, p. 25.]

Peace officers; who are: Sheriff and his deputies, constable, the marshal, constable and policemen of an incorporated city or town, and any private person specially appointed to execute criminal process. C. C. P., Art. 43.

A special constable is a peace officer. C. C. P., Art. 146.

A private person who undertakes to execute process. Id., Art. 278.

De facto marshal of a city or town. Rainey v. State, 8 T. Cr. R., 62.

Same; who are not: Deputy marshal of a town or city, unless made so by the charter. Alford v. State, 8 T. Cr. R., 545.

Ex-bailiff of the grand jury. Alford v. State, supra.

Evidence. Not for the State to disprove, but for defendant to prove that he was a peace officer. Williams v. State, 42 T., 466.

A peace officer has the right per se to carry arms. Williams v. State, supra.

Art. 479. [342] **Arrest without warrant; officer failing punished.**—Any person violating any of the provisions of articles 475 and 477 may be arrested without warrant by any peace officer and carried before the nearest justice of the peace for trial; and any peace officer who shall fail or refuse to arrest such person on his own knowledge, or upon information from some credible person, shall be punished by fine not exceeding five hundred dollars. [Act April 12, 1871, p. 26.]

Construed. Under this article, a peace officer may arrest an offender without warrant upon information of a credible person, although the offender may be in a distant part of the county at the time of the information, and although the arrest may not be then made or attempted. Jacobs v. State, 28 T. Cr. R., 79, 12 S. W. R., 408; Ex parte Sherwood, 29 Id., 334, 15 S. W. R., 812; Miller v. State, 32 Id., 319, 20 S. W. R., 1103.

The law presumes a citizen to be a credible person. Miller v. State, supra.

A peace officer is punishable who refuses or neglects to arrest, without warrant, on information of a credible person, or his own knowledge, one for carrying a pistol. Miller v. State, supra. And see Brown v. King, 93 S. W. R., 1017.

Arresting one for gaming, and being subsequently informed that the party arrested had a pistol on his person at the time of arrest, the sheriff was authorized to hold him for that offense. Garner v. State, 50 T. Cr. R., 364, 97 S. W. R., 98, citing Ex parte Richards, 44 T. Cr. R., 561, 72 S. W. R., 838.

Art. 480. [343] **Not applicable to frontier counties.**—The provisions of this chapter shall not apply to or be enforced in any county which the governor may designate by proclamation as a frontier county and liable to incursions by hostile Indians. [Act April 12, 1871, p. 26.]

Construed. The governor, by a subsequent proclamation, may revoke his previous exemption of a county as frontier. Clayton v. State, 43 T., 410.

Ignorance of the governor's revocation of his previous exemption of a county as frontier is a mistake of law and not of fact, and affords no excuse. Chaplin v. State, 7 T. Cr. R., 87.

TITLE 10.

OFFENSES AGAINST PUBLIC MORALS, DECENCY AND CHASTITY.

Chapter.
1. Unlawful Marriages.
2. Incest.
3. Of Adultery and Fornication.
4. Disorderly Houses.
5. Miscellaneous Offenses.

CHAPTER ONE.

UNLAWFUL MARRIAGES.

Article
"Bigamy" defined 481
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"Negro" and "white person" defined.... 484
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Article 481. [344] **"Bigamy" defined.**—If any person who has a former wife or husband living shall marry another in this state, such person shall be punished by imprisonment in the state penitentiary for a term not less than two nor more than five years. [Amended by Act March 23, 1887, p. 37; O. C. 384.]

Construed. "Former wife," as herein used, means the woman in contradistinction to the woman then being taken to wife. Burton v. State, 51 T. Cr. R., 196, 101 S. W. R., 226.

Constituent elements: 1. The former spouse being alive. 2. Accused's second marriage in this state. La Rose v. State, 29 T. Cr. R., 215, 15 S. W. R., 33.

Indictment must conclude with the constitutional formula, "against the peace and dignity of the state." Poss v. State, 47 T. Cr. R., 486, 83 S. W. R., 1109.

Must allege defendant's valid marriage and subsequent marriage to another during life of the lawful spouse. Hull v. State, 7 T. Cr. R., 593.

Bigamy; adultery. If, after ascertaining their supposed legal marriage was unlawful and void, the parties continued to cohabit together, such cohabitation was adulterous. Hildreth v. State, 19 T. Cr. R., 196.

Bigamy and adultery are different offenses, and former acquittal of the former will not bar prosecution for the latter. Swancoat v. State, 4 T. Cr. R., 105.

Mistake. Bigamy is not committed by one who contracts a marriage under the honest but mistaken belief that a previous spouse is dead. Hildreth v. State, 19 T. Cr. R., 196.

Mistake of law affords no defense. See this case in illustration. Medrano v. State, 32 T. Cr. R., 214, 22 S. W. R., 684.

Evidence. Competent for state to prove defendant's admission that he was a married man. Dumas v. State, 14 T. Cr. R., 464. And like evidence is competent in adultery. Boger v. State, 19 Id., 91.

Same; duress. Defendant cannot plead to prosecution for bigamy duressed marriage to avoid prosecution and punishment for seduction. Medrano v. State, 32 T. Cr. R., 214, 22 S. W. R., 684.

Charge of court on mistake of fact in this case held erroneous, and moreover held unnecessary for the charge to define "proper care" in avoiding such mistake, which is an issue for the jury. Watson v. State, 13 T. Cr. R., 76.

Art. 482. [345] **Preceding article not applicable, when.**—The provisions of the preceding article shall not extend to any person whose husband or wife shall have been continually remaining out of the state, or shall have voluntarily withdrawn from the other and remained absent for five years, the person marrying again not knowing the other to be living within that time;

nor shall the provisions of said article extend to any person who has been legally divorced from the bonds of matrimony. [O. C. 385.]

Construed. The first clause of this article does not apply to a person abandoned by his or her spouse in another state, for more than five years, but who had never lived in this State. Poss v. State, 47 T. Cr. R., 486, 83 S. W. R., 1109.

The second clause, however, that the spouse having voluntarily withdrawn and remained absent more than five years, does apply to the spouse deserted in another state more than five years before the second marriage in this State, and is a complete defense to bigamy, without regard to the presumption of death after the absence of five years. Poss v. State, supra.

Art. 483. [346] **Intermarriage of whites and blacks.**—If any white person and negro shall knowingly intermarry with each other within this state, or having so intermarried, in or out of the state, shall continue to live together as man and wife within this state, they shall be punished by confinement in the penitentiary for a term not less than two nor more than five years. [O. C. 386.]

Constitutional law. This article does not conflict with the Fourteenth or Fifteenth amendments to the Constitution of the United States. Frasher v. State, 3 T. Cr. R., 263; Francois v. State, 9 Id., 144.

The several states have the exclusive right to prescribe how their citizens may marry, whom they may marry, and the legal consequences of the marriage contract. Frasher v. State, supra; Francois v. State, supra.

It has always been the policy of this state to maintain separate marital relations between whites and blacks. Frasher v. State, supra.

Construed. Both parties to such an interdicted marriage are guilty. Francois v. State, supra.

Marriage is a constituent element of the offense; cohabitation without marriage is not sufficient. Moore v. State, 7 T. Cr. R., 608.

Indictment against a white, after alleging the marriage was with a negro, need not notice the alternative clause relating to persons of mixed blood, though it may, to meet possible proof, count separately on each clause of the article. Frasher v. State, 3 T. Cr. R., 263.

Issuable allegations should be directly and certainly averred, and not by way of argument or inference. Moore v. State, 7 T. Cr. R., 608.

Omission to allege the name of the negro consort is not a substantial objection, nor is it available in motion in arrest of judgment. Frasher v. State, 3 T. Cr. R., 263.

Art. 484. [347] **"Negro" and "white person" defined.**—The term "negro," as used in the preceding article, includes also a person of mixed blood descended from negro ancestry from the third generation, inclusive, although one ancestor of each generation may have been a white person. All persons not included in the definition of "negro" shall be deemed a white person within the meaning of this article.

Art. 485. [348] **Proof of marriage.**—In trials for the offenses named in the preceding articles of this chapter, proof of marriage by mere reputation shall not be sufficient.

Construed. Marriage in one county on license issued in another county is valid. Cummings v. State, 36 S. W. R., 256, 35 S. W. R., 19.

A valid marriage is one solemnized with the legal prerequisites of and in accordance with the lex loci contractus. In Texas, a license is a legal prerequisite, and the ceremony must be performed by some one of the functionaries named in the statutes. Dumas v. State, 14 T. Cr. R., 464.

Proof of prerequisites: Original license and return thereon; eye-witnesses to ceremony; general reputation in connection with cohabitation; admissions of accused, etc. Dumas v. State, supra.

Proof of foreign laws. The written law of another state cannot be proved by parol in Texas. Patterson v. State, 17 T. Cr. R., 102. And note the case in extenso on proof of marriage laws of other states. Id.

Common law marriage is established by proof that the parties agreed to take each other to husband and wife, and from that time on lived professedly as such; and the common law marriage is subject to marriage liabilities. Simon v. State, 31 T. Cr. R., 186, 20 S. W. R., 716.

That the officiating alleged minister was not ordained will not void a valid common law marriage. Holder v. State, 35 T. Cr. R., 19, 29 S. W. R., 793.

Same. Constitutional law. Former slaves. The Constitution of 1876 did not abrogate Section 27 of Article XII of the Constitution of 1869, validating as legal the common law marriages of slaves while in bondage. Steward v. State, 7 T. Cr. R., 326. In such case the proof must show that the parties were living together as husband and wife on March 30, 1870, when the Constitution of 1869 took effect. Id. And such proof of such marriage is not proof by reputation. Id.

While general reputation is, alone, insufficient as proof of marriage yet, taken in connection with cohabitation and defendant's admission, it suffices, if it convinces the jury beyond a reasonable doubt. Dumas v. State, 14 T. Cr. R., 464; Adkisson v. State, 34 T. Cr. R., 296, 30 S. W. R., 357.

Admissions of an accused that he is a married man and that his first wife is living, competent evidence against him. Gorman v. State, 23 T., 646; Boger v. State, 19 T. Cr. R., 91; Dumas v. State, 14 Id., 464.

Defendant's petition for divorce is admissible to prove marriage with alleged former spouse. Adkinson v. State, 34 T. Cr. R., 296, 30 S. W. R., 357.

Marriage license signed by the district and county clerk as district instead of county clerk, does not invalidate a marriage thereunder, and with its return is admissible to prove marriage. Foster v. State, 31 T. Cr. R., 409, 20 S. W. R., 823.

There is no artificial rule that requires direct proof that the first wife was living at the time of the second marriage. That can be proved by facts and circumstances. Gorman v. State, 23 T., 646.

Husband and wife. Neither of the lawful spouses is a competent witness against the other on trial for bigamy. Boyd v. State, 33 T. Cr. R., 470, 26 S. W. R., 1080. But are competent for the defense and may be compelled to testify. Dumas v. State, 14 T. Cr. R., 464.

Bigamy, adultery and kindred offenses are not "offenses against each other," wherein spouses are competent witnesses against each other, overruling on this point Morrill v. State, 5 T. Cr. R., 447; Roland v. State, 9 Id., 277; Compton v. State, 13 Id., 271; Thomas v. State, 14 Id., 70; Johnson v. State, 27 Id., —, 11 S. W. R., 34.

CHAPTER TWO.

INCEST.

	Article		Article
Punishment	486	Relationship, how proved; proof of marriage unnecessary	489
Certain marriages prohibited	487		
Same subject	488		

Article 486. [349] **Punishment.**—All persons who are forbidden to marry by the succeeding articles, who shall intermarry or carnally know each other, shall be punished by imprisonment in the penitentiary not less than two nor more than ten years.

Incest, accomplice. The female consenting to an act of intercourse with a relative within the prohibited degree is an accomplice. Skidmore v. State, 57 T. Cr. R., 497, 123 S. W. R., 1129.

One act of carnal intercourse is sufficient, under this article, to constitute the crime of incest, and proof of other acts than that charged is not admissible. Skidmore v. State, supra.

Art. 487. [350] **Certain marriages prohibited.**—No man shall marry his mother, his father's sister or half-sister, his mother's sister or half-sister, his daughter, the daughter of his father, mother, brother or sister, or of his half-brother or sister, the daughter of his son or daughter, his father's widow, his son's widow, his wife's daughter, or the daughter of his wife's son or daughter.

Art. 488. [351] **Same subject.**—No woman shall marry her father, her father's brother or half-brother, her mother's brother or half-brother, her own brother or half-brother, her son, the son of her brother or sister, or of her half-brother or half-sister, the son of her son or daughter, her mother's husband after the death of her mother, her daughter's husband after the death of her daughter, her husband's son, the son of her husband's son or daughter.

Art. 489. [352] **Relationship, how proved; proof of marriage unnecessary.**—Upon a trial for incest, the fact of the relationship between the parties may be proved in the manner in which that fact is established in civil suits; and proof of cohabitation or carnal knowledge shall be in all cases sufficient, without proof of marriage.

Construed. Under this article, construed in connection with Art. 805, C. C. P., the wife is not a competent witness against the husband for incest with her daughter, overruling on the point in the same class of cases, Morrill v. State, 5 T. Cr. R., 447 and Roland v. State, 9 Id., 277. Compton v. State, 13 Id., 271.

Incest can be committed between illegitimate relatives within the prohibited degrees. Clark v. State, 29 T. Cr. R., 179, 45 S. W. R., 576.

Incest being alleged with the step-daughter, it must be shown that the defendant and the mother were legally married, and that at the time of that marriage the marriage of the mother and her former husband had been dissolved by death or legal divorce. McGrew v. State, 13 T. Cr. R., 340; Harville v. State, 54 Id., 426, 113 S. W. R., 283.

Consent of the female does not enter into the offense, and, with or without consent, incestuous intercourse is incest. Mercer v. State, 17 T. Cr. R., 452; Schoenfeldt v. State, 30 Id., 695, 18 S. W. R., 640.

Indictment alleging defendant to be the father of F., and that he had carnal knowledge of said F., sufficient without alleging that F. was a female. Waggoner v. State, 35 T. Cr. R., 199, 32 S. W. R., 896.

In charging rape in one count and incest in another, the indictment is neither duplicitous nor repugnant, though predicated on the same transaction. Owens v. State, 35 T. Cr. R., 345, 33 S. W. R., 875; Wiggins v. State, 47 Id., 538, 84 S. W. R., 821.

Indictment for incest by intermarriage need not allege that accused "knowingly" entered into the unlawful marriage. Following the statute, and charging the intercourse as both incestuous and unlawful, was sufficient. Approving Simon v. State, 31 T. Cr. R., 186, 20 S. W. R., 399, 716; Barrett v. State, 55 Id., 182, 115 S. W. R., 1187.

Jeopardy. Rape, though charged on the same transaction, is a distinct offense from incest, and conviction or acquittal therefor cannot be pleaded as jeopardy. Stewart v. State, 35 T. Cr. R., 174, 32 S. W. R., 766.

The legality of the marriage between the step-father and the mother of the step-daughter must be effectually established. McGrew v. State, 13 T. Cr. R., 340; Nance v. State, 17 Id., 385.

Same. Impeachment. Prosecutrix being impeached by proof of contradictory statements about the paternity of her child, may be supported by proof of her general good reputation for truth and veracity. Tipton v. State, 30 T. Cr. R., 530, 17 S. W. R., 1097.

The general reputation of the prosecutrix for chastity is inadmissible, and she cannot be impeached by showing her admissions of intercourse with others than defendant. Richardson v. State, 44 T. Cr. R., 211, 70 S. W. R., 320.

Acts and declarations of prosecutrix. Inadmissible to prove the declaration of the prosecutrix to her father just after the birth of her child that defendant was its father. Such proof is not res gestae of the act of copulation, or of the birth of the child, being made after that event. Poyner v. State, 40 T. Cr. R., 640, 51 S. W. R., 376.

Error to admit proof of other acts of intercourse than those specifically charged, overruling Burnett v. State, 32 T. Cr. R., 86, 22 S. W. R., 47; Clifton v. State, 10 T. Cr. R., 20; Ball v. State, 44 Id., 489, 72 S. W. R., 384; Smith v. State, Id., 137, 73 S. W. R., 401; Barnett v. State, Id., 592, 73 S. W. R., 399; Kilpatrick v. State, 39 Id., 10, 44 S. W. R., 830; Gillespie v. State, 49 Id., 530, 93 S. W. R., 556.

Declarations of the prosecutrix to third parties should have been excluded. Gillespie v. State, supra; Poyner v. State, 40 Id., 640, 51 S. W. R., 376.

Consent. Incest is incest with or without consent of the female. Mercer v. State, 17 T. Cr. R., 452; Schoenfeldt v. State, 30 Id., 695, 18 S. W. R., 640.

The state may dismiss the prosecution against the defendant's paramour who turns state's evidence, and it was not improper for the court to make the suggestion. Stanford v. State, 42 T. Cr. R., 343, 60 S. W. R., 253.

Relationship by affinity ceases with the dissolution of the marriage creating it. Copulation, therefore, between the accused and his step-daughter after the decease of the latter's mother, is not incest. Johnson v. State, 20 T. Cr. R., 609; Stanford v. State, 42 Id., 343, 60 S. W. R., 253.

CHAPTER THREE.

OF ADULTERY AND FORNICATION.

	Article		Article
"Adultery" defined	490	Punishment for adultery	493
Proof of marriage	491	"Fornication" defined	494
Both parties guilty	492	Punishment for fornication	495

Article 490. [353] **"Adultery" defined.**—"Adultery" is the living together and carnal intercourse with each other, or habitual carnal intercourse with each other without living together, of a man and woman when either is lawfully married to some other person.

Construed. To constitute adultery there must be some sort of living together or cohabitation; adulterous acts of casual recurrence will not suffice. Swancoat v. State, 4 T. Cr. R., 105; Parks v. State, Id., 134; Richardson v. State, —.

If the parties live together a single act will suffice. Bird v. State, 27 T. Cr. R., 635, 11 S. W. R., 641.

Repeated acts at different appointed places may constitute the offense. Swancoat v. State, supra.

Bigamy and adultery are separate and distinct offenses. Swancoat v. State, supra.

See this case for construction of phrases "living in adultery" and "live together in state of cohabitation." Parks v. State, 4 T. Cr. R., 134.

Common law marriage of slaves was validated by the Constitution of 1869. McKnight v. State, 6 T. Cr. R., 158.

Common law marriage will support a prosecution for adultery. Holder v. State, 35 T. Cr. R., 19, 29 S. W. R., 793; Webb v. State, 24 Id., 164, 5 S. W. R., 651.

Essentials: 1. The living together and carnal intercourse with each other. 2. Habitual carnal intercourse without living together. Edwards v. State, 10 T. Cr. R., 25; Mitten v. State, 24 Id., 346, 6 S. W. R., 196; Bird v. State, 27 Id., 635, 11 S. W. R., 641.

Circumstances which would justify the husband in slaying the paramour for adultery with his wife. Price v. State, 18 T. Cr. R., 474.

"Living together" means that the parties "dwell or reside together—abide together in the same habitation as a common or joint residing place." Bird v. State, supra.

Continued copulation after the parties discover that their supposed legal marriage was illegal and void, is adultery. Swancoat v. State, 4 T. Cr. R., 105; Hildreth v. State, 19 Id., 195.

Carnal intercourse with a female under the age of consent not adultery but rape. Donley v. State, 44 T. Cr. R., 428, 71 S. W. R., 958.

Jurisdiction. Proceedings held regular and proper in the transfer of an information from the district to the county court. Hildreth v. State, 19 T. Cr. R., 195.

Proceedings of transfer of indictment held erroneous, and that plea to jurisdiction should have been sustained. Mitten v. State, 24 T. Cr. R., 346, 6 S. W. R., 196.

The order transferring an indictment or information need not state the name or nature of the offense. Roller v. State, 43 T. Cr. R., 433, 66 S. W. R., 777.

Indictment must allege that one of the parties, at the time of the carnal act, was married to some other party than the particeps criminis. Tucker v. State, 35 T., 113; Clay v. State, 3 T. Cr. R., 499; Hildreth v. State, 19 Id., 196.

It is not now necessary that the name of the person to whom one of the parties is married shall be alleged, or if alleged, proved. Collum v. State, 10 T. Cr. R., 708.

Need not aver that accused knew, at the time, that his paramour was a married woman. Fox v. State, 3 S. W. R., 329.

Sufficient in describing the parties as "a male" and "a female." Holland v. State, 14 T. Cr. R., 182.

Indictment for adultery will support a conviction for fornication, but one for fornication will not support a conviction for adultery. Kelley v. State, 32 T. Cr. R., 579, 25 S. W. R., 425. But contra, see Pena v. State, 46 Id., 458, 80 S. W. R., 1014.

Allegation held sufficient to charge that the parties were not married to each other. Lee v. State, 47 T. Cr. R., 464, 83 S. W. R., 1107.

May charge adultery in one count and fornication in another. Garland v. State, 51 T. Cr. R., 643, 104 S. W. R., 898; Cosgrove v. State, 37 Id., 249, 39 S. W. R., 367.

Art. 491. [354] **Proof of marriage.**—The proof of marriage in such cases may be made by the production of the original marriage license and return thereon, or a certified copy thereof, or by the testimony of any person who was present at such marriage, or who has known the husband and wife to live together as married persons.

Art. 492. [355] **Both parties guilty.**—When the offense of adultery has been committed, both parties are guilty, although only one of them may be married.

Marriage of the parties subsequent to the adulterous acts does not condone the offense. Fox v. State, 3 T. Cr. R., 329.

Acquittal or conviction of one of the parties does not bar the prosecution of the other. Alonzo v. State, 15 T. Cr. R., 378; Ledbetter v. State, 21 Id., 344, 17 S. W. R., 427.

Art. 493. [356] **Punishment for adultery.**—Every person guilty of adultery shall be punished by fine not less than one hundred nor more than one thousand dollars. [Act Feb. 12, 1858, p. 165; P. C. 392.]

Art. 494. [357] **"Fornication" defined.**—"Fornication" is the living together and carnal intercourse with each other, or habitual carnal intercourse with each other without living together, of a man and woman, both being unmarried.

Construed. Fornication is committed only when both parties to the carnal intercourse are unmarried. Wells v. State, 9 T. Cr. R., 160.

And in but two modes: 1. By living together and carnal intercourse with each other. 2. By habitual carnal intercourse with each other without living together. Thomas v. State, 28 T. Cr. R., 300, 12 S. W. R., 1098.

"Living together" means that the parties dwell or reside together in the same habitation as a common or joint residing place, approving Mitten's case, 24 T. Cr. R., 346, 6 S. W. R., 196, and Bird's case, 27 Id., 365, 11 S. W. R., 641.

Indictment as a whole, and not in each separate count, is required to conclude "against the peace and dignity of the state." Stebbins v. State, 31 T. Cr. R., 294, 20 S. W. R., 552.

Alleging that neither of the parties was "married to another person then living" sufficient to allege both parties unmarried. Stebbins v. State, supra.

State is not required to elect between counts in a misdemeanor case. Stebbins v. State, supra.

Should follow the statutory definition, and not sufficient to merely charge habitual carnal intercourse. Cannedy v. State, 125 S. W. R., 31.

Evidence for the state must show affirmatively that both parties to the carnal acts were unmarried. Wells v. State, 9 T. Cr. R., 160.

As a general rule the reputation of the female as a prostitute cannot be proved, but in view of the confession of both parties, the indictment and trial being joint, the error in this instance was immaterial. Perigo v. State, 25 T. Cr. R., 533, 8 S. W. R., 660.

Proof, on a trial for adultery, which, in connection with proof of marriage of one of the parties, would sustain conviction, would sustain conviction for fornication when marriage was not proved. Kelley v. State, 32 T. Cr. R., 579, 25 S. W. R., 425.

Proper to exclude defensive proof that others than defendant had carnal intercourse with the female. Rodes v. State, 38 T. Cr. R., 328, 42 S. W. R., 990.

Competent for state to prove defendant's efforts to get the female particeps criminis committed to the poor farm. Boatright v. State, 42 T. Cr. R., 442, 60 S. W. R., 760.

Evidence as to the previous chastity of the woman inadmissible. Id.

The particeps criminis as a witness may be impeached by a letter of her's to defendant contradictory of her testimony. Id.

A witness cannot be impeached as to matter wholly immaterial. Id.

Art. 495. [358] **Punishment for fornication.**—Every person guilty of fornication shall be punished by fine not less than fifty nor more than five hundred dollars.

CHAPTER FOUR.

BAWDY AND DISORDERLY HOUSES.

	Article
"Bawdy house" and "disorderly house" defined	496
"Assignation house" defined	497
Alluring females to visit same	498
Includes any room, etc	499
Punishment for keeping	500
Owner, lessee or agent controlling premises	501
Further defined	502
Keeping same may be enjoined	503
Who may be made party defendant	504
Duty of attorney general, district and county attorneys	505
Officers, their duties	506

Article 496. [359] **"Bawdy house" and "disorderly house" defined.**—A "bawdy house" is one kept for prostitution or where prostitutes are permitted to resort or reside for the purpose of plying their vocation. A "disorderly house" is any assignation house or any theater, playhouse or house where spirituous, vinous or malt liquors are kept for sale, and prostitutes, lewd women or women of bad reputation for chastity are employed, kept in service or permitted to display or conduct themselves in a lewd, lascivious or indecent manner, or to which persons resort for the purpose of smoking or in any manner using opium, or any house in which spirituous, vinous or malt liquors are sold or kept for sale, without first having obtained a license under the laws of this state to retail such liquors; or any house located in any county, justice precinct or other subdivision of a county where the sale of intoxicating liquor has been prohibited under the laws of this state, in which such non-intoxicating malt liquor is sold or kept for the purpose of sale, as requires the seller thereof to obtain internal revenue license under the laws of the United States as a retail malt liquor dealer; or any house located in any county, justice precinct or other subdivision of a county in which the sale of intoxicating liquor has

been legally prohibited, where the owner, proprietor or lessee thereof has posted license issued by the United States of America, authorizing such owner, proprietor or lessee thereof to pursue the occupation and business of a retail liquor dealer, or a retail malt liquor dealer. [Amended by Act April 4, 1889, p. 33; amended, Act 1907, p. 246; S. S. 1910, p. 32.]

Construed. This article is violated if a prostitute is knowingly employed, or is permitted, after employment, to conduct herself in an indecent manner. Johnson v. State, 32 T. Cr. R., 504, 24 S. W. R., 411.

In making a case under this article, all that is required of the state, as to the character of the woman, is to show such facts as would put a reasonable man on notice. Id.

Indictment under this article is not invalid because it failed to charge that the liquors kept for sale were "intoxicating." Tacchiri v. State, 126 S. W. R., 1139.

Art. 497. **"Assignation house" defined.**—An "assignation house" is a house, room or place where men and women meet by mutual appointment, or by appointment made by another, for the purpose of sexual intercourse, whether at such place vinous, spirituous or malt liquors are kept for sale or are used or not. [Act 1907, p. 246; S. S. 1910, p. 32.]

Art. 498. **Alluring females to visit same.**—It shall be unlawful for any person to invite, solicit, procure, allure or use any means for the purpose of alluring or procuring any female to visit and be at any particular house, room or place for the purpose of meeting and having unlawful sexual intercourse with any male person, or to take part, or in any way participate in any immoral conduct with men or women, or to use at such place any intoxicating liquors, or to give to any person the name and address, or either, or photograph of any female for the purpose of enabling the person to whom such name, address or photograph of such female is given and furnished, to meet and have unlawful sexual intercourse, or to bring about or procure such unlawful sexual intercourse with such female by any other person. Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than fifty nor more than two hundred dollars, and, in addition thereto, shall be confined in the county jail not less than one nor more than six months. [Act 1907, p. 246.]

Constitutional law. The punishment assessed in this and in Art. 500, refers to different and distinct, though somewhat allied offenses, and there is no such conflict in the punishment prescribed in said articles as will void the Act of the 30th Legislature, page 246. Wilson v. State, 55 T. Cr. R., 176, 115 S. W. R., 837.

Art. 499. [360] **Includes any room, etc.**—Any room or part of a building or other place appropriated or used for either of the purposes above enumerated is a disorderly house within the meaning of this chapter.

Construed. Not necessary that the place kept for prostitution shall be a "house." He is the keeper of a disorderly house who travels the country with women hired as prostitutes who ply their vocation in his hack or wagon, and share with him the proceeds of their prostitution. Tracey v. State, 42 T. Cr. R., 494, 61 S. W. R., 127.

Art. 500. [361] **Punishment for keeping, or owner of the house having information that his house is being kept or used, etc.**—Any person who shall, directly or as agent for another, or through any agent, keep or be concerned in keeping, or aid or assist or abet in keeping, a bawdy house or a disorderly house, in any house, building, edifice or tenement, or shall knowingly permit the keeping of a bawdy house or a disorderly house in any house, building, edifice or tenement owned, leased, occupied or controlled by him, directly as agent for another, or through any agent, shall be deemed guilty of keeping, or being concerned in keeping, or knowingly permitted to be kept, as the case may be, a bawdy house or a disorderly house, as the case may be, and, on conviction, shall be punished by a fine of two hundred dollars, and by confinement

in the county jail for twenty days for each day he shall keep, be concerned in keeping or knowingly permit to be kept, such bawdy or disorderly house. [Amended by Act April 4, 1889, p. 33; amended 1907, p. 246.]

Constitutional law. The Act of the 30th Legislature, page 246, with reference to disorderly houses, is constitutional. Joliff v. State, 53 T. Cr. R., 61, 109 S. W. R., 176.

Construed. Amendment to a statute cannot be invoked in the prosecution of an offense committed prior to the time the amendment went into effect. Johnson v. State, 28 T. Cr. R., 562, 13 S. W. R., 1005.

A disorderly house is one kept for the purpose of public prostitution or as a common resort for prostitutes, etc. It is not a disorderly house merely because it is resorted to by prostitutes as well as good citizens. McElhaney v. State, 12 T. Cr. R., 231; Harmes v. State, 26 Id., 190, 9 S. W. R., 487.

Keeping a disorderly house is a continuous offense, and a conviction bars prosecution for operation up to the date of the conviction, unless, as in this case, the indictment "carves out" the times of commissions and the evidence is confined to the times carved. In such instances a conviction is no bar to times not carved. Huffman v. State, 23 T. Cr. R., —, 5 S. W. R., 134. And see in extenso on the question, Fleming v. State, 28 T. Cr. R., 234, 12 S. W. R., 605.

Since its amendment, 1889, this article applies only to the owner, lessee or tenant as the keeper of the house. Lamar v. State, 30 T. Cr. R., 693, 18 S. W. R., 788; Mitchell v. State, 34 Id., 311, 30 S. W. R., 810; Cook v. State, 42 Id., 539, 61 S. W. R., 307.

Authority granted a city council by the city charter, to be legal and valid, must be exercised in harmony with the criminal laws of this state. Ex parte Bell, 32 T. Cr. R., 308, 22 S. W. R., 1040.

A variety show or theater is not, eo nomine, illegal, and to be brought within the category of disorderly houses it must be brought within the purview of articles 496 and 502 of this Code, declaring the elements that would constitute it such. Ex parte Bell, supra.

A municipal ordinance transcending the power conferred by the charter, and containing none of the elements of the offense sought to be denounced, is invalid. See this case in illustration. Ex parte Bell, supra.

A tenant who keeps the house as a disorderly house is guilty. Golden v. State, 34 T. Cr. R., 143, 29 S. W. R., 779.

Immaterial that the house kept as a disorderly house was the separate property of accused's wife; the law placing him in control of his wife's property, he was liable. Willis v. State, 34 T. Cr. R., 148, 29 S. W. R., 787.

A disorderly house can be kept though inhabited by but one prostitute, but the proof must show the constituent elements of the offense. Ramsey v. State, 39 T. Cr. R., 200, 45 S. W. R., 489.

A naked trespasser in temporary occupation of the premises with others and a prostitute with whom they had carnal intercourse, is neither owner, lessee nor tenant. Bates v. State, 45 T. Cr. R., 420, 76 S. W. R., 462.

A state's witness who rented a room in the house from the actual manager and controller of the house is not an accomplice. Stone v. State, 47 T. Cr. R., 575, 85 S. W. R., 808.

Jurisdiction. Under the amendment of 1889, the justice of the peace had jurisdiction of cases arising under this article, the penalty being fine of $200. Davis v. State, 32 T. Cr. R., 382, 23 S. W. R., 892. But note that the amendment of 1907 appends a jail sentence.

If the order of the district court transferring certain causes embraces the one at bar, it is sufficient to give jurisdiction to the court below. Forbes v. State, 35 T. Cr. R., 24, 29 S. W. R., 784.

Not required that the transcript transferring the case from the district to the county court shall show the offense in the return of the indictment, or describe the offense at all. Howard v. State, 44 T. Cr. R., 39, 68 S. W. R., 274.

Former acquittal on trial for vagrancy not available as plea in bar of prosecution for keeping a disorderly house. Wilson v. State, 16 T. Cr. R., 497.

Indictment. Ownership of the house was alleged in defendant and proof showed him to have the management and control for the owner. Held, that ownership was

properly alleged—distinguishing Mitchell's case, 34 T. Cr. R., 311, 30 S. W. R., 810. Flynn v. State, 35 Id., 220, 32 S. W. R., 1041.

Further on indictments, see Springer v. State, 16 T. Cr. R., 591; Lamar v. State, 30 Id., 693, 18 S. W. R., 788; Hall v. State, 32 Id., 474, 24 S. W. R., 407; Willis v. State, 34 Id., 148, 29 S. W. R., 787; Young v. State, 55 Id., 383, 116 S. W. R., 1158.

Evidence. On questions of evidence see Allen v. State, 15 T. Cr. R., 320; Burtin v. State, 16 Id., 156; Stone v. State, 22 Id., 185, 2 S. W. R., 585; Sara v. State, Id., 639; Golden v. State, 34 Id., 143, 29 S. W. R., 779; Gamel v. State, 21 Id., 357, 17 S. W. R., 158; Hall v. State, 32 Id., 474, 24 S. W. R., 407; Harkey v. State, 33 Id., 100, 25 S. W. R., 291; Forbes v. State, 35 Id., 24, 29 S. W. R., 784; Ramey v. State, 39 Id., 200, 45 S. W. R., 489; Frazier v. State, 47 Id., 24, 81 S. W. R., 532; Young v. State, 55 Id., 383, 116 S. W. R., 1158.

Charge of the court. On charges of the court see Stone v. State, 22 T. Cr. R., 185, 2 S. W. R., 585; Harkey v. State, 33 Id., 100, 25 S. W. R., 291; Willis v. State, 34 Id., 148, 29 S. W. R., 787; Mitchell v. State, 34 Id., 311, 30 S. W. R., 810; Marx v. State, 44 Id., 506, 72 S. W. R., 590; Young v. State, 55 Id., 383, 116 S. W. R., 1158.

Art. 501. **Owner, lessee or agent controlling premises.**—Any owner, lessee, or the agent of either, controlling the premises, having information that the premises are being kept, used or occupied as a bawdy or disorderly house, shall be held guilty of knowingly permitting the premises to be kept as a bawdy or disorderly house, as the case may be, unless he shall immediately proceed to prevent the keeping, using or occupying of such house, building, edifice or tenement for such purpose by giving such information to the county or district attorney, against the person or persons violating the provisions of this act, or take such other action as may reasonably accomplish such result. [Id. p. 246.]

Art. 502. [362] **"Disorderly house" further defined.**—Any person who shall directly, as agent for another, or through an agent, knowingly employ or have in his service in any capacity in any theater, playhouse, dance house, or house where spirituous or malt liquors are kept for sale, any prostitute, lewd woman or women of bad reputation for chastity, or permit any such woman to display or conduct herself therein in an indecent manner, shall be guilty of keeping a disorderly house, and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, and by confinement in the county jail for twenty days for each day that such person is kept in service or employed or permitted to display or conduct herself as hereinbefore provided. [Act April 4, 1889, p. 33; amended 1907, p. 246.]

See notes under Art. 500.

Art. 503. [362a] **Keeping same may be enjoined.**—The habitual, actual, threatened or contemplated use of any premises, place, building or part thereof, for the purpose of keeping, being intersted in, aiding or abetting the keeping of a bawdy or disorderly house, shall be enjoined at the suit of either the state or any citizen thereof. [Id., p. 246.]

Art. 504. **Who may be made parties defendant.**—Any person who may use, or who may be about to use, or who may aid or abet any other person in the use of any premises, place or building, or part thereof, may be made a party defendant in such suit; provided, that the provisions of this article and article 505 shall not apply to, nor be so construed as to interfere with the control and regulation of bawds and bawdy houses by ordinances of incorporated towns and cities acting under special charters and where the same are actually confined by ordinance of such city within a designated district of such city. [Id., p. 246.]

Art. 505. **Duty of attorney general, district or county attorney.**—The attorney general and the several district and county attorneys shall institute and prosecute all suits that said attorney general, or such district or county attorney, may deem necessary to enjoin such use; provided, that such suit may be brought and prosecuted by any one of such officers; and provided, further, that nothing in the above proviso contained shall prevent such injunction

from issuing at the suit of any citizen of this state, who may sue in his own name; and such citizen shall not be required to show that he is personally injured by the acts complained of; and the procedure in all cases brought hereunder shall be the same as in other suits for injunction, as near as may be; provided, that when the suit is brought in the name of the state by any of the officers aforesaid, the petition for injunction need not be verified. [Id., p. 246.]

Construed. This article is not rendered invalid because it authorizes suit to restrain by any citizen without a showing that he is personally injured by the acts complained of. Ex parte Morgan, 57 T. Cr. R., 551, 124 S. W. R., 99.

Art. 506. [363] **Sheriffs and other officers, district judges and grand juries, their duties in the premises.**—Sheriffs and their deputies, constables and their deputies, mayors, marshals, chiefs of police, their deputies and assistants, and policemen of towns and cities are especially charged diligently to discover and report to the proper legal authorities, and by all lawful means to aid in the enforcement of the law for all violations of the articles of this chapter; the district judges are required to give them specially in charge to the grand juries, and grand juries are required at every term of the district court of their county to call before them each and all officers charged with the enforcement of the articles of this chapter and examine them under oath touching their knowledge and information of violations thereof, and as to their diligence in their enforcement. [Act April 4, 1889, p. 33.]

CHAPTER FIVE.

MISCELLANEOUS OFFENSES.

	Article		Article
"Sodomy" defined and punished	507	Interference with dead bodies	511
Indecent publications and exposures	508	College, physician or surgeon receiving dead bodies	512
Disseminating scandals and lechery	509	Punishment for	513
Desecration of graves	510		

Article 507. [364] **"Sodomy" defined and punished.**—If any person shall commit with mankind or beast the abominable and detestable crime against nature, he shall be deemed guilty of sodomy, and, on conviction thereof, he shall be punished by confinement in the penitentiary for not less than five nor more than fifteen years. [Act Feb. 11, 1860, p. 97.]

Construed. Sodomy is now an offense eo nomine and is punishable under the law. Ex parte Bergen, 14 T. Cr. R., 52; Cross v. State, 17 Id., 476.

For a carnal act held to be, and another held not to be, sodomy, see Lewis v. State, 36 T. Cr. R., 37, 35 S. W. R., 372, and Prindle v. State, 31 Id., 551, 21 S. W. R., 360. And see also Mitchell v. State, 49 Id., 535, 95 S. W. R., 500.

Indictment for this offense which charges in the language of the statute is not sufficient. The acts must be directly averred. Campbell v. State, 29 T., 44.

Immaterial whether the copartner in the offense was a man or woman an indictment alleging a name applicable to either suffices. Adams v. State, 48 T. Cr. R., 90, 86 S. W. R., 334.

Evidence. Carnal knowledge, such as is essential to rape, must be proved. Cross v. State, 17 T. Cr. R., 476.

Art. 508. [365] **Indecent publications and exposures.**—If any person shall make, publish or print any indecent and obscene print, picture or written

composition, manifestly designed to corrupt the morals of youth, or shall designedly make any obscene and indecent exhibition of his own or the person of another, in public, he shall be fined not exceeding one hundred dollars.

Construed. A female under the age of 21 years is not "a youth" within the meaning of this article, and it is no offense to exhibit an alleged indecent publication to her. Edwards v. State, 47 T. Cr. R., 611, 85 S. W. R., 797.

And note the writing held not to be "manifestly designed to corrupt youth." Id.

It is to the persons who may witness the act rather than the locality that the publicity contemplated by the statute has reference. Moffitt v. State, 43 T., 346.

The pinning of an obscene placard to the back of the coat worn by another at a public assembly does not support the allegation of indecent exposure of the person of another. Tucker v. State, 28 T. Cr. R., 541, 13 S. W. R., 1004.

The "person" refers to those parts of the human body that cannot be appropriately shown in public. Id.

Indictment. See Abendroth v. State, 34 T. Cr. R., 325, 30 S. W. R., 787; State v. Hanson, 23 T., 232; Moffitt v. State, 43 Id., 346; State v. Griffin, Id., 538.

Art. 509. **Disseminating scandals and lechery.**—Every person or persons who shall, within this state, engage in the business of editing, publishing or disseminating any newspaper, pamphlet, magazine, or any printed paper, devoted mainly to the publication of scandals, whoring, lechery, assignations, intrigues between men and women, and immoral conduct of persons; or any person or persons who shall knowingly have in his or her possession for sale, or shall keep for sale, or distribute, or in any way assist in the sale, or shall gratuitously distribute, or give away, any such newspaper, pamphlet, magazine, or printed paper, in this state, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by imprisonment in the penitentiary for a term of not less than two nor more than five years. [Act 1897, p. 160.]

Art. 510. [366] **Desecration of grave.**—If any person shall wrongfully destroy, mutilate, deface, injure or remove any tomb, monument, gravestone or other structure in any place used or intended for the burial of the dead, or any fence, railing or curb for the protection of such structure, or any inclosure for any such place of burial, or shall wrongfully injure, cut, remove or destroy any tree or shrub growing within any such inclosure, he shall be punished by imprisonment in jail not exceeding six months, or by fine not exceeding five hundred dollars. [Act Feb. 12, 1858, p. 166.]

Desecration of graveyard by cutting a shrub growing therein must be "wrongfully" done to constitute an offense, and the charge of the court is insufficient if it fails to so instruct. Bird v. State, 46 T. Cr. R., 135, 79 S. W. R., 25.

The charge must define the phrase "inclosure of a graveyard," and to the effect that it must be a place for the burial of the dead, and be entirely enclosed. Id.

Evidence raising the questions of intent and good faith, the charge of the court should have submitted them to the jury. Id.

Interfering with dead bodies. An indictment under this article which omits to allege the name by which the dead body was known in life, or allege sufficient reasons for such failure, is fatally defective. Leach v. State, 44 T. Cr. R., 523, 72 S. W. R., 600; Harris v. State, 72 S. W. R., 1134.

Art. 511. [367] **Interference with dead bodies.**—If any person not authorized by law, or by a relative or friend, for the purpose of reinterment, shall disinter, remove or carry away any human body, or the remains thereof, or shall conceal the same, knowing it to be so illegally disinterred, he shall be punished by fine not exceeding two thousand dollars.

Art. 512. **College, physician or surgeon receiving dead bodies.**—No school, college, physician or surgeon shall be allowed or permitted to receive any such body or bodies until bond shall have been given to the state by such physician or surgeon, or by or in behalf of such school or college, to be approved by the clerk of the county court in and for the county in which such physician

or surgeon may reside, or in which such school or college may be situated, and to be filed in the office of said clerk, which bond shall be in the penal sum of one thousand dollars, conditioned that all such bodies which the said physician or surgeon or said college shall receive thereafter shall be used; and all such experiments on the lower animals shall be conducted only for the promotion of medical science; and whosoever shall sell or buy such body or bodies, or in any way traffic in the same, or shall transmit or convey, or cause or procure to be transmitted or conveyed, said bodies to any place outside the state, shall be guilty of a misdemeanor, and shall, on conviction, be liable to a fine not exceeding two hundred dollars for each offense, or to be imprisoned for a term not exceeding two years in the county jail. [Act 1907, p. 119.]

Art. 513. **Punishment for.**—Any person having duties imposed upon him by the provisions of this law who shall refuse, neglect or omit to perform said duties, or any of them, as required by said law, shall, on conviction thereof, be liable to a fine of not less than one hundred dollars nor more than five hundred dollars for each offense. [Id., p. 119.]

TITLE 11.

OFFENSES AGAINST PUBLIC POLICY AND ECONOMY.

Chapter.
1. Illegal Banking, Passing Spurious Money, and Bank Guaranty.
2. Of Lotteries and Raffles.
3. Bucket Shops—Defining and Prohibiting Same.
4. Gaming.
5. Neglect of Officers to Arrest or Prosecute in Gaming Cases.
6. Betting on Elections.
7. Unlawfully Selling Intoxicating Liquor.
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CHAPTER ONE.

ILLEGAL BANKING, PASSING SPURIOUS MONEY, AND BANK GUARANTY.

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Article 514. [368] **Issuing bills to pass as money.**—If any person within this state shall issue any bill, promissory note, check or other paper intended to circulate as money, he shall be fined not less than ten dollars nor more than fifty dollars for each bill, promissory note, check or other paper so issued.

Art. 515. [369] **Includes corporations.**—Any officer of any banking company or body corporate, who signs his own name, or that of another, by the authority of such other, to any bank bill, promissory note, check or other paper, being evidence of a promise to pay, and intended to circulate as money, is guilty of the offense punishable by the preceding article.

Art. 516. [370] **Also indorsement of foreign bills.**—Any person who may bring into this state any bank bill, purporting to be issued by any bank in any other state or territory of the Union, or in any foreign country, and shall sign or indorse the same to be circulated as money in this state, shall be deemed guilty of the offense mentioned in article 514.

Art. 517. [371] **Passing paper of broken bank.**—If any person shall fraudulently pass or transfer, or offer to pass or transfer, any paper purporting to be bank paper, and to be issued by any bank, which, having once existed, has since broken, or the money of the same becomes valueless, he shall be punished by confinement in the penitentiary not less than two nor more than five years.

Art. 518. [372] **Not applicable to United States banks.**—The provisions of this chapter shall not apply to any bank incorporated under the laws of the United States, nor to bills issued by such bank. [Act Feb. 12, 1858, p. 166.]

Art. 519. **Misappropriating funds of savings banks.**—It shall be unlawful for any director or officer of any bank or banking and trust company, which shall establish or maintain, or continue to maintain, a savings department, or which shall use the word "savings," as provided in this article, to knowingly misappropriate any moneys or funds belonging to such savings department, or to use or consent to the use of any such moneys or funds otherwise than for the payment of lawful demands of savings depositors, and in the making of such investments as are prescribed by law, and in the payment of such dividends to the shareholders as are allowed by the law to be paid therefrom, or to borrow any of the funds belonging to such savings department, or to in any way be an obligor for moneys loaned by or borrowed of such savings department, or to receive or accept, directly or indirectly, any commission, brokerage or other valuable thing or favor of any kind by reason or on account of any loan or investment made out of the funds of such savings department, or to sell such savings department any security or other investment, or wilfully and knowingly do, or perform, any act or transaction by or as a result of which at any time the assets of such savings department, including cash, shall not at least equal in amount the deposits in such savings department, at least fifteen per cent of which shall be actual cash in such savings department. [Act 1909, p. 406.]

Art. 520. **Penalty for.**—Any officer or director of any state bank or banking and trust company, who shall knowingly violate the provisions of this article, shall be deemed guilty of a felony, and shall, upon conviction, be punished by imprisonment in the state penitentiary for a term of not less than one nor more than five years. [Id., p. 406.]

Art. 521. **State banks, authority to do business.**—All state banks transacting business in this state shall be required, on or after the first day of January, 1910, to hold a certificate of authority to transact a banking business, issued by the commissioner in compliance with the provisions of this law, and to keep the same conspicuously posted at all times in the banking house where such business is transacted. It shall be the duty of the commissioner of insurance and banking to issue to each state bank, which the state banking board shall have approved and certified to him as provided by law as being entitled to transact a banking business, a certificate of authority in such form as the state banking board shall approve, to be signed by him under his official seal, certifying that such state bank is authorized under the laws of this state to engage in the banking business. Such certificate of authority, when issued to guaranty fund banks, shall contain the following statement on the face thereof in bold type: "The non-interest bearing and unsecured deposits of this bank are protected by the state bank guaranty fund." And, when issued to bond security banks, shall contain the following statement on the face thereof in bold type: "All deposits of this bank are protected by security bond under the laws of the state of Texas." And, when issued to the state banks other than guaranty fund banks and bond security banks, it shall contain neither of these nor any similar statement. The commissioner of insurance and banking shall close all state banks which the state banking board shall disapprove and determine not entitled under the laws of this state to transact a banking business, and shall proceed in such cases in the manner provided by law with respect to insolvent banks, unless such banks shall go into voluntary liquidation; provided, that hereafter the secretary of state shall, on issuance of any charter to any bank or banking and trust company, deliver the same to the commissioner of insurance and banking, who shall deliver such charter to such corporation, together with the certificate herein provided for, upon such corporation showing to the satisfaction of the state banking board that it has complied with the state banking laws. Any person or persons who shall in any capacity transact, or hold themselves out as transacting,

the business of banking for or on behalf of any state bank or state banking and trust company, after the first day of January, 1910, without such bank or banking and trust company shall hold a certificate of authority, as herein provided for, except in cases where such certificates shall not yet have been issued to newly incorporated banks as herein provided for, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished for each offense, each day being considered as a separate offense, by a fine of not less than one hundred dollars and not exceeding one thousand dollars, or by imprisonment in the county jail for not less than one nor more than twelve months, or by both such fine and imprisonment. [Id., p. 406.]

Art. 522. **Non-interest bearing and unsecured deposits protected.**—All guaranty fund banks provided for by law are hereby authorized and empowered, if they desire so to do, to publish, by any form of advertising which they may adopt, or upon their stationery, the following words: "The non-interest bearing and unsecured deposits of this bank are protected by the depositors guaranty fund of the state of Texas." All bond guaranty banks provided for by law are hereby authorized and empowered, if they desire so to do, to publish, by any form of advertising which they may adopt, or upon their stationery, the following words: "The deposits of this bank are protected by guaranty bond under the laws of this state." Said banks are authorized to use the terms "guaranty fund bank," or "guaranty bond bank," as the case may be, but they are hereby prohibited from describing said forms of guaranty by any other terms or words than herein named. Any guaranty fund bank or bond security bank or any officer, director, stockholder, or other person, for any such bank who shall write, print, publish, or advertise in any manner or by any means, or permit any one for them, or for said bank, to write, print, publish or advertise any statement that the deposits of any such bank are secured otherwise than as permitted in this article, or who shall make or publish any advertisement or statement to the effect that the state of Texas guarantees or secures the deposits in any such bank or banking and trust company, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than one hundred dollars nor more than five hundred dollars, or confined in the county jail for not less than three months nor more than twelve months, or by both such fine and imprisonment. Any person who shall write, print, publish or advertise the above statement, authorized to be used by bond security banks or guaranty fund banks, other than as herein authorized, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than one hundred dollars nor more than five hundred dollars, or confined in the county jail for not less than three months nor more than twelve months, or by both such fine and imprisonment. [Id., p. 406.]

Art. 523. **Embezzling or misapplying funds.**—Every president, cashier, director, teller, clerk or agent of any state bank, or banking and trust company, incorporated under the laws of Texas, who embezzles, abstracts or wilfully misapplies any of the moneys, funds or credits of such state bank, or who, without authority from the directors, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment or decree, or who makes any false entry in any book, report or statement of such state bank, with intent in either case to defraud such state bank, or any other corporation, body politic or any individual, person, firm or association, or to deceive any officer of such state bank, the commissioner of insurance and banking, or any examiner or special agent, authorized by law to examine the affairs of any such state bank, and every person who, with like intent, aids or abets any officer, clerk or agent in any violation of this article, shall be deemed guilty of a felony, and shall, upon conviction, be imprisoned in the state penitentiary for a term of not less than five years nor more than ten years. [Id., p. 406.]

Art. 524. **Director borrowing funds.**—Any director of a state bank or banking and trust company, incorporated under the laws of this state, who shall, either directly or indirectly, borrow any of the funds of such bank in excess of ten per cent of its capital and surplus, without the consent of a majority of the directors of the bank first having been obtained and made a matter of record at a regular meeting of the board, or without the written consent of such majority of the directors, other than the borrowers, being jointly executed by them and filed in the archives of such bank before the loan is made; and any officer of a state bank who shall knowingly become indebted to such bank, directly or indirectly, in any sum whatever, without the consent of a majority of the board, other than the borrower, obtained or recorded or filed in like manner, and any officer or director of such bank who shall knowingly loan or assent to the loaning of any of its funds to any officer, or any of its funds to any director in excess of ten per cent of its capital and surplus, without such consent being first obtained and recorded or filed, or who shall knowingly permit any such officer or director to become indebted to the bank or liable to it without such consent, shall be deemed guilty of a felony, and shall be punished by imprisonment in the state penitentiary for a term of not less than two years, upon conviction thereof. [Id., p. 406.]

Art. 525. **Officer or director, failure of duty.**—Any officer, director or employe of any state bank or trust company, who knowingly or wilfully fails or refuses to perfom any duty imposed upon him by law, or who shall do or perform or assist in doing or performing any act or transaction prohibited by the provisions of this law, for the punishment of which provision is not otherwise herein made, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than five hundred nor more than one thousand dollars, or by imprisonment in the county jail for a term of not less than thirty days nor more than ninety days, or by both such fine and imprisonment. [Id., p. 406.]

Art. 526. **Commissioner of insurance, etc., not to be interested in.**—Neither the commissioner of insurance and banking, nor any regularly appointed clerks or employes of the department of insurance and banking, nor any state bank examiner, shall, at any time during his incumbency, be financially interested, directly or indirectly, in any state bank or banking and trust company, subject to the supervision of the department of insurance and banking, or knowingly be or become indebted, either directly or indirectly, to any such state bank or banking and trust company. [Id., p. 406.]

Art. 527. **Penalty for.**—Any officer or employe, named in the foregoing article, violating its provisions shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding five hundred dollars; and the venue in such case shall be in the county wherein such state bank or banking and trust company is located. The violation of the provisions of this article shall work a forfeiture of the office or position held by the person guilty of such violation. [Id., p. 406.]

Art. 528. **Certifying check without funds, penalty for.**—Any officer, clerk or agent of any state bank or banking and trust company incorporated under the laws of Texas, who shall wilfully certify to any check, or checks, before the amount thereof shall have been regularly entered to the credit of the drawer, upon the books of such state bank or banking and trust company, shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by fine of not less than five hundred nor more than five thousand dollars, or by imprisonment in the state penitentiary for not more than one year, or by both such fine and imprisonment. [Id. p. 406.]

Art 529. **Failure to notify commissioner of banking of violation of law.**—Any state bank examiner, or special agent, who shall knowingly and intentionally fail or refuse to notify the commissioner of insurance and bank-

ing in writing of any violation of the criminal provisions of this law within ten days after the same shall come to his notice or attention, unless such notice shall, within his knowledge, have been previously given by some other bank examiner or special agent, or any commissioner of insurance and banking, who shall knowingly and intentionally fail or refuse to notify in writing the county or district attorney charged by law with the duty of the prosecution thereof, of any such violation, within ten days after the same shall have come to his knowledge or attention, shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than three nor more than twelve months, or by both such fine and imprisonment, and, upon conviction, shall be removed from office. [Id., p. 406.]

Art. 530. **Examiner violating oath of office.**—For any violation of his oath of office, or of any duty imposed upon him by law, any examiner shall be deemed guilty of a felony, and, upon conviction, shall be punished by imprisonment in the penitentiary for a term not exceeding five years, and upon indictment of any such examiner for any violation of this law, he shall be disqualified from further discharging the duties of such office, until such indictment is fully disposed of. [Act 1905, p. 514.]

Art. 531. **Duty of commissioner of insurance and banking.**—It shall be the duty of the commissioner of insurance and banking, not less than twice during any one year, to call upon each bank organized under this act, and trust company or savings bank, doing business under the provisions of this law for a statement as provided by law; and he may call upon any one or more of such corporations to make such statements at any time, though it be more than a second statement within the year; and the commissioner shall give no notice to any person whatsoever of the day on which he will call for such statement. For a violation of this prohibition, or of any other duty herein imposed upon him, he shall be deemed to have committed a misdemeanor in office, and, upon conviction of the same, upon indictment or information of any parties, in the name of the state, before a competent tribunal, he shall be punished by removal from office, and by a fine of not less than five hundred dollars for each violation of this law. Should any president, cashier or secretary, or any officer of such corporation, or any director thereof, refuse to make the statement so required of him or them, or wilfully and corruptly make a statement, he or they, and each of them, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, upon information, punished by a fine for each offense not exceeding five hundred dollars and not less than one hundred dollars, or by imprisonment not less than one nor more than twelve months in the city or county jail, or by both such fine and imprisonment. [Id., p. 514.]

Art. 532. **Receiving deposits when insolvent.**—If any president, director, manager, cashier, or other officer, of any banking institution, or the owner, agent, or manager, of any private bank or banking institution, or the president, vice president, secretary, treasurer, director, or agent, of any trust company or institution, doing business in this state, shall receive or assent to the reception of any deposit of money or other valuable thing into such bank or banking institution, or trust company or institution, or if any such officer, owner, or agent, of such bank or banking institution, or if any president, vice president, secretary, treasurer, director, or agent, of such trust company or institution, shall create or assent to the creation of any debt, debts, or indebtedness, in consideration of or by reason of which indebteness any money or valuable property shall be received into such bank or banking institution, or trust company or institution, after he shall have had knowledge of the fact that such bank, banking institution, or trust company or

institution, or the owner or owners of any such private bank, is insolvent or in failing circumstances, he shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by confinement in the penitentiary for a term of not less than two nor more than ten years; provided, that the failure of any such bank or banking institution, or trust company or institution, shall be prima facie evidence of knowledge on the part of any such officer or person that the same was insolvent or in failing circumstances when the money or property was received on deposit. [Act 1897, p. 130.]

CHAPTER TWO.

OF LOTTERIES AND RAFFLES.

	Article		Article
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Selling lottery tickets	534	Permitting premises to be used for such purposes	537
Raffle for over five hundred dollars	535		

Article 533. [373] **Establishing a lottery.**—If any person shall establish a lottery or dispose of any estate, real or personal, by lottery, he shall be fined not less than one hundred nor more than one thousand dollars.

Const., Art. 3, Sec. 47.

Lottery. Any scheme for the distribution of prizes by chance is a lottery, and is no less a lottery because the scheme includes no blanks if the prizes are of unequal value. Randle v. State, 42 T., 580; Holloman v. State, 2 T. Cr. R., 610; Prendergast v. State, 41 Id., 358, 57 S. W. R., 850.

Proof under which the court properly construed a slot machine as operated, to be a lottery, and so instructed the jury. Prendergast v. State, supra.

Note distinction between lottery and raffle. Reisein v. State, 44 T. Cr. R., 413, 71 S. W. R., 974.

A knife rack is not a lottery, and in any event the imposition of a tax by the state and exaction of a license for its operation would eliminate it from the category of offenses. McRae v. State, 46 T. Cr. R., 489, 81 S. W. R., 741.

Proof that tended merely to show that defendant was present, handled tickets and operated the wheel of the device, is insufficient to show that he established the lottery. Leonard v. State, 49 T. Cr. R., 327.

A subscription scheme involving club membership and weekly dues of a stipulated sum, and final drawing from a bag of tickets for a suit of clothes, is a lottery. Grant v. State, 54 T. Cr. R., 403, 112 S. W. R., 1068.

Art. 534. [374] **Selling lottery tickets.**—If any person shall sell, offer for sale or keep for sale, any ticket or part ticket in any lottery, he shall be fined not less than ten nor more than fifty dollars.

Art. 535. [375] **Raffle for over $500; offering for sale ticket in raffle for over $500.**—If any person shall establish a raffle for, or dispose by raffle of, any estate, real or personal, exceeding five hundred dollars in value, he shall be fined not less than one hundred dollars nor more than one thousand dollars; or if any person shall establish a raffle for, or shall dispose by raffle of, any estate, real or personal, of the value of five hundred dollars, or less, he shall be fined not less than five dollars nor more than two hundred dollars. If any person shall offer for sale or keep for sale any chance, ticket or part ticket, in any raffle of real estate, real or personal, of any value whatever, he shall be fined not less than ten dollars nor more than

fifty dollars, and all laws and parts of laws in conflict with this article are hereby repealed. [Amended act 1909, p. 98.]

Construed. To constitute a violation of this article, the value of the property raffled must exceed $500; and it is immaterial whether the raffle be for religious, benevolent or profane purposes. Long v. State, 22 T. Cr. R., 194, 2 S. W. R., 541. And see Rosalis v. State, Id., 673, 3 S. W. R., 344.

Art. 536. [377] **Dealing in futures.**—If any person shall, directly or through an agent or agents, manage or superintendent for himself, or shall as agent or representative of any other person, firm or corporation, conduct, carry on or tranact any business which is commonly known as dealing in futures, in cotton, grain, lard, any kinds of meats or agricultural products, or corporation stocks, or shall keep any house, or manage, conduct, carry on or tranact any business commonly known as a produce or stock exchange, or bucket shop, where future contracts are bought and sold with no intention of an actual bona fide delivery of the article or thing so bought or sold, such person, whether acting for himself or for another, as aforesaid, shall be deemed guilty of a misdemeanor, and shall be fined in any sum not less than one hundred nor more than five hundred dollars, and, in addition thereto, shall be imprisoned in the county jail not less than thirty days nor more than six months; provided, that each day that such business or house is carried on or kept shall constitute a separate offense. [Act March 1, 1887, p. 10, § 1.]

Construed. A contract for the sale of goods to be delivered in the future, though the seller may not then have them, is valid, but such a sale, with no intention of delivering the goods and receiving the agreed price therefor, is a violation of this statute. Seeligson v. Williams, 65 T., 215; Floyd v. Patterson, 72 Id., 202, 10 S. W. R., 526; Oliphant v. Markham, 79 Id., 543, 15 S. W. R., 569.

Bona fide delivery being contemplated, the transaction was not an offense. Scales v. State, 46 T. Cr. R., 296, 81 S. W. R., 947.

To constitute this offense, the business must be carried on in this state, the sales and purchases being made in this state. An agent in this state merely receiving orders to be conveyed to parties in another state, and purchases and sales there made, does not come within the inhibition of this law. Scales v. State, supra; Salmon v. State, 56 Id., 408, 120 S. W. R., 427.

But one who in this state, controlling none of the commodity, accepts the money of purchasers, telegraphs their orders to brokers in another state, notifies them of the acceptance of the offers, then keeps them advised of the fluctuations of the market and requires them to cover margins, does come within the statute. Fullerton v. State, 75 S. W. R., 534.

Indictment under this article need not allege an actual sale. Scales v. State, 46 T. Cr. R., 296, 81 S. W. R., 947, following Fullerton v. State, 75 S. W. R., 531, and overruling Goldstein v. State, 36 T. Cr. R., 193, 36 S. W. R., 278, and Cothran v. State, Id., 196, 36 S. W. R., 273.

Art. 537. [378] **Permitting premises to be used for such business.**—Whoever knowingly permits any such business to be carried on in his building, house, booth, arbor or erection of which he is the owner, or has the possession, care, management or renting, shall be guilty of a misdemeanor, and, on conviction, fined in any sum not less than one hundred nor more than five hundred dollars. Each day he so permits shall constitute a separate offense. [Act March 1, 1887, p. 10, § 2.]

CHAPTER THREE.

BUCKET SHOPS—DEFINING AND PROHIBITING SAME.

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Article 538. **A bucket shop defined.**—A bucket shop, within the meaning of this law, is any place wherein dealing in futures is carried on contrary to any of the provisions hereof. [Act 1907, p. 172.]

Art. 539. **Futures or dealing in futures defined.**—By each of the expressions, "futures," "dealing in futures," and "future contracts," as these terms are used in this law is meant: 1. A sale or purchase, or contract to sell, or any offer to sell or purchase, any cotton, grain, meat, lard, or any stocks or bonds of any corporation, to be delivered in the future, when it was not the bona fide intention of the party being prosecuted under this chapter, at the time that such sale, contract, purchase, or offer to sell or purchase, was made, that the thing mentioned in such transaction should be delivered and paid for as specified in such transaction. 2. Any such sale, purchase, offer or contract, where it was the intention of the party being prosecuted hereunder at the time of making such contract or offer, that the same should, or, at the option of either party, might be settled by paying or receiving a margin or profit on such contract. 3. Any purchase, sale or offer of sale or purchase, or contract for future delivery of any of the things mentioned in this article on, by or through any exchange or board of trade, the rules, by-laws, customs or regulations of which permit such contract or transaction to be settled or closed by delivery or tender of any grade or grades of the thing mentioned in such contract or transaction, other than the grade upon which the price is based in said transaction, at any price other than the actual price for spot delivery of such other grade or grades, at the time and place of delivery or tender. [Id., p. 172.]

Art. 540. **Penalty for.**—If any person shall, either directly or indirectly, carry on or conduct, or be in any wise interested in carrying on or conducting, any bucket shop, he shall be punished by two years confinement in the penitentiary. [Id., p. 172.]

Art. 541. **Renting or leasing property used for.**—If any owner or person, in the management or control of any property, shall knowingly rent or lease the same to be used as a bucket shop, or shall knowingly permit the same to be used, he shall be fined not less than one hundred nor more than two thousand dollars, and may, in addition thereto, be confined in the county jail not less than one nor more than six months. [Id., p. 172.]

Art. 542. **Agent or broker making contract.**—If any person shall act or offer to act as the agent or broker of any other person in making or offering to make any future contract, he shall be fined not less than one hundred nor more than two thousand dollars, and shall be confined in the county jail not less than one nor more than six months. [Id., p. 172.]

Art. 543. **Penalty for making future contract.**—If any person shall make or offer to make for himself any future contract, he shall be fined not less than one hundred nor more than five hundred dollars, and may be confined in the county jail not less than ten nor more than thirty days; provided, it may be shown in defense of any prosecution under this law that the transaction out of which such prosecution arose was a "hedging" contract between parties in this state and a party or parties without this state; and if such contract was made in whole or in part by any message sent by tele-

graph or telephone, that such message was delivered to the telegraph or telephone company sending the same by the defendant himself, and not through or by any broker or agent, and that such company rendering such service was a common carrier, exclusively so engaged, with no direct or indirect connection with or interest in such transaciton, other than the transmission of such message and receiving the charges therefor which are not in excess of the usual rate for commission messages between the points of transmission and receipt of such message. [Id., p. 172.]

Art. 544. **Telegraph or telephone company.**—If any telegraph or telephone company, or any agent thereof, shall knowingly permit any telegraph or telephone wire or instrument to remain in any bucket shop, or shall knowingly permit any of the wires, instruments or equipments of such telegraph or telephone company, to be used by any person engaged in any business rendered unlawful by this law, whether or not the same be leased by the person or persons so illegally using the same, such company or agent shall be fined not less than one hundred nor more than one thousand dollars, and each day that this article is violated shall constitute a separate offense. [Id., p. 172.]

Art. 545. **Proof prima facie.**—In any prosecution under this law in which it shall be a material issue as to whether or not in the offer to or contract to sell or purchase for future delivery anything mentioned in this law, it was the intention of the defendant that such thing should be delivered and paid for in accordance with the terms of such offer or contract, proof by the state that such contract was for the future delivery of such thing, shall constitute a prima facie case for the state on this issue, and the burden shall be upon the defendant to prove that the thing so contracted for, or offered to be contracted for, was in fact delivered in accordance with the terms of such contract, or that it was the bona fide intention of the defendant, at the time of making such contract, that such thing should be so delivered; and the court trying the case shall so charge the jury. [Id., p. 172.]

Art. 546. **What constitutes prima facie case.**—If, in any prosecution under this law, it shall be a material issue as to whether or not the rules, regulations, by-laws or customs of any exchange or board of trade on, by or through which any contract or offer for future delivery was made, permitted such contract or transaction to be settled or closed by the delivery or tender of any grade or grades of the thing mentioned in such contract or transaction, other than the grade upon which the price was based in said transaction, at any price other than the actual price for spot delivery of such other grade or grades, at the time and place of such delivery or tender, proof that the same was made or offered or pretended to be made by, through or upon any exchange or board of trade shall constitute a prima facie case for the state. [Id., p. 172.]

Art. 547. **Persons not exempt from testifying.**—No person shall be exempt from testifying as to any violation of the provisions of this law by reason of being himself guilty of such violation, but no person called by the state or a grand jury to testify shall be prosecuted for any violation of any of the provisions of this law, testified to by sueh person. [Id., p. 172.]

CHAPTER FOUR.

GAMING.

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Article 548. [379] **Playing cards in a public place.**—If any person shall play at any game of cards at any house for retailing spirituous liquors, store house, tavern, inn, or other public house, or in any street, highway or other public place, or in any outhouse where people resort, or at any place except a private residence occupied by a family; or, if any person shall bet or wager any money or other thing of value, or representative of either, at any game of cards, except in a private residence occupied by a family, and the provisions of the act that permits gaming in a private residence shall not apply in case such residence is one commonly resorted to for the purpose of gaming, he shall be fined not less than ten nor more than twenty-five dollars. [Act 1901, p. 26.]

Art. 549. [380] **What included in preceding article.**—All houses commonly known as public, and all gaming-houses, are included within the meaning of the preceding article. Any room attached to such public house and commonly used for gaming, is also included, whether the same be kept closed or open. A private room of an inn or tavern is not within the meaning of public places, unless such room is commonly used for gaming; nor is a private business office or a private residence to be constructed as within the meaning of a public house or place; provided, said private residence shall not be a house for retailing spirituous liqours. [Act Feb. 11, 1866, pp. 97, 98.]

Art. 550. [381] **Offense complete without betting.**—In prosecutions under the two preceding articles, it shall not be necessary for the state to prove that any money or article of value, or the representative of either, was bet at such game, when the prosecution is for playing cards at a house for retailing spirituous liquors, store house, tavern, inn or any other public place, or in any street, highway or other public place, or in any outhouse where people resort, or at any place except a private residence occupied by a family; provided, that nothing in this title shall be so construed as to prevent the playing of any game for amusement at a private residence occupied by a family. [Amended Act 1901, p. 26.]

Construed. "House for retailing" does not, since the adoption of the Penal Code, necessarily include every room in the building used for retailing spirituous liquors, nor any room, though under the same roof, which is in no way connected with the retailing business carried on in such building. O'Brien v. State, 10 T. Cr. R., 544; Early v. State, 23 Id., 364, 5 S. W. R., 122; Holtzclaw v. State, 26 T., 682.

A rear room to a saloon in which players are supplied with drinks from the saloon through a sliding window, comes within the statute. Stebbins v. State, 22 T. Cr. R., 32, 2 S. W. R., 617.

A private bed-room over a saloon in no wise connected with the business of the saloon is not within the statute. Stewart v. State, 34 T. Cr. R., 33, 28 S. W. R., 806; Hasley v. State, 14 Id., 217.

A dugout, though disconnected with the saloon, but used as a storing place for the saloon's liquor supplies, is within the statute. Reeves v. State, 34 T. Cr. R., 147, 29 S. W. R., 786.

A "tavern" or "inn" is a place specially designated as a public place. It means a place for the general entertainment and lodging of all travelers who apply, paying for same. A private room in such hotel, tavern or inn, does not come within the statute unless it is commonly used for gaming. Comer v. State, 26 T. Cr. R., 508, 10 S. W. R., 106.

A hotel "guest" is one who lives at board or lodging in a hired room, and "lodging" is a place of rest for a night or a temporary habitation. An unappropriated guest room in a hotel, tavern or inn is a public place, even as to a guest occupying other rooms. Comer v. State, supra; Bordeaux v. State, 31 Id., 37, 19 S. W. R., 603.

"Public house" includes those designated by the statute, a fact of which the courts will take judicial knowledge, and all other houses commonly open to the public either for business, pleasure, religious worship or other like purpose. Grant v. State, 33 T. Cr. R., 527, 27 S. W. R., 127.

Note that a bona fide social club is not a public place. Id.; Koenig v. State, Id., 368, 26 S. W. R., 385.

A "public place" means a place which is public in point of fact as distinguished from a place that is private; a place that is visited by many persons, and usually accessible to the neighboring public. Parker v. State, 26 T., 204.

An "outhouse" is one standing out and apart from houses occupied as dwelling or business houses—an unoccupied dwelling house; and that a room in it is occupied as a sleeping room, does not take it out of the statute. Sisk v. State, 28 T. Cr. R., 432, 13 S. W. R., 647; following Wheelock's case, 15 T., 253.

A joint offender testifying at the trial is not an accomplice. Day v. State, 27 T. Cr. R., 143, 11 S. W. R., 36.

On indictments, see Homan v. State, 41 T., 155, and authorities cited; Webb v. State, 17 T. Cr. R., 205; Day v. State, 27 Id., 143, 11 S. W. R., 36.

Art. 551. [382] **Keeping or exhibiting table or bank.** — If any person shall keep or exhibit for the purpose of gaming, any gaming table or bank of any name or description whatever, or any table or bank used for gaming which has no name, or slot machine, any pigeon hole table, or jenny lind table, or nine or ten pin alley, table or alley of any kind whatever, regardless of the number of pins, balls or rings used for gaming, and such pigeon hole table or jenny lind table, or nine or ten pin alley, table, or alley of any kind whatever, regardless of the number of pins, balls, or rings used or slot machines, shall be considered as used for gaming if the table fees or alley fees, or money or anything of value is bet theron, or shall be in any manner interested in keeping or exhibiting any such table or bank, or nine or ten pin alley, table or alley of any kind whatever, regardless of the number of pins, balls or rings used, or slot machines, at any place, he shall be punished by a fine of not less than twenty-five nor more than one hundred dollars, and imprisonment in the county jail for not less than ten nor more than ninety days, regardless of whether any of the above mentioned games, tables, banks or alleys are licensed by law or not. [Amended by Act March 26, 1887, p. 57; amended, Act 1901, p. 267.]

Art. 552. [383] **Table or bank includes, what.**—It being intended by the foregoing article to include every species of gaming device known by the name of table or bank, of every kind whatever, this provision shall be construed to include any and all games which in common language are said to be played, dealt, kept or exhibited.

Art. 553. [384] **Games specifically enumerated.**—Lest any misapprehension should arise as to whether certain games are included within the meaning of the foregoing articles, it is declared that the following games are within the meaning and intention of said articles, viz.: Faro, monte, vingt

et un, rouge et noir, roulette, A B C, chuck-a-luck, keno, pool and rondo; but the enumeration of these games specially shall not exclude any other properly within the meaning of the two preceding articles. Any game played for money upon a billiard table, or table resembling a billiard table, other than the game of billiards licensed by law, is punishable under the provisions of this chapter.

Art. 554. [385] **Indictment.**—In any indictment or information for the class of offenses named in the three preceding articles, it is sufficient to state that the person accused kept a table or bank for gaming, or exhibited a table or bank for gaming, without giving the name or description thereof, and without stating that the table or bank, or gaming device, was without any name, or that the name was unknown.

Art. 555. [386] **Proof.**—In prosecutions under articles 551, 552 and 553, it shall be sufficient to prove that any game therein mentioned was played, dealt or exhibited, without proving that money or other articles of value were won or lost thereon.

Art. 556. [387] **"Played," "dealt" and "exhibited" defined.**—The words "played" and "dealt" have the meaning attached to them in common language. The word "exhibited" is intended to signify the act of displaying the bank or game for the purpose of obtaining bettors.

Gaming table or bank. Constituent elements: 1. It is a game. 2. It has a keeper, dealer or exhibitor. 3. It is based on the principle of the one against the many; the keeper, dealer or exhibitor against the bettors, directly or indirectly. 4. It must be exhibited, that is, displayed for the purpose of obtaining bettors. Bell v. State, 32 T. Cr. R., 187, 22 S. W. R., 687, following Stearnes v. State, 21 T., 692.

Whether or not the table was designed for gaming purposes is immaterial—it is the game or character of play on it that determines its status. Chappel v. State, 27 T. Cr. R., 310, 11 S. W. R., 411, following Stearnes v. State, supra.

And it must be kept and exhibited for gaming purposes. Lyle v. State, 30 T. Cr. R., 118, 16 S. W. R., 765.

Bank is distinguished from a gaming table only in that there must be a fund of money offered and ready to be staked on all the bets others may make against the banker—and this is the only difference between a "gaming bank" and a "gaming table." Webb v. State, 17 T. Cr. R., 205.

"Keeping" is holding the table or bank in readiness for the purpose of obtaining bettors. Wolz v. State, 33 T., 331.

Exhibiting a gaming table or bank is not a continuous offense, and it is a distinct offense from keeping a table for gaming. Kain v. State, 16 T. Cr. R., 282.

Notwithstanding an occupation tax may have been paid and a license obtained. the keeping and exhibiting of a gaming table or bank is an offense, and likewise it is an offense to bet or wager on such table. Reeves v. State, 12 T. Cr. R., 199; Parker v. State, 13 Id., 213.

As to tables and banks not specifically enumerated in the statute, see the following cases: Smith v. State, 17 T., 191; Randolph v. State, 19 Id., 521; Whitney v. State, 10 T. Cr. R., 377; Webb v. State, 17 Id., 205; Chappell v. State, 27 Id., 300, 11 S. W. R., 411; Lyle v. State, 30 Id., 118, 16 S. W. R., 765; Bell v. State, 32 Id., 187, 22 S. W. R., 687; Hairston v. State, 34 Id., 346, 30 S. W. R., 811; Hanks v. State, 54 Id., 1, 111 S. W. R., 402.

Art. 557. [388] **Gaming table, bank, etc., betting at.**—If any person shall bet or wager at any gaming table, or bank, or pigeon hole, or jenny lind table, or nine or ten-pin alley, such as are mentioned in the six preceding articles, or shall bet or wager any money or other thing of value at any of the games included in the six preceding articles, or at any of the following games, viz.: Poker-dice, jack-pot, high-dice, high-die, low-dice, low-die, dominoes, euchre with dominoes, poker with dominoes, sett with dominoes, muggins, crack-loo, crack-or-loo, or the game of matching money or coins of any denomination for such coins, or for other things of value, or at any game of any character whatever that can be played with cards, dice or

dominoes, or at any table, bank or alley, by whatsoever name the same may be known, or whether named or not, and without reference as to how the same may be played, and without reference as to how the same may be constructed or operated, or shall bet or wager upon anything in any place where people resort for the purpose of betting or wagering, he shall be fined not less than ten dollars nor more than fifty dollars; provided, no person shall be indicted under this article for playing said games with dominoes or cards at a private residence occupied by a family, unless same is commonly resorted to for the purpose of gaming; and provided, further, that no banking game played with cards or dominoes shall be exempted from the provisions of this chapter on account of being played at a private residence occupied by a family; and provided, further, that for betting on any gaming table or bank, the court or jury may, in addition to said fine, impose a jail penalty of not less than ten nor more than thirty days. [Act 1907, p. 108.]

Betting at cards. Under the amendment to this article of 1907 it is now an offense to bet at cards, dice or dominoes at a private residence occupied by a private family. Purvis v. State, 52 T. Cr. R., 342, 107 S. W. R., 55; Singleton v. State, 53 Id., 625, 111 S. W. R., 736.

To "bet" is defined a "mutual agreement and tender of a gift of something valuable, which is to belong to the one or the other of the contending parties, according to the result of the trial of chance or skill, or both combined." Long v. State, 22 T. Cr., R., 194, 2 S. W. R., 541.

Bets may be made by acts without words. Emmons v. State, 34 T. Cr. R., 98, 29 S. W. R., 474; Rainbolt v. State, 51 Id., 153, 101 S. W. R., 217.

Payment of table fees by the party losing is betting. Vanwey v. State, 41 T., 639.

The loser to pay for drinks on the game is betting. Batchelor v. State, 10 T., 258; Dunbar v. State, 34 T. Cr. R., 596, 31 S. W. R., 401.

Continuous throwing of dice for bets is not a continuous offense, and each separate bet is a separate offense. Day v. State, 27 T. Cr. R., 143, 11 S. W. R., 36; Kain v. State, 16 Id., 282.

Art. 558. [388a] **Gaming table, bank, etc., keeping or exhibiting.**—If any person shall, directly or as agent or employe for another or through any agent or agents, keep or exhibit, for the purpose of gaming, any policy game, any gaming table, bank, wheel or device of any name or description whatever, or any table, bank, wheel or device for the purpose of gaming, which has no name, or any slot machine, any pigeon hole table, any jenny lind table, ten pin alley or table or alley of any kind whatsoever, regardless of the name, or whether named or not, or of the number of pins, balls, or rings used for gaming, shall be guilty of a felony, and, upon conviction, shall be punished by confinement in the penitentiary not less than two nor more than four years, regardless of whether any of the above mentioned games, tables, banks, alleys, wheels, devices or slot machines are licensed by law or not; provided, that any such alley, table, bank, wheel, machine or device shall be considered as used for gaming, if the table fees, alley fees, or money or anything of value is bet thereon. [Id., p. 108.]

Art. 559. [388b] **Keeping or renting for.**—If any person shall rent to another, or shall keep or be in any manner interested in keeping, any premises, building, room or place for the purpose of being used as a place to bet or wager, or to gamble with cards, dice, dominoes, or to keep or exhibit for the purpose of gaming, any bank, table, alley, machine, wheel or device whatsoever, or as a place where people resort to gamble, bet or wager upon anything whatever, or shall knowingly permit property or premises of which he is owner, or which is under his control, to be so used, shall be guilty of a felony, and, upon conviction, shall be punished by confinement in the penitentiary not less than two nor more than four years, regardless of whether any of the above mentioned games, tables, banks, alleys, machines, wheels or de-

vices, or things, are licensed by law or not; and any place or device shall be considered as used for gaming or to gamble with or for betting or wagering, if any fees, money, or anything of value is bet thereon, or if the same is resorted to for the purpose of gaming or betting. [Id., p. 108.]

Art. 560. [388c] **Betting at places resorted to.**—If any person shall bet or wager at any gaming table or bank, or other thing, mentioned in this law, or shall bet or wager upon anything in any place to which people resort for the purpose of betting or wagering, he shall be punished by a fine of not less than ten nor more than fifty dollars; provided, that where the conviction is for betting at any gaming table or bank, the court or jury may, in addition to said fine, impose a jail penalty of not less than ten nor more than thirty days. [Id., p. 108.]

Art. 561. [388d] **Persons equipping gaming house.**—If any person shall, in any manner, aid in equipping or furnishing any gaming house, or place where people resort for the purpose of gaming, wagering or betting, he shall be punished by confinement in the county jail for a period of not less than thirty nor more than ninety days. [Id., p. 108.]

Art. 562. [388e] **Persons permitting device on premises.**—If any person shall knowingly permit any gaming paraphernalia, table, or device or equipment of a gaming house, of any character whatever, to remain in his possession or on premises under his control or of which he is owner, and to be used for gaming purposes, he shall be punished by confinement in the county jail for a period of not less than thirty days nor more than one year. [Id., p. 109.]

Art. 563. [388f] **Persons going in gaming house.**—If any person shall go into or remain in any gambling house, knowing the same to be such, or shall remain in any place where any of the games prohibited by this act or, within his knowledge, being played, dealt or exhibited, he shall be punished by a fine or not less than twenty-five nor more than fifty dollars. Gambling house and gaming house, as used in this law, is meant any place where people resort for the purpose of gaming, betting or wagering. [Id., p. 109.]

Construed. The "place" referred to in this article means a place in which gaming is being conducted in a sense continuously, and does not embrace a dwelling house in which a prohibited game is played for the time being, and is not shown to be a place to which people resort for the purpose of gaming. Walters v. State, 125 S. W. R., 11.

Art. 564. [388g] **Officers to suppress same.**—Whenever it shall come the knowledge of any sheriff, constable, police officer or other peace officer, by affidavit of a reputable citizen, or otherwise, that any of the provisions of this law are being violated, it shall be the duty of such officer to immediately avail himself of all lawful means to suppress such violation; and he shall be authorized, by any search warrant that is issued by virtue of this law, to enter any house, room or place to be searched, using such force as may be necessary to accomplish such purpose. [Id., p. 109.]

Art. 565. [388h] **When justice to issue search warrant.**—Upon the filing with any justice of the peace, county or district judge, or any other magistrate, of an affidavit in writing, made by a reputable citizen, that gaming, betting or wagering, as prohibited by this law, is being conducted in any building, room, premises or place, describing the same sufficiently for identification, it shall be the duty of such officer, with whom said affidavit is filed, to immediately issue a warrant, commanding the peace officer to whom same is directed, to immediately enter and search such building, room, premises or place, and in the event the same is a gaming house, as defined in this law, to arrest all parties found therein, or making their escape therefrom, and to take possession of any gambling paraphernalia, device or equipment found

therein; and it shall be the duty of such officer to immediately take the persons arrested before the nearest magistrate, and lodge the proper complaint against each person so arrested. [Id., p. 109.]

Art. 566. [388i] **Gambling house public nuisance.**—The existence of any gambling house, or gaming table, or bank, or gaming paraphernalia, or device of whatever kind or character, and all equipments of such gambling house, is hereby declared to be against public policy, and the same is hereby declared to be a public nuisance; and no suit shall be brought or maintained in any of the courts of this state for the recovery of same, or for any insurance thereon, or for damages by reason of any injury to or for the destruction of same. [Id., p. 109.]

Art. 567. [388j] **Used for, terminates lease.** — The use of any house, property or premises, by any tenant or lessee for any purpose, made unlawful by this law, shall terminate all rights and interests of such tenant or lessee in same, and shall entitle the owner thereof to the immediate possession of said house, property or premises. [Id., p. 110.]

Art. 568. [388k] **Officers to seize gaming tables.**—It shall be the duty of every sheriff, constable, police officer or other peace officer, by virtue of the warrant authorized by this act, to seize and take into his possession all gaming tables, devices and other equipments or paraphernalia of gambling houses, the existence of which has come to his knowledge, and to immediately file with the justice of the peace, county judge or district judge, a list in writing of the property seized, and shall designate the place where same was seized, and the owner of same, or person from whom possession was taken. Thereupon it shall be the duty of said justice of the peace, county or district judge, to note same upon his docket, and to issue, or cause the clerk of the court to issue, a notice in writing to the owner or person in whose possession the articles seized were found, commanding him to appear at a designated time, not earlier than five days from the service of such notice, and show cause why such articles should not be destroyed. If personal service can not be had upon the person to whom same is directed, a copy of said notice shall be posted for not less than five days, either upon the court house door of the county where the proceedings are begun or upon the building or premises from which the property seized was taken. [Id., p. 110.]

Art. 569. [388l] **Same destroyed by order of court.**—If, upon a hearing of the matter referred to in the preceding section, the justice of the peace, county judge or district judge, before whom the cause is pending, shall determine that the property seized is a gaming table, or bank, or is used as equipment or paraphernalia for a gambling house, and was being used for gaming purposes, he shall order same to be destroyed; but any part of same may, by order of the court, be held as evidence to be used in any prosecution or case until the prosecution or case is finally disposed of. Property not of that character or not so used shall be ordered returned to the person entitled to possession of the same. It shall be the duty of the officer, within not less than fifteen nor more than thirty days from the entry of said order, to destroy all property, the destruction of which has been ordered by the court, unless the owner, lessee or person entitled to possession under this law, shall, before the destruction of said property, file a suit to recover same. [Id., p. 110.]

Art. 570. [388m] **Persons interested in, rights of**—Any person having interest in, or entitled to possession of, any property seized under this law, shall have the right at any time before the destruction of such property, as in ordinary civil cases, to try the issue of whether or not such property is a gaming table, or bank or device or was used as equipment or paraphernalia of any gambling house, and to recover the possession of the same, and

to maintain any other character of suit not inconsistent with this law; and it shall be the duty of the officer having said property in his possession, after notice of the pendency of said suit, to safely keep said property, pending the same. [Id., p. 110.]

Art. 571. [388n] **Indictment for, sufficiency of.**—In any indictment or information for keeping or exhibiting a gaming table, alley, machine, wheel, device or bank, it shall be sufficient to state that the person accused kept the table, alley, machine, wheel, device or bank for gaming, or exhibited the same for gaming, without giving the name or description thereof and without stating that the table, bank, alley, machine, wheel or gaming device was without any name, or that the same was unknown; and it shall not be necessary in the prosecution to prove that money or other articles of value were won or lost thereon. [Id., p. 110.]

Art. 572. [389] **Permitting a house to be used for gaming.**—If any person shall permit any game prohibited by the provisions of this chapter to be played in his house, or a house under his control, or upon his premises, or upon premises under his control, the said house being a public place, or the said premises being appurtenances to a public place, he shall be fined not less than twenty-five nor more than one hundred dollars. [Amended by Act March 5, 1881, p. 17.]

This article was not repealed, either in terms or by implication, by the act of the Thirtieth Legislature, page 107. Simons v. State, 56 T. Cr. R., 339.

573. [390] **Renting a house for same purpose.**—If any person shall rent to another a room or house for the purpose of being used as a place for playing, dealing or exhibiting any of the games prohibited by the provisions of this chapter, he shall be fined not less than twenty-five nor more than one hundred dollars.

Art. 574. [391] **Procedure in gaming cases.**—Any court, officer or tribunal, having jurisdiction of the offenses enumerated in this chapter, or any district or county attorney, may subpoena persons and compel their attendance as witnesses to testify as to the violations of any of the provisions of the foregoing articles. Any person so summoned and examined shall not be liable to prosecution for any violation of said articles about which he may testify; and, for any offense enumerated in this chapter, a conviction may be had upon the unsupported evidence of an accomplice or participant.

Exemption. This article exempts from prosecution a participant in violation of the gaming laws whose testimony is given in behalf of the state, and this whether he is or is not under indictment for the offense. Griffin v. State, 43 T. Cr. R., 428, 66 S. W. R., 782.

Pleading as exemption to prosecution that he had been summoned and testified before the grand jury as to the violation of the gaming laws, and especially the occurrence involved in the trial, the defendant was entitled to prove those facts if he could. Griffin v. State, supra.

Art. 575. **Betting at baseball or football.**—It shall be unlawful for any person in this state to enter into an agreement with another, either orally, written or implied, whereby either one or both shall bet or wager money or anything of value, or otherwise become a party to any gambling scheme based upon the final result or outcome, or any play or portion thereof of a game of baseball, or football; provided, that nothing herein shall prohibit contesting baseball or football teams, or their duly authorized agents or managers from entering into an agreement as to the manner of disposition of gate receipts derived from such games. [Act 1907, p. 222.]

Art. 576. **Punishment for.**—Any person found guilty of violating this law shall be subject to a fine of not less than five dollars nor more than one hundred dollars. [Id., p. 222.]

Art. 577. **Pool selling or book making.**—It shall be unlawful for any person, association of persons, or any corporation to, at any place in this state, engage or assist in pool selling or book making on any horse race, or, by means of any pool selling or book making, to take or accept any bet, or aid any other person in betting or taking or accepting any bet upon any horse race to be run, trotted or paced in this state. [Act 1909, p. 91.]

Art. 578. **Betting on horse racing.**—That it shall be unlawful for any person or association of persons, or any corporation, at any place in this state, by pool selling or book making or by means of telegraph, telephone or otherwise, to aid or assist any other person in wagering, betting or placing a bet, or in offering to wager, bet or place a bet of anything of value on any horse race to be run, trotted, or paced at any place in this state or elsewhere. [Id., p. 91.]

Art. 579. **Owner or lessee using place for pool selling.**—It shall be unlawful for the owner, agent or lessee of any property in this state to permit the same to be used as a place for selling pools, or book making, or wagering, or receiving or assisting any person in placing any bet of, or in receiving or transmitting any offer to bet, anything of value on any horse race to be run, trotted or paced at any place in this state or elsewhere. [Id., p. 91.]

Art. 580. **Penalty for three preceding articles.**—Any person, violating any one of the provisions of articles 577, 578 and 579, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than two hundred dollars nor more than five hundred dollars, and by imprisonment in the county jail not less than thirty days nor more than ninety days. And any corporation holding a charter, or foreign corporation holding a permit, to do business in this state, which shall violate any of said provisions of articles 577, 578 and 579, shall thereby forfeit its charter or permit to do business in this state, as the case may be, and, in addition thereto, shall be liable to the state for a penalty of not less than two hundred nor more than five hundred dollars; and the person or persons, acting for said corporation in the violation of any of the provisions of either of said articles, shall, upon conviction, be punished by a fine of not less than two hundred nor more than five hundred dollars, and by imprisonment in the county jail for not less than thirty days nor more than ninety days. [Id., p. 91.]

Art. 581. **Buying pools, penalty for.**—If any person shall, at any place in this state, buy pools or otherwise wager anything of value on any horse race to be run, trotted or paced, at any place in this state or elsewhere, or shall offer to wager, or shall offer to place any money or other thing of value with any other person, to be transmitted to any other place, to be wagered on any such horse race, he shall, upon conviction, be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. [Id., p. 91.]

Art. 582. **Evidence sufficient to convict.**—A conviction for the violation of any of the provisions herein may be had upon the unsupported evidence of an accomplice or participant, and such accomplice or participant shall be exempt from prosecution for any offense under this law about which he may be required to testify. [Id., p. 91.]

CHAPTER FIVE.

NEGLECT OF OFFICERS TO ARREST OR PROSECUTE IN GAMING CASES.

Justice of the peace, etc., failure to prosecute ..... Article 583
Peace officer failing to inform..... Article 584
"Offense against gaming laws" defined.. Article 585

Article 583. [392] **Justice of the peace, etc., failing to prosecute.**—If any justice of the peace, mayor or recorder, shall know the fact that an offense against the gaming laws has been committed by any person, and shall fail or neglect to cause such person to be arrested and prosecuted for the same, he shall be punished by fine not less than twenty-five nor more than one hundred dollars. [Act February 12, 1858, p. 167.]

Art. 584. [393] **Peace officer failing to inform.**—If any peace officer shall know that any person has committed an offense against the gaming laws, and shall neglect or fail to give information thereof to some justice of the peace, mayor or recorder, having jurisdiction to try such offense, he shall be punished by fine not less than twenty-five nor more than one hundred dollars. [Act February 12, 1858, p. 167.]

Art. 585. [394] **"Offense against gaming laws" defined.**—By the term "offense against the gaming laws," as used in the two preceding articles, is meant any offense included within the provisions of chapter three of this title. [Act February 12, 1858, p. 167.]

CHAPTER SIX.

BETTING ON ELECTIONS.

Penalty ..... Article 586
"Public election" defined..... Article 587
What "bet or wager" includes..... Article 588

Article 586. [395] **Penalty.**—If any person shall, whether before or after the happening of any public election held within this state, wager or bet in any manner whatever upon the result of any such election, he shall be fined not less than twenty-five nor more than one thousand dollars. [Act Feb. 12, 1858, p. 167.]

Construed. This article applies only to elections held in this state. Covington v. State, 28 T. Cr. R., 126, 28 S. W. R., 225.

Indictment must allege date of election; if joint against two, must allege they wagered together; if against two for jointly wagering with another, must state with whom, or if the fact that his name was unknown; and to charge defendants severally and not jointly must charge that "they did severally bet." Llewellyn v. State, 18 T., 539.

Not necessary to allege that anything of value was bet. Long v. St., 22 T. Cr. R., 194, 2 S. W. R., 541.

Art. 587. [396] **"Public election" defined.**—A public election, within the meaning of the preceding article, is any election for a public officer under the authority of the constitution and laws of the United State or of this state.

Art. 588. [397] **What "bet or wager" includes.**—The bet or wager may be of money or of any article of value, and any device in the form of purchase or sale or in any other form made for the purpose of concealing the true intention of the parties, is equally within the meaning of a bet or wager.

On a trial for violation of the local option law, the court must assume that the election putting the law in force was valid where there was no contest as required by law, and it cannot consider questions as to the sufficiency of the orders and judgments of the commissioners' court putting local option into effect. Wesley v. State. 57 T. Cr. R., 122, S. W. R., 550.

CHAPTER SEVEN.

UNLAWFULLY SELLING INTOXICATING LIQUOR.

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Article 589. **Pursuing occupation in local option districts, punishment for.**—If any person shall engage in or pursue the occupation or business of selling intoxicating liquors, except as permitted by law, in any county, justice precinct, city, town or subdivision of a county, in which the sale of intoxicating liquor has been or shall hereafter be prohibited under the laws of this state, he or she shall be punished by confinement in the penitentiary not less than two nor more than five years. [Act 1909, p. 284.]

Construed. The purpose of this law is to punish one selling intoxicating liquors without license at any time, whether on Sunday or week day. The general Sunday law punishes infractions by sales on Sunday whether with or without license. Ex parte Wright, 56 T. Cr. R., 504.

Art. 302 is not affected nor is it in conflict with any of the provisions of this chapter. Id.

Article constitutional. This article is constitutional, and is applicable to any county of the state, or subdivision thereof, wherein the sale of intoxicating liquor has been or hereafter may be prohibited. Fitch v. State, 127 S. W. R., 1040.

The accused can not defend on the ground of the invalidity of the election after the time prescribed for contesting such election has passed. Jerne v. State, 123 S. W. R., 414. And see Ex parte McGuire, Id., 425; Gober v. State, Id., 427.

Indictment. The indictment must allege the names of the persons to whom the sales of intoxicating liquor were made. Fitch v. State, 127 S. W. R., 1040.

Indictment under this article must negative exceptions. Keith v. State, 126 S. W. R., 569.

Art. 590. **United States revenue license prima facie proof of.**—In prosecutions under this law, where it is proven that there is posted up at the place where such intoxicating liquor is being sold, United States internal revenue liquor or malt license, to any one, it shall be prima facie proof that the person to whom such license is issued is engaged in and is pursuing the business and occupation of selling intoxicating liquors within the meaning of this law. [Id., p. 284.]

Art. 591. **What constitutes pursuing occupation of.**—In order to constitute the engaging in or pursuing the occupation or business of selling intoxicating liquors, within the meaning of this law, it shall be necessary for the state to prove in all prosecutions hereunder, that the defendant made at least two sales of intoxicating liquor within three years next preceding the filing of the indictment. [Id., p. 284.]

Art. 592. [398] **Selling liquor to wild Indians.**—If any person shall sell, give or barter, or cause to be sold, given or bartered, any ardent spirits, or any spirituous or intoxicating liquors, or fire-arms, or ammunition, to any Indian of the wild or unfriendly tribes, he shall be fined not less than ten nor more than one hundred dollars. [Act Oct. 31, 1866, p. 71.]

Art. 593. [400] **Selling to minors.**—Any person who shall give or deliver, or cause to be given or delivered, or be in any way concerned in the gift or delivery of any spirituous, vinous, malt or intoxicating liquors to any person under the age of twenty-one years, whether consigned to such person or to some other person, without the written consent of the parent or guardian of such person who is under the age of twenty-one years, shall be guilty of a misdemeanor, and, upon conviction therefor, shall be fined not less than twenty-five nor more than one hundred dollars; and any person who, as agent for or employed by an express company or other common carrier, or who, as agent for or employe of any other person, firm or corporation, delivers, or causes to be delivered, any spirituous, vinous, malt or intoxicating liquors to any person under the age of twenty-one years, whether consigned to such person or to some other person, without the written consent of the parent or guardian of such minor, shall be guilty of a misdemeanor, and shall be punished, upon conviction therefor, by a fine of not less than twenty-five nor more than one hundred dollars. [Amended, Act 1909, p. 119.]

Construed. Defendant's knowledge at the time that the purchaser was a minor is an essential element of this offense, and it may be proved by circumstances. Hunter v. State, 18 T. Cr. R., 444; Sears v. State, 35 Id., 442, 34 S. W. R., 124; Williams v. State, 23 T. Cr. R., 70, 3 S. W. R., 661; Ferguson v. State, 50 Id., 155, 95 S. W. R., 111.

The sale to a minor must be backed by the written consent of some one authorized in law to give such consent. The fact that the minor had neither parents nor guardian, will not relieve the seller. Herschenbach v. State, 34 T. Cr. R., 122, 29 S. W. R., 470.

Principals, etc. A purchaser of liquor sold in violation of law is neither a principal nor accomplice with the seller. Sears v. State, 35 T. Cr. R., 442, 34 S. W. R., 124.

The defendant, being present and knowing a stranger was buying for a minor, aiding the stranger in that sale, is a principal. Starling v. State, 34 T. Cr. R., 295, 30 S. W. R.

Consent is defensive matter, and the burden is on defendant. Kuhn v. State, 34 T. Cr. R., 85, 29 S. W. R., 272.

Charge of court authorizing conviction if defendant "was instrumental or in any way concerned in giving liquor to a minor" was erroneous. Walker v. State, 57 T. Cr. R., 395, 122 S. W. R., 395.

Under this article, a sale by an agent, acting within the scope of his agency, makes a prima facie case against the dealer. Ollre v. State, 57 T. Cr. R., 520, 123 S. W. R., 1116.

But on the contrary, a dealer is not liable for a sale at his place of business by one who assumes to be, but is not his agent, or by agent who sells in violation of his orders. Id.

Art. 594. [401] **Selling and permitting the same drunk on premises.**—If any person or firm shall sell, or be in any way concerned in selling, spirituous, vinous or other intoxicating liquors in quantities of a quart or more, and shall permit the same to be drunk at the place or establishment where sold, or at any other place provided by said person or firm for that purpose, he or they shall be punished by fine not less than fifty nor more than two hundred and fifty dollars. [Act Feb. 12, 1858, p. 168.]

Art. 595. **Selling to habitual drunkards.**—Any person who shall knowingly sell or give, or cause to be sold or given, or who shall be instrumental in selling, giving or procuring of any spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, to any person who is an habitual drunkard, shall be fined not less than twenty-five nor more than one hundred dollars. [Act 1903, p. 69.]

See Scott v. State, 25 T. Supp., 169.

Art. 596. **"Habitual drunkard" defined.**—An habitual drunkard, within the meaning of this law, is one who makes it a habit to get drunk, or who habitually becomes intoxicated by the voluntary use of intoxicating liquors. [Id., p. 69.]

Art. 597. [402] **Selling in prohibited districts.**—If any person shall sell any intoxicating liquor in any county, justice precinct, city or town in which the sale of intoxicating liquor has been prohibited under the laws of this state, or if any person shall give away any intoxicating liquor in any such county, justice precinct, city or town, with the purpose of evading the provisions of said laws, he shall be punished by fine of not less than twenty-five nor more than one hundred dollars, and by imprisonment in the county jail for not less than twenty nor more than sixty days. Or, if any person shall sell any intoxicating liquor in any county, justice precinct, school district, city or town, or subdivision of a county, in which the sale of intoxicating liquors shall hereafter be prohibited under the laws of this state, or if any person shall give away any intoxicating liquor in any such county, justice precinct, school district, city or town, or subdivision of a county, with the purpose of evading the provisions of said law, he shall be punished by confinement in the penitentiary not less than one nor more than three years. Upon complaint being filed with any county judge, or justice of the peace, describing the place where it is believed by the person making the complaint that intoxicating liquor is being sold or given away in violation of law, such county judge or justice of the peace shall issue his warrant directing and commanding the sheriff or any constable of his county to search such place, and, if the law is being violated, to arrest the person so violating it; and it shall be the duty of the officer to whom such warrant is delivered to search the place described in the warrant, to seize all intoxicating liquors found therein, and arrest and bring before the county judge or justice who issued the writ, all persons connected with such business either as proprietor, manager, clerk or other employe; and, if admission into said place is refused, the officer executing said warrant is hereby authorized to force open the same. In prosecutions under this article, where it is proven that there is posted up at the place where such intoxicating liquor is being sold or given away with the purpose of evading the provisions of the law, United States internal revenue liquor or malt license, to any one, it shall be prima facie proof that the person to whom such license is issued is engaged in the sale of intoxicating liquor. [Amended by Act March 30, 1887, p. 70; amended Act 1909, p. 356.]

Unlawful sale. A physician gave a prescription and directed the patient to take it in whiskey. The patient gave the physician a sum of money who delivered him whiskey in his possession with the statement that it belonged to another patient, and with the understanding that the bottle ordered by the patient should replace the one delivered. Held, a sale under this article. Daniel v. State, 125 S. W. R., 37.

Art. 598. [403] **Not applicable, when.**—The preceding article shall not apply to the sale of wines for sacramental purposes, nor to alcoholic stimulants as medicines in cases of actual sickness; but such stimulants shall only be sold upon the prescription of a regular practicing physician, dated and signed by him and certified on his honor that he (the physician) has personally examined the applicant (naming him), and that he finds him actually sick and in need of the stimulant prescribed as a medicine; provided, that a physician who does not follow the profession of medicine as his principal or usual calling, or who is in any way, directly or indirectly, engaged in the sale of such stimulants on his own account or as the agent, employe, or partner of others, shall not be authorized to give the prescription provided for in this article; and provided, further, that no person shall be permitted to sell more than once on the same prescription, nor upon a prescription which has been canceled, nor on a prescription which is not dated, signed and certified, as above required; provided, that every person selling such stimulants upon the prescription herein provided for shall cancel such prescription by indorsing on it the word "canceled," and file the same away, and on the first day of July, 1903, and every month thereafter, file the said prescription with the clerk of the district court, accompanied by an affidavit, stating that he has sold no intoxicating liquor other than that named in the prescriptions filed, which said prescriptions shall be preserved by the clerk of the district court for a period of three years from and after the date of filing, subject to the inspection of the grand jury, district, county and precinct officers. [Added by Act March 30, 1887, pp. 70-71; amended, Act 1903, p. 56.]

Construed. It is immaterial whether an amendment to an act is unconstitutional or not, and whether, if so, it vitiates the whole article as amended, as, if such be the case, the prosecution can be sustained under the article as it stood before amendment. Uloth v. State, 48 T. Cr. R., 295, 87 S. W. R., 822.

Same; penalty: A rule of construction is that when the legislature revises or re-enacts a statute after it has been judicially construed without changing it, the presumption obtains that the legislature intended that the same construction should continue to be applied to that statute. Lewis v. State, 127 S. W. R., 808, and cases cited.

This amendatory act, being practically a re-enactment of the original statute, it is held, under the authorities cited, that it can apply only to counties adopting local option subsequent to the date on which it went into effect. Lewis v. State, supra.

Same. This article, as amended, is held not to apply to counties in which the local option law was put in force prior to its enactment, and only to those local option districts adopting the local option law after the article, as amended, became operative. Lewis v. State, supra.

Note: This article, as amended by the 31st legislature, contained the words, "has been prohibited." Held, by the court of criminal appeals that the penalty could not be enforced in any county or subdivision thereof where the sale, etc., of intoxicating liquors had been prohibited at the time of the passage of the law, but was applicable only to such counties or subdivisions thereof, in which the sale of intoxicating liquors shall hereafter be prohibited. Lewis v. State, 127 S. W. R., 808.

Art. 599. [404] **Failure to cancel prescription; permitting liquor to be drunk on premises.**—It shall be the duty of any person who sells any intoxicating liquor upon the prescription provided for in article 598 to write across the face of the prescription, with ink, the word "canceled," and file the same

with the clerk of the district court, accompanied by an affidavit as hereinbefore provided; and for any failure to do so, he shall be punished by a fine of not less than twenty-five nor more than one hundred dollars; and if any person shall sell any intoxicating liquor upon the prescription provided for in article 598 and shall permit the same to be drunk at the place or establishment where sold, or at any other place provided for that purpose by such person, he shall be punished by fine of not less than twenty-five nor more than one hundred dollars. [Added by Act March 30, 1887, p. 71; amended Act 1903, p. 56.]

Art. 600. [405] **Giving prescription illegally.**—If any person who is not a regular practicing physician shall give a prescription to be used in obtaining any intoxicating liquor in any county, school district, justice precinct, city or town, or subdivision of a county, in which the sale of intoxicating liquor has been prohibited under the laws of this state, or if any practicing physician who is directly or indirectly, either for himself or as the agent or employe of another, interested in the sale of liquor, shall give a prescription to be used in obtaining any intoxicating liquor in any such county, justice precinct, school district, city or town, or subdivision of a county, or if any physician should give a prescription to be used in obtaining any intoxicating liquor in such county, justice precinct, school district, city or town, or subdivision of a county, to any one who is not actually sick, and without a personal examination of such person, he shall be punished by a fine of not less than twenty-five nor more than one hundred dollars, and by imprisonment in the county jail not less than twenty nor more than sixty days. [Added by Act March 30, 1887, p. 71; amended, Act 1903, p. 56.]

Art. 601. [406] **"Blind tiger" defined; penalty for keeping; procedure against.**—Any person who shall keep or run, or shall be in any manner interested in keeping or running, a blind tiger in any county, justice precinct, school district, city or town, or subdivision of a county, in which the sale of intoxicating liquor has been prohibited under the laws of this state, he shall be punished by confinement in the county jail not less than two nor more than twelve months, and by a fine of not less than one hundred nor more than five hundred dollars. Each and every day such blind tiger is run or kept shall be a separate offense. A "blind tiger," within the meaning of this article, is any place in which intoxicating liquors are sold by any device whereby the party selling or delivering the same is concealed from the person buying or to whom the same is delivered. Upon complaint being filed with any county judge or justice of the peace describing the place where any "blind tiger" is kept or run, such county judge or justice shall issue his warrant, directing and commanding the sheriff, or any constable, of his county, to search such place, and, if the law is being violated, to arrest the person so violating it; and it shall be the duty of the officer to whom such warrant is delivered to search the place described in the warrant, and to arrest and bring before the county judge, or the justice who issued the writ, all persons found by him therein; and if admission into said place is refused, the officer executing said warrant is hereby authorized to force open the same. In prosecutions under this article, where it is proven that there is posted up at the place where such blind tiger is kept or run, United States internal revenue liquor or malt license, to any one, it shall be prima facie proof that the person to whom such license is issued is keeping and running such blind tiger. [Added by Act March 30, 1887, pp. 71, 72; amended, Act 1903, p. 56.]

Art. 602. [407] **Repeal of law does not exempt offender; offender not an accomplice.**—When the sale of intoxicating liquor has been prohibited in any county, justice precinct, school district, city or town, or subdivision of a county, the repeal of such prohibition shall not exempt from punishment any person who may have offended against any of the provisions of the law while it was in force; and the fact that a person purchases intoxicating liquor from one who sells it in violation of the provisions of this chapter shall not consti-

tute such person an accomplice. [Added by Act March 30, 1887, p. 72; amended, Act 1903, p. 56.]

This article specifically provides that the purchaser of intoxicating liquors in a local option district is not an accomplice of the seller. Morrow v. State, 56 T. Cr. R., 519.

Art. 603. **Entries in books of internal revenue collector admissible in evidence.**—In prosecutions under the provisions of this law, an examined copy of the entries on the books of the internal revenue collector, showing that the United States internal revenue liquor or malt license has been issued to the person or persons charged with violating the provisions hereof, shall be admissible in evidence, and shall be held to be prima facie evidence that such person or persons has paid the United States special tax as a seller of spirituous or malt liquors, and shall be held prima facie proof that the person or persons paying such tax are engaged in selling intoxicating liquors. [Act 1903, p. 56.]

Art. 604. **Persons, firms or associations engaged in business of keeping and storing intoxicating liquor.**—If any person, firm or association of persons, agent or employe of any person, firm or association of persons, who are engaged in the business or occupation of keeping or storing spirituous, vinous, or intoxicating liquors for others, within any county, justice precinct, subdivision of a county, city or town, in which the sale of spirituous, vinous and intoxicating liquors has been prohibited under the laws of this state, shall permit any one to drink any spirituous, vinous or intoxicating liquors within such place of business, such person, firm or association of persons, agent or employes, shall be deemed guilty of a misdemeanor. [Act, 1905, p. 91.]

Art. 605. **Penalty for.**—Any person, firm or association of persons, or any agent or employe, found guilty of the above defined offense, shall be punished by a fine in any sum not less than twenty-five dollars nor more than two hundred dollars, and by confinement in the county jail for not less than twenty nor more than sixty days. [Id., p. 91.]

Art. 606. **Shipping intoxicating liquor; words to be placed on package; book to be kept.**—Each and every person in this state, who shall place or have placed any package or parcel, of whatever nature, containing any intoxicating liquor, with any express company, railroad company or other common carrier, for shipment or transportation to any point in any county, justice precinct, school district, city or town, or subdivision of a county, within this state, where the sale of intoxicating liquors has been, or may hereafter be, prohibited under the laws of this state, shall first place in a conspicuous place, in plain letters, on such package or parcel the words: "Intoxicating liquor," the character and quantity of such intoxicating liquor, the place from where shipped, the place of destination and the names of the consignor and the consignee; and no express company, railroad company, or other common carrier, or any agent thereof, in this state, shall accept or receive from any person, firm or corporation, for shipment or transportation to any such point where the sale of intoxicating liquors has been, or may hereafter be, prohibited, under the laws of this state, any such package or parcel, unless the same shall have been labeled in the manner and form as hereinbefore in this article required; and no express company, railroad company, or other common carrier, or any agent thereof, in this state, shall deliver such package or parcel to any other than the consignee in person. Any agent of such express company, railroad company, or other common carrier, having the custody of any book or books required by this law of such express company, railroad company, or other common carrier, to be kept, shall, at the request of any person, at any reasonable time during office hours, produce such book or books for inspection by any officer of the law or any member of the grand jury.

When any express company, railroad company, or other common carrier, within this state, shall receive any package or parcel of whatsoever nature, whether from a point within or without this state, containing any intoxicating liquor, for transportation to any point within any county, justice precinct, school district, city or town, or subdivision of a county, where the sale of intoxicating liquors has been prohibited under the laws of this state, such express company, railroad company, or other common carrier, shall forthwith transport such intoxicating liquor to the place of its destination; and, upon the arrival of same at its place of destination, there shall be entered in a book to be kept for that purpose the names of the consignor and the consignee, the exact time of the arrival of such package or parcel at the place of its destination, the place from where shipped, the quantity and character of such intoxicating liquor, as shown on such package or parcel, the exact time delivered to the consignee, if delivered, and the signature of such consignee, who shall sign in person for same before delivery thereof; and such book shall be open at all reasonable hours for inspection by any officer of the law or any member of the grand jury.

Any agent of any express company, railroad company, or other common carrier, or any other person, who shall violate any of the provisions of this section of this law shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than twenty-five dollars nor more than one hundred dollars, and shall be punished by imprisonment in the county jail for any term not less than twenty nor more than sixty days. [S. S. 1910, p. 33.]

Art. 607. [408] **Evidence when persons are jointly indicted.**—Where persons are jointly indicted, or otherwise prosecuted for selling liquor in violation of law, it shall be sufficient to show, by general reputation, that they are understood to be members of the firm. [Act Feb. 12, 1858, p. 168.]

Art. 608. [409] **Members of firm liable personally.**—Any one member of a firm may be separately prosecuted for the offense of selling liquor in violation of law. [Act Feb. 12, 1858, p. 168.]

Art. 609. [410] **If owner is unknown, persons selling liable.**—Where any establishment for the sale of liquor is conducted without the name of the owner being known, any and all persons who may be found selling liquor in such establishment, in violation of law, shall be subject to prosecution as separate offenders. [Act Feb. 12, 1858, p. 168.]

Art. 610. [411] **Procedure in case of firm.**—When a firm is prosecuted for a violation of the law relating to the sale of liquor, the fine shall be assessed against the parties jointly, but each defendant shall be liable for the whole amount; and in cases of prosecution against a firm, if all the defendants be not arrested, a verdict and judgment for the full amount of the fine may be rendered against any one or more who may be tried. [Act Feb. 12, 1858, p. 168.]

CHAPTER EIGHT.

VIOLATIONS OF THE LAW REGULATING THE SALE OF INTOXICATING LIQUORS.

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Article 611. **Selling without license.**—No person shall, directly or indirectly, sell spirituous or vinous liquors, capable of producing intoxication, in quantities of one gallon or less, without taking out a license as a retail liquor dealer. Any person who shall violate the provisions of this article shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, and by imprisonment in the county jail for a term not to exceed six months. [Act 1909, p. 294.]

Construed. One sale of liquor taken from a licensed saloon by an employe of the proprietor would not constitute the employe a "liquor dealer" within the meaning of this article. Cassidy v. State, 126 S. W. R., 600.

Art. 612. **Selling except as authorized by license.**—No person shall sell, directly or indirectly, malt liquor capable of producing intoxication, in quantities of one gallon or less, without taking out a license as a retail malt dealer; provided that this article shall not apply to a retail liquor dealer, and that a retail liquor dealer's license shall be construed to embrace a retail malt dealer's license. Any person, who shall violate the provisions of this article, shall, upon conviction thereof, be punished by a fine of not less than two hundred and fifty dollars nor more than five hundred dollars, and by imprisonment in the county jail for a term not exceeding ninety days. [Id., p. 295.]

Art. 613. **Wine growers exempted, when.**—This law shall not be so construed as to deny the right of wine growers to sell wine of their own production in any quantity without license; provided, that such wine grower shall not permit nor suffer any wine so sold by him to be drunk on his premises; and provided, further, that this article shall not be so construed as to give any wine grower the right to sell any wine to any minor, without the permission of the parent, master or guardian of such minor first had and obtained, or any habitual drunkard, after being notified by any relative of such drunkard not to make such sale, gift or disposition. Every wine grower who shall violate any of the provisions of this article shall be deemed guilty of a misdemeanor and, on conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail during a term not to exceed three months, or by both such fine and imprisonment. [Id., p. 295.]

Art. 614. **Business under license limited to one place.**—No retail liquor dealer nor retail malt dealer shall carry on said business at more than one place at the same time under the same license, nor shall any such license be voluntarily assigned more than once; but, before the assignee of such license can engage in business thereunder, he shall comply with the provisions required of the original licensee; and provided, further, that the sale of such license, whether in the name of the original licensee or assignee, may be made under execution or mortgage; and the purchaser of such license at such sale shall have the right to surrender such license to the state or county which issued the tax receipt which is the basis therefor, and shall receive therefor the pro rata unearned portion of such license; provided, further, that should said original licensee or his assignee desire to change the place designated in said license he may do so by applying to the county judge as in case of original application for license, but it shall not be necessary to furnish another certificate from the comptroller of public accounts. [Id., p. 295.]

Art. 615. **Time for opening and closing doors.**—Every person or firm having a license, who may be engaged in or who may hereafter engage in the sale of intoxicating liquors to be drunk on the premises (in any locality of this state, other than where local option is in force), shall close and keep closed their houses and places of business and transact no business therein or therefrom from and after twelve o'clock midnight until five o'clock a. m. of each week day, and shall close and keep closed their houses and places of business and transact no business therein or therefrom from and after twelve o'clock midnight Saturday until five o'clock a. m. of the following Monday of each week; and any such person or firm, or his or their agent or employe, who shall open or keep open, or permit to be opened or kept open, any such house or place of business for the purpose of traffic, or who shall sell or barter any intoxicating liquor of any kind, or who shall transact or permit to be transacted therein or therefrom any such business, between the hours aforesaid, shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment. [Id., p. 304.]

Art. 616. **Selling to be drunk on premises, bond required.**—Every person or firm desiring to engage in the sale of spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, to be drunk on the premises, shall, before engaging in such sale, be required to enter into a bond in the sum of five thousand dollars; provided, however, that any person or firm dealing exclusively in malt liquors shall be required to give bond only in the sum of one thousand dollars, with at least two good, lawful and sufficint sureties; and the sureties required by law on the bonds of liquor dealers shall make affidavit before some officer authorized to administer oaths that they, in their own right, over and above all exemptions, are each worth the full amount of the bond they sign as sureties; and no county judge shall approve any such bond, unless the affidavit as provided for in this article shall have been duly made. The approval of any such bond by the county judge without such affidavit shall make said county judge liable for any penalty recovered on such liquor dealer's bond; and any person who shall make any false affidavit as hereby required shall be punished as provided for in the Penal Code of this state. Provided, that nothing herein shall prevent the making of such bond by a surety company as permitted by law, payable to the state of Texas, to be approved as to security by the county judge, which bond shall be conditioned that said person or firm, so selling spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, in any quantity, to be drunk on the premises, shall not, either in person

or knowingly by any agent, employe or representative, during the year for which such license shall run, keep open the house or place where liquors shall be sold under such license for the sale thereof, or transact such business in such house or place of business after twelve o'clock midnight on Saturday and between that hour and five o'clock a. m. on the following Monday of any week; and that such person or firm shall keep an open, quiet and orderly house or place for the sale of spirituous, vinous or malt liquors, or medicated mitters capable of producing intoxication; and that such person, or firm, or his or their agent or employe, will not sell or permit to be sold in his or their house or place of business, nor give nor permit to be given any spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, to any person under the age of twenty-one years, or to a student of any institution of learning, or any habitual drunkard, after having been notified in writing, through the sheriff or other peace officer, by the wife, father, mother, daughter or sister of such habitual drunkard, said notice shall be in force and effect for a period of two years, not to sell to any such person; and that he or they will not permit any person under the age of twenty-one years to enter and remain in such house or place of business; that he or they will not permit any games prohibited by the laws of this state to be played, dealt or exhibited in or about such house or place of business, and that he or they will not rent or let any part of the house or place in which he or they have undertaken to sell spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, in any quantity, to be drunk on the premises, to any person or persons for the purpose of running or conducting any game or games prohibited by the laws of this state; and that he or they will not adulterate the liquors sold by them in any manner, mixing the same with any drug; and that he or they will not knowingly sell or give away any impure or adulterated liquors of any kind; which said bond shall be filed in the office of the county clerk of the county where such business is conducted, and shall be recorded by such clerk in a book to be kept for such purpose, for which service said clerk shall be entitled to a fee of seventy-five cents, which said bond may be sued on at the instance of any person or persons aggrieved by the violations of its provisions; and such person shall be entitled to recover the sum of five hundred dollars as liquidated damages for each infraction of the conditions of such bond; and the said bond shall not be void on the first recovery, but may be sued on until the full penal sum named therein shall have been recovered. In addition to civil proceedings for individual injuries brought on said bond, as above indicated, if any person or firm shall violate any of the conditions of the bond herein required, it shall be the duty of the county and district attorney, or either of them, to institute suit thereupon; or any person owning real property in the county may institute suit thereupon, in the name of the state of Texas, for the use and benefit of the county; but no compensation shall be allowed such citizen, and he may be required to give security for costs, and the amount of five hundred dollars as a penalty shall be recovered from the principals and sureties upon the liquor dealer's bond upon the breach of any of the conditions thereof; and hereafter, when any recovery is had by any person or by any county or district attorney, for the use and benefit of the county in any action in any court of competent jurisdiction, upon the bond of any person or firm engaged in the sale of spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, or malt liquors exclusively, to be drunk on the premises, in any locality other than where local option is in force, upon the ground that such licensee sold or permitted to be sold, or gave or permitted to be given, any such liquors to a minor, in his place of business, or permitted a minor to enter or remain, in his place of business, or sold such liquor to any

habitual drunkard after having been notified in writing not to sell to such habitual drunkard, or that such licensee permitted prostitutes or lewd women to enter and remain in his place of business, or permitted any games prohibited by the law to be played, dealt or exhibited in or about his place of business, or of renting or letting his place of business or any part thereof for such purpose or purposes, the license of such person or firm shall, by reason of such recovery, be forfeited, revoked and canceled, and the court, entering judgment of recovery, shall also enter an order declaring forfeited, revoked and canceled such license, and the unearned portion of the occupation tax paid therefor shall not be refunded, but shall be forfeited to the state and county, city or town to which the money for the same may have been paid. [Id., p. 304.]

Art. 617. **Selling without giving bond or after license revoked.**—Any person or firm who shall sell any such liquors or medicated bitters in any quantity, to be drunk on the premises, without first giving bond as required by this article, or who shall sell the same after said license shall have been forfeited, revoked or canceled, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in the same amount provided for sales where no license has been obtained. [Id., p. 306.]

Art. 618. **An "open house" defined.**—An "open house," in the meaning of this chapter, is one in which no screens or other device is used or placed inside or outside of such house or place of business for the purpose of, or that will obstruct the view through the open door, or place of entrance into any such house or place where intoxicating liquors are sold to be drunk on the premises. [Id., p. 306.]

Art. 619. **A "quiet house" defined.**—A "quiet house" or place of business, in the meaning of this chapter, is one in which no music, loud or boisterous talking, yelling or indecent or vulgar language is allowed, used or practiced, or any other noise calculated to disturb or annoy any person residing or doing business in the vicinity of such house or place of business, or those passing along the streets or public highways. [Id., p. 306.]

Art. 620. **An "orderly house" defined.**—By an "orderly house" is meant one in which no prostitutes or lewd women or woman are allowed to enter or remain; and it is further provided that said house must not contain any vulgar or obscene pictures. [Id., p. 306.]

Art. 621. **Surety on bond, how released; penalty for pursuing business after notice and affidavits.**—Any surety on such bond may relieve himself from further liabilty thereon by giving the principal in said bond notice in writing that he will no longer remain as surety thereon, and by filing with the county judge an affidavit that such notice has been given; and if, within five days after such notice, the principal fails to make a new bond, he shall cease to pursue said business until a new bond is given. Any person who shall continue to pursue said business after such notice is given and such affidavit is filed shall be guilty of a misdemeanor, and shall be punished as provided in cases where no license has been procured. [Id., p. 307.]

Art. 622. **Selling or giving away to minors.**—Every retail liquor dealer, or malt liquor dealer, or other person, who shall knowingly sell, give away, deliver or otherwise dispose of, or suffer the same to be done, about his premises, any intoxicating liquor in any quantity to any minor, or who shall have in his employ about his place of business, or who shall permit any minor to enter and loaf or remain in his place of business, shall be guilty of a misdemeanor, and, upon conviction therefor, shall be punished by a fine of not less than ten dollars nor more than two hundred dollars, or by imprisonment in the county jail for not longer than sixty days, or by both such fine and imprisonment. [Id., p. 307.]

Art 623. **Selling or giving away to habitual drunkards, or on Sunday or election day.**—Any sale, gift or other disposition of intoxicating liquors, knowingly made to any minor, or to any habitual drunkard, or on any Sunday or election day, by an agent, clerk or other person acting for any retail liquor dealer, or retail malt dealer, or other person, shall be deemed and taken to be, for all purposes of this law, as the act of such retail liquor dealer or retail malt dealer, or other person. [Id., p. 307.]

Art. 624. **Spirituous or vinous liquors not to be sold under malt dealer's license.**—Any person or firm doing business under a retail malt dealer's license in this state, who shall sell any spirituous or vinous liquors other than those defined by law as malt liquors, shall, upon conviction therefor, be punished by a fine of not less than one hundred dollars, nor more than three hundred dollars, and by imprisonment in the county jail not less than thirty days nor more than six months, and shall, in addition to the punishment herein prescribed, forfeit his license as a retail malt dealer; and the court in which such conviction is had shall cause such forfeiture to be entered in the judgment of conviction; and such retail malt dealer shall thenceforth be deemed to have no license; and the clerk of said court shall certify such forfeiture to the comptroller of public accounts, as elsewhere herein provided. [Id., p. 308.]

Art. 625. **Musical instruments or games prohibited in place of business.**—It shall be unlawful for any retail liquor dealer, or retail malt dealer, to use, exhibit, suffer to be kept, exhibited or used, in his place of business any piano, organ, or other musical instrument whatever, for the purpose of performing upon, or having the same performed upon, in such place, or to permit any sparring, boxing, wrestling, or any other exhibition or contest, or cock fight, in his place, or to set up, keep, use, or permit to be kept or used, in or about the said premises, or by any other person, or to run, or to be run, in connection with such place of business, in any manner or form whatever, any billiard table, pool-table or gaming table, bowling or ten pin alley, cards, dice, dominoes, or any other device for gaming or playing any game of chance, or to permit any person to play at, on or with such tables, alleys, cards, dice, dominoes, or other device of any kind. Any retail liquor dealer, or retail malt dealer, violating any of the provisions of this article, shall, upon conviction, be fined in a sum not less than twenty-five dollars, nor more than two hundred dollars, or by imprisonment in the county jail for not longer than thirty days, or both such fine and imprisonment. [Id., p. 308.]

Art. 626. **Female employe other than member of family prohibited.**—No retail liquor dealer, or retail malt dealer, shall employ, or suffer to be employed, other than a member of his family, any female as a servant, bartender or waitress in his place of business, nor permit on said premises any dancer, singer or lewd woman; and any person violating the provisions of this article shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by imprisonment in the county jail for not more than twelve months, or by a fine not exceeding five hundred dollars, or both such fine and imprisonment. [Id., p. 309.]

Art. 627. **Not to sell to persons after having been notified.**—It shall be unlawful for any retail liquor dealer, or retail malt dealer, to sell, give away, or otherwise dispose of, or suffer the same to be done about his premises, any intoxicating liquors to any habitual drunkard, after he shall have been notified by the wife, father, mother, brother, sister, child or guardian of such person not to sell, give away or furnish to such person any intoxicating liquors; and any retail liquor dealer or retail malt dealer violating this article shall be fined not less than twenty-five dollars nor more than two hundred dollars, or by imprisonment in the county jail for not exceeding six months, or punished by both such fine and imprisonment. [Id., p. 309.]

Art. 628. **Law not to conflict with local option law.**—This law, or any of the provisions thereof, shall not be construed to be in conflict with any local option law now or hereafter to be in force in this state; and no license to any retail liquor or retail malt dealer shall be issued or shall be effective at any place where local option law is in force and operation. [Id., p. 309.]

Art. 629. **License to be posted in conspicuous place.**—Any license required by this law shall be posted, in some conspicuous place, in the house where the business or occupation, for which such license is necessary, is carried on, before engaging in such business or occupation, and any person so licensed who fails to so post the same shall be fined not exceeding one hundred dollars. [Id., p. 309.]

Art. 630. **Prohibiting sale of liquor at places and on election day.**—It shall be unlawful for any retail liquor dealer, or retail malt dealer, to sell, or offer for sale, any intoxicating liquors at any place where people have assembled for religious worship, or for educational or literary purposes, or in any election precinct on any election day; and any person violating the provisions of this article shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than fifty dollars nor more than two hundred dollars, or by imprisonment in the county jail for not exceeding six months, or by both such fine and imprisonment. [Id., p. 309.].

Art. 631. [411g] **Duties of certain officers.**—Any tax collector, sheriff, deputy sheriff, constable, or other peace officer, having knowledge of the violation of this chapter, shall report the same to the county attorney, who shall forthwith prosecute any person or persons violating the provisions of this chapter; and any tax collector whose attention has been called to an instance in which the provisions of this chapter appear to have been violated, shall investigate the particular case, and, if it is found that this chapter has been violated, report the fact to the county attorney or district attorney. [Act Feb. 12, 1858, p. 168.]

Art. 632. [511h] **Official dereliction; penalty.**—Any officer who shall wilfully refuse or neglect to perform the duties required of him by the provisions of this chapter shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum from one hundred to five hundred dollars, and may be dismissed from office. [Id.]

Art. 633. [411i] **Tax collector issuing illegal receipts.**—All receipts issued by tax collectors for taxes paid under this law shall be made on blanks prepared by the comptroller; and any tax collector who shall issue a manuscript receipt for taxes herein levied, or use any form of receipt other than that furnished him by the comptroller, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished as provided in the preceding article. [Id.]

CHAPTER NINE.

VAGRANCY.

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Male person habitually associating with prostitutes, vagrant	636	Court having jurisdiction; penalty for	639
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Article 634. **"Vagrancy" defined.**—The following persons are and shall be punished as vagrants, viz:

(a) Persons known as tramps, wandering or strolling about in idleness, who are able to work and have no property to support them.

(b) Persons leading an idle, immoral or profligate life, who have no property to support them, and who are able to work and do not work.

(c) All persons able to work, have no property to support them, and who have no visible or known means of a fair, honest and reputable livelihood. The term "visible or known means of a fair, honest and reputable livelihood," as used in this article, shall be construed to mean reasonably continuous employment at some lawful occupation for reasonable compensation, or a fixed and regular income from property or other investments, which income is sufficient for the support and maintenance of such person.

(d) All able-bodied persons who habitually loaf, loiter and idle in any city, town or village, or railroad station, or any other public place in this state for the larger portions of their time, without any regular employment and without any visible means of support. An offense under paragraph (d) of this article shall be made out whenever it is shown that any person has no visible means of support, and only occasionally has employment at odd jobs, being for the most of the time out of employment.

(e) Persons trading or bartering stolen property, or who unlawfully sell any vinous, alcoholic, malt, intoxicating or spirituous liquors.

(f) Every common gambler or person who for the most part maintains himself by gambling.

(g) All companies of gypsies, who, in whole or in part, maintain themselves by telling fortunes.

(h) Every able-bodied person who shall go begging for a livelihood.

(i) Every common prostitute.

(j) Every keeper of a house of prostitution.

(k) Every keeper of a house of gambling or gaming.

(l) Every person who shall abandon his wife, or child, or children, without just cause, leaving such wife, or child, or children, without support, or in danger of becoming a public charge.

(m) Every able-bodied person who lives without employment or labor, and who has no visible means of support.

(n) All persons who are able to work and do not work, but hire out their minor children, or allow them to be hired out, and live upon their wages, being without other means of support.

(o) All persons over sixteen years of age and under twenty-one, able to work and do not work, and have no property to support them, and have not some known, visible means of a fair, honest and reputable livelihood, and whose parents, or those in loco parentis, are unable to support them, and who are not in attendance upon some educational institution.

(p) All persons who advertise and maintain themselves in whole or in part as clairvoyants or foretellers of future events, or as having supernatural knowledge with respect to present or future conditions, transactions, happenings or events. [Act 1909, p. 111.]

Construed. Vagrant. This article enumerates certain persons who come within the definition of "vagrant." Ex parte Strittmatter, 124 S. W. R., 906.

Same. Constitutional law. The legislature had the power to declare the persons enumerated to be vagrants, and the article is constitutional. Id.

Same. To sustain conviction under this article, it is incumbent on the state to prove that the accused is an able-bodied person, and that being able to work, he loitered, loafed and idled the greater portion of his time without employment or visible means of support. Id.

Same. "Larger portion of their time," as used in this article, construed with the balance of the provision, held, not so vague as to invalidate the law. Id.

Art. 635. **Person unlawfully soliciting orders for intoxicating liquors, vagrant.**—Any person who unlawfully solicits orders for intoxicating liquors. [Id., p. 112.]

Art. 636. **Male person habitually associating with prostitutes, vagrant.**—All male persons who habituallly associate with prostitutes, or habitually loiter in or around houses of prostitution, or who, without having visible means of support, receive financial aid or assistance from prostitutes. [Id., p. 112.]

Art. 637. **Duty of sheriff and other officers.**—It shall be the duty of every sheriff, deputy sheriff and constable in every county, and of the police, town marshal, deputy marshal, and other like officials, in every county, city, town or village in the state, to give information under oath to any officer empowered to issue criminal warrants, of all vagrants within their knowledge, or upon information in their respective counties, cities, towns and villages; thereupon the said officer shall issue a warrant for the apprehension of the person alleged to be a vagrant. [Id., p. 112.]

Art. 638. **Information charging vagrancy.**—All information charging vagrancy shall be under oath; and, while it is made the special duty of the officers named in article 637 hereof to file the said information whenever they shall have knowledge or good reason to suspect that any person is a vagrant, as defined by any clause or article of this law, yet any information charging vagrancy may be filed under oath by any resident of the state. [Id., p. 112.]

Art. 639. **Court having jurisdiction; penalty for.**—Whenever any person shall have been arrested on a charge of vagrancy, he shall immediately be carried before any court having jurisdiction of the offense herein named, and, upon conviction thereof, shall be fined in any sum not to exceed two hundred dollars. [Id., p. 112.]

Art. 640. **Failure of officer to perform duty, penalty for.**—If any of the officers named in article 637 shall fail, refuse, or neglect to perform the duties therein required, he shall be guilty of a misdemeanor, and shall be punished by a fine of not less than twenty-five dollars, nor more than one hundred dollars. [Id., p. 112.]

CHAPTER TEN.

MISCELLANEOUS OFFENSES UNDER THIS TITLE.

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Article 641. [414] **Pawnbroker failing to comply with the law.**—If any pawnbroker, or person doing any business as such, shall receive any article in pledge, or sell the same without complying with the laws regulating pawnbrokers in this state, he shall be punished by fine not less than twenty-five dollars nor more than one hundred dollars. [Act April 28, 1879, p. 154.]

Art. 642. [415] **Insurance agent doing business without authority.**—If any person shall transact the business of life, fire or marine insurance in this state, either as agent, solicitor or broker, without his, or the company or association he represents, first obtaining a certificate of authority therefor from the commissioner of insurance and banking, he shall be punished by fine not less than five hundred nor more than one thousand dollars, and by imprisonment in the county jail not less than three nor more than six months. [Act Feb. 17, 1875, p. 44.]

Construed. Indictment to charge this offense must allege that the company for which the accused acted as agent was an insurance company. Brown v. State, 26 T. Cr. R., 540, 10 S. W. R., 112.

That the insurance company had complied with the laws of the state is defensive and not inculpatory matter, and the burden of proof rests on the defense. Smith v. State, 18 T. Cr. R., 69.

Art. 643. [416] **Any violation of insurance laws.**—If any person shall violate any provision of the laws of this state regulating the business of life, fire or marine insurance, he shall be punished by fine not less than five hundred nor more than one thousand dollars. [Act May 2, 1874, p. 200; Feb. 17, 1875, p. 44.]

Art. 644. [417] **Who are insurance agents.**—Any person who solicits insurance on behalf of any insurance company, whether incorporated under the laws of this or any other state, or foreign government, or who takes or transmits other than for himself, any application for insurance, or any policy of insurance, to or from such company, or who advertises or otherwise gives notice that he will receive or transmit the same, or who shall receive or deliver a policy of insurance of any such company, or who shall examine or inspect any risk, or receive or collect or transmit any premium of insurance, or make or forward any diagram of any building or buildings, or do or perform any other act or thing in the making or consummating of any contract of insurance for or with any such insurance company other than for himself, or who shall examine into, or adjust or aid in adjusting, any laws for or on behalf of any such insurance company, whether any of such acts shall be done at the instance or request, or by the employment of such insurance company, or of or by any broker or other person, shall be held to be the agent of the company for which the act is done, or the risk is taken, as far as relates to all the liabilities, duties, requirements and penalties set forth in this act; provided, that the provisions of this act shall not apply to citizens of this state who arbitrate in the adjustment of losses between the insurers and assured, nor to the adjustment of particular or general average losses of vessels or cargoes, by marine adjusters; provided, further, that the provisions

of this act shall not apply to practicing attorneys at law in the state of Texas acting in the regular transaction of their business as such attorneys at law, and who are not local agents nor acting as adjusters for any insurance company. [Act July 9, 1879, extra session, ch. 36, § 1.]

Art. 645. [418] **Penalty for acting as agent unlawfully.**—Any person who shall do or perform any of the acts or things mentioned in the preceding article for any insurance company hereinbefore referred to, without such company having first complied with the requirements of the laws of this state, or having received the certificate of authority from the commissioner of insurance and banking of the state of Texas, as required by law, shall be guilty of a misdemeanor, and, on conviction by any court of competent jurisdiction, for the first offense be fined five hundred dollars, and also a sum equal to the state, county and municipal licenses required to be paid by such insurance company for doing business in this state, and shall be imprisoned in the county jail, where the offense is committed, for the period of three months, unless the fine assessed against him and the sum of licenses herein mentioned and the cost of the court be sooner paid; and for any second or other offense, such person shall be fined in the sum of one thousand dollars, and shall be imprisoned in the county jail for the period of six months, unless the fine assessed against him and the costs of the court be sooner paid. [Id., § 2.]

Art. 646. [419] **Consolidation of railroad corporations declared unlawful.**—It shall be unlawful for any railroad corporation, or other corporation, or the lessees, purchasers or managers of any railroad corporation, to consolidate the stocks, property, works or franchises of such corporation with, or lease or purchase the stocks, property, works or franchises of any other railroad corporation owning or having under its control or management a competing or parallel line; nor shall any officer, agent, manager, lessee or purchaser of such railroad corporation act, or become an officer, agent, manager, lessee or purchaser of any other corporation in leasing or purchasing any parallel or competing line. [Act April 4, 1887, p. 137, § 1.]

Art. 647. [420] **Penalty; officer, etc., not liable, when.** — Any officer, director, manager, superintendent, agent, purchaser or lessee of any such railroad corporation, or other corporation, who shall violate, or aid in violating, any of the provisions of this act, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than one thousand dollars nor more than four thousand dollars; provided, that no person shall be liable to punishment under this act who has not, by virtue of his office, agency or position, a voice in the management of the railway company, or who has not, by virtue of his office, agency or position, some power to prevent a violation of this act. [Id., § 2.]

Art. 648. [421] **"Railroad corporation" defined.**—Railroad corporation, or other corporation, as used in this act, is declared to mean any corporation, company, person or association of persons, who own or control, manage or operate any line of railroad in this state. [Id., § 3.]

Art. 649. [422] **Venue of offenses; duty of judges to give law in charge to grand juries.**—Indictments and prosecutions under the provisions of this act may be found and made in any county through or into which the line of railroad may run, and it shall be the duty of district judges to charge the grand juries upon this law the same as in other cases. [Id., § 4.]

CHAPTER ELEVEN.

INSURANCE COMPANIES.

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FIRE INSURANCE.

Article 650. **Foreign and domestic fire insurance companies.**—Every fire insurance company, every marine insurance company, every fire and marine insurance company, every fire and tornado insurance company, and each and every insurance company of every kind and name, issuing a contract or policy of insurance, or contracts or policies of insurance against loss by fire, on property within this state, whether such property be fixed or movable, stationary or in transit, or whether such property is consigned or billed for shipment within or beyond the boundary of this state, or to some foreign country, whether such company is organized under the laws of this state or under the laws of any other state, territory or possession of the United States, or foreign country, or by authority of the federal government, now holding a certificate of authority to transact business in this state, or hereafter granted authority to transact business in this state, shall be deemed to have accepted such certificate and to transact business thereunder, upon condition that it consents to the terms and provisions of this law, and that it agrees to transact business in this state subject thereto; it being intended that every contract or policy of insurance against the hazard of fire shall be issued in accordance with the terms and provisions of this law, and the company issuing the same governed thereby, regardless of the kind and character of such property, and whether

the same is fixed or movable, stationary or in transit, including the share end of all marine risks insured against loss by fire. [Act S. S. 1910, p. 125.]

Art. 651. **Insurance board created.**—There is hereby created a board to be known as the state insurance board, which shall be composed of the commissioner of insurance and banking, who shall be chairman thereof, and two members, who shall be appointed by the governor, by and with the consent of the senate, subject to removal as provided for removal of state officers by the Revised Statutes of Texas; the members of said board, other than the commissioner of insurance and banking, shall be appointed as herein provided within ten days after this law takes effect; one of said members to be so appointed shall be appointed for a term ending February 1, 1911, and biennially thereafter; the other of said members of said board shall be appointed for a term ending February 1, 1912, and biennially thereafter; and the governor, in making his first appointments to fill these respective offices, shall designate which of said officers shall fill the term expiring February 1, 1911, and which of said officers shall fill the term expiring February 1, 1912. The commissioner of insurance and banking, for the purpose of this law, may be referred to as the commissioner of insurance. [Id., 126.]

Art. 652. **Powers and duties of board.**—1. The state insurance board shall have the power and authority, and it shall be its duty, to prescribe, fix, control and regulate rates of fire insurance, as provided in this law. It shall make and prescribe general basis schedules, together with rules and regulations for determining maximum specific rates therefrom, and furnish each insurance company now doing business in this state, or which may hereafter be granted a certificate of authority to do business in this state, a copy of such general basis schedules; and the said board shall also have authority to alter or amend such general basis schedules in accordance with the provisions of this law. Said board shall also supervise, control and regulate rates of insurance, and shall have authority to alter and revise, and to raise and lower such rates, and to alter and revise, raise and lower such general basis schedules or any part thereof, and decide all questions required, authorized or permitted to be passed upon by said board under the provisions of this law. Said board shall also have authority to employ clerical help, experts, inspectors, and such other assistants, and to incur such other expenses as may be necessary in carrying out the provisions of this law, not to exceed the sum of twenty-five thousand dollars per annum, including salaries of the members of the board, and all other expenses to be paid out of the state treasury.

2. It shall be the duty of said board to ascertain as soon as practicable the annual fire loss in this state; to obtain, to make and maintain a record thereof, and collect such data and information with respect thereto as will enable said board to classify the fire losses of this state, the causes thereof, and the amount of premiums collected therefor, for each class of risks, and the amount paid thereon, in such manner as will be of assistance in determining equitable insurance rates, methods of reducing such fire losses, and reducing the insurance rates of the state. [Id.]

Art. 653. **Sworn statement of companies required.**—The said board is authorized and empowered to require sworn statements from any insurance company affected by this law, and from any of its officers, directors, representatives, general agents, state agents, special agents and local agents, of the rates and premiums collected for fire insurance on each class of risks, on all property in this state during any or all years for the five years next preceding the first day of January, 1910, and of the causes of fires, if such be known, if they are in possession of such data and information, or can obtain it at a reasonable expense; and said board is empowered to require such statements for any period of time after the first day of January, 1910; and said board is empowered to require such statements, showing all necessary facts and information, to enable said board to make, amend and maintain the general

basis schedules provided for in this law, and the rules and regulations for applying same, and to determine reasonable and proper maximum specific rates, and to determine and assist in the enforcement of the provisions of this law. The said board shall also have the right, at its discretion, either personally or by some one duly authorized by it, to visit the offices, whether general, local or otherwise, of any insurance company doing business in this state, and the home office of said company outside of this state, if there be such, and the office of any officers, directors, general agents, state agents, local agents or representatives of such company, and there require such company, its officers, agents or representatives, to produce, for inspection by said board, or any of its duly authorized representatives, all books, records and papers of such company or such agents and representatives; and the said board, or its duly authorized agents or representatives, shall have the right to examine such books and papers, and make or cause to be made copies thereof; and shall have the right to take testimony under oath with reference thereto, and to compel the attendance of witnesses for such purpose; and any company, its officers, agents or representatives, failing to make such statements and reports herein referred to, and failing or refusing to permit the examination of books, papers and records as herein required, when so called upon, or declining or failing to comply with any provision of this article, shall be subject to the penalties provided for in article 661. [Id., 128.]

Art. 654. **Secretary and marshal of board; duties, etc.**—1. For the purpose of facilitating the work of said board, one of the appointed members thereof shall be selected by the board as its secretary, who shall perform the duties which shall appertain to that position, and whose official title shall be secretary of the state insurance board; the other of said appointed members thereof shall be selected by said board as fire marshal of the state insurance board, and his official title shall be fire marshal of the state insurance board; but the said members so selected as secretary and fire marshal as aforesaid, shall receive no compensation for filling their respective positions other than their salaries as members of the state insurance board, and shall perform the duties of these respective positions at the will of the board; but their expenses incurred in performing the duties of those positions shall be paid as provided in this law.

2. It shall be the duty of the fire marshal of the state insurance board, who, for the purpose of this law, may be referred to as the state fire marshal, at the discretion of the board, and upon the request of the mayor of any city or village, or the chief of a fire department of any city or village, or any fire marshal, where a fire occurs within such city or village, or of a county or district judge, or of the sheriff or county attorney of any county, where a fire occurs within the district or county of the officer making such request, or of any fire insurance company, or its general, state or special agent, interested in a loss, or of a policyholder sustaining a loss, or upon the direction of the state insurance board, to forthwith investigate at the place of such fire, the origin, cause and circumstances of any fire occurring within this state, whereby property has been destroyed or damaged, and shall ascertain if possible whether the same was the result of an accident, carelessness or design, and shall make a written report thereof to the state insurance board, and shall also furnish in writing to the county or district attorney of the county in which such fire occurred, all the information and evidence obtained by him, including a copy of all the pertinent testimony taken in the case.

3. The state fire marshal shall have the power to administer oaths, take testimony, compel the attendance of witnesses and the production of documents, and to enter, at any reasonable time, any buildings or premises where a fire has occurred or is in progress, or any place contiguous thereto, for the purpose of investigating the cause, origin, and circumstances of such fire.

And he may enter and examine, at any reasonable time, any building, structure or place, for the purpose of ascertaining the fire hazard, and may remove or require the owner or occupant to remove or safely store combustible material, dangerously exposed or improperly placed therein, and to remove any unnecessary exposure to fire hazard found therein. The said state fire marshal is hereby authorized, when necessary, to apply to a court of competent jurisdiction for the necessary writs or orders to enforce the provisions of this article, and in such case he shall not be required to give bond.

4. If, for any reason, the state fire marshal is unable to make any required investigation in person, he may designate the fire marshal of such city or town, or some other suitable person to act for him; and such person, so designited, shall have the same authority as is herein given the state fire marshal with reference to the particular matter to be investigated by him, and shall receive such compensation for his services as may be allowed by the state insurance board. If the investigation of a fire is made, at the request of an insurance company, or at the request of a policyholder sustaining loss, or at the request of the mayor, town clerk or chief of the fire department of any city, village or town in which the fire occurred, then the expenses of the fire marshal, clerical expenses, witnesses' and officers' fees, incident and necessary to such investigation, shall be paid such insurance company, or such policyholder, or such city or town as the case may be; otherwise the expenses of such investigation are to be paid as part of the expenses of the state insurance board. Provided, the party or parties, company or companies, requesting such investigation, shall, before such investigation is commenced, deposit with the state insurance board, an amount of money in the judgment of said board sufficient to defray the expenses of said fire marshal in conducting such investigation.

5. No action taken by the state fire marshal shall affect the rights of any policyholder or any company in respect to a loss by reason of any fire so investigated; nor shall the result of any such investigation be given in evidence upon the trial of any civil action upon such policy, nor shall any statement made by any insurance company, its officers, agents or adjusters, nor by any policyholder or any one representing him, made with reference to the origin, cause or supposed origin or cause, of a fire to the fire marshal or to any one acting for him, or under his directions, be admitted in evidence or made the basis for any civil action for damages. [Id., 127, 128.]

Art. 655. **Board to prepare basis of schedule, etc.**—Immediately upon the taking effect of this law, or as soon thereafter as practicable, said board is empowered, and it is hereby made its duty, to prepare a system of general basis schedules, together with rules for applying the same, for determining fire insurance rates on property in this state, the said general basis schedules and the rules for applying the same to be at all times reasonable; the said board may employ and use any facts and information now in the possession of, or in the records of the present state fire rating board, as well as all facts obtainable from and concerning fire insurance companies transacting business in this state, showing the experience of said companies and charges for premiums on fire insurance, and generally as to the transaction of their said business during the years named in article 653, or during any other period of time, in order to devise and fix reasonable general basis schedules and rules for applying the same for determining the maximum specific rates. The said board, in preparing such general basis schedules showing the rates on all classes of risks insurable by any company in this state, shall show all charges, credits, terms, privileges and conditions which in anywise affect such rates or the application of such rates to specific risks or the cost of insurance; provided, that such schedules and the rules for applying the same shall be furnished by said board to any and all insurance companies affected by this law

applying therefor; and the same shall be furnished to any citizen of this state applying therefor upon the payment of the actual cost thereof; that such general basis schedules and the rules prescribed with reference thereto shall not take effect until said board shall have entered an order or orders fixing the same, and shall have given notice to all insurance companies affected by this law, authorized to transact business in this state.

2. The said board shall have authority, upon reasonable notice, not exceeding thirty days, of its intention to do so, to alter, amend or revise said general basis schedules promulgated by it, or the specific maximum rates approved or ordered by it, as herein provided, and to give reasonable notice of such alteration, amendment or revisions to the public or to any company or companies affected thereby. Such altered, amended or revised schedules or maximum rates shall be the schedules or maximum rates to be thereafter charged for insurance by any company in this state; provided, that the board may order changes to be made to meet unusual conditions in any particular locality, should such conditions exist or arise, by giving similar notice to the public or to any company affected thereby. Provided, the changes or amendments made to the general basis schedules shall apply only to policies of insurance written after the order of the board making such changes or amendments becomes effective. Provided, further, that no policy existing prior to the taking effect of such changes or amendments to the general basis schedules shall be affected by such changes or amendments, unless there shall be a change in the hazard of the risk necessitating a change in the rate applicable to such risk, in which event such policy shall be affected by such changes or amendments, unless there shall be a change in the hazard of the risk necessitating a change in the rate applicable to such risk, in which event such policy shall be subject to the new rates applicable under the changed or amended general basis schedules. [Id., pp. 129, 132.]

Art. 656. **Companies to file application of same.**—It is further provided, that after the adoption and promulgation of the general basis schedules and the rules and regulations for applying the same, as herein provided for by the board, every insurance company, writing fire insurance policies within this state, shall, within a reasonable time, file with the state insurance board its application of said general basis schedules to the specific risks of the state, and the specific rates obtained thereby in accordance with the several provisions of this law; and provided, further, that any one or more insurance companies may employ, for the application of such general basis schedules and the making of such specific rates, the service of such experts as they may deem advisable for such purpose, but the contract or contracts of employment of such experts shall first be submitted to the state insurance board for its approval; provided, further, that the state insurance board shall have authority, and it shall be the duty of said board, personally, or by its agents, to inspect and supervise the work of said experts in the application of said general basis schedules in the determination of specific rates, which rates shall be the maximum insurance rates that may be charged for insurance in this state; provided, further, that any company may write insurance at a lower rate than the maximum on any risk or class of risks in any particular locality; and provided, further, that any company making any such reduction shall forthwith file with the state insurance board a statement of such reduction, showing the maximum rate and the reduced rate thereon, such statement to be on forms prescribed by the board and signed by the state or general agent of such company, which statement when so filed shall be subject to the inspection of the public. The state insurance board, upon the filing of such statement, shall file a certified copy thereof with the city secretary of any city, town or village of such locality, if there be such, or if there be no such officer, then the board shall file a certified copy thereof with

the county clerk of the county of such locality, which said statement when so filed, shall be subject to public inspection. The county clerk or city secretary aforesaid shall receive as compensation, the sum of ten cents for each such statement filed by him, which shall be paid to him, by the state insurance board, of funds which shall be deposited with the state insurance board for such purpose by any such company; provided, further, that said company or companies shall file with the board copies of all maps and copies of the analysis of all applications of said general basis schedules to the specific risks of this state, if required to do so by the board. And it shall be the duty of the expert or experts representing the insurance companies, or any insurance company in this state, to furnish at the date of the inspection to the owners of all risks inspected for the purpose of applying the general basis schedules provided for in this law, a copy of such inspection report, showing all defects that operate as charges to increase the insurance rate.

It is further provided, that the maximum specific rates so made by a company or companies for any city, town, village or locality, shall not take effect, and such company or companies shall not write insurance thereunder until such maximum specific rates shall have been approved by the board. The board shall have the authority to reject said maximum specific rates so made, or any part thereof, or to alter, amend, modify or change the same, or to permit such maximum specific rates to become effective for a limited time, or any modification or change thereof for a limited time in its discretion; provided, however, that the said board shall have authority in its discretion to permit the said company or companies to apply the said schedules of basis rates to risks other than mercantile and special hazards, without having first submitted the maximum specific rates so made to said board for approval. But such rates that the board may permit any company or companies to apply without the board's approval, shall always be subject to review by the board, and, by the proper showing of any policyholder or policyholders, may be reduced. It is further provided, that all changes made by any company in the maximum specific rates made by it in applying the general basis schedules, shall be subject to the review of the board for its approval or disapproval, and shall be reported to the board in such manner and form as may be prescribed by the board. Provided, further, that any insurance company or companies affected by this law shall have the right at any time to petition the board for an order changing or modifying the general basis schedules, or the application of the general basis schedules to the specific risks; and the board shall consider such petition as provided in this law, and enter such order as the board may deem just and equitable to such company or companies, to competing companies and to the public. Provided, further, also, that any company or any policyholder affected by this law shall have the right to apply to the board for an order reducing the maximum specific rates of insurance on property within this state, and the board shall consider such application and enter such order with reference thereto as it may deem just and equitable to such company, to competing companies and to the public. The board shall also have the power and authority to give each city, town, village or locality credit for each and every hazard they may reduce or entirely remove, also for all added fire-fighting equipment, increased police protection, or any other equipment or improvement that has a tendency to reduce the fire hazard of any such city, town, village, or locality, and also to give credit for a good fire record of each city, town, village or locality. The board shall also have the power and authority to compel any company to give any and all policyholders credit for any and all hazards that said policyholder or holders may reduce or remove. Said credit shall be in proportion to such reduction or removal of such hazard, and said company or companies shall return to such policyholder or policyholders such proportional part of unearned premiums charged for such hazards that may be reduced or removed. [Id., p. 130.]

Art. 657. **Policyholders to be furnished maximum rates, etc.** 1. It is provided, that after the approval by the board of the maximum specific rates made by the insurance companies hereunder, that thereafter when a policy of insurance is written, that the policyholder shall be furnished by the company with a copy of the analysis of his maximum specific rates, showing the items of charge and credit which determine the rate, unless such policyholder has theretofore been furnished with such analysis of his rate. It is also further provided, that the general basis schedules and all maximum specific rates and local tariffs, filed in accordance with the provisions of this law, shall be open to the inspection of the public, and each local agent shall have and exhibit to the public copies thereof, relative to all risks upon which he is authorized to write insurance.

2. It is further provided, that until the general basis schedules, herein provided for, shall have been promulgated by the board, and the maximum specific rates thereunder determined, all companies subject to the provisions of this law shall write insurance at the rates now in force in this state, including the reductions heretofore ordered by the state fire rating board, in localities where such specific rates have been determined and filed with the board; provided, the general basis schedules from which such specific rates have been made, and such specific rates shall be subject to the authortiy of the board under this law. Provided, further, however, that wherever such specific rates have not been determined, then the board shall designate at what rate the company shall write insurance; provided, however, that all rates under this article shall be maximum rates, and the companies shall have the right to write insurance below such rates by complying with the terms and conditions of article 656. [Id., pp. 131, 132.]

Art. 658. **Board to promulgate uniform policies; certain restrictions void.**— 1. It shall be the duty of the state insurance board to make, promulgate, and establish uniform policies of insurance applicable to the various risks of this state, copies of which uniform policies shall be furnished each company doing business in this state, or which may hereafter do business in this state. That after such uniform policies shall have been established and promulgated and furnished the respective companies doing business in this state, such companies shall, within sixty days after the receipt of such forms of policies, adopt and use said form or forms and no other; and all companies, which may commence business in this state, after the adoption and promulgation of such forms of policies, shall adopt and use the same and no other forms of policies. The said insurance board shall also prescribe all standard forms, clauses and endorsements used on or in connection with insurance policies. All other forms, clauses and endorsements, placed upon insurance policies, shall be placed thereon subject to the approval of the board. The board shall also have authority, in its discretion, to change, alter or amend such form or forms of policy or policies, and such clauses and endorsements used in connection therewith, upon giving notice and proceeding in accordance with article 659, subdivisoin 2.

2. Any provision in any policy of insurance, issued by any company, subject to the provisions of this law, to the effect that, if said property is incumbered by a lien of any character, or shall after the issuance of such policy become incumbered by a lien of any character, that such incumbrance shall render such policy void, shall be of no force and effect; and any such provision within or placed upon any such policy shall be absolutely null and void.

3. No company, subject to the provisions of this law, may issue any policy or contract of insurance covering property in this state, which shall contain any clause or provision requiring the assured to take out or maintain a larger amount of insurance than that expressed in such policy, nor in any way providing that the assured shall be liable as co-insurer with the company issuing

the policy for any part of the loss or damage which may be caused by fire to the property described in such policy, and any such clause or provision shall be null and void and of no effect; provided, that it may be optional with the assured to accept a policy or contract of insurance containing a co-insurance clause or provision, when a reduction in the rate of insurance on the property described in such policy is the consideration named in such clause, and when so accepted the co-insurance clause or provision shall be binding on the assured. [Id., pp. 132, 133.]

Article 659. **Protest, and notice of hearings thereon.**—1. It is provided, that any citizen or number of citizens of this state, or any policyholder or policyholders, or any insurance company, affected by this law, or any board of trade, chamber of commerce, or other civic organization, or the civil authorities of any town, city or village, shall have the right to file a petition with the insurance board, setting forth any cause of complaint that they may have as to any order made by this board, or any schedule promulgated by this board, or as to any specific rate approved by this board, and that they shall have the right to offer evidence in support of the allegations of such petition by witnesses, or by depositions or by affidavits; that upon the filing of such petition, the party complained of, if other than the board, shall be notified by the board of the filing of such petition, and a copy thereof furnished the party or parties, company or companies, of whom complaint is made; and the said petition shall be set down for a hearing at a time not exceeding thirty days after the filing of such petition, and the board shall hear and determine said petition; but it shall not be necessary for the petitioners, or any one for them, to be present to present the cause to the board, but they shall consider the testimony of all witnesses, whether such witnesses testify in person, or by deposition, or by affidavits; and if it be found that the complaint made in such petition is a just one, then the matter complained of shall be corrected or required to be corrected by said board.

2. The state insurance board shall give the public and all insurance companies, to be affected by its orders or decisions, reasonable notice thereof, not exceeding thirty days, and an opportunity to appear and be heard with respect to the same; which notice to the public shall be published in one or more daily papers of the state, and such notice to the insurance company or companies, to be affected thereby, shall be by letter deposited in the post-office, addressed to the state or general agent of such company or companies, if the address of such state or general agent be known to the board, or if not known, then such letter shall be addressed to some local agent of such company or companies, or, if the address of a local agent be unknown to the board, then by publication in one or more of the daily papers of the state; and the board shall hear any protests or complaints from any insurance company or any citizen or any city, town or village, or any commercial or civic organization, as to the inadequacy or unreasonablness of any rates fixed by it or approved by it, or as to the inadequacy or unreasonabless of any general bases schedules promulgated by it, or the injustice of any order or decision by it; and, if any insurance company, or other person, or commercial or civic organization, or any city or town or village, which shall be interested in any such order or decison, shall be dissatisfied with any regulation, schedule or rate adopted by such board, such company or person, commercial or civic organization, city, town or village shall have the right, within thirty days after the making of such regulation or order, or rate, or schedule, or within thirty days after the hearing above provided for, to bring an action against said board in the district court of Travis county to have such regulation or order or schedule or rate vacated or modified; and shall set forth, in a petition therefor, the principal ground or grounds of objection to any or all of such regulations, schedules, rates or orders. In any such suit, the issue shall be formed and the contro-

versy tried and determined as in other civil cases; and the court may set aside and vacate or annul any one or more or any part of any of the regulations, schedules, orders or rates promulgated or adopted by said board, which shall be found by the court to be unreasonable, unjust, excessive or inadequate, without disturbing others. No injunction, interlocutory order or decree, suspending or restraining, directly or indirectly, the enforcement of any schedule, rates, order or regulation of said board, shall be granted. Provided, that in such suit, the court, by interlocutory order, may authorize the writing and acceptance of fire insurance policies at any rate, which, in the judgment of the court, is fair and reasonable during the pending of such suit, upon condition that the party to such suit, in whose favor the said interlocutory order of said court may be, shall execute and file with the commissioner of insurance and banking a good and sufficient bond to be first approved by said court, conditioned that the party giving said bond will abide the final judgment of said court and will pay to the commissioner of insurance and banking whatever difference in the rate of insurance it may be finally determined to exist between the rate as fixed by said board complained of in such suit, and the rate finally determined to be fair and reasonable by the court in said suit; and the said commissioner of insurance and banking, when he receives such difference in money, shall transmit the same to the parties entitled thereto.

Whenever any action shall be brought by any company under the provisions of this article within said period of thirty days, no penalties nor forfeitures shall attach or accrue on account of the failure of the plaintiff to comply with the orders, schedules, rates or regulations sought to be vacated in such action until the final determination of the same.

Either party to any such action, if dissatisfied with the judgment or decree of said court, may appeal therefrom as in other civil cases. No action shall be brought in any court of the United States to set aside any orders, rates, schedules or regulations made by said board under the provisions of this law until all of the remedies provided herein shall have been exhausted by the party complaining.

If any insurance company affected by the provisions of this law shall violate any of the provisions of this law, the commissioner of insurance shall, by, and with the consent of the attorney general, cancel its certificate of authority to transact business in this state. [Id., pp. 133, 134.]

Art. 660. **Companies and officers, etc., to comply with law.**—No company shall engage or participate in the insuring or reinsuring of any property in this state against loss or damage by fire, except in compliance with the terms and provisions of this law, nor shall any such company knowingly write insurance at any rate higher than the maximum rates herein provided for; and it shall be unlawful for any company so to do; and it shall be unlawful for any company, or its officers, directors, general agents, state agents, special agents, local agents, or its representatives, to grant or contract for any special favor or advantages in the dividends or other profits to accrue thereon, or in commissions or division of commissions, or any position or any valuable consideration, or any inducement not specified in the policy contract of insurance; or shall such company give, sell or purchase, offer to give, sell or purchase, directly or indirectly, as an inducement to insure, or in connection therewith, any stocks, bonds or other securities of any insurance company or other corporation, partnership or individual, or any dividends or profits accrued, or to accrue thereon, or anything of value whatsoever, not specified in the policy; but nothing in this article, or in this law, shall be construed to prohibit a company from sharing its profits with its policyholders; provided, that such agreement as to profit-sharing shall be placed on or in the face of the policy, and such

profit-sharing shall be uniform and shall not discriminate between individuals or between classes; provided, however, that no part of the profit shall be paid until the expiration of the policy. Any company, or any of its officers, directors, general agents, state agents, special agents, local agents or its representatives, doing any of the acts in this article prohibited, shall be deemed guilty or unjust discrimination; provided, however, that if any agent or company shall issue a policy without authority, and any policyholder, holding such policy, shall sustain a loss or damage thereunder, said company or companies shall be liable to the policyholder thereunder, in the same manner and to the same extent as if said company had been authorized to issue said policy, although the company issued said policy in violation of the provisions of this law. But this shall not be construed to give any company the right to issue any contract or policy of insurance other than as provided in this law. [Id., 135.]

Art. 661. **General penalty for violations.**—Any insurance company affected by this law, or any officer or director thereof, or any agent or person acting for or employed by any insurance company, who, alone or in conjunction with any corporation, company or person, who shall wilfully do or cause to be done, or shall wilfully suffer or permit to be done, any act, matter or thing prohibited or declared to be unlawful by this law, or who shall wilfully omit or fail to do any act, matter or thing required to be done by this law, or shall cause or wilfully suffer or permit any act, matter or thing directed not to be done, or who shall be guilty of any wilful infraction of this law, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than three hundred dollars nor more than one thousand dollars for each offense. [Id., 136.]

Art. 662. **Penalty for acceptance of rebate, etc.**—No person shall knowingly receive or accept from any insurance company or from any of its agents, sub-agents, brokers, solicitors, employes, intermediaries, or representatives, or any other person, any rebate or premium payable on the policy, or any special favor or advantage in the dividends or other finacial profits accrued or to accrue thereon, or any valuable consideration, position or inducement not specified in the policy of insurance; and any person so doing shall be guilty of a violation of the provisions of this article, and shall be punished by a fine of not exceeding one hundred dollars, or by imprisonment in the county jail for not exceeding ninety days, or by both such fine and imprisonment. [Id.]

Art. 663. **Incrimination not to excuse witness.**—No person shall be excused from giving testimony or producing evidence when legally called upon to do so at the trial of any other person or company charged with violating any of the provisions of this law on the ground that it may incriminate him under the laws of this state; but no person shall be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter or thing concerning which he may testify or produce evidence under this law, except for perjury in so testifying. [Id., 137.]

Art. 664. **Companies exempt.**—This law shall not apply to purely mutual or to purely profit-sharing fire insurance companies, incorporated or unincorporated under the laws of this state and carried on by the members thereof solely for the protection of their property and not for profit, nor to purely co-operative interinsurance and reciprocal exchanges carried on by the members thereof solely for the protection of their property and not for profit. [Id.]

FRATERNAL BENEFICIARY ASSOCIATIONS.

Art. 665. **What constitutes such association.**—Any corporation, society, order or voluntary association without capital stock, organized and carried

on solely for the mutual benefit of its members and their beneficiaries, and not for profit, and having a lodge system with a ritualistic form of work and representative form of government, and which may make provision for the payment of death benefits, is hereby declared to be a fraternal beneficiary association. [Act 1909, p. 359.]

Art. 666. **May create, maintain and disburse a reserve emergency or surplus fund.**—Any association may create, maintain, disburse and apply a reserve, emergency or surplus fund in accordance with its constitution and laws. Any such reserve, emergency or surplus funds shall be held, invested and disbursed for the use and benefit of the association; and no such association shall be permitted to use any portion of such funds for any purpose, except the payment of death or disability benefits. Provided, that a separate fund, created for the purpose of paying the assessments of a certain class of members, may be used for that purpose and no other. The funds from which benefits shall be paid, and the funds from which the expenses of the association shall be defrayed, shall be derived from the periodical or other payments by the members of the association and accretions of said funds; and every contract hereafter made between such association and its members shall provide that, if such regular payments are insufficient to pay all matured death and disability claims in full and to provide for the creation and maintenance of the funds required by its constitution and laws, extra assessments may be levied upon the members to meet such deficiency. [Id., p. 359.]

Art. 667. **Its funds, how to be invested.**—Any such association may invest its funds in real estate for office purposes, and may hold or sell and convey any real estate acquired by foreclosure, or received in satisfaction of loans. It may also invest its funds in government, state, provincial, county or municipal bonds, or bonds of any township, park or school district having taxing powers; provided, such bonds shall be a direct obligation on all the taxable property within such municipality or district, or irrigation, paving or drainage district bonds; provided, such obligation shall be a direct obligation on all real estate within such district, or first lien or ground rents upon improved real estate, not exceeding fifty per cent of the market value thereof. [Id., p. 359.]

Art. 668. **President or other officer investing funds contrary to law, penalty for.**—Any president or other officer or agent, director or trustee, or member of any board or committee, having the control or management of the investment of the moneys and funds of any fraternal beneficiary association, who shall invest or assent to the investment of any such funds, or any portion thereof, in violation of the terms and provisions of this law, shall be deemed guilty of a felony, and shall, upon conviction, be punished by imprisonment in the state penitentiary for a term of not less than one year nor more than five years. [Id., p. 360.]

Art. 669. **Sworn statement of officers to be filed.**—Not later than March the first of each calendar year, the officer or officers, board or committee, or other body, charged or authorized by the laws or rules or regulations of such association with the duty of investing the funds of such association, shall either jointly or severally make, execute and file with the commissioner of insurance and banking a sworn statement that within their knowledge no part of the money collected by or on behalf of such association for mortuary or disability purposes, and no part of the reserve, emergency or surplus fund, nor the net accretions of either or any of said funds, has been used for expenses or for any purpose other than those permitted by this law, during the preceding year. Any such officer, director, trustee or member of any such board or committee, or any other person, who shall execute

and file with the commissioner of insurance and banking, or execute for the purpose of being filed with such commissioner, any false statement concerning the facts referred to in this article, shall be guilty of a felony, and, upon conviction, shall be imprisoned in the penitentiary for a period of not less than one year nor more than five years. Provided, that any association that provides in its laws for using any portion of the first year's assessments, received from new members, for expenses, shall not be held or considered to be acting contrary to or in violation of this article. [Id., p. 360.]

Art. 670. **Mortuary, etc., fund not to be used for expenses.**—Every provision for payment by members of such an association, in whatever form made, shall distinctly state the purpose of the same and the proportion thereof which may be used for expenses; and no part of the money collected for mortuary or disability purposes, and no part of the reserve, emergency or surplus funds, or the net accretions of either or any of said funds, shall be used for expenses. Any officer, agent or other person, having in his keeping or possession any money collected for mortuary or disability purposes of any fraternal beneficiary association, or belonging to the reserve, emergency or surplus fund of any such association, or representing the net accretions of any or either of said funds, who shall use or permit the use of any such moneys or funds for any purpose other than those permitted by this law, or who shall in any way violate or assent to the violation of the provisions of this article, shall be deemed guilty of a felony, and shall be punished by imprisonment in the penitentiary for a term of not less than one nor more than five years. [Id., p. 360.]

Art. 671. **Persons organizing lodges without certificate of authority.**—Any person who solicits for or organizes lodges of such associations as are described in article 661, without first obtaining from the commissioner of insurance and banking a certificate of authority, showing that the association has complied with the provisions of this law, and is entitled to do business in this state, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than one hundred dollars nor more than two hundred and fifty dollars, or by imprisonment in the county jail for not less than three nor more than six months, or by both such fine and imprisonment; provided, the provisions of this article shall not be so construed as to prohibit any member or members of a local or subordinate lodge from soliciting any person or persons to become a member of any local or subordinate lodge already in existence; and providing, further, the provisions of this article shall not apply to any member or members of any local or subordinate lodge who participates in, supervises, or directs, or conducts, the organization or establishment of any local or subordinate lodge within the limits of the county of his or their residence or lodge district. Any society, or any officer, agent or employe thereof, neglecting or refusing to comply with, or violating, any of the provisions of this law, the penalty for which neglect, refusal or violation is not specified in this article, shall be fined not exceeding two hundred dollars, upon conviction thereof. All certificates of authority for agents or solicitors shall be issued by the commissioner upon application made therefor by any of the general officers of the association, or by any agent whom the properly authorized governing body of the association has, by resolution filed with the commissioner of insurance and banking, duly empowered to make such application; and all such certificates shall be revoked by the commissioner upon the request of the association, and may be revoked for cause upon like ground and in like manner as the certificates of authority of agents for life insurance companies under the laws of this state. All such certificates shall be renewed annually, and shall expire on the last day of February of each

year, and a fee of one dollar shall be paid, for the use of the state, for the issuance of each such certificate. [Id., p. 369.]

Art. 672. **Not to apply to mutual relief or burial associations, with certain provisions.**—The provisions of this law shall not apply to incorporated or unincorporated mutual relief, or benefit, or burial associations operating upon the assessment plan, whose business is confined to not more than one county in the state, or to a territory in two or more adjacent counties included within a radius of not more than twenty-five miles surrounding the city or town in which its principal office is to be located, which is designated in its charter, which are hereby denominated local mutual aid associations; providing, that such associations are in no manner, directly or indirectly, connected, federated or associated with any such association, and do not, directly or indirectly, contribute to the expense or support of any other such association, or to the officers, promoters or managers thereof. And provided, that no person or officer shall receive from said association any payment on account of organization or other expenses or salaries not a bona fide resident of such county in which such association is domiciled. [Id., p. 369.]

Associations shall anually file statement. False statement, false swearing.—The association above mentioned shall annually, on or before March 1, file a statement with the commissioner of insurance and banking, which shall be signed and sworn to by the president, secretary and treasurer, or the officer holding positions corresponding thereto. Such statement shall show whether the association has, during the preceding year, done any business outside of the county in which it is domiciled, and shall state whether or not said association is associated, federated or directly or indirectly connected with any other, and shall show what, if anything, has been contributed during the preceding year by said association, or the members, to any person or officer or director thereof for salaries, commissions or promotion expenses, and the name and residence of the party or parties receiving the same. Should any person in such affidavit herein provided for make any false statement, he shall be deemed guilty of false swearing and punished as provided by law for such offense. [Id., p. 369.]

ACCIDENT INSURANCE COMPANIES.

Art. 673. **Providing for organization of.**—That any number of persons, not less than five, may organize a corporation for the purpose of transacting the business of accident insurance, upon the co-operate or mutual assessment plan, without capital stock, by complying with the provisions of this law; provided, that all such persons shall be bona fide citizens and residents of the state of Texas. [Act 1903, p. 174.]

Art. 674. **Obtaining and filing charter.**—When said charter has been filed with the commissioner, with the approval of the attorney general, accompanied by a filing fee of twenty dollars, the commissioner shall record the said charter and certificate of the attorney general in a book kept for that purpose, and shall, upon the receipt of fee for certified copy of charter, of one dollar, furnish a certified copy of such charter and certificate of the attorney general to the corporators, and shall return to said corporators all such applications for membership, also a certificate that such charter has been filed and recorded in his office, and that said company is duly incorporated under the laws of the state of Texas, and authorized to transact the business set forth in its charter, stating same; upon the filing and recording of which charter, said association shall become a body politic and corporate, with the right to transact its said business in this state and elsewhere, according to the provisions of this law, to hold property and to alienate same, to contract, sue

and be sued under its corporate name, and by that name shall have succession, and may by its board of directors make by-laws not inconsistent with law, and shall carry on its business subject to the provisions of this law. [Id., p. 174.]

Art. 675. **"Mutual assessment accident insurance" defined.**—Any corporation which issues any certificate, policy or other evidence of interest to its members, whereby upon his death or total disability, any money is to be paid by such corporation to such member, or beneficiary designated by him, which money is derived from voluntary contributions or from admission fees, dues and assessments, or any of them, collected or to be collected from the members thereof, and interest and accretions upon, and wherein the paying of such money is conditioned upon the same being realized in the manner aforesaid, and wherein the money so realized is applied to the uses and purposes of said corporation, and the expense of the management and prosecution of its business, and which has no subordinate lodges or similar bodies, shall be deemed to be engaged in the business of mutual assessment accident insurance as contemplated by this law, and shall be subject only to the provisions of this law. [Id., p. 175.]

Art. 676. **Not to issue stock or declare dividend.**—Such corporations shall issue no certificate of stock, shall declare no dividends, shall pay no profits; and the salaries of all officers shall be designated in its by-laws, and such by-laws shall provide for annual members' meetings, in which each member shall be entitled to vote, only in person, to the amount of insurance held. [Id., p. 175.]

Art. 677. **Before adoption or amendment of by-laws must give notice to all members.**—Every such corporation must, before the adoption of any by-laws or amendments thereto, cause the same to be mailed to all the members and directors of such association, together with the notice of the time and place when the same will be considered, and same shall be so mailed at least ten days before the time for such meeting; provided, that the provisions of this article shall not apply to by-laws adopted within sixty days after the incorporation of such company. [Id., p. 175.]

Art. 678. **Certificate of membership, etc., what it shall contain.**—Each certificate of membership, policy or other contract of insurance, issued by such company, shall bear on its face, in red letters, the following words: "The payment of the benefit herein provided for is conditioned upon its being collected by this company from assessments and other sources, as provided in its by-laws." Provided, that nothing in this law shall be construed to prevent the creation of a reserve fund by any such corporation, which funds or accretions, or both, are to be used only for the payment of assessments or death losses, or benefits in case of physical disability, as provided in the by-laws of said corporation; provided, that at least sixty per cent of all amounts realized from assessments and otherwise shall be used for the payment only of losses as they occur. [Id., p. 175.]

Art. 679. **Notice of assessment shall state what.**—Each notice of assessments made by such corporation upon its members, or any of them, shall truly state the cause and purpose of such assesment, amount paid on the last claim paid, the cause of disability or death, the name of the member for whose death or disability such payment was made, the maximum face value of the certificate or policy, and, in case of disability, the maximum amount provided for in such policy or certificate for such disability, and if not paid in full, the reason therefor. [Id., p. 175.]

Art. 680. **Officers or employes violating this law, penalty.**—Any officer or other employe of the mutual insurance company, who shall use or appropriate, or knowingly permit to be used or appropriated by another, any money belonging to such mutual insurance ecompany, in any manner other than is herein provided, shall be deemed guilty of a felony, and, upon con-

viction, shall be punished by imprisonment in the state penitentiary for any length of time for not less than two nor more than ten years. [Id., p. 175.]

MUTUAL FIRE, STORM AND LIGHTNING INSURANCE COMPANIES.

Art. 681. **To pay tax on gross premiums.**—Each and every mutual insurance company operating under this law shall pay to the commissioner of insurance and banking annually on the thirty-first day of December, one-half of one per cent of all the gross premiums received during the year; and no other tax shall be required of such mutual insurance companies, their officers and agents, except such fees shall be paid to the commissioner of insurance and banking as is required by law. [Act 1903, p. 166.]

Art. 682. **Sixty per cent of gross premiums to pay losses.**—All mutual insurance companies, heretofore incorporated under the laws of this state and those incorporated by virtue of this law, shall set aside sixty per cent of all gross premiums received as a fund for the payment of losses, which fund shall be kept separate from all the funds of said companies, and set aside five per cent of all gross premiums received, as a reserve fund to be invested as hereinbefore provided; the remainder of the gross premiums received may be used in paying the expenses of such corporation, provided same is necessary; but in the event more money is received from such source in any one year than is necessary to pay expenses of the company, such surplus shall be appropriated annually on the thirty-first day of December to the reserve fund. And should any mutual insurance company, on the thirty-first day of December of each and every year, have on hand any funds, other than is necessary to pay losses already incurred, such surplus shall be invested in securities as hereinbefore provided, and deposited with the state treasurer as part of the reserve fund, until such reserve fund shall amount to one hundred thousand dollars. [Id., p. 166.[

Art. 683. **Officer or employe appropriating or using funds contrary to law, penalty.**—Any officer or other employe of the mutual insurance company who shall use or appropriate, or knowingly permit to be used or appropriated by another, any money belonging to a mutual insurance company in any manner, other than is herein provided, shall be deemed guilty of a felony, and, upon conviction, shall be punished by imprisonment in the state penitentiary for any length of time for not less than two years nor more than ten years. [Id., p. 166.]

LIFE INSURANCE COMPANIES.

Art. 684. **Shall invest funds how, penalty for violation.**—Co-operative life insurance companies shall invest their funds only in bonds of the state of Texas, or of some county, city, town, school district, or other subdivision organized, or which may hereafter be organized and authorized, or which may hereafter be authorized, to issue bonds under the constitution and laws of this state, or in mortgages upon improved, unincumbered real estate, the title to which is valid, situate within the state of Texas, worth double the amount of the loan thereon, exclusive or buildings, unless such buildings are insured in some fire insurance company authorized to transact business under the laws of this state, and the policy or policies transferred to the company, or in not more than one office building located in some city or town of this state in which the home office of such company is located, the actual value of which is not less than the amount invested therein. All moneys of any such company, coming into the hands of any officer thereof or subject to his control, when not invested as prescribed in this article, shall be deposited in the name of such company in some bank or banks in this state, which are subject to either state or national regulation and supervision, and which have been approved by

the commissioner of insurance and banking as depositories therefor. No co-operative life insurance company shall purchase or hold real estate, except the building in which it has its home office and the land upon which it stands, or such as it shall acquire in good faith through foreclosure sale or otherwise in satisfaction of debts contracted or loans made in the course of its dealings. Any officer or director of any such company, who shall knowingly and wilfully violate or assent to the violation of the provisions of this article, shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by imprisonment in the penitentiary for a term of not less than one nor more than five years. [Act 1909, p. 287.]

Art. 685. **Commissioner annually to make valuation of all policies; net premiums to pay death losses; penalty for officers diverting funds.**—The commissioner of insurance and banking shall annually make valuations of all outstanding policies of co-operative life insurance companies as of December 31 of each year in accordance with the one year preliminary term method based upon the American Experience Table of Mortality and three and one-half per cent interest per annum.

The net premiums upon all policies issued by any such company shall be computed in accordance with the provisions of this article, and no portion of such net premium collected upon any policy, and no portion of the gross premium collected upon any policy, except the expense loading, shall ever be used or applied for the payment of any expenses of the company of any kind or character, or for any other purpose than the payment of death losses, surrender values, or lawful dividends to policy holders, loans to policy holders, or for the purposes of such investments of the company as are prescribed in this law. Any officer, director or employe of any co-operative life insurance company, who shall knowingly and wilfully violate the provisions of this article, shall be deemed guilty of a felony, and, upon conviction, shall be punisehed by imprisonment in the penitentiary for a term of not less than one nor more than five years. [Id., p. 287.]

Art. 686. **Detailed medical examination of persons before entering into contract of insurance, penalty.**—No co-operative life insurance company shall enter into any contract of insurance upon the life of any person without having previously made, or caused to be made, a detailed medical examination, prescribed by its medical director and approved by its board of directors, of the insured, by a duly qualified and licensed medical practitioner, and without his certificate that the insured was in sound health at the date of examination. Any officer or agent or employe of such company violating the provisions of this article, or effecting, or attempting to effect, a contract of insurance contrary to the provisions hereof, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred nor more than five hundred dollars, or by imprisonment in the county jail for not less than six months, or by both such fine and imprisonment. [Id., p. 289.]

Art. 687. **Director or officer not to receive anything or be pecuniarily interested in, when.**—No director or officer of any insurance company, transacting business in this state, or organized under the laws of this state, shall receive any money or valuable thing for negotiating, procuring, recommending or aiding in any purchase or sale by such company of any property or any loan from such company, nor be pecuniarily interested, either as principal, co-principal, agent or beneficiary, in any such purchase, sale or loan; provided, that nothing contained in this article shall prevent a life insurance corporation from making a loan upon a policy held therein, by the borrower, not in excess of the reserve value thereof. Any person violating any provisions of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than three hundred dollars nor more than one thousand dollars. [Id., p. 197.]

Art. 688. **Insurance companies not to discriminate.**—No insurance company doing business in this state shall make or permit any distinction or discrimination in favor of individuals between insurants (the insured), of the same class and of equal expectation of life, in the amount of, or payment of, premiums or rates charged for policies of life or endowment insurance, or in the dividends or other benefits payable thereon; nor shall any such company or agent thereof make any contract of insurance or agreement as to such contract other than as expressed in the policy issued thereon, nor shall any such company or any officer, agent, solicitor or representative thereof, pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance, any rebate of premium payable on the policy, or any special favor or advantage in the dividends or other benefits to accrue thereon or any paid employment or contract for service of any kind, or any valuable consideration or inducement whatever, not specified in the policy contract of insurance; or give, sell or purchase, or offer to give, sell or purchase, as an inducement to insurance or in connection therewith, any stocks, bonds or other securities of any insurance company or other corporation, association or partnership, or any dividends or profits to accrue thereon, or any thing of value whatsoever not specified in the policy, or issue any policy containing any special or board contract or similar provision, by the terms of which said policy will share or participate in any special fund derived from a tax or a charge against any portion of the premium on any other policy. Any company or agent violating the provisions of this article shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, and the said company shall, as an additional penalty, forfeit its certificate of authority to do business in this state; and the said agent shall, as an additional penalty, forfeit his license to do business in this state for one year; provided, the company shall not be held liable under this article for any act of its agent, unless such act was authorized by its president, one of its vice presidents, its secretary or an assistant secretary, or by its board of directors. [Id., p. 198.]

Art. 689. **Person soliciting insurance without certificate of authority, penalty.**—Any person who, for direct or indirect compensation, solicits insurance, in behalf of any company, or transmits for a person other than himself, an application for a policy of insurance to or from such company, or assumes to act in negotiation of insurance without a certificate of authority to act as agent or solicitor for such compnay, or after such certificate of authority shall have been canceled or revoked, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than one hundred dollars. [Id., p. 208.]

Indictment to be sufficient to charge the offiense of unlawfully acting as an insurance agent must allege that the company for which the accused acted as agent was an insurance company. Brown v. State, 26 T. Cr. R., 540, 10 S. W. R., 112.

And see Smith v. State, 18 T. Cr. R., 69.

Art. 690. **Agent procuring by fraudulent representation.**—Any such agent or solicitor who knowingly procures, by fraudulent representations, payment of an obligation for the payment of a premium of insurance shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than one hundred dollars, nor more than one thousand dollars. [Id., p. 208.]

Art. 691. **Agent embezzling or misappropriating money, etc.**—Any insurance agent or solicitor who collects premiums for an insurance company lawfully doing business in this state and who embezzles or fraudulently converts or appropriates to his own use, or with intent to embezzle, takes, secretes or otherwise disposes of or fraudulently withholds, appropriates, lends, invests or

otherwise uses or applies, any money or substitutes for money received by him as such agent or broker, contrary to the instructions or without the consent of the company, for or on account of which the same was received by him, shall be deemed guilty of theft of property of the value of the amount involved in either case and shall be punished accordingly. [Id., p. 208.]

Art. 692. **Agent or examining physician making false statement, penalty.**—Any solicitor, agent, or examining physician who shall knowingly or wilfully make any false or fraudulent statement or representation, in or with reference to any application for insurance, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars. [Id., p. 208.]

Art. 693. **Officers of foreign insurance company filing false statement, penalty.**—Any officer of any insurance company not organized under the laws of this state, who shall file with the commissioner of insurance and banking any statement, report or other paper required or provided for by law to be so filed, which shall contain any material statement or fact known to be false by the person filing the same, or any person who shall execute or cause to be executed any such false statement, report or other paper to be so filed, shall be deemed guilty of a felony, and, upon conviction, shall be punished by imprisonment in the penitentiary for a term of not less than one year. [Id., p. 211.]

TITLE 12.

OF OFFENSES AFFECTING PUBLIC HEALTH.

Chapter.
1. Occupation and Acts Injurious to Health.
2. Sale of Unwholesome Food, Drink or Medicine.
3. Nursery and Farm Products.
4. Feed Stuffs and Bollworm Poison.
5. Cocaine and Morphine.
6. Unlawful Practice of Medicine.
7. Dentistry.
8. Pharmacy—Practice of.
9. Nursing and Embalming.
10. Violations of Quarantine.
11. Texas State Board of Health.

CHAPTER ONE.

OCCUPATION AND ACTS INJURIOUS TO HEALTH.

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Article 694. [423] **Offensive trades and nuisances.**—If any person shall carry on any trade, business or occupation injurious to the health of those who reside in the vicinity, or shall suffer any substance which has that effect to remain on premises in his possession, he shall be punished by fine not less than ten nor more than one hundred dollars; and each separate day of carrying on such business, trade or occupation, or of permitting such substance to remain on the premises, shall be considered a separate offense.

Art. 695. [424] **Pollution or obstruction of water courses.**—If any person shall in any wise pollute or obstruct any water course, lake, pond, marsh or common sewer, or continue such obstruction or pollution, so as to render the same unwholesome or offensive to the inhabitants of the county, city, town or neighborhood thereabout, he shall be fined in a sum not exceeding five hundred dollars. [Act Feb. 11, 1869, p. 97.]

Art. 696. [425] **Leaving dead animal in road.**—If any person shall leave the dead carcass or body of any horse, mule, ox, steer, cow or other animal, which died in the actual possession of such person, in any public road or highway, or in any street or alley of any village, town or city in this state, or within fifty yards of such public road, highway, street or alley, he shall be fined not less than five nor more than one hundred dollars. [Act April 7, 1874, p. 69.]

Construed. To constitute this offense, the animal must die while in the actual (manual) possession of the accused—that is, while the animal is being in some way used by the accused. Ogg v. State, 48 T. Cr. R., 231, 87 S. W. R., 348.

Art. 697. **Public buildings, railways, persons, etc., subject to rules of health officer.**—If any person having control of any public building, or any agent, manager, operator, employe or receiver of any railway company, sleeping car company, or any individual, shall fail to comply with the provisions of this chapter, and the rules and regulations promulgated by the state health officer, under the provisions thereof, he shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than fifty nor more than two hundred dollars. [Act 1903, p. 180.]

CHAPTER TWO.

SALE OF UNWHOLESOME FOOD, DRINK OR MEDICINE, OR MILL PRODUCTS.

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Article 698. [426] **Selling flesh of animals not slaughtered, or diseased animals.**—If any person shall knowingly sell the flesh of any animal dying otherwise than by slaughter, or slaughtered when diseased, he shall be fined as provided in article 711 of this chapter. [O. C.]

Construed. To constitute this offense, the defendant must have known when he sold it that the meat was diseased, and that knowledge must be affirmatively established by the evidence. Teague v. State, 25 T. Cr. R., 577, 8 S. W. R., 667.

Art. 699. **Manufacture or sale of adulterated or misbranded foods, etc.**—No person, firm or corporation, shall within this state manufacture for sale, have in his possession with the intent to sell, offer or expose for sale, or sell or exchange, any article of food, drink or drugs, which is adulterated or misbranded within the meaning of this law. The term "food," as used herein, shall include all articles used for food, drink, flavoring, confectionery, or condiment, by man, whether simple, mixed or compound. That the term "drug," as used herein, shall include all medicines and preparations for internal or external use recognized in the United States Pharmacopoeia or National Formulary, and any substance or mixture of substances intended to be used for the cure, mitigation or prevention of disease of either man or animal. [Act 1909, p. 167.]

Offering for sale adulterated food. On a prosecution for offering adulterated food for sale, it devolves upon the state to prove not only that the accused did offer such food for sale, but that when he did so he knew that it was adulterated. Sanchez v. State, 27 T. Cr. R., 14, 10 S. W. R., 756.

Art. 700. **Adulterated foods, etc., defined.**—That for the purposes of this law, an article shall be deemed to be adulterated:

(a) In the case of drugs: (1) If, when sold under or by a name, recognized in the eighth decennial revision of the United States Pharmacopoeia or in such United States Pharmacopoeia as was official at the time of labeling it, or in the National Formulary, it differs from the standard strength, quality or purity laid down therein; (2) if, when sold under or by a name not recognized in the eigth decennial revision the United States Pharmacopoeia, but which is found in some other pharmacopoeia or other standard work on materia medica, it differs materially from the standard of strength, quality or purity laid down in such work; (3) if its strength, quality or purity falls below the professed standard under which it is sold.

(b) In the case of confectionery: If it contain terra alba, barytes, talc, chrome yellow or other mineral substance or poisonous color or flavor, or other ingredients deleterious or detrimental to health, or any vinous, malt or spirituous liquor or compound or narcotic drug.

(c) In the case of food. (1) If any substance has been mixed and packed with it, so as to reduce or lower or injuriously affect its quality or strength; (2) if any substance has been substituted wholly or in part for the article; (3) if any valuable constituent of the article has been wholly or in part abstracted, or if the product be below the standard of quality, strength or purity represented to the purchaser or consumer; (4) if it be mixed, colored or powdered, coated or stained, in a manner whereby damage or inferiority is concealed; (5) if it contain any added poisonous or other added deleterious ingredient which may render such article injurious to health; provided, that when in the preparation of food products for shipment, they are preserved by any external application applied in such manner that the preservative is necessarily removed mechanically, or by maceration in water or otherwise, and directions for the removal of said preservative shall be printed on the covering of the package, the provisions of this law shall be construed as applying only when said products are ready for consumption; (6) if it consists in whole or in part of a filthy, decomposed or putrid animal or vegetable substance, or any portion of an animal or vegetable unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter. [Id. p, 167.]

Art. 701. **Misbranded articles of food, etc., defined.**—That the term "misbranded," as used herein, shall apply to all drugs or other articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design or device regarding such article or the ingredients or substances contained therein, which shall be false or misleading in any particular.

That for the purposes of this law, an article shall also be deemed to be misbranded:

(a) In the case of drugs: (1) If it be an imitation of or offered for sale under the name of another article; (2) if the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package, or if the package fail to bear a statement on the label of the quantity or proportion of any alcohol, morphine, phenacetin, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilid, or any derivative or preparation of any such substances contained therein.

(b) In the case of food: (1) If it be an imitation of, or offered for sale under the distinctive name of, another article; (2) if it be labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so, or if the contents of the package, as originally put up, shall have been removed in whole or in part, and other contents shall have been placed in such package, or if it fail to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucaine, phenacetin, chloroform, cannabis indica, chloral hydrate or acetanilid, or any derivative or preparation of any of such substances contained therein; (3) if in package form, and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package; (4) if the package containing it or its labels, bear any statement, design or device regarding the ingredients or the substances contained therein, which statement, design or device, shall be false or misleading in any particular; provided, that an article of food which does not contain any added poisonous or deleterious ingredient shall not be deemed to be

adulterated or misbranded in the following cases: First, in case of mixtures of compounds, which may be now, or from time to time hereafter, known as articles of food, under their own distinctive names, and not an imitation of, or offered for sale under the distinctive name of, another article, if the name be accompanied on the same label or brand with a statement of the place where said article has been manufactured or produced; second, in the case of articles labeled, branded or tagged, so as to plainly indicate that they are compounds, imitations or blends; that the term "blend," as used herein, shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring and flavoring only; and provided, further, that nothing in this law shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods, which contain unwholesome added ingredients, to disclose their trade formulas, except in so far as the provisions of this law may require to secure freedom from adulteration or misbranding. [Id., p. 167.]

Art. 702. **Dealer in slaughtered meats, fish, fowl, etc.**—Every dealer or peddler in slaughtered flesh, meats, fish, fowl or game, for human food, at wholesale or retail, in the transportation of such food from place to place to customers, or in storing or keeping same for sale, shall protect the same from dust, flies and other vermin or substances which may injuriously affect it, by securely covering it, while being so transported, stored or kept. [Id., p. 168.]

Art. 703. **Cider not produced wholly from juice of fruit.**—It shall be unlawful for any person to manufacture, sell, offer or expose for sale or exchange, any cider not produced wholly from the juice of fruit. [Id., p. 168.]

Art. 704. **Manufacture or sale of food to which has been added certain acids, etc., prohibited.**—It shall be unlawful for any person to manufacture, sell, offer or expose for sale or exchange, any article of food, to which has been added formaldehyde, boric acid, benzoic acid or benzoates, sulphurous acid or sulphite, salicylic acid or salicylates, abrastols, beta napthol, fluorine compounds, dulcin, glucin, cocaine, sulphuric acid, or other mineral acid, except phosphoric acid, any preparation of lead or copper or other ingredient injurious to health; provided, that nothing in this law shall be construed as prohibiting the sale of catsups, sauces, concentrated fruits, fruit juices, and like substances, preserved with one-tenth of one per cent of benzoate of soda, or the equivalent benzoic acid, when a statement of such fact is plainly indicated upon the label; provided, further, that the oxides of sulphur may be used for bleaching, clarifying and refining food products. [Id., p. 169.]

Art. 705. **Baking powder compound to be labeled.**—Whoever manufactures for sale within this state, or offers or exposes for sale or exchange, or sells, any baking powder or compound intended for use as a baking powder under any name or title whatsoever, shall securely affix, or cause to be securely affixed, to the outside of every box, can or package containing such baking powder or like mixture, or compound, a label distinctly printed in plain capital letters in the English language, containing the name and residence of the manufacturer or dealer, and the ingredients of the baking powder. Baking powder containing less than ten per cent of available carbon dioxide shall be deemed to be adulterated. [Id., p. 169.]

Art. 706. **Watered, adulterated or impure milk.**—It shall be unlawful for any person, either by himself or agent, to sell or expose for sale or exchange, any unwholesome, watered, adulterated, or impure milk, or swill milk, or colostrum, or milk from cows kept upon garbage, swill or any other substance in a state of fermentation or putrifaction, or other deleterious substances, or from cows kept in connection with any family in which there are infectious diseases, or from sick or diseased cows; provided, "skim milk" may be sold if on the can or package from which such milk is sold, the

words "skim milk" are distinctly painted in letters not less than one inch in length. [Id., p. 169.]

Construed. The pure food law with reference to the sale of adulterated milk, is enforcible, and there is no conflict in the penalties prescribed by the state law; besides the act of the legislature cannot be held invalid because the city ordinance may be out of harmony with it; and, when a conflict arises between the act of the legislature and the city ordinance, the latter must give way and be held invalid. Mantel v. State, 55 T. Cr. R., 456, 117 S. W. R., 855.

A city ordinance cannot provide penalties other than those prescribed by the state for the same offenses. Mantel v. State, supra, and authorities cited.

Art. 707. **City council has power to appoint inspector of milk.**—Authority is hereby given the common council, or commission of any city or town, to appoint an inspector of milk in any such city or town, and to fix his compensation. [Id., p. 169.]

Art. 708. **Dealer not to be prosecuted, when.**—That no dealer shall be prosecuted under the provisions of this law, when he can establish a guaranty, signed by the wholesaler, jobber, manufacturer, or other party, residing within this state or in the United States, from whom he purchases such article, to the effect that the same is not adulterated or misbranded within the meaning of this act, designating it. Said guaranty, to afford protection, shall contain the name and address of the party making the sale of such articles to such dealer; and in such case, said party or parties shall be amenable to the prosecutions, fines and other penalties which would attach, in due course, to the dealer under the provisions of this law. [Id. p, 169.]

Art. 709. **Dairy and food commissioner, etc., not to furnish certificates as to purity of article manufactured or sold.**—It shall be unlawful for the dairy and food commissioner, or his deputy or assistants, while they hold office, to furnish to any individual, firm or corporation any certificate as to the purity or excellence of any article manufactured or sold to or by them to be used as food or drug, or in the preparation of foods or drugs. [Id., p. 171.]

Art. 710. **Obstructing dairy and food commissioner.**—Any person who shall wilfully hinder or obstruct the dairy and food commissioner, or his deputy or other person, or inspector by him duly authorized, in the exercise of the powers conferred upon him by this law, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than ninety days, or both such fine and imprisonment. [Id., p. 172.]

Art. 711. **Penalty for violating any provision of this law.**—Whoever shall do any of the acts or things prohibited, or wilfully neglect or refuse to do any of the acts or the things enjoined by this law, or in any way violate any of its provisions, shall be deemed guilty of a misdemeanor, and, where no specific penalty is prescribed by this chapter, shall be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars. [Id., p. 169.]

MILL PRODUCTS.

Art. 712. **Standard weights, etc.**—Mill products, hereinafter mentioned, shall have the following standard weights, viz: Flour, one hundred and ninety-six pounds per barrel, or forty-eight pounds per sack; corn meal, bolted or unbolted, thirty-five pounds per sack, and feed made from cereals of any kind, whether pure, mixed or adulterated, one hundred pounds per sack. Fractional barrels and sacks shall weigh in the same proportion; and these weights shall be net and exclusive of the barrel or sack in which such product is packed. [Act 1905, p. 227.]

Art. 713. **Correct name and true net weight to be marked or branded on hogshead, sack, package, etc.**—The correct name and the true net weight of the contents of each and every hogshead, barrel, box, cask, bale, sack or package of any of the foregoing products, whether sold in single packages or lots, shall be plainly marked, branded or stenciled in large, legible letters and figures, not less than two inches in size, upon the exterior of such hogshead, barrel, box, cask, bale, sack or package, in a conspicuous place, as the head in case of hogsheads or barrels, and the front or branded side in case of sacks, bales or packages; and it shall be unlawful for any person, firm or corporation, or the agent, employe or representative of any person, firm or corporation, to sell or exhcange, or offer for sale or exchange, any of such products so packed or contained, until the provisions hereof have been complied with. [Id., p. 227.]

Art. 714. **Penalty for offering same for sale not so marked or branded.**—It shall be unlawful for any person, firm or corporation, or the agent, employe or representative of any person, firm or corporation, to sell or exchange, or offer for sale or exchange, whether in single packages or lots, any product composed of mixed cereals of any kind, or any cereal adulterated in any manner, unless the word "adulterated" is plainly marked, printed or stenciled diagonally across the other marks or brands, if any, on the hogshead, barrel, box, bale, cask, sack or package containing the same, or in case there are no other marks thereon, then across such hogshead, barrel, box, cask, bale, sack or package, in a conspicuous place in large legible letters and figures not less than two inches in size. [Id., p. 227.]

Art. 715. **Penalty for violating any provision of this law.**—If any person shall knowingly violate the provisions of this law, he shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not less than twenty-five dollars nor more than one thousand dollars, and each transaction shall be deemed a separate offense. [Id., p. 227.]

Art. 716. **Manufactured wheat or corn products, packages how marked or branded.**—Any person, firm, corporation or agent, employe or representative of any person, firm, corporation, manufacturer or dealer in said manufactured wheat or corn products in original packages, and offering the same for sale in this state, whether said packages are sold singly or in lots, and all manufacturers or dealers of flour, meal or feed from the above enumerated grain products in this state, when offering the same for sale in original packages, whether sold in single packages or lots, shall place in large, legible letters and figures, not less than two inches in size, on the package or packages so offered for sale, the name of the contents and the actual net weight of the contents of said package or packages; and it shall be unlawful for any such person to sell, or offer to sell, any of the articles mentioned in this act which have been falsely labeled, knowing the same to be falsely labeled. All adulterated wheat or corn products shall have stamped upon the sacks or barrels, "adulterated." [Act 1899, p. 304.]

Construed. An information or indictment based upon this article, to be sufficient, must allege the article with which the flour was adulterated. Dorsey v. State, 38 T. Cr. R., 527, 44 S. W. R., 514.

(This chapter is a substitution for chapter two of title XII, of the Penal Code of 1895, held in some respects inoperative. See Dorsey v. State, 38 T. Cr. R., 527, 44 S. W. R., 514.)

CHAPTER THREE.

NURSERY AND FARM PRODUCTS.

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Article 717. **Keeping of trees, shrubs, plants, etc., affected with contagious diseases prohibited.**—No person in this state shall knowingly or wilfully keep any peach, almond, apricot, nectarine or other trees affected with the contagious disease known as yellows. Nor shall any person keep for sale any apple, peach, plum or other tree affected with nematode galls, crown galls, or root rot. Nor shall any person knowingly or wilfully keep any plum, cherry or other trees affected with the contagious disease or fungus known as black knot; nor any tree, shrub or plant infested with or by the San Jose scale or other insect pest dangerously injurious to, or destructive of, trees, shrubs or other plants; nor any orange or lemon trees, citrus stocks, cape jasmines or other trees, plants or shrubs infested with "white fly" or other injurious insect pests or contagious diseases of citrus fruits; nor subtropical plants, shrubs, evergreens or ornamentals; nor any china, forest or other trees, shrubs or plants, infested with injurious insect pests or contagious diseases. Every such tree, shrub or plant shall be a public nuisance, and as such, it shall be the duty of the commissioner of agriculture or his representatives to abate it; and no damage shall be awarded for entering upon the premises upon which there are trees, shrubs or plants infected with yellows, black knot, crown gall or other infectious or dangerous disease, or infested with San Jose scale or other dangerous insect pest, for the purpose of legally inspecting the same; nor shall any damages be awarded for the treatment by the commissioner of agriculture, or his duly authorized agents or representatives, of such trees, shrubs or plants, or for altogether destroying such trees, if necessary to suppress such insect, pest or disease, if done in accordance with the provisions of this article. But the owner of the trees, shrubs or plants shall be notified immediately upon its being determined that such trees, shrubs or plants should be destroyed, by a notice in writing signed by the commissioner or the person or persons representing him, which said notice in writing shall be delivered in person to the owner of such trees, shrubs or plants, or left at the usual place of residence of such owner, or, if such owner be not a resident of the locality, to notify by leaving such notice with the person in charge of the premises, trees, shrubs or plants, or in whose possession they may be. Such notice shall contain a brief statement of the facts found to exist, whereby it is necessary to destroy such trees, shrubs or plants, and shall call attention to the law under which it is proposed to destroy them; and the owner shall, within ten days from the date upon which such notice shall have been received, remove and burn all such diseased or infected trees, shrubs or plants. If, however, in the judgment of said commissioner, or person representing him, any tree, shrub or plant infected with any disease, or infested with dangerously injurious insects, can be treated with sufficient remedies, he may direct such treatment to be car-

ried out by the owner under the direction of the commissioner, agent, employe or representatives. In case of objections to the findings of the chief inspector, employes or representatives of the commissioner, an appeal may be made to the commissioner, whose decision shall be final. An appeal must be taken within five days from service of said notice, and shall act as a stay of proceedings until it is heard and decided. When the commissioner, or chief inspector, or employe, or representative, appointed by him, shall determine that any tree or trees, shrubs or other plants must be treated or destroyed forthwith, he may employ all necessary assistance for that purpose; and such representative or representatives, agent or agents, employe or employes may enter upon any or all premises necessary for the purpose of such treatment, removal or destruction. But such commissioner or the person representing him shall, before such treatment or destruction, first require the owner or person in charge of the trees, shrubs or plants, to treat or destroy same, as the case may be; and, upon the refusal or neglect upon the part of said owner or person in charge to so treat or destroy such trees, plants or shrubs, then such commissioner, chief inspector, or person or persons representing him shall treat or destroy such trees, shrubs or plants; and all charges and expenses thereof shall be paid by such owner or person in charge of said trees, shrubs or plants, and shall constitute a legal claim against such owner or person in charge, which may be recovered in any court having jurisdiction upon the suit of such commissioner or chief inspector, or the county attorney of the county where the premises are situated, together with all costs, including an attorney fee of ten dollars, to be taxed as other costs. [Act 1909, p. 316.]

Art. 718. **Commissioner of agriculture cause examination of.**—The commissioner of agriculture shall cause an examination to be made at least once each year, of each and every nursery or other place where trees, shrubs or plants, commonly known as nursery stock, are grown or exposed for sale, for the purpose of ascertaining whether the trees, shrubs or plants therein kept, or propagated for sale, are infected with contagious disease or diseases, or infested with insect pests. If, after such examination, it is found that the said trees, shrubs or other plants so examined are apparently free in all respects from any contagious or infectious disease or diseases, dangerously injurious insect pest or pests, the said commissioners shall issue to the owner or proprietor of the stock so examined a certificate, setting forth the fact that the stock so examined was at the time of such examination apparently free from any and all such disease or diseases, insect pest or pests. No such certificate shall be negotiable or transferable, and shall be void if sold or transferred. Any such act or sale or transference shall be punishable as provided by this article. [Id., p. 318.]

Art. 719. **Nursery stock consigned for transportation shall be accompanied by certificate.**—All nursery stock, consigned for shipment, or shipped by freight, express or other means of transportation shall be accompanied by a copy of said certificate attached to each car, box, bale, bundle or package. It is specifically provided that when such box, bale, bundle or package, contains nursery stock to be delivered to more than one individual, partnership or corporation, that each portion of such nursery stock to be delivered to such individual, partnership or corporation shall also bear a copy of the certificate of inspection issued as provided in this article. Should any individual, partnership or corporation, nursery agent, or dealer or broker, send out or deliver, within the state, trees, vines, shrubs, plants, buds or cuttings, commonly known as nursery stock, and which are subject to the attacks of insects and diseases above provided for, unless he has in his possession a copy of said certificate, dated within a year thereof, deface or destroy such certificate, or wrongfully be in possession of such certificate, or fail to attach proper

tags on each and every shipment, such tags bearing a copy of the said certificate, he shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than one hundred dollars nor more than two hundred dollars. [Id., p. 318.]

Art. 720. **Shipment of into the state shall be accompanied by certificate of inspection.**—No individual, partnership or corporation, outside the state, shall be permitted to ship nursery stock into this state, without first filing with the commissioner of agriculture a certified copy of his or their certificate of inspection, issued by the proper authorities in the state, in which the proposed shipment originates. This certificate must show that the stock to be shipped has been examined by the proper officer of inspection in that state or province, and that the stock is apparently free from all dangerous insect pests or contagious diseases; and that when fumigation is required by the commissioner of agriculture, that the stock has been properly fumigated. Immediately upon receipt of the filing with the commissioner of agriculture of this certificate, he shall, in addition, make further investigation as to the moral standing and integrity of the applicant as will satisfy him that the applicant is entitled to receive a certificate. A fee of five dollars shall be required from the applicant, upon receipt of which, the commissioner of agriculture may issue a certificate permitting the applicant to ship into the state. Each box, bale or package of nursery stock from outside the state shall bear a tag, on which is printed a copy of the certificate of this state, and also a copy of the certificate of the state in which it originates. [Id., p. 318.]

Art. 721. **Transportation company or common carrier not to receive, when.**—No transportation company or common carrier shall receive, transport or deliver shipments of nursery stock originating either within or without the state which do not bear shipping tags or labels, showing the certificate of inspection of the state in which it originates, together with the permit from this state, if it be a shipment from without the state. Any individual, partnership or corporation from without the state, or any agent of any transportation company, common carrier, or any person or persons, who shall violate the provisions of this article, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than fifty nor more than two hundred dollars, together with all costs for each offense.

Provided, that no transportation company or common carrier shall be liable for damages to the consignee or consignor for refusing to receive for transportation or delivery such trees, packages, bales, bundles or boxes, when not accompanied by copies of the certificates provided for in this article. The agent of such companies or common carriers shall report any such shipment to the commissioner of agriculture immediately. Shipments of nursery stock into this state, or originating within the state, without tags or proper certificates, as provided for in this article, shall be fined as provided herein. [Id., p. 319.]

Art. 722. **Commissioner of agriculture, power to revoke certificate.**—The commissioner shall have the power to revoke any certificate which has been issued, when he shall find that false representations have been made by the party or parties to whom certificates have been issued, or who have refused to comply with the law, instructions, rules and regulations given by the commissioner of agriculture in reference to the provisions of this law and its enforcement. Any individual, partnership, or corporation, who shall be guilty of interfering with, refusing or preventing, the commissioner of agriculture, or his representatives, in the execution of their official duties, to enter upon any premises owned, used or leased by them; and any person who shall make false representations for the purpose of obtaining a certificate from the commissioner of agriculture, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than twenty-five dollars nor

more than two hundred dollars, together with all costs for each offense. [Id., p. 319.]

Art. 723. **Shall enforce this law and make and enforce regulations.**—The commissioner of agriculture shall enforce the provisions of this law, and make and enforce such rules and regulations as may be deemed necessary for carrying the same into effect, not inconsistent with the same, and for the inspection of nurseries, orchards, forest trees, greenhouses and any other premises, deemed necessary to carry out the provisions of this law, together with all products originating from same within the meaning of this law. He shall also appoint one person who shall be designated as chief inspector, whose duty it shall be to inspect, or cause to be inspected, under the directions of the commissioner of agriculture, all trees, plants and shrubs, of every kind whatsoever, grown, produced or offered for sale by any nursery, dealer, individual or corporation in this state, and also to inspect, or cause to be inspected, all orchards provided for in this law, and may employ such other person or persons, expert or experts, as may be necessary from time to time for administering and carrying into operation and enforcing the provisions of this law; provided, that the chief inspector employed under the provisions of this law shall not, during the time of such service, be interested in, or connected with, any nursery business whatsoever. The said commissioner shall fix and collect reasonable fees for the inspection, as provided for in this law; provided, that not less than two dollars and fifty cents nor more than fifteen dollars shall be charged for each inspection under the provisions of this law. All fees, collected under the provisions of this article, shall be paid to the department of agriculture, and credited to the fund provided for administering this law. [Id., p. 319.]

Art. 724. **Giving false certificate.**—If the said commissioner, or any of his agents or employes, give a false certificate, or a certificate without an actual examination of the nursery stock for which such certificate is given, to any owner, proprietor or lessee of any nursery, or owner of nursery stock, or to any other person, for use under the provisions of this law, he shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars for each offense. [Id., p. 320.]

Art. 725. **"Nursery stock" defined.**—The term, "nursery stock," within the meaning of this law, shall include all fruit trees and vines, shade trees and forest trees, whether such shade or forest trees be especially grown for sale in a nursery or taken from the forests and offered for sale, all scions, seedlings, roses, evergreens, shrubbery or ornamentals, also such greenhouse plants or propagation stock, all classes of berry plants, cut flowers taken from plants, bushes, shrubs or other trees growing in this state, which may be a medium for disseminating injurious insect pests and contagious diseases. [Id., p. 320.]

Art. 726. **"Nursery" defined.**—The term, "nursery," shall be construed to mean any grounds or premises on which nursery stock is grown, or exposed for sale. "Being in the nursery business" applies to any individual, partnership or corporation which may either sell or grow, or both grow and sell, nursery stock, regardless of the variety or quantity of nursery stock sold or grown. [Id., p. 320.]

Art. 727. **"Dealer" defined.**—The term, "dealer," shall be construed to apply to any individual, partnership or corporation not growers of nursery stock, but who buy and sell nursery stock for the purpose of reselling and reshipping under their own name or title, independently of any control of those from whom they purchase. An "agent of a nursery or dealer" shall be construed to apply to any individual, partnership or corporation selling nursery stock, either as being entirely under the control of the nursery or dealer

with whom the nursery stock offered for barter and traffic originates, or some co-operative basis for handling nursery stock with the grower or dealer, as specified in this article. That any such agent shall have proper credentials from the dealer he represents or co-operates with, and failing in that, any such agent shall be classed as a dealer, and subject to such rules and regulations as may be adopted relative to them, and shall be amenable to the same penalties for violations of any provisions of this law, or the rules and regulations of the conmmissioner. Provided, that any agent of any dealer or nurseryman, as specified in this article, who shall knowingly deliver to any individual, partnership or corporation, any tree, shrub, or plant infested or diseased, as specified in the provisions of this law, even though such trees, shrubs or plants are received in a box, bale or package, bearing a certificate of inspection, as provided in this law, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than twenty-five dollars nor more than five hundred dollars for each such delivery to each individual, partnership or corporation. [Id., p. 321.]

Art. 728. **Making false representations.**—That any person, persons, company of persons, co-partnership, any member of a company or co-partnership, any corporation or any stockholder or officer thereof, any agent, servant or employe .of any such person, persons, company of persons, co-partnership, member or stockholder of any company, co-partnership or corporation or officer aforesaid, who shall hereafter, knowingly, make any false representation or representations of the name, quality or nature of any nursery product for the purpose of inducing any vendee to buy the same, or who shall deliver to any vendee, knowingly, any such product other than that contracted for, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned in the county jail not less than thirty days nor more than six months, or both so fined and imprisoned. [Act 1907, p. 304.]

Art. 729. **Statute of limitation shall run, when.**—The statute of limitation shall not begin to run against a prosecution under the foregoing article until such product shall have developed and disclosed the fraud. [Id., p. 304.]

CHAPTER FOUR.

FEED STUFFS AND BOLL WORM POISON.

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Article 730. **Printed on tag, certificate of name, number of pounds and analysis; penalty for failure.**—Every lot or parcel of concentrated feeding stuffs, as defined in article 732, used for feeding farm live stock, sold, offered or exposed for sale in the state of Texas, for use within this state, shall have printed on a tag, described in article 734, a plainly printed statement clearly and truly certifying the number of net pounds of feeding stuff in the package, stating the name or names of material of which such weight is composed, where the contents are of a mixed nature, the name, brand or trade mark under which the article is sold, the name and address of the manufacturer or importer, the place of manufacture, such information as is required by article 740, if any, and a chemical analysis stating the minimum percentages it contains of crude protein, allowing one per cent of nitrogen to equal six and one-quarter per cent of protein, of crude fat, of nitrogen-free extract, and the maximum percentage it contains of crude fiber; these constituents to be determined by the methods adopted at the time by the association of official agricultural chemists of the United States. Mill products, hereinafter mentioned, shall have the following standard weight, viz: Flour, one hundred and ninety-six pounds per barrel, or forty-eight pounds per sack; corn meal, bolted or unbolted, thirty-five pounds per sack; rice bran, one hundred and forty-three pounds per sack; rice polish, two hundred pounds per sack; and other feeds made from cereals of any kind, whether pure, mixed or adulterated, one hundred pounds per sack. Fractional barrels and sacks shall weigh in the same proportion, and those weights shall be net and exclusive of the barrel or sack in which said product is packed. And any person, firm or association of persons, engaged in the manufacture of mill products of any character whatsoever, who shall use any bag, box, barrel or any other receptacle, into which to put such product other than the one bearing the name of such mill manufacturing the same, shall be guilty of a misdemeanor, and, upon conviction therefor, shall be fined in any sum from one hundred dollars to one thousand dollars, or, in addition thereto, be confined in the county jail for a term of thirty days, or both such fine and imprisonment. [Act 1907, p. 243.]

Art. 731. **"Concentrated commercial feeding stuff" defined.**—The term, "concentrated commercial feeding stuffs," as herein used, shall not include hay or straw, the whole seed or grains of wheat, rye, barley, oats, Indian corn, rice, buckwheat or broom corn, or any other whole or unground grains or seeds. [Act 1905, p. 207.]

Art. 732. **"Concentrated feed stuff" defined.**—The term, "concentrated feed stuffs," as herein used, shall include wheat bran, wheat shorts, linseed meals, cotton seed meals, pea meals, cocoanut meals, gluten meals, gluten feeds,

maize feeds, starch feeds, sugar feeds, dried brewer's grains, malt sprouts, hominy feeds, cerealine feeds, rice meals, rice bean, rice polish, rice hulls, oat feeds, corn and oat chops, corn chops, ground beef or mixed fish feeds, and all other materials of similar nature not included in this article. [Id., p. 207.].

Art. 733. **Manufacturer or party selling to file what, and deposit samples.**—Before any concentrated feeding stuff, as defined in article 732, is so offered or exposed for sale, the importer, manufacturer and party who causes it to be sold, or offered for sale, within the state of Texas, for use within this state, shall, for each and every feed stuff, bearing a distinguishing name and trade mark, file with the director of the Texas agricultural and experiment station a certified copy of the statement named in article 730, and shall also deposit with said director a sealed glass jar or bottle containing not less than one pound of the feeding stuff to be sold or offered for sale, accompanied by an affidavit that it is a fair average sample thereof, and corresponds within reasonable limits to the feeding stuff which it represents in the percentage of protein, fat and crude fiber, and nitrogen-free extract which it contains. This shall not be construed to apply to farmers who grind their own feed stuff, and who do not adulterate same. [Act 1907, p. 244.]

Art. 734. **To pay inspection tax and affix tag.**—The manufacturer, importer, agent or seller of each concentrated commercial feeding stuff, as defined in article 731, shall, before the article is offered for sale, pay to the director of the Texas agricultural experiment station an inspection tax of ten cents per ton for each ton of such concentrated feeding stuff sold or offered for sale in the state of Texas, for use within this state, and shall affix to each lot shipped in bulk, and to each bag, barrel or other package of such concentrated feeding stuffs a tag to be furnished by said director, stating that all charges specified in said section have been paid. The director of said Texas agricultural experiment station is hereby empowered to prescribe the form of such tags, and adopt such regulations as may be necessary for the enforcement of this law. Whenever the manufacturer or importer or shipper of a concentrated feeding stuff shall have filed a statement made in article 730, and have paid the inspection tax, no agent or seller of said manufacturer, inspector or shipper shall be required to file such statement or pay such tax. The amount of the inspection tax and penalties received by said director shall be paid into the state treasury. So much of the inspection tax and penalties collected under this act shall be paid by the state treasurer to the treasurer of the Texas agricultural and mechanical college as the director of the Texas agricultural experiment station may show by his bills has been expended in performing the duties required by this act, but, in no case, to exceed the amount of the inspection tax and penalties received by the state treasurer under this act. Provided, the excess, if any, for the next two years may be used as it accrues, by the board of directors of the agricultural and mechanical college for the purpose of putting up a station administration building, to provide the necessary offices and laboratory space, in order that the purposes of this act may be carried out. [Id., p. 244.]

Art. 735. **Penalty for failure to affix tag or label.**—Any manufacturer, importer or agent, selling, offering or exposing for sale, any concentrated commercial feeding stuff, as defined in article 731 without the statement required by article 730, and the tax tag required by article 734, or with a label, stating that said feeding stuff contains substantially a larger percentage of protein, fat or nitrogen-free extract, or a smaller quantity of crude fiber than is contained therein; and any person violating any other provision of this law, shall, on conviction in a court of competent jurisdiction, be fined not less than one hundred dollars nor more than five hundred

dollars for the first conviction, and not less than five hundred nor more than one thousand dollars for each subsequent conviction. [Id., p. 245.].

Art. 736. **Penalty for counterfeiting tag.**—Any person who shall counterfeit, or use a counterfeit, of the tag or tags prescribed by this law, knowing the same to be counterfeited, or who shall use them a second time, after the said tags shall have been once attached, shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined in a sum not exceding five hundred dollars, one-half of which fine shall be paid to the informer; which fine may be doubled or tripled at each second or third conviction, and so on progressively for subsequent convictions. [Act 1905, p. 207.]

Art. 737. **Shall furnish list of names or trade marks.**—All manufacturers and importers of concentrated commercial feeding stuffs, or dealers in same, shall, when requested, furnish the director of the Texas experiment station with a complete list of names or trade marks of such feeding stuffs. [Id., p. 207]

Art. 738. **Analysis of to be made and published annually.**—The director of the Texas agricultural experiment station shall cause one analysis or more to be made annually of each concentrated commercial feeding stuff sold, or offered for sale, under the provisions of this act. Said director is hereby authorized in person, or by deputy, to take a sample not exceeding two pounds in weight for analysis from any lot or package of concentrated commercial feeding stuff which may be in the possession of any manufacturer, importer, agent, dealer or buyer in this state; but said sample shall be drawn or taken in the presence of said party or parties in interest or their representatives, and shall be taken from a parcel, lot or number of parcels, which shall not be less than five per cent of the whole lot inspected, and shall be thoroughly mixed and divided into two samples and placed in glass or metal vessels, carefully sealed, and a label placed on each, stating the name or brand of the feeding stuff or material sampled, the name of the party from whose stock the sample is drawn and the date and place of taking such sample; and said label shall be signed by the director or his deputy and the party or parties at interest, or their representative present at the taking and sealing of said sample; provided, that where the party or parties at interest refuse to be present and take part in the sampling of the said feed stuffs, the director or his deputy may take said samples in the presence of two disinterested witnesses; one of said duplicate samples shall be retained by the director, and the other shall be left with the party whose stock was sampled; and the sample or samples retained by the director shall be for comparison with the certified statements made in articles 730 and 733. The result of the analysis of the sample or samples so prescribed, together with such additional information as circumstances advise, shall be published in reports or bulletins by the Texas agricultural and mechanical college from time to time. [Id., p. 207.]

Art. 739. **"Importer" defined.**—The term, "importer," for all the purposes of this law, shall be taken to mean all such persons as shall bring into or offer for sale, within this state, concentrated commercial feeding stuffs manufactured without this state. [Id., p. 207.]

Art. 740. **Manufacturing or selling adulterated feeding stuffs, penalty for.**—Any person manufacturing, selling, or offering for sale, any adulterater feeding stuff within this state, shall, upon conviction therefor, be punished by a fine of not less than twenty-five dollars and not more than two hundred dollars, or be imprisoned in the county jail for a term of not less than thirty days and not more than sixty days, or by both such fine and imprisonment. For the purpose of this act, a feeding stuff shall be deemed to be adulterated if it contains any sawdust, dirt, damaged feed, or any foreign matter whatever, or if it is in any respect not what it is represented

to be; or if any rice hulls or chaff, peanut shells, corncobs, oat hulls, or other similar substances of little or no feeding value are admixed therewith; provided, that no wholesome mixture of feeding stuffs shall be deemed to be adulterated if the true percentage of constituents thereof is plainly and clearly stated on the package, and made known to the purchaser at the time of the sale. It shall be the duty of the director of the experiment station to examine, or have examined, for adulteration, all suspicious samples of feeding stuffs, and such other samples as may be desirable. [Act 1907, p. 245.]

BOLL WORM POISON.

Art. 741. **What samples to be deposited with professor of chemistry, agricultural and mechanical college.**—Before any commercial fertilizer, or commercial poison, or any chemical mixture used as a commercial fertilizer, or commercial poison, such as london purple, arsenic, paris green, or any poison used for the purpose of destroying the boll worm or other pests, are sold or offered for sale in this state, the manufacturer, agent, importer or party who sells or offers it for sale within this state shall deposit with the professor of chemistry of the agricultural and mechanical college a sealed tin can, bottle or jar, containing not less than one pound of the fertilizer or commercial poison offered for sale, with an affidavit that it is a fair sample taken from several barrels, boxes, sacks or from quantities in larger bulk of the article thus to be sold or offered for sale; provided, the unmixed substance, cotton seed meal, land plaster, salt, ashes, lime, green sand marl, uncrushed bones and animal excrements, shall be exempt from the operation of this law. [Act 1899, p. 64.]

Art. 742. **Analysis fee to be paid by whom.**—The manufacturer, importer, vendor or agent of any commercial fertilizer, or commercial poison, as referred to in article 741, shall pay annually to the treasurer of the agricultural and mechanical college an analysis fee of fifteen dollars for each and every fertilizer or commercial poison sold, exposed or offered for sale within this state. Such payment shall be made at the time the sample of fertilizer or commercial poison is submitted to the professor of chemistry for analysis. [Id., p. 64.]

Art. 743. **Professor of chemistry to print analysis in form of label.**—After the analysis fee has been paid, as provided for in article 742, it shall be the duty of the professor of chemistry of the agricultural and mechanical college to analyze, or have analyzed under his direction, any sample of a commercial fertilizer or commercial poison in accordance with the requirements of the foregoing sections of this law. The professor of chemistry shall print the result of such analysis in the form of a label, which shall set forth the name of the manufacturer, the brand of the fertilizer, or commercial poison, and the essential ingredients contained in such fertilizer or commercial poison, viz:

1. Available nitrogen and its equivalent in ammonia.
2. Soluble phosphoric acid; total available phosphoric acid.
3. Reverted phosphoric acid.
4. Total phosphoric acid.
5. Potash, soluble in water.

This, however, shall not preclude the professor of chemistry from setting forth any other ingredients which the fertilizer may contain. And he shall place upon each label the money value of such fertilizer or commercial poison, computed from its composition as he may determine. He shall furnish such labels in quantities of five hundred or multiples thereof, at a cost of one dollar per one hundred, the money to be paid directly to the treasurer of the agricultural and mechanical college. [Id., p. 64.]

Art. 744. **Every barrel, keg or package shall be labeled.**—Every box, barrel, keg or other package or quantity of commercial fertilizer or commercial poison (within the limitation of article 741) in any shape or form, sold or offered for sale in this state, shall have attached to it in a conspicuous place the label, as provided for in article 743, with the signature of the professor of chemistry attached. [Id., p. 65.]

Art. 745. **Samples may be taken for comparison.**—The professor of chemistry, or any duly authorized agent of his, is hereby authorized to select from any package of commercial fertilizer or commercial poison, sold or exposed for sale, in this state, a quantity not to exceed two pounds, for a sample to be used for the purpose of an official analysis, and for comparison with the sample furnished by the manufacturer, agent or vendor for official analysis. [Id., p. 65.]

Art. 746. **Penalty for violating or evading this law.**—Any manufacturer, agent of vendor of any commercial fertilizer or commercial poison who shall offer or expose for sale any such fertilizer or commercial poison, without having previously complied with the provisions of this chapter, shall be fined not less than fifty and not more than five hundred dollars for each violation or evasion of this law. [Id., p. 65.]

CHAPTER FIVE.

COCAINE AND MORPHINE.

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Unlawful for any practitioner of medicine, dentistry or veterinary to prescribe to habitual users	748
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Art. 747. **Unlawful to sell or give away except on prescription, with certain provisos.**—It shall be unlawful for any person, firm or corporation to sell, furnish or give away cocaine, salts of cocaine or preparations containing cocaine, or salts of cocaine, or any morphine, or salts of morphine, or preparations containing morphine or salts of morphine, or any opium or preparations containing opium, or any chloral hydrate or preparations containing chloral hydrate, except upon the original written order or prescription of a lawfully authorized practitioner of medicine, dentistry or veterinary medicine, which order or prescription shall be dated and shall contain the name of the person for whom prescribed, or, if ordered by a practitioner of veterinary medicine, shall state the kind of animal for which ordered and shall be signed by the person giving the prescription or order. Such written order or prescription shall be permanently retained on file by the person, firm or corporation who shall compound or dispense the article ordered or prescribed; and it shall not be recompounded or dispensed a second time, except upon the written order of the original prescriber for each and every subsequent compounding or dispensing. No copy or duplicate of such written order or prescription shall be made or delivered to any person; but the original shall at all times be open to inspection by properly authorized officers of the law. Provided, however, that the above provisions shall not apply to preparations containing not more than two grains of opium, or not more than one-eighth grain of morphine, nor not more than two grains of

chloral hydrate, or not more than one-sixteenth grain of cocaine, in one fluid ounce, or, if solid preparation, in one avoirdupois ounce; provided, also, that the above provisions shall not apply to preparations recommended in good faith for diarrhoea or cholera, each bottle or package of which is accompanied by specific directions for use, and the caution against habitual use; nor to linaments or ointments when plainly labeled, "For external use only." And provided, further, that the above provisions shall not apply to sales at wholesale jobbers, wholesalers and manufacturers to retail druggists, nor to sales at retail by retail druggists to regular practitioners of medicine, dentistry or veterinary medicine, nor to sales made to manufacturers of proprietary or pharmaceutical preparations for use in the manufacture of such preparations, nor the sales to hospitals, colleges, scientific or public institutions; nor to the sale of patent or proprietary medicines sold by druggists or others, containing any of the foregoing substances, the sale of which is prohibited by this law; provided, such preparations be not compounded or sold for the purpose of the evasion of this law. [Act 1905, p. 45.]

Art. 748. **Unlawful for any practitioner of medicine, dentistry or veterinary to prescribe to habitual users.**—It shall be unlawful for any practitioner of medicine, dentistry or veterinary medicine to furnish to, or prescribe for the use of, any habitual user of the same, any cocaine or morphine, or any salts or compound of cocaine or morphine, or any preparation containing cocaine or morphine or their salts, or any opium or choral hydrate, or any preparation containing opium or chloral hydrate; and it shall also be unlawful for any practitioner of dentistry to prescribe any of the foregoing substances for the use of any person not under his treatment in the regular practice of his profession, or for any practitioner of veterinary medicine to prescribe any of the foregoing substances for the use of any human being; provided, however, that the provisions of this section shall not be construed to prevent any lawfully authorized practitioner of medicine from prescribing in good faith for the use of any habitual user of narcotic drugs such substances as he may deem necessary for the treatment of such habit. [Id., p. 46.]

Art. 749. **Penalty for violating this law.**—Any person who shall knowingly violate any of the provisions of this law shall be deemed guilty of a misdemeanor, and, upon conviction for the first offense, shall be fined not less than twenty-five dollars nor more than fifty dollars, and, upon conviction for a second offense, shall be fined not less than fifty dollars nor more than one hundred dollars, and, upon a conviction for a third and all subsequent offenses, shall be fined not less than one hundred dollars nor more than two hundred dollars, and shall be imprisoned in the county jail for not less than six months. It shall be the duty of the grand jury to make presentments for violations of this law. [Id., p. 46.]

CHAPTER SIX.

UNLAWFUL PRACTICE OF MEDICINE.

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Article 750. **Authority to practice registered in district clerk's office; change of residence recorded, where.**—It shall be unlawful for any one to practice medicine, in any of its branches, upon human beings within the limits of this state who has not registered in the district clerk's office of the county in which he resides, his authority for so practicing, as herein prescribed, together with his age, postoffice address, place of birth, school of practice to which he professes to belong, subscribed and verified by oath; which, if wilfully false, shall subject the applicant to conviction and punishment for false swearing as provided by law. The fact of such oath and record shall be indorsed by the district clerk upon the certificate. The holder of the certificate must have the same recorded upon each change of residence to another county, and the absence of such record shall be prima facie evidence of the want of possession of such certificate. [Act 1907, p. 225.]

Art. 751. **District clerk to keep medical register.**—It is hereby made the duty of the district clerk of each county in this state to purchase a book of suitable size, to be known as the "medical register" of such county, and set apart one full page for the registration of each physician, and to record in the same the name and record of each practitioner who presents a certificate from the state board of examiners, issued under this act. The clerk shall receive the sum of one dollar from each physician so registered, which shall be his full compensation for all duties required under this act. When any physician shall die or remove from the county, or have his license revoked, it shall be the duty of said clerk to make a note of facts at the bottom of the page as closing the record. On the first day of January in each year, said clerk shall, on request of the board, certify to the office of the state board of medical examiners a correct list of the physicians then registered in the county, together with such other information as said board may require. Any district clerk, upon conviction of knowingly violating any of the provisions of this act, shall be fined not more than fifty dollars. A copy from the medical register pertaining to any person certified to by said clerk under the seal of said court, also a certificate issued by said officer certifying that any person named has or has not registered in said office as required by this act, shall be admitted as evidence in all trial courts. [Id., p. 225.]

Art. 752. **Practioner of medicine to receive verification license.**—All legal practitioners of medicine in this state who, practicing under the provisions of previous laws, or under diplomas of a reputable and legal college of medicine, have not already received license from a state medical examining board of this state, shall present to the board of medical examiners for the state of Texas, documents, or legally certified transcripts of documents, sufficient to establish the existence and validity of such diplomas or of the valid and existing license heretofore issued by previous examining boards of this state, or exemption existing under any law, and shall receive from said board verification license, which shall be recorded in the district clerk's office in the county in which the licentiates may reside. Such verifi-

cation license shall be issued for a fee of fifty cents to all practitioners who have not already received a license from the state board of medical examiners of this state. It is especially provided that those whose claims to state licenses rest upon diplomas from medical colleges, recorded from January 1, 1891, to July 9, 1901, shall present to the state board of medical examiners satisfactory evidence that their diplomas were issued from bona fide medical colleges of reputable standing, which shall be decided by the board of medical examiners before they are entitled to a certificate from said board. This board may, at its discretion, arrange for reciprocity in license with the authorities of other states and territories having requirements equal to those established by this act. License may be granted applicants for license under such reciprocity on payment of twenty dollars. [Id., p. 225.]

Art. 753. **Applicants other than those under previous article.**—All applicants for license to practice medicine in this state who are not licensed under the provisions of the previous article must successfully pass an examination before the board of medical examiners established by this act. Applicants, to be eligible for examination, must present satisfactory evidence to the board that they are more than twenty-one years of age, of good moral character and graduates of bona fide reputable medical schools. Such schools shall be considered reputable within the meaning of this law, whose entrance requirements and courses of instruction are as high as those adopted by the better class of medical schools of the United States, whose course of instruction shall embrace not less than four terms of five months each. Application for examination must be made in writing under affidavit to the secretary of the board, on forms prepared by the board, accompanied by a fee of fifteen dollars; except when an applicant desires to practice obstetrics alone, the fee shall be five dollars. Such applicants shall be given due notice of the date and place of examination. Applicants to practice obstetrics in the state of Texas, upon proper application, shall be examined by the board in obstetrics only, and upon satisfactory examination, shall be licensed to practice that branch only; provided, this shall not apply to those who do not follow obstetrics as a profession, and who do not advertise themselves as obstetricians or midwives, or hold themselves out to the public as so practicing. In case any applicant, because of failure to pass examination, be refused a license, he or she shall, after one year, be permitted to take a second examination without an additional fee. [Id., p. 226.]

Art. 754. **Not to discriminate against any particular school.**—Nothing in this law shall be constructed as to discriminate against any particular school or system of medical practice. This act shall not apply to dentists, legally qualified and registered under the laws of this State, who confine their practice strictly to dentistry; nor to nurses who practice only nursing; nor to masseurs, in their particular sphere of labor, who publicly represent themselves as such; nor to commissioned or contract surgeons of the United States army, navy or public health and marine hospital service, in the performance of their duties, but such shall not engage in private practice without license from the board of medical examiners; nor to legally qualified physicians of other states called in consultation, but who do not open offices or appoint places in this state where patients may be met or called to see. This act shall be so construed as to apply to persons, other than licensed druggists of this state, not pretending to be physicans, who offer for sale on the streets or other public places, remedies which they recommend for the cure of disease. [Id., p. 227.]

Art. 755. **Shall be regarded as practicing medicine, when.**—Any person shall be regarded as practicing medicine within the meaning of this act:

(1) Who shall publicly profess to be a physician or surgeon and shall treat, or offer to treat, any disease or disorder, mental or physical, or any physical deformity or injury, by any system or method, or to effect cures thereof.

(2) Or who shall treat, or offer to treat, any disease or disorder, mental or physical, or any physical deformity or injury, by any system or method or to effect cures thereof, and charge therefor, directly or indirectly, money or other compensation. [Id. p. 227.]

Construed. One who advertises and practices as a "massage doctor," though he used no drugs, and exacted fees therefor, is a practitioner of medicine within the meaning of this article. Newman v. State, 124 S. W. R., 956.

Art. 756. **Practicing in violation of law, penalty.**—Any person practicing medicine in this state in violation of the provisions of this law shall, upon conviction thereof, be fined in any sum not less than fifty dollars nor more than five hundred dollars, and by imprisonment in the county jail for a term not exceeding six months; and each day of such violation shall constitute a separate offense, and in no such case shall the violator be entitled to recover anything for the services rendered. [Id., p. 228.]

Indictment insufficient which omits either of the allegations that the accused resided in the county, or that he did not register his authority to practice medicine as required by law. Lockhart v. State, 124 S. W. R., 923.

Information hereunder need not negative exceptions not contained in the enacting clause. Newman v. State, 124 S. W. R., 956.

Art. 757. [441] **Not applicable, to what cases.**—The provisions of this chapter shall not apply to any person who has been regularly engaged in the general practice of medicine, in any of its branches or departments, in this state, for five consecutive years prior to January 1, 1875; nor to any person who may have legally qualified himself to practice medicine under the provisions of an act, entitled, "An act to regulate the practice of medicine," passed May 16, 1873; nor to all those who were practicing medicine in Texas prior to January 1, 1885; nor to all those who began the practice of medicine in this state after the above date, who have complied with the laws of this state, regulating the practice of medicine, in force. [O. C., Act 1901, p. 14.]

Art. 758. **Physicians, etc., to report births and deaths.**—All physicians, surgeons or accoucheurs who may attend at the birth of a child, or, in the absence of such attendance, either parent of the child, shall report the fact to the clerk of the county court, together with the name of the parent or parents, the sex of the child and the race to which the child belongs, and whether of foreign or native parents, whether still born or alive, within thirty days after said birth occurs, under a penalty of five dollars for each failure to do so; to be collected as other fines for misdemeanors are. All physicians, surgeons, accouchers and coroners, cognizant of death, shall report the same, together with the race, nativity, age, sex, residence, whether alien or citizen, and the cause of death, to the clerk of the county court within thirty days after the occurrence, under a penalty of not less than five dollars nor more than fifty dollars for each failure to do so; these data to be recorded as a part of the vital statistics of the county and state; and the clerk of the county court shall be paid by the county ten cents for each birth or death so recorded, and he shall report monthly all these data to the department of public health and vital statistics. In default of so reporting, he shall be fined not less than fifty dollars for each offense. [Act 1903, p. 220.]

CHAPTER SEVEN.

DENTISTRY.

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Article 759. **Persons practicing dentistry or dental surgery to obtain certificate.**—It shall be unlawful for any person to practice, or attempt to practice, dentistry or dental surgery in the state of Texas, without first having obtained a certificate from the state board of dental examiners; provided that physicians and surgeons may, in the regular practice of their profession, extract teeth or make application for the relief of pain; and, provided, further, that nothing herein shall apply to any person legally engaged in the practice of dentistry or dental surgery in this state, at the time of the passage of this law. [Act 1905, p. 143.]

Art. 760. **Unlawful to extract teeth, when.**—It shall be unlawful for any person or persons to extract teeth, or perform any other operation pertaining to dentistry, for pay, or for the purpose of advertising, exhibiting or selling any medicine or instrument or business of any kind or desription whatsoever, unless such person or persons shall first have complied with the provisions of this title. [Id., p. 143.]

Art. 761. **Board of examiners created.**—A board of examiners, consisting of six practicing dentists of acknowledged abilty as such, is hereby created, who shall have authority to issue certificates to persons in the practice of dentistry or dental surgery in the state of Texas, who are legally practicing the same at the time of the passage of this law, and issue certificates to all applicants who may hereafter apply to said board, and pass a satisfactory examination. [Id., p. 143.]

Art. 762. **Appointed by governor.**—The members of said board shall be appointed by the governor, and shall serve for two years, excepting that the members of the board first appointed shall be made as follows: Three for one year, and three for two years, respectively, and until their successors are duly appointed.

In case of vacancy occurring in said board by resignation, removal from the state, or by death, such vacancy may be filled for its unexpired term by the governor. [Id., p. 143.]

Art. 763. **Before entering upon duties shall make oath.**—Before entering upon the duties of his office, each and every member of this board shall make oath before any officer authorized to administer an obligation who shall be empowered to use a seal of office, that he will faithfully discharge the duties incumbent upon him to the best of his abiltiy. The same shall be filed for record with the county clerk in which affiant resides. The county clerk shall receive for recording the same, fifty cents. [Id., p. 144.]

Art. 764. **Shall keep record of what.**—Said board shall keep a record in which shall be registered the names and residences or places of business of all persons authorized under this title to practice dentistry or dental surgery in this state. It shall elect one of its members president, and one secretary thereof; and it shall meet at least once in each year, and as much oftener, and at such times and places as it may deem necessary. A majority of the

members of said board shall constitute a quorum, and the proceedings thereof shall be open to the public. [Id., p. 144.]

Art. 765. **Persons desiring to commence practice of dentistry, what is required of.**—Any person, desiring to commence the practice of dentistry or dental surgery within this state, after the passage of this law, shall, before commencing such practice, make application to said board, and, upon undergoing a satisfatcory examination before said board, shall be entitled to a certificate from said board, granting such person the right to practice dentistry or dental surgery within this state. [Id., p. 144.]

Art. 766. **Members of board when not in session may act, when.**—Any member of said board may, when the board is not in session, grant a license to practice dentistry to any person whom such member finds, on examination, to be qualified, on the payment of two dollars by such person. A license so granted shall be valid until the next meeting of the board, but no longer. Each member shall make a report of license, so granted by him, at the meeting of the board following the granting of the license. A member shall not grant a license under the provisions of this article to one who has been rejected by the board as disqualified. [Id., p. 144.]

Art. 767. **License issued by board to be filed with and recorded by county clerk.**—Every person to whom license is issued by said board of examiners shall, within thirty days from the date thereof, present the same to the clerk of the county in which he or she resides or expects to practice, who shall officially record said license in his office book, provided for that purpose, and shall be entitled to a fee of fifty cents for his services. [Id., p. 144.]

Art. 768. **Penalty for violating any provision of this law.**—Any person who shall violate this law by practicing, or attempting to practice, dentistry or dental surgery within this state, without first complying with the provisions of this law, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum of not less than twenty-five nor more than three hundred dollars for each and every offense, each day in the practice constituting an offense. All fines collected from prosecutions under this law shall be appropriated to the common school funds in the county where collected. [Id., p. 145.]

Art. 769. **Penalty for extracting teeth in advertising, etc.**—Any person or persons who shall violate this law by extracting teeth, or performing any other operation pertaining to dentistry for the purpose of advertising, exhibiting or selling any medicine, instrument or business of any kind or description, shall be deemed guilty of a misdemeanor, and, upon conviction thereof,, shall be fined in a sum of not less than twenty-five nor more than three hundred dollars for each and every offense. [Id., p. 145.]

Art. 770. [454] **Burden of proof upon whom.**—On the trial of any person indicted under the provisions of this law, it shall be incumbent upon the defendant, in order to exempt him from the penalties of this law, to show that he has authority under the law to practice dentistry in this state. [O. C.]

CHAPTER EIGHT.

PHARMACY—PRACTICE OF.

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Article 771. **Unlawful for any person not licensed to conduct pharmacy or drug store.**—It shall be unlawful for any person, not licensed as a pharmacist, within the meaning of this law, to conduct or manage any pharmacy, drug or chemical store, apothecary shop or other place of business for the retailing, compounding or dispensing of any drug, chemical or poison, or for the compounding of physician's prescriptions, or to keep exposed for sale at retail, any drug, chemicals or poisons, except as hereinafter provided, or for any person, not licensed as a pharmacist or assistant pharmacist within the meaning of this law, to compond, dispense or sell at retail, any drug, chemical, poison, or pharmaceutical preparation, upon the prescription of a physician or otherwise, or to compound physicians' prescriptions, except as an aid to, or under the supervision of, a person licensed as a pharmacist under this law, And it shall be unlawful for any owner or manager of a pharmacy, or drug store, or other place of business, to cause or permit any other than a person licensed as a pharmicist or assistant pharmacist to compound, dispense or sell at retail, any medicine or poison, except as an aid to, or under the supervision of, a person licensed as a pharmacist. Provided, however, that nothing in this section shall be construed to prevent any person from engaging in the business herein described, as proprietors and owners thereof; provided such proprietors or owners shall have employed in his business, to conduct same, some one qualified under this act; nor to interfere with any legally registered practioner of medicine or dentistry in the compounding of his prescriptions, or to prevent him from supplying his patients such medicine as he may deem proper; nor with exclusively wholesale business of any dealer who shall be licensed as a pharmacist, or who shall keep in his employ at least one person who is licensed as a pharmacist; nor with the selling at retail of non-poisonous domestic remedies; nor with the sale of patent or proprietary preparations, when sold in unbroken packages; nor with the sale of poisonous substances, which are sold exclusively for use in the arts, or for use as insecticides, when such substances are sold in unbroken packages bearing a label having plainly printed upon it the name of the contents, the word "poison" and the names of at least two readily obtainable antidotes. [Act 1907, p. 349.]

Art. 772. **Persons heretofore registered entitled to certificate.**—All persons heretofore registered by district boards as pharmaceutical examiners shall, upon presenting proof of such registration in accordance with the law regulating the practice of pharmacy then in force, and the payment of one dollar, be entitled to a certificate of registration as licensed pharmacist, under the meaning of this law, from the state board of pharmacy, without examination. Such application shall be made to the state board of pharmacy within ninety days after the first meeting of said board. Proprietors and employes of such proprietors who are actively engaged in the preparation of physicians' prescriptions, and compounding and vending of medi-

cines in towns of less than one thousand inhabitants in the State of Texas, and also proprietors and employes of such proprietors who shall become so engaged in such towns during the next five years after the passage of this law, shall be exempt from examination; provided, he or she will register as required in this law, and, upon paying said board of pharmacy one dollar, shall receive a certificate of registration which shall entitle such person to practice pharmacy in towns of one thousand inhabitants or under. Provided, that should such person fail to apply for registration within ninety days, from and after the first meeting of said board, said party shall be required to pay the same fee as in original registration. Every person who shall hereafter desire to be licensed as a pharmacist shall file with the secretary of the board of pharmacy an aplication, upon blanks furnished by the board of pharmacy for that purpose, duly verified under oath, setting forth the name and age of the applicant, the place or places at which, and the time spent in the study of the science and art of pharmacy, the experience in the compounding of physicians' prescriptions which the applicant has had under the direction of a legally licensed pharmacist, and shall appear at a time and place designated by the board of pharmacy, and submit to an examination as to his or her qualifications for registration as a licensed pharmacist or assistant pharmacist; provided, however, if any applicant should fail to pass a satisfactory examination, he or she may, at any subsequent meeting of the board of pharmacy within six months, be permitted to be re-examined without cost. [Id., p. 350.]

Art. 773. **In order to be licensed what is required of applicant.**—In order to be licensed as a pharmacist within the meaning of this act, an applicant shall be not less than twenty-one years of age, and shall have been licensed as an assistant pharmacist for not less than two years prior to his application for license as a pharmacist, or he shall present to the board satisfactory evidence that he is a graduate of a reputable school or college of pharmacy, or that he has had four years' practical experience in pharmacy under the instruction of a pharmacist; and he shall also pass a satisfactory examination by or under the direction of a board of pharmacy. In order to be licensed as an assistant pharmacist, within the meaning of this law, an applicant shall not be less than eighteen years of age, and shall have a sufficient preliminary general education, and shall have not less than two years' experience in pharmacy, and shall pass a satisfactory examination by, or under the direction of the board of pharmacy. Provided, however, that in the case of persons who have attended a reputable school or college of pharmacy, the actual time of attendance at school or college of pharmacy, may be deducted from the time of experience required of pharmacist and assistant pharmacist, but in no case shall less than two years' experience be required for registration as a licensed pharmacist. [Id., p. 350.]

Art. 774. **When board shall enroll name of applicant and issue license.**—If the applicant for license as a pharmacist or assistant pharmacist has complied with all the requirements of the two preceding articles, the board of pharmacy shall enroll his name upon the register of pharmacist or assistant pharmacist, and issue to him a license, which shall entitle him to practice as pharmacist or assistant pharmacist for a period of two years from the date of said license. The board of pharmacy may refuse to grant a license to any person guilty of felony or gross immorality, or who is addicted to the use of alcoholic liquors or narcotic drugs to such an extent as to render him unfit to practice; and the board of pharmacy, after due notice and herein may revoke a license for like cause, or any license which has been procured by fraud. [Id., p. 351.]

Art. 775. **When board may issue license without examination.**—The board of pharmacy may issue license to practice as pharmacist or assistant phar-

macist in this state, without examination, to such persons as have been legally registered or licensed as pharmacists or assistant pharmacists in other states or foreign countries; provided, that the applicant for such license shall present satisfactory evidence of qualifications equal to those required from licentiates in this state, and that he was registered or licensed by examination in such other state or foreign country, and that the standard of competency required in such other state or foreign country accords similar recognition to the licentiates of this state. Applicants for license under this article shall, with their application, forward to the secretary of the board of pharmacy the same fees as are required of other candidates for license. [Id., p. 351.]

Art. 776. **License and renewal conspicuously posted.**—Every certificate of license to practice as pharmacist or assistant pharmacist, and every license to any proprietor or employe to conduct a drug store in towns of not more than one thousand inhabitants, as above provided, and every renewal of such license, shall be conspicuously exposed in the pharmacy, or drug store or place of business of which the pharmacist, or assistant pharmacist, or other person to whom it is issued, is the owner or manager, or in which he is employed. Every licensed pharmacist or assistant pharmacist who desires to continue in the practice of his profession shall, within thirty days next preceding the expiration of his license or permit, file with the board an application for the renewal thereof, which application shall be accompanied by the fee hereinafter prescribed. If the board shall find that the applicant has been legally licensed in this state, and is entitled to renewal of license, or to a renewal of such permit, it shall issue to him a certificate attesting the fact. If any pharmacist or assistant pharmacist shall fail, for a period of sixty days after the expiration of his license, to make application to the board for its renewal, his name shall be erased from the register of licensed pharmacist or assistant pharmacist; and such person, in order to become registered as a licensed pharmacist or assistant pharmacist, shall be required to pay the same fee as in the case of original registration. The name of the responsible manager of every pharmacy, drug store or apothecary shop, shall be conspicuously displayed outside of such place of business. [Id., p. 351.]

Art. 777. **When board to examine applicants and make annual report to governor.**—It shall be the duty of the board to examine all applications for registration of such persons as may be entitled to the same under the provisions of this law, and to make an annual report to the governor, a copy of which shall be furnished to the Texas state pharmaceutical association, upon the condition of pharmacy in Texas, which report shall embrace all the proceedings of the board, and give an itemized account of all money received and disbursed by said board; and said itemized account of money paid out by said board shall show to whom paid and specifically for what purpose it was paid, and also the names of all pharmacists duly registered under this act. And it shall be the further duty of the board to deliver all money on hand at the end of the term of each board after all outstanding debts have been paid over to their successors in office. [Id., p. 353.]

Art. 778. **Board to hold meetings for examination of applicants.**—The Texas state board of pharmacy shall hold meetings for the examination of applicants for registration, and for the transaction of such other business as may legally come before it, at least once in four months, and such additional meetings as may be necessary; provided, that said regular meetings shall be held on the third Tuesdays of January, May and September of each year, in such cities or places as the said board may select, or such cities or places as shall be deemed most convenient for applicants. Due notice of such meetings shall be given by publication in such papers as may be selected by the board, thirty days in advance of said meetings. Three members shall

constitute a quorum for the transaction of any and all business. The president and secretary shall have the power to administer oaths in all matters pertaining to the examination and registration of pharmacist and assistant pharmacist. The board shall keep a record of its proceedings and a register of all persons to whom certificates or license as pharmacist or assistant pharmacist and permits have been issued, and all renewals thereof; and the books and register of the board or a copy of any part thereof, certified by the secretary, shall be accepted as competent evidence in all the courts. [Id., p. 353.]

Art. 779. **Member of board may issue temporary certificate, when.**—Any member of the board of pharmacy may issue a temporary certificate upon satisfactory proof that the applicant is competent; said temporary certificate shall be null and void after the first meeting of the board of pharmacy next after the granting said temporary certificate; provided, that not more than one temporary certificate shall ever be granted to any one person. [Id., p. 354.]

Art. 780. **Board may charge and collect fees.**—The board of pharmacy shall be entitled to charge and collect the following fees: For the examination of an applicant for license as a pharmacist, five dollars; for the examination of an applicant for license as an assistant pharmacist, two dollars and fifty cents; for renewing the license as a pharmacist, one dollar; for renewing the license as assistant pharmacist, one dollar; for issuing license to any proprietor or employe to conduct a drug store in towns of not more than one thousand inhabitants, one dollar; all fees shall be paid before any applicant may be admitted to examination or his name placed upon the register of pharmacists, or assistant pharmicists, or before any license or permit or any renewal thereof may be issued by the board. [Id., p. 354.]

Art. 781. **Penalty for violating this law.**—Whoever, not being licensed as a pharmacist, shall conduct or manage any drug store or other place of business for the compounding, dispensing or sale at retail of any drugs, medicine or poisons, or for the compounding of physicians' prescriptions contrary to the provisions of articles 771 and 772, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars, and each week such drug store or pharmacy or other place of business is so unlawfully conducted shall be held to constitute a separate and distinct offense. Whoever, not being licensed as a pharmacist or assistant pharmacist, shall compound, dispense or sell at retail, any drugs, medicine, poison or pharmaceutical preparation, even upon a physician's prescription or otherwise, and whoever, being the owner or manager of the drug store, pharmacy or other place of business, shall cause or permit any one not licensed as a pharmacist or assistant pharmicst, to dispense, sell at retail or compound any drug, medicine, poison or physician's prescription, contrary to the provisions of articles 771 and 772, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten dollars nor more than one hundred dollars. Any license or permit or renewal thereof, obtained through fraud, or by any false or fraududent representations, shall be void and of no effect in law. Any person who shall make any false or fraudulent representations for the purpose of procuring a license or permit or renewal thereof, either for himself or for another, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars; and any person who shall wilfully make a false affidavit for the purpose of procuring a license or permit or renewal thereof, either for himself or for another, shall be deemed guilty of perjury, and, upon conviction thereof, shall be subject to like penalties as in other cases of perjury. Whoever, being the holder of any license or permit granted under this act, shall fail to

expose such license or permit, or any renewal thereof, in a conspicuous position in the place of business to which such license or permit relates, or in which the holder thereof is employed, contrary to the provisions of article 776, shall, upon conviction thereof, be fined not less than five dollars nor more than twenty-five dollars; and each week that such license, permit or renewal shall not be exposed, shall be held to constitute a separate and distinct offense; and whoever, being the holder of any license or permit granted under this act, shall, after the expiration of such license or permit, and without renewing the same, continue to carry on the business for which such license or permit was granted, contrary to the provisions of article 776, shall, upon conviction thereof, be fined not less than five dollars nor more than twenty-five dollars. [Id., p. 354.]

CHAPTER NINE.

NURSING AND EMBALMING.

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Article 782. **Unlawful to practice nursing as trained nurse without certificate.**—It shall be unlawful for any person to practice nursing as a trained, graduate or registered nurse without a certificate from the state board of nurse examiners. A nurse who has received his or her certificate shall be styled and known as a "registered nurse." No other person shall assume such title or use the abbreviation "R. N." or any other letters, to indicate that he or she is a trained, graduate or registered nurse. [Act 1909, p. 228.]

Art. 783. **Penalty for.**—Any person violating the provisions of this law, or who shall make any false representations to said board in applying for a certificate, shall be guilty of a misdemeanor, and, upon conviction, be punished by a fine of not more than three hundred dollars. [Id., p. 228.]

Art. 784. **Persons engaged or desiring to engage in practice, what required of.**—Every person engaged, or desiring to engage, in the practice of embalming, in connection with the care and disposition of dead human bodies, within the state of Texas, shall make a written application to the state board of embalming for a license, accompanying the same with a license fee of five dollars, whereupon the applicant, as aforesaid, shall present himself or herself before said board at a time and place to be fixed by said board; and if the board shall find upon examination that the applicant is of good moral character, possessed of the knowledge of the venous arterial system, the location of the heart, lungs, bladder, womb and other organs of the human body, and the location of abdominal, pleural and thoracic cavities, location of the carotid, bracharal, radial, ulnar, femoral and tibinal arteries, a knowledge of the science of embalming and the care and disposition of the dead, and has a reasonable knowledge of sanitation and the disinfection of bodies of diseased persons, and the apartment, clothing and bedding in case of death by infectious or contagious diseases, the board shall issue to said applicant a license as a duly licensed embalmer, authorizing

him to practice the science of embalming. Such license shall be signed by a majority of the board and attested by its seal. All persons receiving license under the provisions of this law shall have said license registered in the county clerk's office in the county in the jurisdiction of which it is proposed to carry on said practice, and shall display said license in a conspicuous place of business of said person so licensed. [Act 1903, p. 124.]

Art. 785. **Shall annually obtain renewal license.**—That every registered embalmer, who desires to continue the practice of his profession, shall annually thereafter, during the time he shall continue in such practice, on such date as said board may determine, pay to the secretary of said board a fee of two dollars for the renewal of said license. [Id., p. 125.]

Art. 786. **Unlawful for persons not registered to practice.**—It shall be unlawful for any person not a registered embalmer, to embalm or pretend to practice the science of embalming, in connection with the care and disposition of the dead, unless said person is a registered embalmer, within the meaning of this chapter. [Id., p. 125.]

Art. 787. **Not to apply when and to whom.**—That nothing in this law shall apply to, or in any manner interfere with, the duties of any municipal, county, and state officer, or state institution, nor shall this law apply to any person simply engaged in the furnishing of burial receptacles for the dead, but shall only apply to such person or persons engaged in the business of embalming, in connection with the care and dispositon of the dead. [Id., p. 125.]

Art. 788. **Penalty for violation.**—That any person who shall embalm, or attempt to practice the science of embalming, in connection with the care and disposition of the dead, without having complied with the provisions of this law, shall be guilty of a misdemeanor, and, upon conviction thereof, before any court, shall be sentenced to pay a fine of not less than fifty dollars or not more than one hundred dollars for each and every offense. All fines collected for the violation of any of the provisions of this law shall be paid into the public school fund of the state. [Id., p. 125.]

CHAPTER TEN.

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Article 789. [472] **Vessel landing from infected port.**—After the legal establishment of any quarantine station on the coast of this state, if any vessel shall land or arrive at such station from any infected port without a bill of health from the proper officer of said port, or with a false bill of health, the master or commanding officer of such vessel shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than five hundred nor more than five thousand dollars. [Act Aug. 13, 1870, p. 75; amended act 1901, p. 305.]

Art. 790. [473] **Passing station without permission.**—Any master or commanding officer of a vessel that passes or attempts to pass any quarantine station on the coast of this state, during the continuance of the quarantine, without having first obtained permission from the health officer of such station so to do, shall be punished by imprisonment in the penitentiary not less than two nor more than five years, or by fine not less than five hundred nor more than ten thousand dollars. [Act Aug. 13, 1870, p. 75.]

Art. 791. [474] **Going ashore without permission.**—Any person belonging to or on board of a vessel placed under quarantine, who shall go ashore without the written permission of the health officer of the station, shall be fined not less than fifty nor more than five hundred dollars. [Id.]

Art. 792. [475] **Landing goods without permission.**—Any master or officer of a vessel placed under quarantine, who shall land or permit to be landed from said vessel any goods, wares, merchandise or article whatsoever, while the same is under quarantine, without the written permission of the health officer of the quarantine station, shall be fined not less than fifty nor more than one thousand dollars for each article so landed. [Id.]

Art. 793. [476] **Leaving quarantine station.**—Any person detained at any quarantine station, who shall wilfully absent himself without leave of the officer having charge thereof, shall be deemed guilty of a misdemeanor, and, on conviction thereof by any court of competent jurisdiction, shall be punished by a fine of not less than ten dollars nor more than one thousand dollars. [Act April 12, 1883, p. 81.]

Art. 794. [477] **Officer, etc., disobeying, etc., quarantine law.**—Any health officer, guard or other employe, who shall knowingly and wilfully disobey or in any manner knowingly neglect or fail to perform any duty imposed upon him by the provisions of quarantine laws, rules and regulations of this state, or who shall disobey, knowingly, an order emanating from superior authority, shall be fined, upon conviction by a court of competent jurisdiction, in a sum not exceeding one thousand dollars; provided, that, in the meaning of this article, the governor and state health officer shall alone be deemed superior authority. [Id.; quarantine law, Act 18th Leg., p. 17.]

Art. 795. [478] **Evading quarantine guards, etc.**—Any person coming from any port or district infected with yellow fever or any other infectious or contagious disease, who shall knowingly evade any guard or pass through any cordon of quarantine duly established, shall be deemed guilty of a mis-

demeanor, and, upon conviction by any court of competent jurisdiction, be punished by fine not exceeding one thousand dollars. [Act April 11, 1883, p. 81.]

Art. 796. [478a] **Violating quarantine regulations.**—Any person, who shall knowingly and wilfully violate any regulation of quarantine established by the governor, the state health officer, or the health officer of any county or city of this state, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than twenty nor more than one thousand dollars. [Act 1901, p. 305.]

Art. 797. [478b] **Conductor or person in charge of train or steamboat.**—If any conductor, or person in charge of any train, ship, steamboat or any other kind of common carriers, shall knowingly and wilfully bring into this state any person or thing contrary to the quarantine regulations as proclaimed by the governor, or state health officer, such conductor or person so knowingly and wilfully offending, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not to exceed five hundred dollars. [Id., p. 305.]

Art. 798. [478c] **Merchant or person violating governor's proclamation.**—Any merchant or other person who shall knowingly and wilfully order the shipment, or knowingly and wilfully receive any merchandise, whose shipment into the state is prohibited by the governor's proclamation, or any person who knowingly and wilfully sells and proceeds to deliver such merchandise or other article as above, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding five hundred dollars. [Id., p. 305.]

Art. 799. [478d] **Physician knowingly concealing case of contagious disease.**—Any physician who shall knowingly conceal any case of contagious disease, or who shall fail to report to the county or city health officer any case of contagious disease of which he may have knowledge shall, upon conviction, be fined in any sum not less than twenty-five dollars nor more than one hundred dollars. [Id., p. 305.]

CHAPTER ELEVEN.

TEXAS STATE BOARD OF HEALTH.

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Article 800. **Creating same.**—The department of public health and vital statistics as now existing under the laws of this state is hereby abolished, and that there be created and established, in its stead, a state board of health, to be officially designated as Texas state board of health, which shall consist of seven members, who shall be legally qualified practicing physicians, who shall have had at least ten years' experience in actual practice of medicine within the state of Texas, of good professional standing, who shall be graduates of reputable medical colleges, to be appointed biennially by the governor as soon as practicable after the passage of this bill, and thereafter on or before the tenth day of March, following his inauguration. One member of said board, who shall be appointed by the governor and confirmed by the senate, shall be designated by the governor as state health officer, and who shall be president and executive officer of the board. The members of said board shall hold their office for a term of two years, and until their successors shall be appointed and qualified, unless sooner removed for cause. [Act 1909, p. 340.]

Art. 801. **Has power to prepare sanitary code, supplement and rules and regulations.**—Power is hereby conferred on the Texas state board of health to prepare a sanitary code, to be known as the sanitary code for Texas, which shall provide rules and regulations for the promotion and protection of the public health, and for the general amelioration of the sanitary and hygienic condition within this state, for the suppression and prevention of infectious and contagious diseases, and for the proper enforcement of quarantine, isolation and control of such diseases; provided, however, that where a patient can be treated with reasonable safety to the public health, he shall not be removed from his home without his consent, or the consent of the parents or guardian, in case of a minor, which said code, when so made, adopted, approved by the governor, published and promulgated, shall have the force of law in all respects as far as relates to the following subjects:

(a) In the management of quarantine and disinfection with respect to all contagious, infectious diseases and exposures.

(b) In the government of quarantine and disinfecetion of all pestilential diseases, such as bubonic plague, Asiatic cholera, leprosy, typhus and yellow fever.

(c) For the inspection, sanitation and disinfection of all railway coaches (including interurban cars), sleeping cars, street cars, waiting rooms, toilet rooms in cars and stations, depots and stations; the regulations for the proper protection of the public water, ventilation and heat supplies in such places, and the sanitary conduct and condition of all persons within such places.

(d) Governing the reporting, by physicions and health officers, of the presence, in any locality, of all contagious and infectious diseases.

(e) Governing the manner and method of collecting and reporting all vital and mortuary statistics, including reports of births and deaths, designat-

ing to whom and by whom such report shall be made, and the form of same.

(f) Governing the preparation for transportation of dead bodies.

Provided, that said Texas state board of health shall prepare and adopt, at such time as they may deem proper and expedient, an advisory supplement to such sanitary code for Texas, which shall contain rules and regulations on the following subjects:

(1) Prescribing and fixing the standard for disinfectants; requiring employment of disinfectants of proper quality and standard for the disinfection of all premises as directed by the board.

(2) Regulating the proper sanitary disposition of sewerage, garbage, and offal, and the proper drainage of unsanitary premises.

(3) Governing the proper interment and disinterment of dead bodies.

(4) Regulating the examination and inspection, both ante mortem and post mortem, of all animals which may be intended for supplying food products of meat for human consumption; regulating and governing the protection of the public with reference to the sale and use of diseased animals for producing food products or meat, the manner of feeding to animals, designated for producing food products for human consumption, all offensive or diseased producing food stuffs; regulating the inspection, examination and management of all dairy cows and herds for the purpose of controlling and suppressing tuberculosis and other diseases liable to be communicated from animal to man.

(5) Regulating the sanitary condition of slaughter houses, meat markets and dairies.

(6) Rules and regulations for the sanitation and disinfection of public buildings; provided, that a public building is hereby declared to be any building owned by the state or any county or any city school building, college or university of any class, any dance hall, music hall, saloon, fire hall, skating rink, theater, theatorium, moving picture show, circus pavilion, office building, hotel, lodging house, restaurant, lecture hall, place of public worship or any building or place used for the congregation, occupation or entertainment, amusement or instruction of the public.

(7) Rules and regulations to govern and control the conduct and operation of markets, peddlers' wagons, and all other places and methods of exposure for sale of meats, fish, poultry, game, fruits, vegetables and all perishable articles of food exposed for sale, and to regulate the time and method of such exposure, and to prescribe and limit methods for the preservation of such articles of food, and to prohibit the doing of any act, or the use of any method with respect thereto, which said board shall deem prejudicial to the public health; provided, that any condemnation of any such article of food shall be in writing, and a record of the same shall be kept by said health department. Provided, that such advisory supplement to sanitary code for Texas shall be advisory only. It shall be the duty of all city and county health officers, members of city councils, city and county commissioners to co-operate at all times with the Texas state board of health in enforcing the rules and regulations contained in such advisory supplement, and any city or town in this state may, by a majority of its city council or commissioners, and whenever the subject matter relates to the public schools, with the approval of a majority of the members of the school board of such city or town adopt such advisory supplement; and the rules and regulations therein contained shall thereafter have the full force and effect of law in such city or town; provided, that the commissioners' court of any county in this state may, by a majority vote, adopt said advisory supplement to the sanitary code for Texas, and thereafter the rules and regulations contained in such advisory supplement shall have the full force and effect of law outside of all incorporated cities and towns in such county. [Id., p. 342.]

Art. 802. **Person violating sanitary code, punishment for.**—Any person who shall violate any of the rules and regulations contained in the sanitary code of Texas, as embraced in subdivisions a, b, c, d, e, and of article 801, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than ten dollars and not more than one thousand dollars. [Id., p. 344.]

Art. 803. **Person violating regulations.**—Any person who shall wilfully violate any of the rules and regulations contained in the advisory supplement to the sanitary code for Texas, embraced in subdivisions 1, 2, 3, 4, 5, 6 and 7, of article 801, when same shall have been adopted by the city or county in which said person shall have violated such rules and regulations, he shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than five dollars and not more than two hundred dollars. [Id., p. 344.]

Art. 804. **When code to be published.**—On adoption of the said code by votes of a majority of the members of the board, and approved by the governor, it shall be published at length for one time in official monthly bulletin of the state board of health, and at least three times for three consecutive weeks in three daily newspapers of the state, after which adoption, approval and publication, it shall become operative and have the absolute force of law; and any person who shall violate any of the rules, regulations in said sanitary code, after its adoption and publication as above provided for, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined as herein prescribed. [Id., p. 345.]

Art. 805. **Rules and regulations to be enforced by courts.**—And it is hereby made the duty of the several courts of this state having jurisdiction over such offenses, according to the grade thereof, to enforce and carry into effect each and all of the rules and regulations as promulgated in said sanitary code of Texas, when they shall have the force and effect of law as provided herein, and to impose and collect penalties, in the amounts therein specified, from all persons found guilty of any violations thereof. [Id., p. 345.]

Art. 806. **Members of board, inspectors and officers constituted peace officers.**—Each member of the said Texas state board of health, and each of its inspectors and officers, is hereby constituted a peace officer, and shall have power to arrest persons violating any of the provisions of the sanitary code to be adopted by the board, of the violation of any public health, sanitary or quarantine law of the state; and such member, officer or inspector may so arrest such offenders without warrant when the offense is committed within the presence or sight of such member, officer or inspector, but otherwise only when in the execution of a warrant issued by a proper officer. [Id., p. 345.]

Art. 807. **Sheriff and other officers to do what.**—It is hereby made the duty of all sheriffs and their deputies, and constables and their deputies, police officers, town marshals, state rangers, and all other peace officers, to assist in the apprehension and arrest of all persons violating any provisions, rules, ordinances or laws or the sanitary code for Texas, as it may be adopted by said board, or for violation of any public health, sanitary or quarantine laws of the sanitary code for Texas, as it may be adopted by said inspectors and officers of said board, to apprehend and arrest all persons who may commit any offense against the public health laws of this state, or the rules, regulations, ordinances and laws of the sanitary code for Texas when adopted, published and promulgated by said board of health, as provided in this law, when charged to execute a warrant of arrest issued by the proper officer for the apprehension and arrest of all persons charged with so offending. [Id., p. 346.]

Art. 808. **When and by whom buildings and premises may be examined and inspected.**—The members of the board of health and every person duly authorized by them, upon presentation of proper authority in writing, are hereby empowered, whenever they may deem it necessary in pursuance of their duties, to enter into, examine, investigate, inspect and view all grounds, public buildings, factories, slaughter houses, packing houses, abattoirs, dairies, bakeries, manufactories, hotels, restaurants and all other public places and public buildings where they may deem it proper to enter, for the discovery and suppression of disease, and for the enforcement of the rules, regulations and ordinances of the sanitary code for Texas after it has been adopted, promulgated and published by the board for the enforcement of any and all health laws, sanitary laws or quarantine regulations of this state. [Id., p. 346.]

Art. 809. **Oaths may be administered, when and by whom.**—The members of said board of health and its officers are hereby severally authorized and empowered to administer oaths and to summon witnesses and compel their attendance in all matters proper for the said board to investigate, such as the determination of nuisances, investigation of public water supplies, investigation of any sanitary conditions within the state, investigation of the existence of infection or the investigation of any and all matters requiring the exercise of the discretionary powers invested in said board and its officers and members, and in the general scope of its authority invested by this law. The several district judges and courts are hereby charged with the duty of aiding said board in its investigations and in compelling due observance of this law, and, in the event any witness summoned by said board or any of the officers or members of the same, shall prove disobedient or disrespectful to the lawful authority of such board, officer or member, such person shall be punished by the district court of the county in which such witness is summoned to appear as for contempt of said district court. [Id., p. 346.]

Art. 810. **Witness testifying falsely guilty of perjury.**—Any witness, when summoned to appear before said board, who shall falsely testify as to any matters proper for the determination of any question which the board may be investigating, shall be deemed guilty of perjury, and shall be punished as provided by law for the offense of perjury. [Id., p. 346.]

TITLE 13.

OF OFFENSES AFFECTING PROPERTY HELD IN COMMON FOR THE USE OF THE PUBLIC.

Chapter.
1. Obstruction of Navigable Streams, and Roads, Streets and Bridges.
2. Offenses Pertaining to Public Roads and Irrigation.
3. Offenses Relating to Ferries.
4. Offenses Relating to Public Grounds and Buildings.
5. Public Lodging House — Fire Escape.
6. Offenses Relating to the Protection of Fish, Birds and Game.

CHAPTER ONE.

OBSTRUCTION OF NAVIGABLE STREAMS, AND ROADS, STREETS AND BRIDGES.

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Article 811. [479] **Obstruction of navigable streams.**—If any person shall obstruct the navigation of any stream which can be navigated by steam, keel or flat boats, by cutting and felling trees, or by building on or across the same any dike, mill-dam, bridge or other obstruction, he shall be fined not less than fifty nor more than five hundred dollars.

Art. 812. [480] **Of roads, streets or bridges.**—If any person shall wilfully obstruct or injure, or cause to be obstructed or injured in any manner whatsoever, any public road or highway, or any street or alley in any incorporated town or city, or any public bridge or causeway, he shall be fined in a sum not exceeding five hundred dollars.

Construed. A public road cannot be laid out and established without the requirements of the law in such cases having first been complied with, and one of the prerequisites is that those appointed to lay out the road shall, before proceeding to act as such, take the oath prescribed by statute. Davidson v. State, 16 T. Cr. R., 336.

For other requirements to constitute a road a public road, see Day v. State, 14 T. Cr. R., 26; Rankin v. State, 25 Id., 694, 8 S. W. R., 932; Thompson v. State, 22 Id., 328, 3 S. W. R., 232; Bradley v. State, Id., 330, 2 S. W. R., 828; Crouch v. State, 39 Id., 145, 45 S. W. R., 578.

And as to proof of its public character; Hall v. State, 13 T. Cr. R., 269; Day v. State, 14 Id., 26; Jolly v. State, 19 Id., 76; Michael v. State, 12 Id., 108; Berry v. State, Id., 249; McWhorter v. State, 43 T., 666.

The act of obstruction must be affirmatively shown to have been "wilful." Laroe v. State, 30 T. Cr. R., 374, 17 S. W. R., 934; Parsons v. State, 26 Id., 192, 9 S. W. R., 490; Cornelison v. State, 40 Id., 159, 49 S W. R., 384.

But after the road has been legally established the owner of land condemned for that purpose cannot disregard the order of the commissioners court even on the advice of attorneys that the order establishing the road was void. Crouch v. State, 39 T. Cr. R., 145, 45 S. W. R., 578.

A road laid out, worked and recognized as a public road for fifteen years is a public road. Ward v. State, 42 T. Cr. R., 435, 60 S. W. R., 757; Race v. State, 43 Id., 438, 66 S. W. R., 560.

Only the commissioners court, as such, is authorized to establish and designate a public road. Ehilers v. State, 44 T. Cr. R., 156, 69 S. W. R., 148.

Evidence showing that the road at the point of obstruction had never been designated, but was used by the public by the consent of the owner until such time as he should elect to inclose it; he was not guilty of obstruction, citing Isham v. State, 49 T. Cr. R., 324, 92 S. W. R., 808. Farr v. State, 55 Id., 271, 116 S. W. R., 570.

The ordinance of a town authorizing the occupation of six feet of sidewalk for the purpose of a fruit stand would be a complete defense to obstruction if only the six feet were occupied. Echols v. State, 12 T. Cr. R., 615.

Indictment for obstructing a public street must allege that it was in an incorporated city or town. It is no offense under this article to obstruct a street or alley in an unincorporated town. Echols v. State, supra.

Art. 813. [481] **Riding or driving over bridges.**—If any person shall ride or drive over any bridge belonging to any county, or to any municipal or private corporation, faster than a walk, he shall be fined in any sum not exceeding one hundred dollars. [Act 22d Leg., p. 131.]

Art. 814. **Name of owner of automobile or motor vehicle to be registered.**—All owners of automobiles or motor vehicles shall, before using such vehicles or machines upon the public roads, streets or driveways, register with the county clerk of the county in which he resides, his name, which name shall be registered by the county clerk in consecutive order, in a book to be kept for that purpose, and shall be numbered in the order of their registration; and it shall be the duty of such owner or owners to display in a conspicuous place on said machine the number so registered, which number shall be in figures not less than six inches in height. The county clerk shall be paid by such owner or owners a fee of fifty cents for each machine registered. [Act 1907, p. 193.]

Art. 815. **Speed of regulated.**—No automobile or motor vehicle shall be driven or operated upon any public road, street or driveway at a greater rate of speed than eighteen miles an hour, or upon any public road, street or driveway, within the built up portions of any city, town or village, the limits of which shall be fixed by the municipal officers thereof, at a greater rate of speed than eight miles an hour, except where such city or town may, by an ordinance or bylaw, allow a greater rate of speed; provided, the speed limit shall not apply to race courses or speedways. [Id., p. 193.]

Constitutional law; speed regulation. This article, the act of the Thirtieth Legislature, page 193, regulating the speed of automobiles driven on a public road, street or driveway, is constitutional. Byrd v. State, decided June 8, 1910—not yet reported.

Same; indictment to be sufficient to charge this offense must negative the exceptions named in the article. Id.

Art. 816. **Not to be operated as to endanger life or limb.**—No person in charge of an automobile or motor vehicle on any public road, street or driveway, shall drive the same at any speed greater than is reasonable and proper, having regard to the traffic and use of the public road, street or driveway by others, or so as to endanger the life or limb of any person thereon. [Id., p. 193.]

Art. 817. **Racing on street or public road prohibited.**—All drivers or operators of automobiles or motor vehicles are prohibited from racing upon any public road, street or driveway. [Id., p. 193.]

Art. 818. **Operator when signaled shall come to a standstill.**—Any person driving or operating an automobile or motor vehicle shall, at the request, or signal by putting up the hand, or by other visible signal from a

person riding or driving a horse or horses or other domestic animal, cause such vehicle or machine to come to a standstill as quickly as possible, and to remain stationary long enough to allow such animal to pass [Id., p. 193.]

Art. 819. **Shall have attached suitable bell to give notice of approach.**—Every driver or operator of an automobile or motor vehicle shall have attached thereto a suitable bell or other appliance for giving notice of its approach, so that, when such attachment is rung or otherwise operated it may be heard a distance of three hundred feet, and shall carry a lighted lamp between one hour after and one hour before sunrise. [Id., p. 193.]

Art. 820. **Penalty for violation.**—Every one who violates any of the six preceding articles shall be punished by a fine of not less than five dollars nor more than one hundred dollars. [Id., p. 193.]

Art. 821. [482] **Destroy, injure or misplace bridge, culvert, ditch, signboard, etc.**—Any person who shall knowingly or wilfully destroy, injure or misplace any bridge, culvert, drain, sewer, ditch, signboard, mile post, or tile, or anything of like character placed upon any road for the benefit of the same, shall be guilty of a misdemeanor, and, upon conviction thereof, punished by fine of not more than five hundred dollars, and shall be liable to the county and any person injured for all damages caused thereby. [Act 22d Leg., ch. 97, p. 149, § 22.]

Art. 822. [482a] **Unlawful to carry over any public road or culvert any traction engine, when.**—It shall be unlawful for any person to transport or carry over any public bridge or culvert, upon any public road or highway, or any street or alley in any incorporated town or city, any traction engine with lugs on the wheels thereof, and to carry or transport over any such public bridge or culvert any traction engine or separator, without having first provided and placed in position skids upon which the wheels of said traction engine or separator shall be run, which said skids shall be not less than three inches thick, twelve inches in width and sixteen feet in length; and any person violating the provisions of this article shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding five hundred dollars. [Act 1907, p. 189.]

Art. 823. [483] **Not applicable, when.**—No person shall be punished, under article 812, who places obstructions in the streets or alleys of an incorporated city or town for purposes of building or improvement, under the sanction of the eorporate authorities of such city or town.

Art. 824. [484] **Commissioners may also regulate.**—Nothing in this chapter contained shall be so construed as to prevent the commissioners' courts of the several counties, or the municipal authorities of towns or cities, from adopting such regulations as they may deem proper relative to the removal of obstructions from public roads, streets or bridges, and to enforce the same by due process of law.

Art. 825. [485] **Commissioners' court may control streets, etc., when.**—In all cities and incorporated towns in the state of Texas in which, from any cause, there is not a de facto municipal government in the active discharge of their official duties, the commissioners' court of the county in which such city or incorporated town is situated shall assume and have control of the streets and alleys thereof, and shall have the same worked under the law and regulations for the working of public roads; and such streets and alleys, for the purposes of this law, shall be held and denominated public roads; provided, that all residents of any city or town having no de facto city government, not otherwise exempt from road duty, shall be liable to road service as in other cases. [Act March 4, 1885, p. 25.]

Art. 826. [485a] **Wilful obstruction of public ditch or diversion of water.**—If any person shall wilfully obstruct any public ditch, or shall wilfully

divert the water from its proper channel, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than five nor more than five hundred dollars, and shall also be liable for any and all damages accruing to any person or persons or corporation or county for any such act. [Acts of 1895, p. 155.]

CHAPTER TWO.

OFFENSES PERTAINING TO PUBLIC ROADS AND IRRIGATION.

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Commissioner failing to comply	830	Person obstructing ditch constructed under the drainage law	836
Superintendent failing to comply	831	Injuring canal	837
Failure to attend when summoned, etc.	832		

Article 827. [486] **Refusal to serve as overseer.**—If any person, subject to public road duty under the laws of this state, shall wilfully fail or refuse to serve as overseer of any road in his road district or precinct, when duly appointed as such overseer by the commissioners' court of his county, he shall be fined not less than ten nor more than fifty dollars. [Act July 29, 1876, p. 67.]

A road overseer has no option of accepting or rejecting an appointment as road overseer, but must perform the service required of him as prescribed, and within the time prescribed. State v. Chinn, 29 T., 497.

Art. 828. [487] **Failure of duty as overseer.**—If any overseer of a public road in this state shall wilfully fail, neglect or refuse to perform any duty imposed upon him by law, or shall so fail, neglect or refuse to keep the roads, bridges and causeways in his precinct or district clear of obstructions and in good order, or shall wilfully suffer such roads, bridges or causeways to remain uncleared and out of repair for twenty days at any one time, he shall be fined not less than ten nor more than twenty-five dollars. [Id., p. 68.]

Construed. The neglect or failure on the part of the overseer must be shown to have been "wilful." The law exacts only reasonable diligence and effort, and not impossibilities. Moore v. State, 27 T. Cr. R., 439, 11 S. W. R., 457; Parker v. State, 29 Id., 372, 16 S. W. R., 186.

A road overseer is not guilty under this article for removing a fence he found in the roadway On the controry, it was his duty to remove it. Shott v. State, 7 T. Cr. R., 616.

Art. 829. [488] **Same subject.**—If any overseer of a public road in this state shall fail, within six months after his appointment as such, to measure the road or roads in his precinct or district and set up posts of lasting timber at the end of each mile leading from the court house, or some other noted place or town, and to mark on such posts in legible words and figures the distance in miles to such court house, or other noted place, or shall fail, when any such post is destroyed or removed, to replace the same with another marked as the original, or shall fail to affix or set up at the forks of all public roads in his district or precinct index boards with the directions pointing toward the most noted places to which they lead, he shall be fined in the sum of five dollars. [Id., p. 67.]

Art. 830. [489] **Road commissioner failing to comply; penalty.**—Any road commissioner who shall wilfully fail to comply with any duty required of him shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by fine of not less than twenty-five nor more than two hundred dollars. [Act April 6, 1889, 21st Leg., ch. 111, § 5.]

Art. 831. [490] **Road superintendent failing to comply; penalty.**—Any road superintendent who shall wilfully fail or refuse to comply with any provision of law or order of the commissioners' court shall be guilty of a misdemeanor, and, on conviction thereof, punished by fine of not less than twenty-five nor more than two hundred dollars for each offense. [Act 22d Leg., ch. 97, p. 149, § 21.]

Art. 832. [491] **Failure to attend when summoned.**—If any person, liable to work upon the public roads, after being legally summoned, shall fail or refuse to attend, either in person or by able and competent substitute, or fail or refuse to furnish his team or tools at the time and place designated by the person summoning him, or to pay to such road overseer the sum of one dollar for each day he may have been notified to work on the public roads, or to pay to such overseer the sum of one dollar and fifty cents for each day he may have been notified to furnish his team for road work, or, having attended, shall fail or refuse to perform good service or any other duty required of him by law, or the person under whom he may work, or, if any one shall fail to comply with any duty required of him as provided by law, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, fined in any sum not exceeding twenty-five dollars. [Act July 29, 1876, p. 60; amended, Act 1901, p. 277.]

Construed. This article has no application to a citizen of a city which, under its charter, exercises exclusive control over the streets, alleys and public highways within the city limits. Ex parte Roberts, 28 T. Cr. R., 43, 11 S. W. R., 782.

As to legal appropriation of land for road purposes, see Norwood v. Gonzales county, 79 T., 218, 14 S. W. R., 1057.

A town or city incorporated under the general laws has the power, by ordinance, to compel its citizens to work its streets under fine and imprisonment. Ex parte Bowen, 34 T. Cr. R., 107, 29 S. W. R., 269.

Art. 833. [493] **Failure to open boundary lines.**—Whenever the commissioners' court of any county in this state shall duly declare the boundary lines between the lands of different persons a public highway, in accordance with law, if any person or owner shall fail, neglect or refuse, for twelve months after legal notice thereof, to leave open his land, free from all obstructions, for ten feet on his side of the line designated, he shall be fined not more than twenty dollars for each month after the twelve months aforesaid in which he may so fail, neglect or refuse. [Act July 29, 1876, p. 69.]

Art. 834. [494] **Leaving gates open on third-class roads.**—Any person or persons placing a gate on or across any third-class road, or on or across any road such as is designated in article 833 of the Penal Code, shall be required to keep said gate and the approaches to the same in good order; and the gate shall be ten feet wide and so constructed as to cause no unnecessary delay to the traveling public in opening and shutting the same, and provide a fastening to hold said gate open till the passengers go through; and such person or persons shall place a permanent hitching post and stile block on each side of, and within sixty feet of, such gate. Any person or persons who may hereafter place a gate on or across a third class road, or on or across any road such as is designated in article 493, who shall wilfully or negligently fail to comply with the requirements of this article shall be deemed guilty of a misdemeanor, and, on conviction, may be fined in any sum not less than five nor more than twenty dollars for each offense; and each week of said

failure shall constitute a separate offense. Any person or persons who shall wilfully or negligently leave open any gate on or across any third class road, or on or across any road such as is designated in article 493, shall be deemed guilty of a misdemeanor, and, on conviction, may be fined in any sum as above provided for. [Amended by Act Feb. 2, 1874, S. S., p. 18.]

Construed. For construction of this article, see Jolly v. State, 19 T. Cr. R., 76, and Conner v. State, 21 Id., 176, 17 S. W. R., 157; and note the first mentioned decision to the effect that if the road obstructed by the gate is not a public road of either class, then the leaving open of such a gate would be a violation of article 1250 of this Code.

Art. 835. [495] **Violation of irrigation laws.**—If any person amenable to the laws governing irrigation shall fail or refuse to work on any ditch or aqueduct when summoned so to do by the proper authority, he shall be fined not less than one nor more than five dollars. [Act Dec. 20, 1861.]

Art. 836. **Persons obstructing ditch constructed under the drainage law.**—If any person shall wilfully or negligently obstruct, or cause to be obstructed, any ditch constructed under the drainage law of this state, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than ten dollars nor more than one hundred dollars. [Act 1899, p. 100.]

Art. 837. [496] **Injuring irrigation canal, etc.**—Any person who shall wilfully or through gross negligence injure any irrigating canal or its appurtenances, wells or reservoirs, or who shall waste the water thereof, or shall take the water therefrom without authority, shall be deemed guilty of a misdemeanor, and, for each offense, shall be liable to a fine not exceeding two hundred dollars. [Act March 19, 1889, p. 100, § 14; amended, Act 1899, p. 301.]

CHAPTER THREE.

OFFENSES RELATING TO FERRIES.

Keeping ferry without license..... Article 838 | Failure to keep good boats, etc..... Article 839

Article 838. [497] **Keeping ferry without license.**—If any person or firm shall keep any ferry over any water course, navigable stream, lake or bay in this state, and shall charge or receive any money, property, or other valuable thing, for crossing passengers or property at such ferry, without first obtaining license, as is now or as may hereafter be required by law, such person or firm shall be punished by fine not less than fifty nor more than two hundred dollars. [Act Feb. 11, 1860, p. 98.]

Art. 839. [498] **Failure to keep good boats.**—If the owner of any licensed ferry in this state shall fail to keep, at all times, good, safe and substantial boats, sufficient in number for the ready accommodation of the public, or shall fail to keep the banks on each side of the ferry in good repair, and so graded that the ascent shall not exceed one foot in every seven feet from the water's edge to the top of the bank, or shall fail to give ready attendance on all passengers desiring to cross with their animals, wagons, or other property, or shall charge higher rates of ferriage than those fixed by the proper authority, he shall be fined not less than ten nor more than one hundred dollars. [Act March 4, 1875, pp. 58-59.]

CHAPTER FOUR.

OFFENSES RELATING TO PUBLIC GROUNDS AND BUILDINGS.

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Article 840. [499] **Injuring or defacing a public building.**—If any person shall wilfully injure or deface any public building, or the furniture therein in this state, he shall be fined not less than five nor more than five hundred dollars. The word "deface" in this chapter shall be held to apply to writing, carving or scratching on the walls or plastering or furniture of said building, or staining the same with paint or any other article which will produce a discoloration of the same. [Act May 14, 1888, p. 5, § 5.]

Art. 841. [500] **"Public building" defined.**—The term "public building" as used in the preceding article means the capitol and all other buildings in the capitol grounds at the seat of government, including the general land office and the executive mansion, the various state asylums and all buildings belonging to either, all college or university buildings erected by the state, all court houses and jails and all other buildings held for public use by any department or branch of government, state, county or municipal; and the specific enumeration of the above shall not exclude other buildings not named, properly coming within the meaning and description of a public building.

Art. 842. [501] **All officers to report violations.**—It is the especial duty of all executive officers of the state and the county officers of the various counties to aid in the execution of the two preceding articles, and to report all violations thereof to the proper authorities for immediate prosecution. [Act Jan. 4, 1862, p. 51.]

Art. 843. [502] **Driving in capitol grounds.**—If any person shall drive, ride or lead, or cause to be driven, ridden or led, any horse or other animal to the capitol grounds at the seat of government, or into the inclosure of the state cemetery, without the consent of the keeper or superintendent of said grounds or cemetery, he shall be fined not exceeding twenty-five dollars. [Act April 29, 1874, p. 165.]

Indictment. If the building is not one of those specifically named in the statute, the indictment must allege that it was a public building or that it was a building held for public use. Brown v. State, 16 T. Cr. R., 244; Pratt v. State, 19 Id., 276; Clark v. State, 23 Id., 260, 5 S. W. R., 115.

A school house is a "public building" within the purview of this article. Thurston v. State, 125 S. W. R., 31.

Art. 844. **Injuring roadway, public grounds or property of state prohibited.**—It shall be unlawful for any person or persons to drive, or cause to be driven, over or along any roadway in any of the public grounds of this state, any heavy vehicle, or vehicle for carrying merchandise, or vehicle heavily loaded, or otherwise reasonably calculated to injure or deface such roadways, or to make their maintenance more expensive; or to drive, or cause to be

driven, any vehicle or conveyance of any kind, or to drive, or cause to be ridden, any animal of any kind, over, across, or along any of the footpaths or walks in such grounds, or on the turf of such grounds, or at any place therein, except on and along the roadways and at the hitching places provided therefor; or to hitch any horse or team in any of said public grounds, or to the fences surrounding the same, unless at some place especially provided therefor, or to cause or permit any horse, not being driven to some vehicle or ridden, or any cow, sheep, goat, hog, or other animal reasonably calculated to injure said grounds, or anything pertaining thereto, or go into or remain in any portion of said grounds; or to cut, pull, break, bruise, remove, or in anywise injure any tree, or shrub or vegetation of any kind growing thereon; or disturbing any birds' nests or eggs; or to in any wise injure, deface or in any way interfere with any chair, bench, seat, hydrant, frame, fence, gate, erection or structure of any kind therein or thereon or connected therewith; or to fish or wash or bathe in or any way pollute the waters of any lake or pond, or stream, therein, or to obscenely or indecently expose any part of his or her person, or to do any indecent act thereon. Any person violating any of the several provisions of this law shall be guilty of a misdemeanor, and shall be fined in any sum not less than five nor more than one hundred dollars. [Act 1903, p. 187.]

Art. 845. **Not to apply, when.**—This law shall not apply to anything done by the lawful custodian of the public grounds on which said act is performed, or under his authority and direction, and which is done in the reasonable discharge of his duties as such custodian, or in the use of such grounds for the purpose to which they are dedicated by the state. [Id., p. 187.]

Art. 846. **"Public grounds" defined.**—The term "public grounds," as used in this law, includes all grounds owned by the state, and used and maintained by it in connection with any public building or institution, whether for governmental, educational, eleemosynary or other purpose, and all state cemeteries and all parks maintained at the expense of the state. [Id., p. 187.]

Art. 847. [503] **Hitching in capitol grounds.**—If any person shall hitch any animal to any tree or shrub in the capitol grounds or state cemetery, he shall be punished as prescribed in the preceding article. [Act April 29, 1874, p. 165.]

Art. 848. [503a] **Pass-keys to state capitol.**—It shall not be lawful for any person to make or have made, or to keep in his possession, a pass or master key to the rooms and apartments in the state capitol, unless authorized to do so by the superintendent of public buildings and grounds; and any person violating the provisions of this article shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in any sum not exceeding one hundred dollars. [Acts of 1895, p. 79.].

Art. 849. [504] **Taking property from public grounds.**—If any person shall take, remove, injure or destroy any species of public property pertaining to public building, as defined in article 841, or to the grounds belonging to such building, he shall be fined not less than twenty-five nor more than one hundred dollars.

Art. 850. [505] **Unlawful fencing, using, etc., public lands.**—It shall be unlawful for any person to fence, use, occupy or appropriate, by herding or line-riding, any portion of the public lands of the state, or of the lands belonging to any particular fund specified in this act, without having first obtained a lease of such lands in accordance with the provisions of this act. Any person, whether owner of stock, manager, agent, employe or servant, who shall fence, use, occupy or appropriate, by herding or line-riding, any portion of such lands without a lease thereof, shall be deemed guilty of a misdemeanor, and shall, upon conviction, be fined not less than one hundred nor more than one thousand dollars, and, in addition thereto, shall be imprisoned in the county jail for a period of not less than three months nor more than two

years. Each day of such fencing, using, occupying or appropriating, by herding or line-riding, shall be deemed a separate offense; and any person so offending may be prosecuted, by indictment or information, in the proper court of the county where any portion of the land lies or to which it may be attached for judicial purposes, or in the county of Travis; and jurisdiction of such offenses is hereby vested in said courts; and, in case any indictment or information is preferred or filed against a non-resident of this state for a violation of this article, it shall be the duty of the governor to demand the extradition of the defendant from the proper officer of any state or territory where he may be found, in order that he may be brought to trial. "Fencing," within the meaning of this article, is the erection of any structure of wood, wire, or both, or any other material intended to prevent the passage of cattle, horses, mules, asses, sheep, goats or hogs, whether the same shall inclose lands on all sides or be erected on one or more sides. Any appropriation of land belonging to any particular fund specified in this act, or of the public lands of this state, without having first obtained a lease thereof, by fencing of any kind, or by inclosures consisting partly of fencing and partly of natural obstacles, or impediments to the passage of live stock, shall be deemed an unlawful appropriation, punishable as provided in this article for appropriating such lands; and each day said land is so appropriated shall be deemed a separate offense. [Act April 1, 1887, p. 89, § 18.]

Art. 851. [506] **Not applicable, when.**—The provisions of this act, as set forth in the preceding article, shall not apply to persons who are moving or gathering or holding for shipment any stock mentioned in said article; provided, the said persons have not erected any fence on such lands or continue on said lands longer than one week. [Id., § 19.]

Art. 852. [507] **Turning loose too many stock on leasehold land.**—No purchaser or other person than the lessee of public free school, asylum and public lands shall be permitted to turn loose within such leasehold more than one head of horses or mules or cattle for any ten acres of land purchased, owned or controlled by him and uninclosed, or in lieu thereof, four head of sheep or goats to every ten acres so purchased, owned or controlled and uninclosed. Each violation of this provision of this article, which restricts the number of stock that may be turned loose on lands leased from the state, shall be an offense; and the owner, on conviction, shall be punished by a fine not less than one dollar for each head of stock he may so turn loose; and each thirty days' violation of the provisions of this article shall constitute a separate offense. [Act April 1, 1887, p. 88, § 15; amended by Act April 28, 1891, p. 181.]

Art. 853. [509] **Other statutes relating to public lands.**—Each and every person who shall have inclosed, by fencing or otherwise, any of the public free school lands belonging to the state, and shall use the same to the exclusion of the public, shall pay an annual rental value therefor of the sum of twenty-five dollars for each section so inclosed.

And it shall be the duty of the surveyor of each county to make a report to the county commissioners' court on the first Monday in June each year of the number of sections of public school lands in his county inclosed during the past year, and the names of the person or persons controlling such inclosed lands, and the number of sections controlled by him or them, respectively.

And the said court, at the first regular term thereafter, shall make a list of the names of the persons controlling such public free school lands, the number of sections so controlled by each person, and the aggregate amount due from each person, at the rate of twenty-five dollars for each section so inclosed and controlled, which list shall be recorded by the clerk of said court, and a certified copy thereof forwarded by him to the comptroller of

public accounts, and a like copy delivered to the collector of taxes for said county.

The collector of taxes, on receipt of such list, shall proceed to collect the same under the same provisions and penalties as is imposed by law for the collection of taxes.

All moneys collected under the provisions of this act shall be paid by the collector into the state treasury and constitute a part of the available school fund; provided, that the state may resume control of said land at any time.

Any person who shall control inclosed lands belonging to the public free schools, and fail to pay the rental value as specified under the provisions of this act, upon the demand of the collector, shall be subject to prosecution upon complaint, information or indictment, and fined in the sum of one hundred dollars for each section so inclosed. [Act April 17, 1879, pp. 101-2.]

Art. 854. **Permitting fence to remain standing round land of another, etc.**—If any person or corporation shall knowingly make or permit to remain standing any fence on or around the land of another, or the public, public school, university or asylum lands of this state, without the written consent of the owner thereof duly acknowledged, or a duly executed lease of such land from the proper authority in a case of public, public school, university or asylum lands, as the case may be, duly recorded in the county where the land lies or to which it is attached for judicial purposes, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, fined in any sum not less than fifty cents nor more than one dollar per acre per month for each month so inclosed, or fined and imprisoned in the county jail for any period not over two years. Within the meaning of person, as used in this act, is included every man managing or controlling for a corporation, firm or joint stock company, and any and every individual or person who shall aid, assist or direct in the violation of this act. Half of all fines collected under the provisions of this act shall be paid to the person or persons informing on the person or corporation who shall unlawfully inclose any land; provided, that each three months said land is so inclosed shall constitute a separate offense. A fence, within the meaning of this act, is any structure of wood, wire, or both, or any other material intended to prevent the passage of cattle, horses, mules, asses, sheep, goats or hogs. Where persons or corporations have unlawfully fenced land belonging to the state, or public school, university or asylum lands, it shall be the duty of the attorney general, either in person or by proxy, to institute proceedings in the name of the state against any person or incorporation so unlawfully inclosing said lands; and the expense incurred in employing counsel to prosecute such cases shall be deducted from the fine or fines collected from any person or corporation violating the provisions of this act, the balance to be paid to the fund to which it belongs. [Act Feb. 7, 1884, pp. 68-69.]

Art. 855. **Articles that apply to prosecutions.**—In all prosecutions under this chapter, the provisions of articles 1290 and 1291 of the Penal Code of the state of Texas shall apply. [Id.]

Art. 856. **When the law does not apply.**—This chapter shall not apply to persons who have heretofore settled upon lands not their own, where the inclosure is two hundred acres or less, and where the principal pursuit of such person upon the land and is that of agriculture. [Id.]

Art. 857. **Unlawful to herd horses, etc.**—It shall be unlawful for any person, firm or corporation to herd, or aid in herding, or cause to be herded, loose-herded or detained for grazing by line-riding, any cattle, horses, mules, asses, sheep or goats on any vacant public domain, school, university or asylum lands within this state, unless the same shall have been leased from the proper authority; provided, that this section of this act shall not apply to persons

herding such stock, in gathering for or carrying to and from market, or in moving the same from one section of the country to another. [Id.]

Art 858. **Penalty.**—Any person who shall knowingly violate any of the provisions of article 857 shall be guilty of a misdemeanor, and upon conviction, shall be fined one hundred dollars for each year or part of a year, for each section or part of a section (meaning six hundred and forty acres of land or less, whether surveyed in sections or not), which shall be used contrary to the provisions of said article. [Id.]

Art. 859. [509a] **Turning loose excess of stock on leased lands.**—Each violation of the provisions of article 852 of this Code, which restricts the number of stock that may be turned loose on lands leased from the state, shall be an offense; and the offender, on conviction, shall be punished by fine of one dollar for each head of stock he may so turn loose; and each thirty days' violation of the provisions of said article shall constitute a separate offense. [Acts of 1895, p. 71.]

Art. 860. [509b] **Illegal fencing, etc., of public lands.**—It shall be unlawful for any person to fence, use, occupy or appropriate by herding or line-riding, any portion of the public lands of the state, or of the lands belonging to the public free schools or asylums, without having first obtained a lease of such lands. Any person, whether owner of stock, manager, agent, employe or servant, who shall fence, use, occupy or appropriate by herding or line-riding any portion of such lands without a lease thereof, shall be deemed guilty of a misdemeanor, and shall, upon conviction, be fined not less than one hundred nor more than one thousand dollars, and, in addition thereto, shall be imprisoned in the county jail for a period of not less than three months nor more than two years. Each day of such fencing, occupying, using or appropriating by herding or line-riding shall be deemed a separate offense; and any person so offending may be prosecuted by indictment or information in the proper court of the county where any portion of the land lies, or to which it may be attached for judicial purposes, or in the county of Travis; and jurisdiction of such offenses is hereby vested in said courts; and in case any indictment or information is preferred or filed against a nonresident of this state for a violation of this article, it shall be the duty of the governor to demand the extradition of the defendant from the proper officer of any state or territory where he may be found, in order that he may be brought to trial. "Fencing," within the meaning of this article, is the erection of any structure of wood, wire, or both, or any other material intended to prevent the passage of cattle, horses, mules, asses, sheep, goats or hogs, whether the same shall inclose lands on all sides or be erected on one or more sides. Any appropriation of land belonging to any particular fund specified in said act or of the public lands of this state, without having first obtained a lease thereof, by fencing of any kind, or by inclosures consisting partly of fencing and partly of natural obstacles or impediments to the passage of live stock, shall be deemed an unlawful appropriation, punishable as provided in this article for appropriating such lands, and each day said land is appropriated shall be deemed a separate offense. [Id., p. 74.]

CHAPTER FIVE.

PUBLIC LODGING HOUSE—FIRE ESCAPES.

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Article 861. **Every public lodging house to be furnished with.**—Every building or structure kept, used or maintained as, or advertised as, or held out to the public to be, an inn, hotel or public lodging house or place where sleeping accommodations are furnished to the public, whether with or without meals, shall have and be provided with, at each and every floor above the second floor, or at every floor twenty feet or more above the ground, two or more iron or steel fire escapes to be attached securely on the outside of the walls of such buildings or structures; and such buildings or structures shall have and be provided with a way of egress to said fire escapes, which way of egress and fire escapes shall, at all times, be kept free and clear of obstructions and in good repair and ready and suitable for immediate use. [Act 1907, p. 164.]

Art. 862. **How constructed.**—Said fire escapes shall consist of iron or steel ladders reaching from the roof of the building to within twelve feet of the ground, and the rungs of said ladders must be at least six inches from the wall, so that a secure foothold and handhold on same may be had, and the ladders must be securely bolted to and through the wall, and must be capable of sustaining a weight of fifteen hundred pounds avoirdupois, and that each floor above the ground floor, with proper open connections and exit to these ladders, shall be iron or steel balconies or landings, with strongly braced iron or steel hand railings, capable of sustaining a weight of fifteen hundred pounds avoirdupois. Said landings or balconies and the hand railings thereof shall be securely bolted to and through the walls, and, in case of wooden buildings, said ladders, landings or balconies and hand railings shall be securely bolted to and through, or clamped with iron or steel clamps to and around, the upright studding or frame proper of the building. [Id., p. 164.]

Art. 863. **Where constructed.**—All fire escapes shall be located as far as possible, consistent with accessibility, from stairways, elevator hatchways and other openings in the floors, and shall be located on two or more sides of the building, and as far apart as is consistent with the construction and location of the building. [Id., p. 164.]

Art. 864. **Placards indicating way to.**—Placards or signs, indicating plainly the way to fire escapes, shall be placed and kept continuously in conspicuous places in the offices, hallways and in every bedroom of such building. [Id., p. 164.]

Art. 865. **Every bedroom to be furnished with rope.**—Every building or structure not more than two stories high from the ground, and where the second floor is less than twenty feet above the ground, kept, used or maintained as, or advertised as, or held out to the public to be, an inn, hotel or public lodging house or place where sleeping accommodations are furnished to the public, whether with or without meals, shall have and be provided with, in every bedroom on the floor above the ground floor, a manilla or hemp rope of at least five-eighths of an inch thickness, firmly knotted at least at every fifteen inches of its length, and long enough to reach within four feet of the ground, and to be securely fastened within the room not less than three feet above the base or sill of the window or

opening, and so with strength of rope and fastening be capable of sustaining a weight of not less than five hundred pounds avoirdupois. [Id., p. 164.]

Art. 866. **Penalty for violation.**—Any person or persons owning, keeping or maintaining, controlling or managing, any building or structure kept as, used as, maintained as, or advertised as, or held out to the public to be, an inn, hotel, public lodging house or place where sleeping accommodations are furnished to the public, whether with or without meals, in violation of the provisions of this act, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than twenty-five nor more than two hundred dollars; and each and every day any person owning, keeping, maintaining, controlling or managing any building or structure kept as, maintained as, or advertised as, or held out to the public to be, an inn, hotel, public lodging house or place where sleeping accommodations are furnished to the public, whether with or without meals, in violation of the provisions of this law, shall constitute a separate offense. [Id., p. 165.]

Art. 867. **Tenant or lessee may do what.**—The tenant or sub-tenant, lessee or sub-lessee, of any building, coming within the provisions and requirements of this act, may, when the owner or his agent fails to comply with the provisions of this act, contract for and have constructed and erected said fire escapes in accordance with the requirements of this law, and may deduct the cost of same from the amount due, or the amounts that may become due such landlord or lessor on account of the rent or lease of such building. [Id., p. 165.]

CHAPTER SIX.

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Article 868. **Killing fish by poison, dynamite, etc.**—If any person shall at any time during the year, take, catch or kill, or attempt to take, catch or kill, any fish by means of poison, dynamite or any other explosive in any of the fresh waters, lakes and streams of this state, such person shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty nor more than two hundred dollars, or by imprisonment in the county jail for a term of not less than twenty nor more than sixty days, or by both such fine and imprisonment. [Act 1907, p. 161.]

Art. 869. **Entrap or net fish (except minnows), certain counties exempt.**—If any person shall at any time during the year take, catch, ensnare or entrap any fish (except minnows for bait) by means of nets, or in any other manner than with ordinary hook and line or trot line, such person shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars; provided, that the following counties are hereby exempted from the provisions of this article: Anderson, Angelina, Archer, Baylor, Bosque, Brazos, Brown, Burnet, Brazoria, Bowie, Camp, Caldwell, Chambers, Cherokee, Cass, Clay, Comanche, Collin, Delta, DeWitt, Eastland, Fannin, Freestone, Fayette,

Galveston, Gillespie, Goliad, Grimes, Hamilton, Hardin, Hopkins, Hill, Hood, Houston, Hunt, Jack, Jefferson, Johnson, Jones, Kaufman, Knox, Lamar, Limestone, Liberty, Llano, Mason, Matagorda, Mitchell, Morris, Nacogdoches, Newton, Orange, Panola, Polk, Raines, Rockwall, Red River, San Augustine, Sabine, Stephens, Shackelford, San Jacinto, Shelby, Smith, Throckmorton, Trinity, Tyler, Titus, Upshur, Van Zandt, Webb, Walker, Wharton, Wood and Young; provided that the counties of Gregg, Harrison and Rusk shall be exempt from the provisions of this section as to the waters of Sabine river, but no further, and that Harrison county shall be exempt from the provisions of this article in so far as it applies to the waters of Big Cypress above Tuscombia bridge and Little Cypress; provided, that, in the county of McLennan, it shall not be unlawful for any person or persons to take or catch fish by means of net or seine from any stream in said county from May 15 to October 1 of each year; and that it shall not be unlawful for any person or persons to take or catch fish by net or seine in Palo Pinto county from June 15 to October 1 of each year; provided, that Clay county shall be exempt from the provisions of this article along the waters of Wichita and Red rivers, also Jack county along the waters of the Trinity river; provided that the counties of Austin, Washington and Palo Pinto shall be exempt from the provisions of this article along the waters of the Brazos river; provided, further, that in the county of Falls it shall not be unlawful for any person or persons to take or catch fish by means of net or seine from any stream in said county from June 15 to September 1 of each year. [Act 1909, p. 95.]

Art. 870. **Entrap or net in any pool or pond, burden of proof.**—Any person who shall take, catch, ensnare or entrap any fish by means or nets or seines or by muddying, ditching or draining in any lake, pool or pond in any county within this state without the consent of the owner of such lake, pool or pond, shall be subject to the penalty hereinbefore prescribed in article 868; and, in all prosecutions under this law, the burden of proof of such consent of the owner shall devolve and be upon the defendant. [Id., p. 96.]

Art. 871. **Conviction may be had on unsupported testimony of accomplice.** Any court, officer or tribunal, having jurisdiction of the offense set forth in this chapter, or any district or county attorney, may subpoena persons, and compel their attendance as witnesses to testify as to violations of any of the provisions of this law; and any person so summoned and examined shall not be liable to prosecution for any of the violations of this law about which he may testify; and a conviction for said offense may be had upon the unsupported evidence of an accomplice or participant. [O. C.]

Art. 872. [513] **Duty of persons erecting mill dams.**—It shall be the duty of all persons, firms or corporations, who have erected, or who may hereafter erect, any mill dam, water-weir or other obstructions or weirs on streams within the waters of this state, to construct and keep in repair fish-ways or fish-ladders at such mill dam, water weirs or obstructions, so that at all seasons of the year fish may ascend above such dam, weirs or obstructions to deposit their spawn. Any firm, corporation or person owning such mill-dam or obstructions who shall fail or refuse to construct or keep in repair such fish-ways or fish-ladders, after having been notified and required by the county judge to do so, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding one hundred nor less than twenty-five dollars for every such neglect or refusal. [O. C.]

Art. 873. **Limiting fish that may be taken and sold.**—It shall be, and is unlawful for any person to take, in any way, more than fifty pounds of any fresh water fish, for sale or barter for money or anything of value whatsoever; provided, that any one person shall be allowed to take and sell as much as fifty pounds of fish in one week, and no more than fifty pounds of fish in any

one week of seven days; provided, the counties of Wharton and Nueces shall be exempt from the provisions of this law. [Act 1905, p. 222.]

Art. 874. **Number of squirrels that may be taken and sold.**—It shall be, and is unlawful, for any person to kill more than ten squirrels in any one day of twenty-four hours; and it is not lawful for any person to sell more than five squirrels in any one week of seven days. [Id., p. 222.]

Art. 875. **Not to apply to certain counties.**—If any person shall violate any provision of the two preceding articles, said person shall be deemed guilty of a misdemeanor, and, upon convicition thereof, shall be punished by a fine of not less than five dollars, with confinement in the county jail not less than one day nor more than ten days. Provided, the said provisions shall not apply to any county situated in the ninth and twelfth and thirty-first and fifth and eighteenth and twenty-first and seventeenth and tenth and second and twenty-fourth and fifteenth and fourteenth senatorial districts of Texas. [Id., p. 222.]

Art. 876. **Sale of squirrels prohibited in county of Montgomery.**—It shall be unlawful for any person to sell, or offer for sale, or ship for sale, in the county of Montgomery, any squirrels; and any person violating the provisions of this article, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars. [Act 1909, p. 117.]

Art. 877. [513a] **Catching of fish, etc., in counties of Montgomery and Newton.**—It shall be unlawful for any person in the counties of Montgomery and Newton in the state of Texas, at any time during the year, to take, catch, ensnare or entrap any fish by means of nets, traps, poison or dynamite, or in other manner than with the ordinary hook and line or trot line, in any of the fresh waters, lakes or streams of this state in said counties; and any person violating the provisions of this article shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars and not more than one hundred dollars; provided, that this article shall not be construed to prevent the catching of fish by nets in any of the lakes in said county, except Grand Lake. [Act 1909, p. 133.]

Art. 878. **Wild game, property of public.**—All the wild deer, wild antelope, wild Rocky Mountain sheep, wild turkey, wild ducks, wild geese, wild grouse, wild prairie chickens (pinnated grouse), wild Mongolian or English pheasants, wild quail or partridges, wild doves, wild pigeons, wild plover, wild snipe, wild jacksnipe, wild curlews, wild robins, wild Mexican pheasants or chachalaca, and all other wild animals, wild birds and wild fowls found within the borders of this state, shall be, and the same are hereby declared to be the property of the public. [Act 1907, p. 278.]

Art. 879. **Unlawful to kill or have in possession any wild bird but game bird as defined.**—It shall be unlawful for any person in the state of Texas to kill, catch or have in his or her possession, living or dead, any wild bird, other than a game bird, or to purchase, to offer or expose for sale, transport or ship within or without the state, any such wild bird after it has been killed or caught, except as permitted by this law; and no part of the plumage, skin or body of any bird protected by this article shall be sold or had in possession for sale. For the purposes of this article, the following only, shall be considered game birds: Wild turkey, wild ducks, wild geese, wild grouse, wild prairie chicken (pinnated grouse), wild Mongolian or English pheasants, wild quail or partridges, wild doves, wild pigeons, wild plover, wild, snipe, wild jacksnipe, wild curlews, wild robins and wild Mexican pheasants or chachalaca. [Id., p. 278.]

Art. 880. **Unlawful to destroy nest or eggs of wild birds.**—It shall be unlawful for any person in the state of Texas to take or needlessly destroy the

nest or eggs of any wild bird, or have such nest or eggs in his or her possession, except as permitted by this law. [Id., p. 279.]

Art. 881. **Penalty for violating two preceding articles.**—Any person violating any of the provisions of articles 879 and 880 shall be deemed guilty of a misdemeanor, and shall, upon conviction, be fined not less than ten nor more than one hundred dollars for each bird, living or dead, or a part of a bird, nest or set of eggs, or part thereof, possessed in violation of this law, or may be imprisoned in the county jail for not less than five nor more than thirty days for each offense, or may be subject to both such fine and imprisonment. [Id., p. 279.]

Art. 882. **Sell, purchase or offer for sale game or game birds, penalty.**—Whoever shall sell or offer for sale, have in his or her possession for the purpose of sale, or whoever shall purchase or have in his possession after purchase, any wild deer, wild antelope or wild Rocky Mountain sheep, killed in this state, or the carcass thereof, or the hide thereof, or the antlers thereof; or whoever shall sell or offer for sale, or have in his possession for the purpose of sale, or whoever shall purchase or have in his possession after purchase, any of the game or game birds mentioned in article 879, killed or taken within this state, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than ten nor more than one hundred dollars, or may be imprisoned in the county jail for not less than five nor more than thirty days, or may be subject to both such fine and imprisonment. [Id., p. 279.]

Constitutional law. This statute is held constitutional. Ex parte Blardone, 55 T. Cr. R., 189, 116 S. W. R., 1199.

And the legislative power has the right to decree that the citizen shall be restricted in the slaughter of game, and inhibited from the sale of game slaughtered under that restriction. Id.

Art. 883. **Netting or trapping of prohibited.**—The netting or trapping of any wild bird or wild fowl mentioned in articles 878 and 880, at any season of the year, is hereby prohibited; and any person violating the provisions of this article shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than ten nor more than one hundred dollars, or may be imprisoned in the county jail not less than five nor more than thirty days, or may be subject to both such fine and imprisonment. [Id., p. 279.]

Art. 884. **Unlawful to kill wild geese or ducks otherwise than by ordinary gun.**—It shall be unlawful to destroy any wild geese or wild ducks by any means otherwise than by an ordinary gun, capable of being held to and shot from the shoulder; and whoever violates the provisions of this article shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than ten nor more than one hundred dollars, or may be imprisoned in the county jail not less than five nor more than thirty days, or may be subject to both such fine and imprisonment. [Id., p. 279.]

Art. 885. **Killing of in certain counties at night prohibited.**—If any person shall, in either of the counties of Harris, Jefferson, Galveston, Brazoria, Matagorda, Nueces, Aransas, Refugio, Lavaca, San Patricio, Cameron, Hidalgo or Calhoun, shoot or shoot at, with a gun of any description, or hunt or kill in any manner, any wild duck, wild goose or any other kind of wild aquatic fowl at night, that is, between sunset and sunrise, he shall be fined not less than five nor more than twenty dollars. [Act 1901, p. 301.]

Art. 886. **Certain game not to be killed for a period of five years.**—It shall be unlawful for any person to kill, take or destroy any wild Mongolian or English pheasant, wild prairie chicken (pinnated grouse), wild antelope or wild Rocky Mountain sheep, for the space of five years next; and any per-

son violating the provisions hereof, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than ten nor more than one hundred dollars, or may be imprisoned in the county jail not less than five nor more than thirty days, or may be subject to both such fine and imprisonment. [Act 1907, p. 279.]

Art. 887. [518] **Killing certain harmless birds prohibited.**—If any person shall wilfully kill, or in any manner injure, any mocking bird, whippoorwill, night hawk, blue bird, red bird, finch, thrush, linnet, wren, martin, swallow, bobolink, cat bird, nonpareil, scissortail, he shall be deemed guilty of a misdemeanor, and, upon conviction before a justice of the peace or other court of competent jurisdiction, he shall be fined a sum of not less than five nor more than fifteen dollars. [Act March 15, 1881, p. 30.]

Art. 888. [519] **Killing of certain other birds or fowls prohibited.**—If any person shall wilfully kill any seagull, tern, shear-water, egret, heron or pelican, or shall wilfully take from their nests, or in any manner destroy, any egg or eggs of any seagull, tern, shear-water, egret, heron or pelican, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than five nor more than twenty-five dollars; provided, that the killing of any of the birds above enumerated, or taking of their eggs with intent to preserve the same for scientific purposes, shall not be construed to be a violation of this act. [O. C.]

Art. 889. **Open season, when; killing of over certain number game prohibited.**—It shall be unlawful for any person to kill, ensnare or entrap, or in any way destroy any wild deer in the period of time embraced between the first day of January and the first day of November in each year; provided, it shall be unlawful for any person at any season of the year to take, kill, trap or ensnare any wild female deer or spotted fawn within this state; and provided, further, that it shall be unlawful for any person to take, kill, trap or ensnare more than three wild buck during the months of November and December of any one year (provided, it shall be unlawful to kill any wild turkey in the period of time embraced between the first day of April and the first day of December of each year, or more than three wild turkey in the period of time embraced in the months of December, January and February of each year), or any wild quail or partridge, or any dove within the period of time embraced between the first day of February and the first day of November in each year; provided, it shall be unlawful, except herein elsewhere provided, for any person in any one day to kill or destroy more than twenty-five of the birds or fowls mentioned in article 878 that are permitted to be taken or killed in any one day. It shall further be unlawful for any person, at any time, to hunt deer or other game, mentioned in article 878, by aid of what is commonly known as a hunting lamp or lantern, or any other light used for the purpose of hunting at night; and, after the space of five years, it shall be unlawful for any person to kill, trap or ensnare, or in any way destroy, any wild antelope or Rocky Mountain sheep in the period of time embraced between the first day of January and the first day of November of each year; provided, further, that it shall be unlawful for any person to kill, trap or ensnare more than two wild antelopes or one Rocky Mountain sheep during the months of November and December of each year, and any wild Mongolian or English pheasants, wild turkey or any prairie chicken (pinnated grouse), in the period of time embraced between the first day of February and the first day of November of each year. Any persons violating any provisions of this article shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than ten nor more than one hundred dollars, or may be imprisoned in the county jail for not less than

five days nor more than thirty days, or may be subject to both such fine and imprisonment. [Act 1907, p. 280.]

Art. 890. **Unlawful to receive for transportation.**—It shall be unlawful for any express company, railroad company or other common carrier, or the officers, agents, servants or employes of the same, to receive for the purpose of transportation, or to transport, carry or take beyond the limits of the state, or within this state, except as hereinafter provided, any wild animal, bird or water fowl, mentioned in article 878, or the carcass thereof, or the hide thereof. Any persons violating the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than ten nor more than one hundred dollars, or may be imprisoned in the county jail for not less than five nor more than thirty days, or may be subject to both such fine and imprisonment; provided, that each shipment shall constitute a separate offense, and that such express company, or other common carrier, or its agents, servants or employes, shall have the privilege of examining any suspected package for the purpose of determining whether such package contains any of the articles mentioned herein. [Id., p. 280.]

Art. 891. **Exception when lawfully killed, shipping affidavit necessary.**—Nothing in this chapter shall be construed to prohibit the transportation or shipment of any of the game, birds or wild fowls mentioned in article 878, when lawfully taken or killed, from the place of shipment to the home of the person who killed the same; provided, the person who killed said game, birds or fowls shall accompany said game, birds or fowls on the same train or common carrier from the point of shipment to the said point of destination; and provided, further, that the person desiring to ship or transport said game, birds or fowls shall first make the following affidavit in writing before some officer authorized by law to administer oaths, and deliver same to said railroad or common carrier, or to the agent of said railroad or common carrier, at the point of shipment; and, upon filing the affidavit, such party shall be permitted to transport to his home in accordance herewith not exceeding twenty-five of any wild game bird, when such number is permitted to be killed, or the kind offered for shipment, except wild duck; provided that such party may be permitted to transport seventy-five wild ducks upon filing the affidavit containing the provisions as stipulated in the affidavit prescribed:

State of Texas, county of.....

Before me, the undersigned authority, on this day personally appeared ..... who, after being by me duly sworn, upon oath says:

I live at....., in the county of..... in the state of.....; that I have killed (state the number and kind of game, birds or fowls), which I desire to ship from ....., in ..... county, to my home, which game I killed for my own use and not for sale, and same shall not be sold, and same will be accompanied by me from the point of shipment to the point of destination; that I have not killed or shipped exceeding three buck deer during this hunting season, and have not killed are shipped exceeding twenty-five birds or fowls, mentioned in article 1, except wild ducks, in any one day during the present hunting season; and that I have in no way violated any of the provisions of this law; (and if such game to be shipped be wild duck, then such party shall further make affidavit) that the shipment I offer is wild duck only, that the number does not exceed

seventy-five, that I killed the said ducks in three days consecutively; and that I did not kill more than twenty-five of same in any one day.

.....

Sworn to and subscribed by.....before me this.....day of....., 190....

.....

Name and official character of officer.

And thereupon, said game, birds or fowls shall be transported or shipped, by railroad or other common carrier in the name of the person making said affidavit, to the home of said person, and shall mark on the card attached to said game, birds or fowls the words "affidavit made." Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than ten nor more than one hundred dollars, or may be imprisoned in the county jail for not less than five nor more than thirty days, or may be subject to both such fine and imprisonment. [Id., p. 281.]

Art. 892. **What birds not protected.**—The English or European house sparrows, hawks, crows, buzzards, black birds, rice birds and owls are not included among the birds protected by this chapter. Nothing herein contained shall be construed to prevent any person or persons from killing birds that are at the time destroying his growing crop. [Id., p. 282.]

Art. 893. **Domestic birds excepted.**—Nothing in this chapter shall prevent the keeping of any bird in a cage as a domestic pet; provided, that such bird shall not be sold or exchanged or offered for sale or exchange, or transported out of the state; provided that nothing herein contained shall be construed to prohibit the sale or shipment of canary birds or parrots. [Id., p. 282.]

Art. 894. **Possession of prohibited bird applies to any such bird.**—Whenever in this chapter the possession of any bird is prohibited, said prohibition shall apply equally to a bird coming from outside the state as to one taken within the state. [Id., p. 282.]

Art. 895. **Possession during protected season prima facie evidence of guilt.**—Possession at any time of the year during which the game, birds and wild fowl of the state are protected herein shall be prima facie evidence of the guilt of the person in possession thereof. [Id., p. 282.]

Art. 896. **Game, fish and oyster commissioner to enforce law.**—It is hereby made a special duty of the game, fish and oyster commissioner to enforce the statutes of this state for the protection and preservation of wild game and wild birds, and to bring or cause to be brought actions and proceedings in the name of the state of Texas to recover any and all fines and penalties provided for in the laws now in force or that may hereafter be enacted relating to wild game and wild birds. Said game, fish and oyster commissioner may make complaint and cause proceedings to be commenced against any person for violation of any of the laws for the protection and propagation of game or birds without the sanction of the county attorney in which such proceedings are commenced, and in such case he shall not be required to furnish security for costs. Said commissioner shall at any and all times seize and take possession of all birds and animals that have been caught, taken or killed, or had in possession or under control, or have been shipped contrary to any of the laws of this state; and such seizure may be made without a warrant. All birds or animals, seized by the commissioner, shall be disposed of in such manner as may be directed by any court having competent jurisdiction to hear and determine cases for violation of the game and bird laws of this state. [Act 1907, p. 254.]

Art. 897. **Has power of sheriff, may arrest without warrant.**—Said game, fish and oyster commissioner shall have the same power and authority to serve criminal process as sheriffs, and shall have the same power as sheriffs to require aid in executing such process.

Said commissioner may arrest without warrant any person found by him in the act of violating any of the laws for the protection or propagation of game or wild birds, and take such person forthwith before a magistrate having jurisdiction. Such arrests may be made on Sunday, and in which case the person arrested shall be taken before a magistrate having jurisdiction, and proceeded against as soon as may be, on a week day following the arrest. [Id., p. 255.]

Art. 898. **Penalty for violation.**—Any person violating the provisions of this law shall be punished, upon conviction, by fine not exceeding one hundred dollars and the cost of prosecution, or imprisonment in the county jail not exceeding thirty days, or both such fine and imprisonment, in the discretion of the court.

And the court shall sentence the offender to be confined in the county jail, until such fine is paid, for any period not exceeding one hundred days; and, in all cases where a fine and imprisonment is imposed, the sentence shall provide that, if the fine and costs are not paid at the time of the expiration of such imprisonment, the person serving such sentence shall be further detained in jail until such fine and costs are paid, for any period stated; provided, that the whole term of imprisonment shall not exceed six months. [Id., p. 257.]

Art. 899. **Hunting license to be procured, when.**—It shall hereafter be unlawful for any person who has not been a bona fide inhabitant of and resident citizen of this state, for six months last past to hunt for or kill any game or birds protected by the laws of this state, without first procuring a hunting license from the game, fish and oyster commissioner, permitting him to do so, and by paying to said commissioner the sum of fifteen dollars. Said license shall be dated when issued, and shall remain in force until the first day of September, following thereafter. It shall hereafter be unlawful for any person to hunt or kill any game quadrupeds or game birds or wild fowl protected by the game laws of this state, except in the county of his residence or in the counties adjoining the county of his residence, or on land owned or controlled by him, without first obtaining a state hunting license from the game, fish and oyster commissioner, permitting him to do so. Any person who has been a bona fide resident of this state for six months last past may procure a hunting license to hunt outside the boundaries of the county in which he resides, by paying a license fee of one dollar and seventy-five cents to the county clerk of the county in which he resides, to be dated when issued. Such license shall expire the first day of September of each year following such date. Said license shall authorize the person named therein to use firearms in the hunting or killing game birds during the hunting season of that year, but only in the manner and time prescribed by law. Said license shall limit the number and quality of game which may be taken or killed, in accordance with the provisions of law governing the subject. [Act 1909, p. 456.]

Art. 900. **Person hunting who refuses to show license.**—Any person found hunting, in open season, any game protected by the laws of the state, and who shall refuse to show his license herein provided for to any sheriff, deputy sheriff, constable, game commissioner or deputy game commissioner, or any other person or persons, on whose lands said person or persons are found hunting, or to any person who has the land under their control, on demand, shall be deemed guilty of a violation of the provisions of this law, and, upon conviction, shall be liable to the penalties provided herein. [Id., p. 456.]

Art. 901. [525] **Oysters culled from public beds, etc.; penalty.**—When oysters are culled or selected from public beds, those not wanted for market or sale or for family use shall be planted while alive, by the person or persons taking them, on the beds from which they were taken, or some other bed, public or private; and any person violating the provisions of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined, for each offense, not less than ten dollars nor more than fifty dollars. [Id., § 2.]

Art. 902. [526] **Planting prohibited, when.**—It shall not be lawful for any person to plant or purchase oysters for planting, bedding or depositing, or for marketing, or for any other purpose whatever, from the first day of May to the first day of September in any year; and, if any person shall violate the provisions of this article, or either of them, he shall be deemed guilty of a misdemeanor, and, on conviction, he shall be fined for each offense not less than ten nor more than one hundred dollars. [Id., § 6.]

Art. 903. **Unlawful to receive for shipment, when.**—It shall be unlawful for any transportation company operating within this state, its officers, agents or employes, to receive for shipment, or to ship, within the boundaries of this state, from the first day of May to the first day of September of any year, any oysters from any public bed or reef, depositing or for marketing; provided, that nothing in this chapter shall be so construed as to prohibit any such transportation company, its officers, agents or employes, from shipping, or receiving for shipment, any oysters taken from a private bed located under the laws of this state, offered for shipment by the owner or owners, locator or locators, of such bed; such fact to be established by the written affidavit of the person or persons offering such oysters for shipment, made before an officer authorized to take oaths. Any officer, agent or employe of such transportation company, violating the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined for each offense not less than ten nor more than one hundred dollars. [Act 1907, p. 233.]

Art. 904. [528] **Unlawful to rake, dredge, etc.; penalty.**—It shall be unlawful for any person or persons to rake, dredge or excavate with machinery any public oyster bed or oyster reefs in the waters of this state. Any person or persons who shall violate the provisions of this article shall, on conviction, be fined in any sum not less than five hundred nor more than one thousand dollars. Each day's violation of any of the provisions of this article will constitute a separate offense. [Id., § 8.]

Art. 905. [529] **Unlawful to destroy or deface buoy.**—Any person who shall wilfully deface, injure, destroy or remove any buoy or fence, or parts thereof, used to designate or enclose a private oyster bed in this state, without the consent of the owner thereof, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than ten dollars nor more than two hundred and fifty dollars. [Act 1901, p. 302.]

Art. 906. [529b] **Unlawful to catch fish, green turtle, etc., how and when.**—It shall be unlawful for any person to catch, or attempt to catch, any fish, green turtle, loggerhead, terrapin or shrimp, in any of the bays or navigable waters of this state, within the limits, or within one mile of the limits, of any city or town in this state, with seines, drag nets, fykes, set nets, trammel nets, traps, dams or weirs.

Any one violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than twenty-five nor more than two hundred dollars.

In all prosecutions under the provisions of this act, the identification of the boat from which such violation or violations occur shall be prima facie evidence against the owner, lessee, person or persons in charge, or master of such boat. [Act 1897, p. 213.]

Art. 907. [529c] **Catching of same by poison, dynamite, etc., prohibited.** The catching of fish, green turtle, or terrapin, in any of the public waters in the state by poison, lime, dynamite, nitro-glycerine, giant powder, or other explosives, is hereby prohibited; and any person offending against this article shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than twenty-five dollars nor more than two hundred and fifty dollars; and each day shall constitute a separate offense. [O. C.; amended, Act 1897, p. 125.]

Art. 908. [529d] **Penalty for failure to take out license as a fisherman.**—Any person who shall engage in the business of fishing or catching green turtle or terrapin, without first having procured a license therefor, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than ten dollars nor more than two hundred and fifty dollars; and any person who shall sell fish, green turtle, or terrapin, caught by drag seine or set net, shall be considered as engaged in the business above named. [Id., p. 173; amended, Act 1897, p. 125.]

Art. 909. [529e] **Sale of certain fish of certain weight prohibited.**—It shall be unlawful for any person to have in his or her possession, or to sell or ship: Any red fish more than twelve pounds in weight, or less than one pound in weight; any trout of less than three-fourths of one pound in weight; sheephead, flounder, Spanish mackerel or pompano, of less than one-half pound in weight. It shall also be unlawful for any person to catch and hold within any seines or inclosure any character of fish for a longer period of time than thirty-six hours. Any person offending against this article shall, upon conviction, be fined in any sum not less than ten dollars nor more than two hundred and fifty dollars. [Act 1909, p. 329.]

Art. 910. [529f] **Sale of turtle and terrapin of certain weight prohibited.**—It shall be unlawful for any person to sell or ship any green turtle of less than twelve pounds in weight, or terrapin of less than six inches in length of under shell, or to catch or sell any terrapin from the first day of May to the first day of August. Any person offending against this article shall, upon conviction, be fined in any sum not less than ten dollars nor more than two hundred and fifty dollars. [O. C.]

Art. 911. [529g] **Catching of fish or terrapin by drag seine, etc., during breeding season in coast waters or breeding grounds prohibited.**—It shall be unlawful for any person, during the breeding season, consisting of the months intervening between April 1 and September 1, to catch any fish or terrapin by drag seine, set net or other device, except the ordinary hook and line or cast net, or to drag any seine, set any net, or use any other device, except the regular turtle net (the meshes of which shall not be less than twelve inches square) in any of the coast waters of the state of Texas, which are hereby declared to be breeding grounds for fish and terrapin, except the following bays, coast waters and passes in this state, in which seining, setting nets, or the use of any other devices for catching fish, turtle or terrapin in any way other than by the ordinary hook and line and cast net, is hereby prohibited, at any and all times, to-wit:

All that portion of coast waters in Calhoun, Victoria and Jackson counties north or west of a line starting from the extreme end of Gallinipper Point in Calhoun county and running in a northerly direction in a direct line to the extreme south point of Point Comfort, or Mitchell's Point, in Calhoun county, and all that body of water in Matagorda county known as Tres Palacios Bay, lying north and east of a line drawn from Wells Point to Oliver Point, and its bayous and inlets; also that body of water in Matagorda county commonly known as Oyster Lake, and all that body of water in Cameron county west of a straight line drawn from the T head, or upper end of the Rio Grande railroad wharf at Point Isabel to the extreme southern point of Brazos Santiago, and all that body of water in

Cameron and Nueces counties known as Baffins Bay; all that portion of water known as Red Fish Bay in Aransas and Nueces counties, being all that body of water lying west of and between Tally Island Shell Banks, Bird Island, Hog Island, Blackberry Island and Ransom Island on the east and the mainland on the west; also that portion of water in Aransas county known as St. Charles Bay; also that portion of water in San Patricio and Nueces counties lying north of a line drawn from the south end of the San Antonio and Aransas Pass railway bridge, and running in an easterly direction to the extreme southern point of Hatch's Peninsula; also that body of water known as Clear Creek and Clear Lake and its bayous in Galveston and Harris counties; also all water within one mile on either side of all passes leading from the Texas coast waters into the Gulf of Mexico.

The breeding ground referred to in this article, in which fishing by drag seine, set net, or by the use of any other device, except the ordinary hook and line and cast net, is prohibited during the said months from April 1 to August 31 of each year, as above specified, are as follows:

1. All the waters of Laguna Madre, except Baffins Bay, and from Rio Grande wharf to Portrero Largo, etc., which shall be closed at all times.

2. All that portion of water in Nueces county north of the San Antonio and Aransas Pass railway bridge and marked on the United States coast survey chart as Nueces Bay.

3. All that portion of water marked on the United States coast survey chart as Hynes Bay.

4. All that portion of water in Calhoun county north of a line starting from the extreme point of Marsh's Point and running due east to the east bank of San Antonio Bay, and marked on the United States coast survey chart as Mission Bay and San Antonio Bay. All that portion of water in Espiritu Santo Bay in Calhoun county north of a line drawn from the east end and north bank of the channel at Steamboat Dugout and running in a northeasterly direction to the east point of Blackberry Island, and all waters in Espiritu Santo Bay north of a line starting from the east point of Blackberry Island, thence in an easterly direction to the north side of the north channel where Big Bayou enters Matagorda Bay.

5. All that portion of water in Calhoun county marked on the United States coast survey chart as Keller's Bay and Carancahua Bay.

6. All that portion of water in Matagorda county known on the United States coast survey chart as Turtle Bay; also all that portion of water in said county north of a line extending from Half-moon Lighthouse in a northeasterly direction to Dog Island, and all that water lying north of a line extending from Dog Island to the mouth of Caney Creek.

7. All that portion of water in Brazoria county marked on the United States coast survey chart as Bastrop Bay and Oyster Bay.

8. All that portion of water in Galveston and Harris counties north of a line starting from the extreme southern point of Red Bluff on the west bank of Galveston Bay and running in an easterly direction to the first beacon south of Morgan's Point, thence in a northerly direction to the extreme point of Mesquite Point.

9. All that portion of water in Chambers county marked on the United States coast survey chart as Turtle Bay.

10. All that portion of water in Chambers county starting from the mouth of Trinity river, with all adjacent channels, bayous and lakes up said river, to include Lake Charlotte.

11. All that portion of water lying west of a line drawn from the northwest point of Mustang Island at the old revetment (placed there by the United States government) to the first bayou south of the lighthouse and continuing in the same direction to the east shore of Harbor Island. Said

body of water lies between Mustang and Harbor islands, and is commonly known as the Cove.

12. All that body of water on the west shore of St. Joe Island, beginning at a point on St. Joe Island called Caesar's Point, thence in a southerly direction along the middle ground to a stake six hundred feet due west of Allen's Wharf, thence to the west shore of said island, thence northerly with the meanders of said shore to the place of beginning.

Any person offending against this article shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than ten dollars nor more than two hundred and fifty dollars. Each day shall constitute a separate offense, and, in all prosecutions under this article, the identification of the boat from which the violation occurred shall be prima facie evidence against the owner or parties last in charge of such seines or nets or on such boat. [Act 1909, p. 329.]

Art. 912. [529h] **Person fishing with drag seine, etc., shall return to water, what.**—Any person fishing with a drag seine or set net, for sale or market, shall return all fish, green turtle or terrapin of the sizes and weights, specified in articles 909 and 910 of the Penal Code, to the water, while they are yet alive, except sharks, gars, rays and sawfish; and the size of the meshes of the fish seines shall not be less than one and one-quarter inch square, not including the bag; nor shall any seine exceed twelve hundred feet in length; and any person offending against this article shall be deemed guility of a misdemeanor, and, upon conviction, shall be fined not less than ten dollars nor more than two hundred and fifty dollars (as amended in 1897). [Act 1909, p. 331.]

Art. 913. [529i] **United States coast survey charts admissible in evidence.**—The United States coast survey charts numbers 203, 204, 205, 206, 207, 208, 209, 210, 211 and 212, covering the coast of Texas, shall be evidence in all prosecutions under this Act. [O. C.]

Art. 914. [529j] **Unlawful to take or catch oysters during certain seasons.**—It shall be unlawful for any person to take or catch oysters from any public beds or reefs, for sale or for market, from the first day of April to the first day of September of each year. Any person offending against this article shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than ten dollars nor more than two hundred and fifty dollars; and each day shall constitute a separate offense; provided, that part of Laguna Madre south and west of Baffins Bay, be exempted from the operation of this article. [Act 1909, p. 331.]

Art. 915. [529j½] **Taking water from public waters of state; screen shall be placed over end of pipe.**—It shall be the duty of every person, firm or corporation, using pumps for the purpose of taking water from the public waters of the state, to place wire screen over the mouth of the intake pipe for the purpose of preventing fish from entering said pipe. The size of such screens shall be prescribed by the game, fish and oyster commissioner of the state of Texas. Any person, firm or corporation failing to comply with this article, after notification by the game, fish and oyster commissioner, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than fifty dollars nor more than two hundred dollars; and each day shall constitute a separate offense. [Id., p. 331.]

Art. 916. [529l] **Unlawful to take fish, turtle, oysters, etc., without license.**—It shall be unlawful for any person to catch any fish, green turtle or terrapin, with seine or set net for market, in any of the bays or coast waters of this state, or gather any oysters, tongs or otherwise, for market or planting, from any of the public reefs or beds in this state, without having a license from the fish and oyster commissioner, or his deputy. Any person offending against this article shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than ten dollars nor more than two

hundred and fifty dollars; and each day shall constitute a separate offense. [Act 1899, p. 77.]

Art. 917. **Dealer in fish and oysters shall take out license; requirements of; "wholesale dealer" defined.**—For the protection of the fish and oyster industry, any individual, firm or corporation, engaged in, or who may engage in, the business of a wholesale dealer or dealers in fish and oysters, shall, on or before the first day of September of each year, secure from the game, fish and oyster commissioner, or one of his deputies, a license granting such individual, firm or corporation, permission to engage in said occupation. For the purpose of obtaining this license, the applicant desiring same must make written application to the game, fish and oyster commissioner, or one of his deputies, in which he (the applicant) shall set forth, under oath, if required, that he is a citizen of the United States; he shall also agree that, because of the privilege which he applies for from the state of Texas, that all products bought by him shall, at all times, be subject to the inspection of the game, fish and oyster commissioner, or any of his deputies; and in said application, he shall authorize said commissioner or any of his deputies, to enter his place of business, or any place where he may have such products stored, and inspect same. He shall also agree to keep a correct record of all purchases made by him under this chapter in a book to be furnished by the game, fish and oyster commissioner; and further, that failure on his part to keep a correct record shall be grounds for the forfeiture of his license granted him under the application aforesaid. This application, having been duly executed and delivered to the game, fish and oyster commissioner, or any of his deputies, together with the fee for same, it shall then be the duty of the game, fish and oyster commissioner, or his deputy, to issue to the applicant a license to engage in the business set forth in the application. Said license must be signed by the game, fish and oyster commissioner, or one of his deputies, stamped with the seal of his office, and state the name of the licensee, place of business and the kind of license applied for, and shall be good for twelve months following the date of issuance. For it, the applicant shall pay two dollars and fifty cents for each ten thousand pounds of fish bought by him during the year previous, as evidenced by the record book before mentioned; and, if for oysters, then, he shall pay one dollar for each thousand barrels bought by him for the same period. The game, fish and oyster commissioner is authorized to arrange the amount with all applicants under this chapter for a license to be issued on or before September 1, 1909, said agreement to be based on the amount of business done for twelve months ending September 1, 1909, as near as can be ascertained. Any person, firm or corporation failing to comply with this article shall be fined not less than ten dollars nor more than fifty dollars; and each day shall constitute a separate offense. A "wholesale dealer," within the meaning of this article, is one who is regularly engaged in buying fish in lots of two hundred and fifty pounds or more, and oysters in lots of five barrels or more, for the purpose of resale. [Act 1909, p. 327.]

Art. 918. [529n] **Selling unculled oysters, penalty.**—Any person, offering for sale, or who shall sell, any cargo of oysters which shall contain more than five per cent of young oysters, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than ten dollars nor more than two hundred and fifty dollars. Any oyster that measures less than three inches from hinge to mouth shall be deemed a young oyster for the purpose of this and the preceding article. [Id., p. 327.]

Art. 919. [529o] **Duty of game, fish and oyster commissioner.**—It shall be the duty of the game, fish and oyster conmmissioner, or his deputy, when he thinks that any cargo of oysters offered for sale contains more than five per cent of young oysters, to take as many as he may deem necessary

from such cargo, cull them and measure the young oysters, or those that measure less than three inches from the hinge to the mouth, and ascertain, to the best of his ability, the proportion of the young oysters to the marketable oysters; and, if the young oysters be in greater proportion than five per cent. the cargo shall be deemed unculled, and the owner shall be deemed guilty of the offense described in article 918 of the Penal Code. [Id., p. 327.]

Art. 920. [529p] **Unlawful taking oysters from private beds, theft.**—It shall be unlawful for any person to take oysters from a private bed, or to take oysters deposited by one making up a cargo for market or family use, without the consent or permission of the owner thereof; and any one offending any provisions of this article shall be deemed guilty of theft, and, upon conviction, shall be punished by fine of not less than fifty dollars nor more than two hundred and fifty dollars, or by confinement in the county jail of not less than twenty days nor more than twelve months, or by both such fine and such imprisonment. [O. C.]

Art. 921. **Taking oysters for planting, penalty for selling same.**—It shall be unlawful for any person gathering oysters for planting on locations obtained from the state, or on private property, to sell, market, or in any way dispose of, oysters so gathered at the time of gathering for any other purpose than planting; provided, this shall not be considered as meaning the right to dispose of a location or oyster bed. Any person offending against this article shall be deemed guilty of a misdemeanor, and, upon convictioo, shall be fined in any sum not less than fifty dollars nor more than five hundred dollars. [Act 1907, p. 328.]

Art. 922. **Unlawful to gather seed oysters without license.**—It shall be unlawful for any person, firm, corporation or joint stock company to gather seed oysters for planting without first having obtained a permit or license to do so from the game, fish and oyster commissioner, or his deputy, said permit or license to designate the reef or beds from which the applicant is allowed to gather seed oysters; and any person, agent, employe or officer of a firm, corporation or joint stock company, gathering or having gathered, oysters for planting from any bed or reef not designated, or who has no permit or license for gathering seed oysters, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than fifty dollars nor more than five hundred dollars. In any and all prosecutions under this article, the fact of having possession of, or having deposited oysters not culled, which are designated as seed oysters, shall be prima facie evidence against the party charged with the offense; provided, that this shall not be construed as against parties fishing for market and are conforming to the law in regard to culling. [Act 1899, p. 77.]

Art. 923. **Penalty for selling fish, turtle, oysters, etc., without license.**—Any person who shall bring to market any fish, turtle, terrapin, shrimp or oysters taken from the coast waters of this state shall pay the tax and obtain the permit, as prescribed by law, before disposing of any part of said product; and, if he or any other person, shall sell or shall dispose of any part of said product for shipment or storage before obtaining said permit, the person so selling or disposing of said product, or any part thereof, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than ten dollars nor more than two hundred and fifty dollars. In prosecutions, in this and other similar cases, the fact of the fish, turtle, terrapin, shrimp or oysters being of the varieties that are found on the Texas coast shall be prima facie evidence that said fish, turtle, terrapin, shrimp or oysters were taken from the coast waters of this state. [Act 1905, p. 134.]

TITLE 14.

OF OFFENSES AGAINST TRADE, COMMERCE AND THE CURRENT COIN.

Chapter.
1. Of Forgery and Other Offenses Affecting Written Instruments.
2. Forgery of Land Titles, etc.
3. Of Counterfeiting and Diminishing Value of Current Coin.
4. Of Offenses Which Affect Foreign Commerce.
5. Public Warehousemen and Warehouses.
6. Bureau of Cotton Statistics.
7. False Weights and Measures.
8. Of Offenses by Public Weighers.
9. Miscellaneous Offenses.

CHAPTER ONE.

OF FORGERY AND OTHER OFFENSES AFFECTING WRITTEN INSTRUMENTS.

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Article 924. [530] **"Forgery" defined.**—He is guilty of forgery who, without lawful authority, and with intent to injure or defraud, shall make a false instrument in writing, purporting to be the act of another, in such manner that the false instrument so made would (if the same were true) have created, increased, diminished, discharged or defeated any pecuniary obligation, or would have transferred, or in any manner have affected any property whatever.

Construed. To constitute the basis of forgery, the instrument must appear on its face to be, or must in fact be, one which, if true, would possess some legal validity, or in other words must be legally capable of effecting a fraud. Cagle v. State, 39 T. Cr. R., 109, 44 S. W. R., 1097, and authorities cited.

If the instrument is incomplete in form, the indictment must set out the extrinsic facts to show that, if genuine, it would be valid. Cagle v. State, supra; Scott v. State, 40 Id., 105, 48 S. W. R., 523; Carder v. State, 35 Id., 105, 31 S. W. R., 678.

A good test is whether the subject-matter of the alleged forgery would create a pecuniary liability upon the purported maker, if it were genuine. And every instrument purporting to be a complete pecuniary obligation on the part of the maker, is the subject of forgery. Scott v. State, 40 T. Cr. R., 105, 48 S. W. R., 523.

The intent to injure or defraud anyone, whether it does or not, is the gravamen of forgery. Scott v. State, supra; Green v. State, 36 T. Cr. R., 109, 35 S. W. R., 971.

A simple request to let the bearer, or third party, have goods, without imposing a charge on anyone, cannot be assigned as forgery. Crawford v. State, 40 T. Cr. R., 344, 50 S. W. R., 378.

The transfer of a homestead, without the purported joinder of the wife and her privy examination and acknowledgment, is not forgery. Johnson v. State, 40 T. Cr. R., 605, 51 S. W. R., 382.

The signing of a fictitious name to an instrument, with fraudulent intent, is forgery. Hocker v. State, 34 T. Cr. R., 359, 30 S. W. R., 783.

Venue. See McGlasson v. State, 38 T. Cr. R., 351, 43 S. W. R., 93; Jessup v. State, 44 Id., 83, 68 S. W. R., 988.

Jurisdiction. The courts of Texas would have no jurisdiction over uttering a forged draft drawn in Texas, but sent by mail and uttered for the first time in Arkansas. It was still, while in transit, in the possession of the utterer through his innocent agent, the United States mail. Jessup v. State, supra.

Indictment containing a count for forgery and another for uttering, an election between the two cannot be required, and, the evidence supporting both counts, a general verdict can be entered upon either. Carr v. State, 36 T. Cr. R., 3, 34 S. W. R., 949.

But the court submitting but one of the counts in its charge is tantamount to an election by the state, and the dismissal of the other count. Stephens v. State, 36 T. Cr. R., 386, 37 S. W. R., 425.

Further on indictment; necessary allegations: Shanks v. State, 25 T., 326; Baggerly v. State, 21 Id., 757; Anderson v. State, 20 T. Cr. R., 595; Thomas v. State, 18 Id., 213; Smith v. State, Id., 399; Roberts v. State, 2 Id., 4; Westbrook v. State, 23 Id., 401, 5 S. W. R., 248; Millsaps v. State, 38 Id., 570, 43 S. W. R., 1015; Colter v. State, 49 Id., 165, 49 S. W. R., 379; Labbaite v State, 6 Id., 257; Hennessy v. State, 23 Id., 340, 5 S. W. R., 285; Overly v. State, 34 Id., 500, 31 S. W. R., 377; Robinson v. State, 35 Id., 54, 43 S. W. R., 526; Bell v State, 21 Id., 270, 17 S. W. R., 155; Chester v. State, 23 Id., 577, 5 S. W. R., 125; Hooper v. State, 30 Id., 412, 17 S. W. R., 1066; Crawford v. State, 31 Id., 51, 19 S. W. R., 766, and cases cited.

Evidence: Howard v. State, 37 T. Cr. R., 494, 36 S. W. R., 475; McGlasson v. State, 8 Id., 620, 40 S. W. R., 503; Preston v. State, 41 Id., 300, 53 S. W. R., 881; Whittle v. State, 43 Id., 468, 66 S. W. R., 771.

Variance between the alleged forged check, as set out in the indictment and the instrument itself as tendered in evidence, is fatal. Feeney v. State, 124 S. W. R., 944.

And see Fite v. State, 36 T. Cr. R., 4, 34 S. W. R., 922; Stephens, Id., 386, 37 S. W. R., 425; Davis v. State, 37 Id., 218, 39 S. W. R., 296; Thulemeyer v. State, 38 Id., 349, 43 S. W. R., 83; Pierce v. State, Id., 604, 44 S. W. R., 292; Sawyers v. State, 39 Id., 481, 46 S. W. R., 814.

On standard of comparison, see McGlasson v. State, 37 T. Cr. R., 620, 40 S. W. R., 503.

Charge of court. See Thornley v. State, 36 T. Cr. R., 119, 34 S. W. R., 264; Darbyshire v. State, Id., 547, 38 S. W. R., 173; Garza v. State, Id., 317, 42 S. W. R., 563; Feeney v. State, 124 S. W. R., 944.

Verdict failing to find on an essential element of the offenses and to assess punishment, is an absolute nullity: O'Connor v. State, 37 T. Cr. R., 267, 39 S. W. R., 368.

A verdict may be applied to either of the separate counts, as the case may be, but the judgment must specify the count or the offense of which defendant was convicted. Jacobs v. State, 42 T. Cr. R., 353, 59 S. W. R., 1111.

Art. 925. [531] **Alteration also forgery.**—He is also guilty of forgery who, without lawful authority, and with intent to injure or defraud, shall alter an instrument in writing, then already in existence, by whomsoever made, in such manner that the alteration would (if it had been legally made) have created, increased, diminished, discharged or defeated any pecuniary obligation, or would have transferred, or in any manner have affected any property whatever.

Indictment, under this article, must set forth what was done, that is, specifically describe the alteration. State v. Knippa, 29 T., 295.

Indictment is not duplicitous because in one portion it describes the entire instrument as forged, and in another charges that the defendant knew that the endorsement was forged. Strang v. State, 32 T. Cr. R., 219, 22 S. W. R., 680.

Art. 926. [532] **Intent to injure, etc., necessary.**—The false making or alteration, to constitute forgery, must be done with intent to injure or defraud; and the injury must be such as affects one pecuniarily, or in relation to his property.

Construed. Intent to defraud is the essence of this offense, but it is immaterial whether this intent is or not directed toward any particular person, and it is sufficient if the state or some person may be affected. Henderson v. State, 14 T., 503; Montgomery v. State, 12 T. Cr. R., 323.

Evidence: Ham v. State, 4 T. Cr. R., 645; Francis v. State, 7 Id., 501; Burks v. State, 24 Id., 326, 6 S. W. R., 300; S. C. v. State, Id., 332, 6 S. W. R., 303; Hennessy v. State, 23 Id., 340; Mason v. State, 30 Id., 306, 20 S. W. R., 564.

Subsequent ratification of the act of the person whose name was forged does not condone the forgery. Countee v. State, 33 S. W. R., 127.

Forgery by alteration is committed by the fraudulent endorsement of the name of the payor on an existing negotiable note. And so is the raising of a draft or check forgery by alteration. Strang v. State, 32 T. Cr. R., 219; 22 S. W. R., 680; Mason v. State, 31 Id., 306, 20 S. W. R., 564; Mason v. State, 32 Id., 95, 22 S W. R., 144.

Art. 927. [533] **"Instrument in writing" defined.**—The words "instrument in writing," as used in articles 924 and 925, and elsewhere in this chapter, include every writing, purporting to make known or declare the will or intention of the party whose act it purports to be, whether the same be of record or under seal or private signature, or whatever other form it may have. It must be upon paper or parchment, or some substance made to resemble either of them. The words may be written, printed, stamped or made in any other way, or by any other device. And the words, "in writing," "write," "written," include all these modes of making. An instrument, partly printed or stamped, and partly written, is an instrument in writing. In order to come within the definition of forgery, the signature, when made otherwise than by writing, must be made to resemble manuscript.

Art. 928. [534] **"Alter" defined.**—The word "alter," in the definition of forgery, means to erase or obliterate any word, letter or figure, to extract the writing altogether, or to substitute other words, letters or figures for those erased, obliterated or extracted, to add any other word, letter or figure to the original instrument, or to make any other change whatever which shall have the effect to create, increase, diminish, discharge or defeat a pecuniary obligation, or to transfer, or in any other way affect, any property whatever.

Art. 929. [535] **"Another" includes, what.**—The instrument must purport to be the act of "another;" and, within the meaning of this word, as used in defining forgery, are included this state, the United States, or either of the states or territories of the Union; all the several branches of the government of either of them; all public or private bodies, politic and corporate; all courts; all officers, public or private, in their official capacity; all partnerships in professions or trades; and all other persons, whether real or fictitious, except the person engaged in the forgery.

Construed. Fraudulently signing the name of a dead or a fictitious person to an instrument in writing is forgery. Henderson v. State, 14 T., 503; Brewer v. State, 32 T. Cr. R., 74, 22 S. W. R., 41; Davis v. State, 34 Id., 117, 29 S. W. R., 478; Hocker v State, Id., 359, 30 S. W. R., 783; Johnson v. State, 35 Id., 271, 33 S. W. R., 231.

Art. 930. [536] **"Pecuniary obligation" defined.**—"Pecuniary obligation" means every instrument having money for its object, and every obligation for the breach of which a civil action for damages may be lawfully brought.

Construed. A diploma from a school or college is not a "pecuniary obligation," and hence does not come within the purview of this article, but it is a species of "property," and, as such, a fraudulent order for its delivery is the subject of forgery. Alexander v. State, 28 T. Cr. R., 186, 12 S. W. R., 595.

Whether or not an instrument imports a pecuniary obligation is a question for the court, and it should be determined in the charge to the jury. Overly v. State, 34 T. Cr. R., 500, 31 S. W. R., 377.

Instances of "pecuniary obligation:" Peel v. State, 35 T. Cr. R., 308, 33 S. W. R., 541; Keeler v. St., 15 Id., 111; Hendricks v. State, 26 Id., 176, 9 S. W. R., 555; Reddick v. State, 31 Id., 587, 21 S. W. R., 684; Anderson v. State, 20 Id., 595; Kennedy v. State, 33 Id., 183, 26 S. W. R., 78; Boles v. State, 13 Id., 650; Crawford v. State, 19 Id., 766.

Art. 931. [537] **"Transferred or in any manner have affected" defined.**—By an instrument which would "have transferred or in any manner have affected" property, is meant every species of conveyance, or undertaking in writing, which supposes a right in the person purporting to execute it, to dispose of or change the character of property of every kind, and which can have such effect when genuine.

Construed. Any written instrument which, if true, would create, increase, diminish, discharge or defeat a pecuniary obligation, or would transfer or in some manner affect property, is subject-matter of forgery. But if void or invalid on its face, and it can not be made good by averment, forgery cannot be predicated upon it. Anderson v. State, 20 T. Cr. R.,595; Hendricks v. State, 26 Id., 176, 9 S. W. R., 555; King v. State, 27 Id., 567, 11 S. W. R., 527.

But if the legality of the instrument be but doubtful, and by proper averments its legality can be shown, it is the subject of forgery. Robbins v. State, 22 T. Cr. R., 548, 3 S. W. R., 759; Daud v. State, 34 Id., 460, 31 S. W. R., 376; Carder v. State, 35 Id., 105, 31 S. W. R., 678.

Forgery may be predicated upon an instrument which, if true, would tend, though might not actually, defeat or discharge an obligation. Fonville v. State, 17 T. Cr. R., 368.

Subjects-matter of forgery: Order for diploma. Alexander v. State, 28 T. Cr. R., 186, 12 S. W. R., 595.

School voucher. Thomas v. State, 18 T. Cr. R., 213; Mee v. State, 23 Id., 566, 5 S. W. R., 243.

Railroad ticket. Overly v. State, 34 T. Cr. R., 500, 31 S. W. R., 377; Robinson v. State, 35 T. Cr. R., 54, 43 S. W. R., 526.

Time check. Daud v. St., 34 T. Cr. R., 460, 31 S. W. R., 376.

Raised check. Mason v. State, 31 T. Cr. R., 306, 20 S. W. R., 564.

Telegram. Morris v. State, 17 T. Cr. R., 660; Dooley v. St., 21 Id., 549, 2 S. W. R., 884.

Will, during life-time of declarant, is not. Huckaby v. State, 45 T. Cr. R., 577, 78 S. W. R., 942.

Art. 932. [538] **All participants guilty.**—He is guilty of making or altering, as the case may be, under articles 924 and 925, who, knowing the illegal purpose intended, shall write, or cause to be written, the signature, or the whole or any part, of a forged instrument. All persons engaged in the illegal act are deemed guilty of forgery.

All participants guilty: Peel v. State, 35 T. Cr. R., 308, 33 S. W. R., 541; Robinson v. State, 8 Id., 54, 43 S. W. R., 526; Heard v. State, 9 Id., 1.

Art. 933. [539] **Filling up over signature.**—It is forgery to make, with intent to defraud or injure, a written instrument, by filling up over a genuine signature, or by writing on the opposite side of a paper so as to make the signature appear as an indorsement.

Art. 934. [540] **Person not guilty, when.**—When the person making or altering an instrument in writing acts under an authority which he has good reason to believe, and actually does believe, to be sufficient, he is not guilty of forgery, though the authority be in fact insufficient and void.

Art. 935. [540a] **Altering teacher's certificate is forgery.**—Any person who shall unlawfully and wilfully raise, change, or alter, any teacher's cer-

tificate or diploma or other instrument having the force of a teacher's certificate, shall be deemed guilty of forgery, and, upon conviction thereof, shall be punished by confinement in the penitentiary for a term of not less than two nor more than seven years. [Acts of 1893, p. 205.]

See Thomas v. State, 18 T. Cr. R., 213; Mee v. State, 23 Id., 566, 5 S. W. R., 243; Alexander v. State, 28 Id., 186, 12 S. W. R., 595.

Art. 936. [541] **Penalty.**—If any person be guilty of forgery he shall be punished by confinement in the penitentiary not less than two nor more than seven years.

Art. 937. [542] **Passing forged instrument.**—If any person shall knowingly pass as true, or attempt to pass as true, any such forged instrument in writing as is mentioned and defined in the preceding articles of this chapter, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years.

See authorities cited under article 924, ante.

Depositing forged notes as security for a debt is the passing of same within the meaning of the statute. Nichols v. State, 39 T. Cr. R., 80, 44 S. W. R., 1091.

Indictment under this article sufficient which alleges that accused "did wilfully, knowingly and fraudulently, pass as true to one F. a forged instrument in writing to the tenor following," and then setting out the instrument. Cagle v. State, 39 T. Cr. R., 109, 44 S. W. R., 1091.

If the paper declared on be not an instrument ordinary in commercial transactions, but is contractual in form, and depends on extrinsic facts to create a liability, such extrinsic facts must be averred. See this case in illustration. Cagle v. State, supra.

Charge of court. "Knowingly" and "pass" are not words of technical meaning and need not be defined in the charge. Peterson v. State, 25 T. Cr. R., 70, 7 S. W. R., 530.

And further on charge of court, see Mason v. State, 31 T. Cr. R., 306, 20 S. W. R., 564; Davis v. State, 34 Id., 117, 29 S. W. R., 478; Ham v. State, 4 Id., 645; Shanks v. State, 25 T. Supp., 326; Hennessy v. State, 23 T. Cr. R., 340, 5 S. W. R., 215; Burks v. State, 24 Id., 326, 6 S. W. R., 600; s. c., Id., 303, 6 S. W. R., 332.

Venue is in any county where the instrument was forged or used or passed or attempted to be used or passed. Hocker v. State, 34 T. Cr. R., 359, 30 S. W. R., 783; Mason v. State, 32 Id., 95, 22 S. W. R., 144.

But note that the forgery being the endorsement in one county of an instrument to be paid in another county, the venue is in the first county. Thulemeyer v. State, 34 T. Cr. R., 619.

The appellate court will reform a sentence to conform to the verdict. Peterson v. State, 25 T. Cr. R., 70, 7 S. W. R., 530.

Art. 938. [543] **Preparing implements for forgery.**—Whoever shall prepare in this state any implements or materials, or engrave any plate for the purpose of being used in forging the notes of any bank, whether within this state or out of it, and whether the same be incorporated or not, or who shall have in his possession in this state any such implements, materials or engraved plate, with intent to be used for the purpose above mentioned, shall be imprisoned in the penitentiary not less than two nor more than five years.

Art. 939. [544] **Possession of forged instument with intent to pass.**—If any person shall knowingly have in his possession any instrument of writing, the making of which is by law an offense, with intent to use or pass the same as true, he shall be punished by confinement in the penitentiary not less than two nor more than five years. [Act Feb. 12, 1859, p. 169.]

Art. 940. [545] **Evidence in case of bank bills.**—Upon the trial of any indictment for the forgery of any bank bill, or for passing, or attempting to pass, any such bill as true, or for knowingly having in possession any such

forged bank bill, evidence that bills or notes, purporting to be issued by any bank, are commonly received as currency, or proof of the existence of such bank by parol testimony, shall be deemed sufficient to show its legal establishment and existence.

Art. 941. [546] **Falsely reading instrument.**—If any one, with intent to defraud, shall, either by falsely reading or falsely interpreting, any pecuniary obligation or instrument in writing, which would in any manner affect property, or by misrepresenting its contents, induce any one to sign such instrument as his act, or give assent to it in such manner as would make it his act, if not done under mistake, the person, so offending, shall be imprisoned in the penitentiary not less than two nor more than five years.

Art. 942. [547] **Substituting one instrument for another.**—If any person, with intent to defraud, shall substitute one instrument of writing for another, and, by this means, induce any person to sign an instrument materially different from that which he intended to sign, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years.

Art. 943. **Mutilate, destroy, deface any book, record or other document kept by officer of this state, punishment for.**—If any person, without authority of law, shall wilfully and maliciously change, alter, mutilate, destroy, deface or injure any book, papers, record or any other document, required or permitted by law to be kept by any officer within this state, he shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by a fine not exceeding five thousand dollars, or by imprisonment in the penitentiary not less than one nor more than five years. [Act 1899, p. 301.]

Art. 944. [548] **Falsely personating another.**—If one shall falsely personate another, whether bearing the same name or not, and, in such assumed character, shall give authority to any person to sign such assumed name to any instrument in writing which, if genuine, would create, increase, diminish or discharge any pecuniary obligation, or would transfer, or in any way affect any property, he shall be imprisoned in the penitentiary not less than two nor more than seven years.

See Peel v. State, 35 T. Cr. R., 308, 33 S. W. R., 541.

Art. 945. [549] **Same in acknowledgments.**—If any person shall falsely personate another, whether bearing the same name or not, and in such assumed character shall, before any officer authorized by law to authenticate instruments of writing for registration, acknowledge the execution of an instrument of writing purporting to convey, or in any manner affect, an interest in property, such instrument purporting to be the act of the person whose name is so assumed, and the acknowledgment thereof being such as would entitle the instrument to be registered, he shall be punished by confinement in the penitentiary not less than two nor more than ten years.

Indictment hereunder should set out the fasely authenticated instrument or explain not doing so; sufficiently describe the property to be affected; aver the purpose of the acknowledgment, and negative the authority of the accused. Martin v. State, 1 T. Cr. R., 586.

Need not allege the whereabouts or residence of the person falsely personated. Freeman v. State, 20 T. Cr. R., 558.

Art. 946. [549a] **Prosecutions under one bill of indictment.**—A conviction for any of the offenses, mentioned in articles 924, 937 and 939 of this Code, shall be a bar to any other prosecution under said articles, based upon the same transaction or same forged instrument of writing; provided, that one or more of said several offenses may be charged by separate counts in the same bill of indictment, and prosecuted together to final judgment, without election by the state as to which it relies upon for conviction; and pro-

vided, further, a judgment of conviction shall specify which offense or under which count the defendant is found guilty, and shall assess but one penalty not exceeding the greatest punishment fixed by law to the highest grade of offense of which defendant is convicted; and it is hereby declared unlawful for any county or district attorney, or any person acting as such, to wilfully or knowingly demand or receive fees for more than one prosecution that could have been combined or prosecuted in one bill of indictment, and subject to the penalties prescribed by law for the punishment of extortion of illegal fees. [Acts of 1895, p. 106.]

See notes to Art. 937, ante.

Jeopardy. This article limits the defense of former jeopardy in offenses defined by articles 943, 956 and 958 of this Code to former conviction, and does not include former acquittal. Green v. State, 36 T. Cr. R., 109, 35 S. W. R., 971; Hooper v. State, 30 Id., 412, 17 S. W. R., 1066; Reddick v. State, 31 Id., 587, 21 S. W. R., 684.

Evidence. The forged instrument being accessible, its introduction in evidence was imperative. Dovalina v. State, 14 T. Cr. R., 312.

As to practice when the forged instrument is lost, destroyed or is in the possession of the defendant, see Rollins v. State, 21 T. Cr. R., 148, 17 S. W. R., 466; Henderson v. State, 14 Texas, 503; Thornley v. State, 36 T. Cr. R., 119, 34 S. W. R., 264; Patterson v. State, 17 Id., 102; Johnson v. State, 9 Id., 249; Caston v. State, 31 Id., 304, 20 S. W. R., 585.

Proof of systematic crime: See Hennessy v. State, 23 T. Cr. R., 340, 5 S. W. R., 215; Heard v. State, 9 Id., 1; Mason v. State, 31 Id., 306, 20 S. W. R., 564.

Proof of hand-writing; standard of comparison. See Heard v. State, 9 T. Cr. R., 1; Heacock v. State, 13 Id., 383; Rogers v. State, 11 Id., 608; Mallory v. State, 37 Id., 482, 36 S. W. R., 751.

CHAPTER TWO.

FORGERY OF LAND TITLES, ETC.

	Article		Article
"Forgery of patents," etc., defined.....	947	Proof and allegations necessary in indictment; proof of intent to defraud United States, etc., no variance.....	951
False certificate by officers, forgery...	948	Venue	952
Knowingly uttering forged instrument..	949	Rules in forgery applicable.....	953
Non-residents may commit; venue.....	950		

Article 947. [550] **"Forgery of patents," etc., defined.**—Every person who falsely makes, alters, forges or counterfeits, or causes or procures to be falsely made, altered, forged or counterfeited, or in any way aids, assists, advises or encourages the false making, altering, forging or counterfeiting of any certificate, field notes, returns, survey, map, plat, report, order, decree, record, patent, deed, power of attorney, transfer, assignment, release, conveyance or title paper, or acknowledgment, or proof of record, or certificate of record belonging or pertaining to any instrument or paper, or any seal, official or private stamp, scroll, mark, date, signature, or any paper, or any evidence of any right, title, or claim of any character, or any instrument in writing, document, paper or memorandum, or file of any character whatsoever, in relation to or affecting lands, or any interest in lands in this state, with the intent to make money or other valuable thing thereby, or with intent to set up a claim or title, or aid or assist any one else in setting up a claim or title, to lands or any interest in lands, or to prosecute or defend a suit, or aid or assist any one else in prosecuting or defending a suit with re-

spect to lands, or to cast a cloud upon the title, or in any way injure, obtain the advantage of, or prejudice the rights or interest of, the true owners of lands, or with any fraududent intent whatever, shall be deemed guilty of forgery, and be punished by imprisonment in the state penitentiary at hard labor not less than five nor more than twenty years. [Act July 28, 1876, p. 59.]

Construed, Constitutional law. Under this article, which is held constitutional, persons out of the state may commit the offense defined, and be indicted therefor, either in the county of Travis, the county in which the offense was committed, or the county in which the land to be affected is situate. Ham v. State, 4 T. Cr. R,. 645; Francis v. State, 7 Id., 501; Rogers v. State, 11 Id., 608; Hanks v. State, 13 Id., 289; Grooms v. State, 40 Id., 319, 50 S. W. R., 370; Johnson v. State, 9 Id., 249.

Any act in furtherance of the offense from which a fraudulent intent can be inferred comes within the purview of this article. And the least degree of concert or collusion between plural parties in the illegal transaction makes the act of one the act of all. Phillips v. State, T. Cr. R., 364; Heard v. State, 9 Id., 1.

Proof showing that a conspiracy to fabricate land titles was entered into in this state, and that one or more of the overt acts were perpetrated in this state, the courts of this state had jurisdiction independent of the act of 1876—this article. Rogers v. State, 10 T. Cr. R., 655.

A forged transfer of land, though in blank, comes within the scope of this article. Phillips v. State, 6 T. Cr. R., 364.

Extradition. While not so under international extradition, a citizen of another state extradited to this state, may be tried for another offense than that alleged against him in the requisition on which he was extradited. Ham v. State, 4 T. Cr. R., 645.

Evidence; standard of comparison must be an admitted or absolutely proved writing by accused—distinguishing: Phillips v. State, 6 T. Cr. R., 364, and Hatch .v State, Id., 384; Rogers v. State, 11 Id., 608.

As standards, signatures to documents shown to be archives of the general land office are competent. Rogers v. State, supra.

A distinct variance between the attestation clause of a deed and the haec verba allegation of the indictment, disqualifies the former as evidence. Ex parte Rogers, 10 T. Cr. R.,655.

The cross-examination of a defendant as a witness in his own behalf with respect to his proved handwriting, used as a standard of comparison, is not obnoxious to the constitutional objection that it was compelling him to give evidence against himself. Grooms v. State, 40 T. Cr. R., 319, 50 S. W. R., 370.

Art. 948. [551] **False certificate by officers forgery.**—If any person authorized by law to take the proof or acknowledgment of any instrument, document or paper whatsoever, affecting or relating to the title of lands in this state, wilfully and falsely certify that such proof or acknowledgment was duly made, or if any person fraudulently affixes a fictitious or pretended signature purporting to be that of an officer or any other person, though such person never was an officer or never existed, he shall be deemed guilty of forgery and punished as provided in article 947 of this chapter. [Id.]

Art. 949. [552] **Knowingly uttering forged instruments.**—Every person who knowingly utters, publishes, passes or uses, or who in any way aids, assists in or advises the uttering, publishing, passing or using as true and genuine any false, forged, altered or counterfeited certificate, field-notes, returns, survey, map, plat, report, order, decree, record, patent, deed, power of attorney, transfer, assignment, release, conveyance, title papers, acknowledgment or proof for record or certificate of record belonging or pertaining to any instrument or paper, or any evidence of any right, title or claim of any character whatsoever, or any instrument in writing, document, paper, memorandum or file, or any official or private seal, or any scroll, mark, date or signature in any way relating to, or having any connection with, land, or any interest in land in this state, with the intent mentioned in article 947

of this chapter, or with any other fraudulent intent whatsoever, shall be deemed guilty and be punished in like manner as is provided in article 947 of this chapter. And the filing or causing or directing to be filed, or causing or directing to be recorded, in the general land office of the state, or in any office of record or in any court in this state, or the sending through the mails or by express, or in any other way, for the purpose of filing or record of any such false, altered, forged or counterfeited matter, documents, conveyances, papers or things, knowing the same to be false, altered, forged or counterfeited, shall be an uttering, publishing and using within the meaning of this article. [Id.]

Art. 950. [553] **Non-residents may commit, venue.**—Persons out of the state may commit and be liable to indictment and conviction for committing any of the offenses enumerated in this chapter, which do not in their commission necessarily require a personal presence in this state—the object of this chapter being to reach and punish all persons offending against its provisions, whether within or without the state. An indictment, under this chapter, may be presented by the grand jury of Travis county, in this state, or in the county where the offense was committed, or in the county where the land lies about which the offenses named in this chapter were committed [Id.]

See notes under Art. 947.

Constitutional law. The various articles of this chapter held constitutional. Grooms v. State, 40 T. Cr. R., 319, 50 S. W. R., 370; Johnson v. State, 9 Id., 249; Ham v. State, 4 Id., 645; Francis v. State, 7 Id., 501; Rogers v. State, 11 Id., 608; Hanks v. State, 13 Id., 289.

Construed. Since the Act of 1876 (this chapter), the fabrication of a certificate of a notary public, purporting to authenticate the acknowledgment of a conveyance or transfer, is forgery. Rogers v. State, 8 T. Cr. R., 401.

To take any one step or do any one act or thing in the commission of the offense, if any fraudulent intent may be reasonably inferred therefrom, is an offense under this article. Phillips v. State, 6 T. Cr. R., 364.

Forgery in another state of title to land in this state, or of any instrument affecting title to land in this state, is an offense against the law of this state, and subject to the jurisdiction conferred by this article. Hanks v. State, 13 T. Cr. R., 289.

As Travis county has original jurisdiction under this article, it is competent, by agreement of parties, to transfer cases filed in another jurisdictional county to Travis. Grooms v. State, 40 T. Cr. R., 319, 50 S. W. R., 370.

A forged transfer of land, though a blank be left for the name of the transferee, is an instrument within the meaning of this act. Phillips v. State, 6 T. Cr. R., 364.

And, though not acknowledged or witnessed, a writing in the form of a deed is the subject of forgery. Lassiter v. State, 35 T. Cr. R., 540, 34 S. W. R., 751.

Art. 951. [554] **Proof and allegations necessary in indictments; proof of intent to defraud the United States, etc.**—Upon indictment under this chapter, to warrant a conviction, it shall only be necessary to prove that the person charged took any one step, or did any one act or thing in the commission of the offense, if from such step, act or thing any of the intentions hereinbefore mentioned, or any other fraudulent intention, may be reasonably inferred; nor shall it be any defense to a prosecution under this chapter that the matter, act, deed, instrument or thing was in law, either as to substance or form, void, or that the same was not in fact used for the purpose for which it was made or designed; and it shall only be necessary in an indictment under this chapter to state with reasonable certainty the act constituting the offense, and charge, in connection therewith, in general terms, the intention to defraud, without naming the person or persons it was intended to defraud; and, on trial of such indictment, it shall be sufficient and shall not be deemed a variance if there appears to be an intent to defraud the United States, or any state, territory, county, city, town or village, or

any body corporate, or any public officer in his official capacity, or any co-partnership or member thereof, or any particular person. [Id.]

See notes under Art. 950.

Even before the act of 1876, of which this article is a part, to utter or pass a fabricated certificate of authentication was an offense. Johnson v. State, 9 T. Cr. R., 249.

Since the act referred to, the fabrication of instruments in the nature of official acts,—those, for instance, of a notary public—has been forgery. Rogers v. State, 8 T. Cr. R., 401.

Art. 952. [555] **Venue.**—Indictments under this chapter may be presented and the offenses prosecuted in any of the counties prescribed in title 4, chapter 2, of the Code of Criminal Procedure. [Id.]

Art. 953. [556] **Rules in forgery applicable.**—The rules prescribed in chapter 1 of this title, relative to the offense of forgery, so far as the same are applicable, shall apply to the various offenses enumerated in this chapter. [Id.]

CHAPTER THREE.

OF COUNTERFEITING AND DIMINISHING VALUE OF CURRENT COIN.

	Article		Article
"Counterfeiting" defined	954	Making dies, etc., and having them in possession	959
"Altering" also counterfeiting	955	Passing coin of diminished value	960
Resemblance need not be perfect	956	"Gold and silver coin" defined	961
Punishment	957	What sufficient to constitute passing	962
Passing counterfeit coin	958		

Article 954. [557] **"Counterfeiting" defined.**—He is guilty of counterfeiting who makes, in the semblance of true gold or silver coin, any coin of whatever denomination, having in its composition a less proportion of the precious metal of which the true coin intended to be imitated is composed than is contained in such true coin, with intent that the same should be passed in this state or elsewhere.

Construed. Jurisdiction. This article makes the counterfeiting of the gold or silver coins of the United States an offense against this state, and confers jurisdiction of such offense upon the courts of this state. Martin v. State, 18 T. Cr. R., 224.

Congress has expressly conferred and recognized the jurisdiction of state courts over counterfeiting. Stroube v. State, 40 T. Cr. R., 581, 51 S. W. R., 357.

Venue lies in any county wherein the coins were passed. Stroube v. State, supra.

Charge of court: Stroube v. State, supra.

Evidence: Glass v. State, 45 T. Cr. R., 605, 78 S. W. R., 1068.

Art. 955. [558] **"Altering" also counterfeiting.**—He is also guilty of counterfeiting who, with like intent, alters any coin of lower value so as to make it resemble coin of higher value.

Art. 956. [559] **Resemblance need not be perfect.**—The resemblance between the true and the false coin need not be perfect to constitute the offense of counterfeiting.

Art. 957. [560] **Punishment.**—Any person who shall counterfeit any gold or silver coin shall be punished by imprisonment in the penitentiary not less than five nor more than ten years.

Art. 958. [561] **Passing counterfeit coin.**—If any person, with intent to defraud, shall pass, or offer to pass, as true, or bring into this state, or have in his possession, with intent to pass as true, any counterfeit coin, knowing the same to be counterfeit, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years.

Art. 959. [562] **Making dies, etc., and having them in possession.**—If any person, with the intention of committing the offense of counterfeiting or of aiding therein, shall make or repair, or shall have in his possession any die, mould or other instrument whatever, designed or adapted, or usually employed for making coin, or shall prepare, or have in his possession, any base metal prepared for coinage, with intent that the same may be used for the purpose of counterfeiting, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years.

Art. 960. [563] **Passing coin of diminished value.**—If any person shall, with intent to profit thereby, diminish the weight of any gold or silver coin, and shall afterward pass it for the value it would have had before it was so diminished, or send it to any place, whether in the state or out of it, with the intent that the same may be passed, he shall be punished by imprisonment in the penitentiary not less than two nor more than five year. [Act Feb. 12, 1858, p. 169.]

Art 961. [564] **"Gold and silver coin" defined.**—By the gold or silver coin mentioned in this chapter is meant any piece of gold or silver of which one of these metals is the principal component part, and which passes as money in the United States, either by law or usage, whether the same be of the coinage of the United States or of any foreign country.

Art. 962. [565] **What sufficient to constitute passing.**—It is sufficient to constitute the offense of passing, or attempting to pass, under the provisions of this chapter, if the counterfeit coin be delivered or offered to another, with the intention of defrauding, or enabling such other person to defraud, although such counterfeit coin be not delivered or offered at the full value which it would bear if genuine.

CHAPTER FOUR.

OF OFFENSES WHICH AFFECT FOREIGN COMMERCE.

	Article		Article
Shipping articles without inspection	963	Same subject	966
Altering marks, etc	964	Fraudulent insurance	967
False packing	965	Harboring deserting seamen	968

Article 963. [566] **Shipping articles without inspection.**—If any person shall export from this state, or ship for the purpose of exportation to any one of the United States or to any foreign port, any article of commerce which, by any law of the state, may be required to be inspected by a public inspector, without having caused such inspection to be made according to law, he shall be fined not exceeding one hundred dollars.

Art. 964. [567] **Altering marks, etc.**—If any person shall counterfeit or alter the mark, brand or stamp directed by any law of the state to be put on any article of commerce, or on the box, cask or package containing the same, he shall be punished by fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year.

Art. 965. [568] **False packing.**—If any person shall, with intent to defraud, put into any hogshead, barrel, cask or keg, or into any bale, box or package containing merchandise or other commodity usually sold by weight, any article whatever of less value than the merchandise with which such bale, box, package, hogshead, barrel, cask or keg is apparently filled, or, with intent to defraud, shall sell or barter, give in payment, or expose to sale, or ship for exportation, any such hogshead, barrel, cask, keg, box, bale or package of merchandise, or other commodity with any such article of inferior value concealed therein, he shall be punished by confinement in the county jail not exceeding one year, or by fine not exceeding one thousand dollars.

Construed. The gravamen of this offense is packing a bale with an article of less value than the pretended article. Packing a bale of cotton with an "inferior quality" of cotton, is no offense. Lidtke v. State, 27 T. Cr. R., 500, 11 S. W. R., 629.

It is not essential to an indictment under this article that the name of the person intended to be defrauded shall be alleged. Holden v. State, 18 T. Cr. R., 91.

This article defines two separate and distinct offenses. When the indictment charges and the evidence suggests but one it is error to submit both to the jury. Jones v. State, 22 T. Cr. R., 680, 3 S. W. R., 478.

Sale and intent to defraud, coupled with a guilty knowledge that the bale of cotton was falsely packed, or knowledge of such facts as would put him on inquiry, is of the essence of this offense, and unless shown conviction cannot stand. Anderson v. State, 30 T. Cr. R., 699, 18 S. W. R., 866.

Art. 966. [569] **Same subject.**—If any person shall, with intent to deceive and defraud, conceal within any hogshead, cask, barrel, box, bale, keg or package, containing merchandise or other commodity, any merchandise or commodity of a quality inferior to that which such hogshead, cask, barrel, bale, keg or package is filled, or any substance of less value, he shall be fined not exceeding five hundred dollars. [Act Feb. 12, 1858, p. 170.]

Art. 967. [570] **Fraudulent insurance.**—If any person shall cause insurance to be made in this state upon any merchandise or other commodity represented to be already shipped, or about to be shipped, at any place, whether within this state or out of it, and shall, with the intent to defraud the insurer, ship articles of value less than one-half the represented value of those insured, or of a different kind from those insured, he shall be punished by fine in a sum not exceeding the amount for which such merchandise or commodity may be insured.

Art. 968. [571] **Harboring deserting seamen.**—The municipal authorities of incorporated towns and cities, being shipping ports, may make such regulations as are deemed proper for the punishment of keepers of boarding houses and others who knowingly lodge, entertain or conceal seamen who have deserted from any merchant vessel in their respective ports; but they shall not affix a higher penalty for such offense than a fine of fifty dollars, or imprisonment in jail for thirty days.

CHAPTER FIVE.

PUBLIC WAREHOUSEMEN AND WAREHOUSES.

	Article
"Public warehousemen" and "warehouses" defined	969
Owner, proprietor, etc., shall obtain certificate and file bond	970
Shall issue warehouse receipt for property stored	971
When such receipt shall be issued	972
When and to whom property stored shall be delivered	973
Shall not limit his liability	974
Warehouse receipt negotiable, except when	975
Public warehousemen violating provisions hereof, penalty	976
Not applicable to private warehouses or private warehouse receipts	977

Article 969. **"Public warehousemen" and "warehouses" defined.**—All persons, firms, companies or corporations who shall receive cotton, tobacco, wheat, rye, oats, rice, whisky, oil, or any kind of produce, wares, merchandise, or any description of personal property in store for hire, under the provisions of this act, shall be deemed and taken to be public warehousemen; and all warehouses which shall be owned or controlled, conducted and managed in accordance with the provisions of this act, shall be deemed and taken to be public warehouses; provided, that a public warehouse for the storage of cotton may, within the meaning of this act, include a lot or parcel of land inclosed with a lawful fence, the gates or entrances to which shall be kept securely locked at night. [Act 1901, p. 251.]

Art. 970. **Owner, proprietor, etc., shall obtain certificate and file bond.**—That the owner, proprietor, lessee or manager of any public warehouse, whether an individual, firm or corporation, before transacting any business in such public warehouse, shall procure from the county clerk of the county in which the warehouse or warehouses are situated, a certificate that he is transacting business as a public warehouseman under the laws of the state of Texas, which certificate shall be issued by said clerk upon a written application, setting forth the location and name of such warehouse or warehouses, and the name of each person, individual, or a member of the firm, interested as owner or principal in the management of the same; or, if the warehouse is owned or managed by a corporation, the names of the president, secretary and treasurer of such corporation shall be stated, which application shall be received and filed by such clerk and preserved in his office; and the said certificate shall give authority to carry on and conduct the business of a public warehouse within the meaning of this act, and shall be revokable only by the district court of the county in which the warehouse or warehouses are situated, upon a proceeding before the court, on complaint by written petition of any person, setting forth the particular violation of the law, and upon process, procedure and proof, as in other civil cases. The person receiving a certificate, as herein provided for, shall file with the county clerk granting same, a bond

payable to the state of Texas, with good and sufficient surety, to be approved by said clerk, in the penal sum of five thousand dollars, conditioned for the faithful performance of his duty as a public warehouseman, which said bond shall be filed and preserved in the office of such clerk. [Id., p. 251.]

Art. 971. **Shall issue warehouse receipts for property stored.**—That on application of the owner or depositor of the property stored in a public warehouse, the warehouseman shall issue, over his own signature, or that of his duly authorized agent, a public warehouse receipt therefor, to the order of the person entitled thereto; which receipt shall purport to be issued by a public warehouse, shall bear date of the day of its issue, and shall state upon its face the name of the warehouse and its location, the description, quantity, number and marks of the property stored, and the date on which it was originally received in warehouse, and that it is deliverable upon the return of the receipt, properly indorsed by the person to whose order it was issued, and on payment of all charges for storage. All such receipts shall be numbered consecutively, in the order of their issue; and when such receipt is for cotton, the receipt shall state whether the cotton therein described is exposed to the weather or is under shelter; and a correct record of such receipts shall be kept in a well-bound book, which shall be, at all reasonable hours, open to examination by any interested person; and no two receipts bearing the same number shall be issued from the same warehouse during the same year, nor shall any duplicate receipt be issued, except in the case of a lost or destroyed receipt, in which case the new receipt shall bear the same date and number as the original, and shall be plainly marked on its face "duplicate;" and provided, that no such duplicate receipt shall be issued by the public warehouseman until adequate security acceptable to the warehouseman be deposited with or to the order of said warehouseman, to protect the party or parties who may finally hold the original receipt in good faith and for a valuable consideration. [Id., p. 251.]

Art. 972. **When such receipt shall be issued.**—That no public warehouse receipt shall be issued, except upon the actual previous delivery of the goods into the public warehouse or on the premises, and under the control of the public warehouseman by whom it purports to be issued; and the name of the warehouse shall invariably be specified in such receipt. [Id., p. 252.]

Art. 973. **When and to whom property stored shall be delivered.**—That on the presentation and return to the warehouseman of any public warehouse receipt issued by him and properly indorsed, and the tender of all proper warehouse charges upon the property represented by it, such property shall be delivered immediately to the holder of such receipt; but no public warehouseman who shall issue a receipt for goods shall, under any circumstances or upon any order or guarantee whatsoever, deliver the property for which receipts have been issued, until the said receipt shall have been surrendered and canceled, except in case of lost receipts, as provided for in article 971; and, in default of the strict compliance with the provisions of this article, he shall be held liable to the legal holder of the receipt for the full value of the property therein described, as it appeared on the day of the default, and shall, furthermore, be liable to the special penalty herein provided. Upon delivery of the goods from the warehouse, upon any receipt, such receipt shall be plainly marked in ink across its face with the word "canceled," with the name of the person canceling the same, and shall thereafter be void, and shall not again be put in circulation. [Id., p. 252.]

Art. 974. **Shall not limit his liability.**—That no public warehouseman shall insert in the public warehouse receipt issued by him any language limiting or modifying his liabilities or responsibilities as imposed by the laws

of this state, excepting, "not accountable for leakage or depreciation," or words of like import and meaning. [Id., p. 252.]

Art. 975. **Warehouse receipt negotiable, except when.**—That the receipt issued against property stored in public warehouses, as herein provided for, shall be negotiable and transferable by endorsement in blank or by special endorsement, and delivery in the same manner and to the same extent as bills of exchange and promissory notes now are, without other formality; and the transferee or holder of such public warehouse receipt shall be considered and held as the actual and exclusive owner, to all intents and purposes, of the property therein described, subject only to the lien and privilege of the public warehouseman for storage and other warehouse charges; provided, however, that all such public warehouse receipts as shall have the words "not negotiable" plainly written or stamped on the face thereof, shall be exempt from the provisions of this article; and provided, further, that no public warehouseman shall issue warehouse receipts against his own property in his own warehouse; but, upon sale of such property in good faith, may issue to the purchaser his public warehouse receipt in form and manner as herein provided, which issue and delivery of the receipt shall be deemed to complete the sale, and shall constitute the purchaser full owner, as aforesaid, of the property therein described. Nothing in this last clause shall be construed to exempt the issuer of said receipt for his own goods in his own public warehouse, from complying with and being subject, in all respects, to all other articles of this chapter. [Id., p. 252.]

Art. 976. **Public warehousemen violating provisions hereof, penalty.**—That any public warehouseman who violates any of the provisions of this law shall be deemed guilty of criminal offense, and, upon indictment and conviction thereof, shall be punished by fine in any sum not exceeding five thousand dollars, or imprisonment in the state penitentiary not exceeding two years, or by both such fine and imprisonment. And every and all persons, aggrieved by the violations aforesaid, shall have the right to maintain an action against the person or persons, corporation or corporations, so violating any of the provisions of this law, for the recovery of damages which he or they may have sustained by reason of such violation aforesaid, before any court of competent jurisdiction, whether such person or persons so violating shall have been convicted of criminal offense under this law or not. [Id., p. 252.]

Art. 977. **Not applicable to private warehousemen or private warehouse receipts.**—That nothing in this law shall be construed to apply to private warehouses or to the issue of receipts by their owners or managers under existing laws, or to prohibit public warehousemen from issuing such receipts as are now issued by private warehousemen under existing laws; provided, that such private warehouse receipts issued by public warehousemen shall never be written on a form or blank indicating that it is issued from a public warehouse, but shall, on the contrary, bear on its face, in large characters, the words, "not a public warehouse receipt." [Id., p. 252.]

CHAPTER SIX.

BUREAU OF COTTON STATISTICS.

	Article
"Public ginner" defined, certificate required, form of	978
Form of affidavit to be made	979
County clerk to issue and number each certificate	980
Duty of commissioner of agriculture	981
Public ginner to forward report to commissioner of agriculture	982
Shall open same and give out to public, when	983
Giving out information before time specified, penalty	984
County clerk or public ginner violating any provisions hereof, penalty	985
Person, owner, etc., of public gin shall keep record	986
Each bale of cotton shall be marked and same put upon record	987
Buyers of cotton shall not alter or deface marks	988
Person, firm, corporation, etc., failing, refusing, etc., to comply with any provision hereof, penalty	989

Article 978. **"Public ginner" defined, certificate required, form of.**—All custom ginners of seed cotton in this state are hereby declared to be public ginners. Any person or persons, firm or corporation in this state, before engaging in the business of public ginners, shall obtain from the county clerk of the county in which gin is located a certificate after the following form:

Number .....

This is to certify that .....
of ..... county, Texas, has this day filed affidavit required by law, of all public ginners in this state.

(Seal.)

.....
County clerk of ..... county, Texas.

[Act 1907, p. 313.]

Art. 979. **Form of affidavit to be made.**—The form of affidavit to be made to and filed with the county clerk shall be as follows:

I, ... of
..... county, Texas, do solemnly swear that I will, so long as I may operate a public gin, make and forward a true and correct report of the number of bales of cotton ginned by me to the commissioner of agriculture at Austin, as required by law. [Id., p. 313.]

Art. 980. **County clerk to issue and number each certificate.**—The county clerk shall number each certificate issued by him consecutively, beginning at number one; and shall immediately forward to the commissioner of agriculture the name and postoffice address to whom certificate was issued. The clerk shall issue certificates to all ginners, and shall take the affidavits as herein required without cost to ginners. [Id., p. 313.]

Art. 981. **Duty of commissioner of agriculture.**—The commissioner of agriculture, upon receipt of information of the issuance of a ginner's certificate from any county clerk in this state, shall immediately forward all necessary blanks to the public ginner for making official cotton report, which shall consist of the following:

Envelopes addressed to the commissioner of agriculture, Austin, Texas; and there shall be printed upon the upper left hand corner the words, "official cotton report of ..... county," also blanks, to-wit:

Official Cotton Report.

Certificate No. .....

....., 190..

Commissioner of Agriculture,
Austin, Texas.

Sir: This is to certify that I have ginned ..... bales of cotton from the ..... day of ..... 190....., to the ..... day of ..... 190.....

(Signed) .....

[Id., p. 313.]

Art. 982. **Public ginner to forward report to commissioner of agriculture.**—All public ginners shall make and forward reports to the commissioner of agriculture, on the blanks furnished them, by the third of each month, stating the exact number of bales ginned by them the preceding calendar month. This report must be made by all ginners, unless they have ceased to operate, the notice of which must be forwarded to the commissioner of agriculture. These reports must be securely sealed by ginners. [Id., p. 314.]

Art. 983. **Shall open same and give out information, when.**—The commissioner of agriculture shall open, on the eighth of each month, and tabulate the official cotton reports of the various counties, in the presence of three creditable witnesses, who shall be appointed by the governor. The complete report, showing total number of bales of cotton ginned, shall be given out to the public, including the press, at eleven o'clock a. m., on the ninth of each month. [Id., p. 314.]

Art. 984. **Giving out information before time specified, penalty.**—If the commissioner of agriculture, his assistants, or any one else connected with the opening and tabulating of these official cotton reports, or any other person, shall give out any information, as to the number of bales of cotton ginned, before the time specified by this act, shall, upon conviction, be confined in the penitentiary not less than one year nor more than three years. [Id., p. 314.]

Art. 985. **County clerk or public ginner violating any provisions hereof, penalty.**—All county clerks and public ginners who violate any of the provisions of this act are guilty of a misdemeanor, and, upon conviction, shall be fined not less than twenty-five nor more than two hundred dollars. [Id., p. 314.]

Art. 986. **Person, owner, etc., of public gin shall keep record.**—Hereafter, every person, firm, corporation or association of persons owning, controlling or operating a public cotton gin in this state, shall keep, or cause to be kept, a public record of all cotton brought to them for ginning and packing. Such record shall correctly show the amount of cotton received, date of its receipt, by whom brought to the gin and the name or names of the party or parties claiming to own the same. [Act 1901, p. 263.]

Art. 987. **Each bale of cotton shall be marked and same put upon record.**—Said ginner, after ginning and packing said cotton, shall place, or cause to be placed, on each bale of cotton, the initials of the party or parties claiming to own said cotton, under which he shall place some private ginner's mark, all of which shall be put upon record in the book before mentioned. [Id., p. 263.]

Art. 988. **Buyers of cotton shall not alter or deface marks.**—Hereafter, every person, firm, corporation or association of persons who shall buy cotton in this state, shall not change, alter or deface the marks and brands on such cotton. [Id., p. 263.]

Art. 989. **Person, firm, corporation, etc., failing, refusing, etc., to comply with any provisions hereof, penalty.**—Any person, firm, corporation or association of persons failing, neglecting or refusing to comply with any of the provisions of this act shall be punished by a fine in any sum not more than twenty-five dollars. [Id., p. 263.]

CHAPTER SEVEN.

FALSE WEIGHTS AND MEASURES.

	Article		Article
Penalty for using	990	Applicable to electric current, water or gas, when; penalty for violation	993
Definition	991		
Destruction of, on conviction	992		

Article 990. [572] **Penalty for using.**—If any person shall use a false balance, weight or measure in weighing or measuring anything whatever, purchased or sold by himself, or bartered, shipped or delivered by him for sale, or bartered or pledged, or given in payment, knowing the same to be false, and with intent to defraud, he shall be punished by fine not exceeding three hundred dollars.

Art. 991. [573] **Definition.**—A false weight or measure is such as is not in conformity with the standard which is or may be established by a law of this state.

Art. 992. [574] **Destruction of, on conviction.**—When a warrant of arrest is issued in case of offenses under this chapter, the magistrate shall direct the false balances, weights or measures to be seized and kept by the sheriff until the trial of defendant; and, in case of conviction, the same shall be destroyed.

Art. 993. **Applicable to electric current, water or gas, when; penalty for violation.**—Whoever, intentionally, by any means or device, prevents electric current, water or gas from passing through any meter or meters belonging to a person, corporation, or company, engaged in the manufacture or sale of electricity, water or gas, for lighting, power or other purposes, furnished such person to register the current of electricity, water or gas, passing through meters, or intentionally prevents a meter from duly registering the quantity of electricity, water or gas supplied, or, in any way, interferes with its proper action or just registration, or without the consent of such person, corporation or company, intentionally diverts any electric current from any wire, or water or gas from any pipe or pipes of such person, corporation or company, or otherwise intentionally uses, or causes to be used, without the consent of such person, corporation or company, any electricity or gas manufactured, or water produced or distributed, by such person, corporation or company, or any person, corporation or company who retains possession of, or refuses to deliver, any meter or meters, lamp or lamps, or other appliances which may be, or may have been, loaned them by any person, corporation or company for the purpose of furnishing electricity, water or gas, through the same, with the intent to defraud such person, corporation or company, or, if any person, corporation or company engaged in the manufacture or sale of electricity, water, or gas for lighting, power or other purposes, shall knowingly misread any meter or overcharge any customer for such light, water or gas furnished, shall, for every such offense, be

punished by a fine of not less than twenty-five dollars and not more than one hundred dollars. Every person, firm or corporation engaged in the business referred to in this act shall keep displayed at all times, in a conspicuous place in their office, a printed copy of this law. [Act 1905, p. 205.]

CHAPTER EIGHT.

OF OFFENSES BY PUBLIC WEIGHERS.

	Article
Use of false balances	994
Giving false certificate	995
Other than public weigher shall not weigh, etc	996
Factor, etc., shall not employ private weigher	997
Person may weigh his own produce	998
Weighing or offering to weigh for public without complying with this law, penalty	999

Article 994. [575] **Using false balances.**—If any person is elected or appointed public weigher under the laws of this state, or, if any person whomsoever who is engaged in the business of weighing for the public, and who holds himself out to weigh for the public, shall fraudulently use any false balances, scales or instruments for weighing, or shall, in the exercise of his duty as such public weigher, or as such weigher for the public, fraudulently give the wrong weight of any article whatever weighed by him, he shall be punished by fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail not to exceed one year. [Amended, Act 1901, p. 257.]

Art. 995. [576] **Giving false certificate.**—If any public weigher in this state or his deputy, or if any person whomsoever who is engaged in the business of weighing for the public, or who holds himself out to weigh for the public, shall wilfully or fraudulently certify to or sign any false weight of cotton, sugar, wool, hides, or other commodity, he shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. [Act March 15, 1875, p. 164; amended, Act 1901, p. 257.]

Art. 996. [577] **Other than public weigher shall not weigh.**—It shall not be lawful for any person other than a regularly appointed weigher, or his deputy, to weigh any cotton, wool, sugar or hides required to be weighed, sold or offered for sale in any city having a public weigher duly qualified. Any person or persons so offending shall be deemed guilty of a misdemeanor, and, upon conviction before any court of competent jurisdiction, shall suffer a fine of five dollars for each and every bale of cotton, bale or sack of wool, hogshead or barrel of sugar, bale or loose hide, so weighed. [Act April 19, 1879, p. 116, § 7.]

Art. 997. [578] **Factor, etc., shall not employ private weigher.**—It shall not be lawful for any factor, commission merchant, or any other person or persons, to employ any one other than a regularly appointed and qualified public weigher, or his deputy, to weigh any cotton, wool, sugar or hides required to be weighed, sold or offered for sale in any city having a public weigher duly qualified; and any person or persons violating this provision shall be liable, at the suit of the public weigher of such city, or either of such public weighers, to damages in any sum not less than five dollars for each bale of cotton, bale or sack of wool, hogshead or barrel of sugar, or bale of hides, so unlawfully weighed, to be recovered in any court of such county having jurisdiction thereof; provided, any owner shipping any produce

named in this article to any town or city having a public weigher may, by written instructions, authorize his factor, commission merchant or agent to have such produce weighed by private weighers, if he prefers so to do; and, in all such cases, the prohibitions and penalties embraced in this article and in the preceding article shall not apply. [Id., § 8.]

Art. 998. [579] **Person may weigh his own produce.**—Nothing in this law shall prevent any person, firm or corporation from weighing his own cotton, wool, sugar, hay, grain or pecans in person; providing that in places where there are no public weighers appointed or elected, that any person who shall weigh cotton, wool, sugar, grain, hay or pecans for compensation shall be required, before weighing such produce, to enter into a bond, with at least two good and sufficient sureties, in the sum of twenty-five hundred dollars, approved and payable as in the case of public weighers referred to in this chapter, and conditioned that he will faithfully perform the duties of his office, and turn over all property weighed by him on demand of the owner; provided, that this article shall not apply to merchant flouring mills. [Id., § 10; amended, Act 1905, p. 117.]

Art. 999. **Weighing or offering to weigh for public without complying with this law, penalty.**—Any person who shall weigh or offer to weigh any cotton, wool, sugar or hides for compensation for the public, without complying with all of the provisions of this law, shall be guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding two hundred dollars. [Act 1905, p. 117.]

Construed. Any person may weigh cotton, hides or wool, when requested to do so by the owner, notwithstanding there may be a public weigher in the city or town where the same is weighed. Ex parte Hunter, 34 T. Cr. R., 114, 29 S. W. R., 482.

A private person has the right, under the law, to keep scales for weighing in a city; to pursue the business of a private cotton weigher, and to solicit such business on private orders as he is allowed to receive. Watts v. State, 61 T., 184.

CHAPTER NINE.

MISCELLANEOUS OFFENSES.

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Commission merchant, etc., soliciting business or pursuing occupation without bond, penalty for	1007

Article 1000. [580] **False certificate by notary public.**—If any notary public shall make any false certificate as to the proof or acknowledgment of any instrument of writing relating to commerce or navigation to which, by law, he is authorized to certify, or shall make any false certificates as to the proof or acknowledgment of any letter of attorney, or other instrument of writing relating to commerce or navigation, to which he may by law certify, he shall be punished by confinement in the penitentiary not less than two nor more than five years.

Art. 1001. [581] **False declaration or protest by.**—If any notary public shall make any false declaration or protest respecting any matter or thing

relating to commerce or navigation, or to commercial instruments, where, by law, he is authorized to make such declaration or protest, he shall be punished as prescribed in the preceding article.

Art. 1002. [582] **Preceding articles embrace, what.**—The provisions of the two preceding articles are intended to embrace all acts of a notary public, done in his official capacity within the proper sphere of his duties, and which arise out of transactions respecting nagivation or commerce.

Art. 1003. [583] **False declaration by master of vessel.**—If any master or other officer of a vessel, with intent to defraud, shall make a false declaration or protest as to the loss or damage of any vessel or cargo, he shall be punished by confinement in the penitentiary not less than two nor more than five years.

Art. 1004. [584] **Throwing ballast into the sea near bar, etc.**—From and after the passage of this act, it shall be unlawful to throw into the sea any part of the ballast of any vessel within six miles of any bar or harbor in this state. [Act April 23, 1879, p. 153, § 2.]

Art. 1005. [585] **Penalty.**—If any ballast shall be thrown into the sea within the limits forbidden by this law, from any vessel, the master or officer in charge thereof at the time shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than two hundred dollars. [Id., § 2.]

Art. 1006. [586] **False entry in book of account.**—If any person, with intent to defraud, shall make, or cause to be made, any false entry in any book kept as a book of accounts, or shall, with like intent, alter, or cause to be altered, any item of an account kept or entered in such book, he shall be fined not less than one hundred nor more than one thousand dollars, or be punished by confinement in the penitentiary not less than two nor more than five years.

Art. 1007. **Commission merchant, etc., soliciting business or pursuing occupation without bond, penalty for.**—Any commission merchant, or the officers or agents of such, whether the merchant is a resident of this state or not, who shall advertise or solicit business as a commission merchant, or who shall pursue, in any way, the occupation of a commission merchant, without having made the bond or bonds as required by law, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than one hundred dollars and not more than one thousand dollars. [Act 1907, p. 61.]

TITLE 15.

OF OFFENSES AGAINST THE PERSON.

Chapter.
1. Assault and Assault and Battery.
2. Aggravated Assault and Battery.
3. Of Assault With Intent to Commit Some Other Offense.
4. Of Maiming, Disfiguring and Castration.
5. False Imprisonment.
6. Enticing Minors.
7. Of Kidnaping and Abduction.
8. Rape.
9. Abortion.
10. Administering Poisons and Injurious Potions.
11. Of Homicide.
12. Of Justifiable Homicide.
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Chapter 12.—Of Justifiable Homicide—continued.
    3. By Officers in the Performance of a Duty, and by Other Persons under Certain Circumstances.
    4. Defense of Person or Property.
13. Of Excusable Homicide.
14. Homicide by Negligence:
    1. In the Performance of a Lawful Act.
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15. Of Manslaughter.
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18. General Provisions Relating to Homicide.

CHAPTER ONE.

ASSAULT AND ASSAULT AND BATTERY.

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Article 1008. [587] **"Assault and battery" defined.**—The use of any unlawful violence upon the person of another with intent to injure him, whatever be the means or the degree of violence used, is an assault and battery. Any attempt to commit a battery, or any threatening gesture showing, in itself or by words accompanying it, an immediate intention, coupled with an ability to commit a battery, is an assault.

Construed. An assault is an attempt to commit a battery; and it must be within the ability of the assailant to commit a battery by violence on the person by the means used. McKay v. State, 44 T., 43.

Ability, coupled with at least an attempt or some threatening gesture, showing in itself, or by words accompanying it, an immediate intention to commit a battery, are constituent elements of assault. Carroll v. State, 27 T. Cr. R., 366, 6 S. W. R., 190; Flournoy v. State, 25 Id., 244, 7 S. W. R., 865; Lee v. State, 34 Id., 519, 31 S. W. R., 667.

Intent and act must combine with attempt to do a present injury, and mere preparations to injure at some future time will not suffice. Fondren v. State, 16 T. Cr. R., 48; Johnson v. State, 43 T., 576. And see Bell v. State, 29 T., 492; Rainbolt v. State, 34 Id., 286; Hill v. State, Id., 623; Agitone v. State, 41 Id., 501.

Without intent to injure, there can be no assault. Dickenson v. State, 24 T. Cr. R., 121, 5 S. W. R., 648; Donaldson v. State, 10 Id., 307; Ware v. State, 24 Id., 521, 7 S. W. R., 240.

Same; battery. Every battery includes an assault, and the least hostile touching of another's person is a battery. Newton v. State, 14 T., 387; Johnson v. State, 17 Id., 515.

Intent to injure and unlawful violence must concur to constitute assault and battery, but the slightest degree of violence suffices. Donaldson v. State, 10 T. Cr. R., 307; Ware v. State, 24 Id., 521, 7 S. W. R., 240.

Art. 1009. [588] **Intent presumed, and "injury" defined.**—When an injury is caused by violence to the person, the intent to injure is presumed; and it rests with the person inflicting the injury to show the accident or innocent intention. The injury intended may be either bodily pain, constraint, a sense of shame or other disagreeable emotion of the mind.

Intent. Injury being inflicted, the presumption obtains that the intent was to injure, but without injury the intent must be proved. Ware v. State, 24 T. Cr. R., 521, 7 S. W. R., 240; McConnell v. State, 25 Id., 329; 8 S. W. R., 275.

The presumption arising from the actual injury is not conclusive, and its effect is to cast the burden of proof upon the defendant to show innocent intent, and the question goes to the jury under proper charge of the court. Floyd v. State, 29 T. Cr. R., 341, 15 S. W. R., 819.

Art. 1010. [589] **May be committed on person not intended.**—An assault, or an assault and battery, may be committed, though the person actually injured thereby was not the person intended to be injured.

Construed. If, in a difficulty he brought on, accused, in an effort to strike an antagonist, accidentally strikes and injures a third party, he is guilty of assault and battery on the latter. Powell v. State, 32 T. Cr. R., 230, 22 S. W. R., 677.

However, if in the justifiable self-defense of himself, the accused unintentionally injured a bystander, he would be guilty of no offense. Powell v. State, supra; Plummer v. State, 4 T. Cr. R., 310; Clark v. State, 19 Id., 495.

Art. 1011. [590] **How it may be committed.**—An assault, or assault and battery, may be committed by the use of any part of the body of the person committing the offense, as of the hand, foot, head, or by the use of any inanimate object, as a stick, knife, or anything else capable of inflicting the slightest injury, or by the use of any animate object, as by throwing one person against another, or driving a horse or other animal against the person.

Art. 1012. [591] **Any means capable of injury sufficient.**—Any means used by the person assaulting, as by spitting in the face or otherwise, which is capable of inflicting an injury, comes within the definition of an assault, or an assault and battery, as the case may be.

Art. 1013. [592] **"Coupled with ability to commit" defined.**—By the terms, "coupled with an ability to commit," as used in article 1008 is meant—

1. That the person making the assault must be in such a position that, if not prevented, he may inflict a battery upon the person assailed.

2. That he must be within such distance of the person so assailed as to make it within his power to commit the battery by the use of the means with which he attempts it.

3. It follows that one who is, at the time of making an attempt to commit a battery, under such restraint as to deprive him of the power to act, or who is at so great a distance from the person assailed as that he can not reach his person by the use of the means with which he makes the attempt, is not guilty of an assault. But the use of any dangerous weapon, or the semblance thereof, in an angry or threatening manner, with intent to alarm another, and under circumstances calculated to effect that object, comes within the meaning of an assault.

Construed. An assault can only be committed when the act is coupled with the ability to commit a battery. For instance, the parties being too far separated for the accused to commit violence with the means used, there was no assault. Marthall v. State, 34 T. Cr. R., 22, 36 S. W. R., 1062.

Intent to alarm. Under the last clause of subdivision 3 of this article, if a dangerous weapon is used in a threatening manner, with intent to alarm, and under circumstances calculated to effect that object, the ability to commit battery is not necessary to constitute assault. Kief v. State, 10 T. Cr. R., 286; Tremble v. State, 57 Id., 439, 125 S. W. R., 41.

If the weapon as used was calculated to alarm, it is immaterial that it did not, in fact, alarm the party threatened. Coker v. State, 22 T. Cr. R., 20, 2 S. W. R., 615. And see further Johnson v. State, 19 Id., 545; Atterberry v. State, 33 Id., 88, 25 S. W. R., 125.

The use of the weapon must be unlawful, which necessarily implies aggression, and the facts must show a present unlawful purpose to alarm another. If the weapon is used in lawful self-defense, it does not constitute assault. White v. State, 29 T. Cr. R., 530, 16 S. W. R., 340.

An assault with a gun which cannot be fired comes only within the definition of a simple assault, and does not constitute an offense under article 1041, post—overruling on this point McCullough v. State, 24 T. Cr. R., 128, 5 S. W. R., 839, and Blackwell v. State, 33 Id., 278, 26 S. W. R., 397.

If there be question of the ability to commit battery, it should go to the jury under instruction. Boles v. State, 18 T. Cr. R., 422.

Art. 1014. [593] **When violence does not amount to.**—Violence used to the person does not amount to an assault or battery in the following cases:

1. In the exercise of the right of moderate restraint or correction given by law to the parent over the child, the guardian over the ward, the master over his apprentice, the teacher over the scholar.

Parent and child. This provision applies only to the actual, and not to a mere conventional, relationship of parent and child. Davis v. State, 6 T. Cr. R., 133.

A master has no right to whip his servant. Davis v. State, supra.

A step-father who stands in loco parentis to the child may exercise the right of moderate chastisement. Gorman v. State, 42 T., 221; Turner v. State, 35 T. Cr. R., 369, 33 S. W. R., 972.

The elder brother of a minor who provides the latter with board, schooling and clothes, stands in the relation of loco parentis. Snowden v. State, 12 T. Cr. R., 105.

It devolves upon the parent, guardian and master of an apprentice to show the circumstances and relations which would justify an act of violence. State v. Stephenson, 20 T., 151.

Teacher and pupil. The teacher is clothed with discretionary authority to punish refractory pupils, and is not liable for its exercise, unless in an excessive or malicious manner. Stevens v. State, 44 T. Cr. R., 67, 68 S. W. R., 281, citing Dowlin v. State, 14 Id., 61; Hutton v. State, 23 Id., 386, 5 S. W. R., 122 and Kinnard v. State, 35 Id., 276, 33 S. W. R., 234.

The teacher can employ only that degree of violence that is necessary to restrain or corerct the pupil. Dowlin v. State, 14 T. Cr. R., 61.

The punishment must be moderate and cannot be inflicted as long as the pupil appears unsubdued. Whitley v. State, 33 T. Cr. R., 172, 25 S. W. R., 1072.

2. For the preservation of order in a meeting for religious, political or other lawful purposes.

Only the force necessary to the purpose is permissible under this subdivision of the article; excessive force is punishable. Rasberry v. State, 1 T. Cr. R., 664.

3. The preservation of the peace, or to prevent the commission of offenses.

4. In preventing or interrupting an intrusion upon the lawful possession of property.

Construed. The owner of the house has the right to eject an obstreperous guest disturbing his family, after a vain request that he leave, but he can use only sufficient force to do so. Hinton v. State, 24 T., 454.

Aggravated assault cannot be justified upon the ground that the house was the property of defendant and the assault was committed in an effort to take pos-

session of it, nor can title be invoked to mitigate the offense. Terrell v. State, 37 T., 442.

Reasonable force to prevent injury to one's own property is not assault. Souther v. State, 18 T. Cr. R., 352.

One may defend against an asasult upon his property by such means as are at hand at the time. Lilly v. State, 20 T. Cr. R., 1.

Defense of one's own habitation is a right only limited in extent by the same rules which govern in the defense of the person. Richardson v. State, 7 T. Cr. R., 486.

5. In making a lawful arrest and detaining the party arrested, in obedience to the lawful order of a magistrate or court, and in overcoming resistance to such lawful order.

Construed. Legal arrest by an officer being resisted, he may resort to such force as is necessary, but no more, to overcome the resistance and accomplish the arrest. If the officer exceeds such force, he is guilty of an offense. Beaverts v. State, 4 T. Cr. R., 175, citing Skidmore v. State, 43 T., 93; Skidmore v. State, 2 T. Cr. R., 20. And see also Giroux v. State, 40 T., 97; Carter v. State, 30 T. Cr. R., 551, 17 S. W. R., 1102.

While an officer has the right to use necessary force to complete a legal arrest, he may not kill his prisoner to prevent his attempted escape. Caldwell v. State, 41 T., 86. And see Miers v. State, 34 T. Cr. R., 161, 29 S. W. R., 1074; Tiner v. State, 44 T., 128.

6. In self-defense or in defense of another against unlawful violence offered to his person or property.

The whole doctrine of self-defense rests upon reasonable necessity, actual or apparent, and apparent necessity must be as pressing and imminent as real necessity. Williford v. State, 38 T. Cr. R., 393, 42 S. W. R., 972.

The right of self-defense is limited only by what reasonably appeared to defendant to be dangerous at the time, viewed from his standpoint and no other. Aycock v. State, 55 T. Cr. R., 142, 115 S. W. R., 590; Jones v. State, 50 Id., 194, 95 S. W. R., 1044; Newcomb v. State, 49 Id., 550, 95 S. W. R., 1048; Brownlee v. State, 48 Id,. 408, 87 S. W. R., 1153; Beard v. State, 47 Id., 50, 83 S. W. R., 824.

One has the right to kill, resisting a combined attempt to rob and assault with a dangerous weapon. Pryse v. State, 54 T. Cr. R., 523, 106 S. W. R., 144.

A cool and calm determination in the mind of the slayer to kill the deceased should the latter, at the time of the meeting, attack him, and do some act manifesting an intention to kill or seriously injure him, would not destroy the slayer's right of self-defense. Pratt v. State, 50 T. Cr. R., 227, 96 S. W. R., 8.

On actual and apparent danger, see Phipps v. State, 34 T. Cr. R., 608, 31 S. W. R., 657; s. c., Id., 560, 31 S. W. R., 397; Garner v. State, Id., 356, 30 S. W. R., 782; Law v. State, 8 Id., 79, 29 S. W. R., 160; Smith v. State, 33 Id., 513, 27 S. W. R., 137; McGrath v. State, 35 Id., 413, 34 S. W. R., 127; Williford v. State, 36 Id., 414, 37 S. W. R., 761; Pinson v. State, 50 Id., 234, 96 S. W. R., 23; Crenshaw v. State, 48 Id., 77, 86 S. W. R., 335.

And further, on the right of self-defense, see West v. State, 2 T. Cr. R., 460; Weaver v. State, 19 Id., 547; Blake v. State, 3 Id., 581; May v. State, 6 Id., 191; Hobbs v. State, 16 Id., 517; Hawthorne v. State, 28 Id., 212, 12 S. W. R., 603.

If the proof shows real and actual danger, the court is not required to charge on apparent danger. Thompson v. St., 35 T. Cr. R., 352, 33 S. W. R., 871; Moore v. State, 31 Id., 234, 20 S. W. R., 563; Dyer v. State, 47 Id., 253, 83 S. W. R., 192, distinguishing Hjeronemus v. State, 9 T. Cr. R., 805, and McVey v. State, 81 S. W. R., 740.

In defense of another. One who interposes in defense of the life or person of another assumes the same responsibilities to the law that rest upon such other, and is entitled to the same justification. For full discussion of the subject, see Guffy v. State, 8 T. Cr. R., 187; Kendall v. State, Id., 569; Dyson v. State, 14 Id., 454; Reyons v. State, 33 Id., 143, 25 S. W. R., 786; Terrell v. State, 53 Id., 604, 111 S. W. R., 152.

Art. 1015. [594] **Degree of force permissible.**—In all the cases mentioned in the preceding article, where violence is permitted to effect a lawful purpose, only that degree of force must be used which is necessary to effect such purpose.

In his own necessary self-defense, one may resort to violence not excessive of the degree of force necessary to repel the aggression, and no greater. Stockton v. State, 25 T., 772; Burch v. State, 43 Id., 376; Hobbs v. State, 16 T. Cr. R., 517; Hawthorne v. State, 28 Id., 212, 12 S. W. R., 603; Miller v. State, 31 Id., 609, 21 S. W. R., 925; Patterson v. State, 49 Id., 613, 95 S. W. R., 129.

Art. 1016. [595] **Verbal provocation no justification.**—No verbal provocation justifies an assault and battery, but insulting and abusive words may be given in evidence in mitigation of the punishment affixed to the offense.

While grossly insulting words may operate to mitigate punishment, they will not justify assault and battery or reduce the offense. Timon v. State, 34 T. Cr. R., 363, 30 S. W. R., 808; White v. State, 23 Id., 154, 3 S. W. R., 714; Cartwright v. State, 14 Id., 486.

Art. 1017. [596] **"Battery," how used.**—The word "battery" is used in this Code in the same sense as "assault and battery."

Assault is included in every battery. Norton v. State, 14 T., 387; Johnson v. State, 17 Id., 515.

Art. 1018. [597] **Degrees of assault.**—An assault is either a simple assault, an aggravated assault, or an assault with intent to commit some other offense.

Aggravated assault and battery necessarily includes simple assault and battery. One cannot be heard to complain of conviction of the latter on proof sufficient to establish the former. Foster v. State, 25 T. Cr. R., 543, 8 S. W. R., 664.

Art. 1019. [598] **Punishment for simple assault.**—The punishment for a simple assault, or for assault and battery, unattended with circumstances of aggravation, shall be a fine of not less than five nor more than twenty-five dollars.

A single difficulty may embrace plural assaults, and a conviction may be had for each. Bradley v. State, 34 T., 95; Samuels v. State, 25 T. Cr. R., 537, 8 S. W. R., 656; Ashton v. State, 31 Id., 482, 21 S. W. R., 48.

Conviction for aggravated assault and battery or aggravated assault will not bar prosecution for murder, if the assaulted party subsequently dies from the injuries. Johnson v. State, 19 T. Cr. R., 453; Curtis v. State, 22 Id., 227, 3 S. W. R., 86.

Art. 1020. [599] **Abusive language an offense.**—If any person shall, in the presence or hearing of another, curse or abuse such person, or use any violently abusive language to such person, concerning him or any of his female relatives, under circumstances reasonably calculated to provoke a breach of the peace, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not less than five nor more than one hundred dollars. [Act March 8, 1887, pp. 13, 14.]

Indictment: Foreman v. State, 31 T. Cr. R., 477, 20 S. W. R., 1109; Menasco v. State, 32 Id., 582, 25 S. W. R., 422; Secker v. State, 28 Id., 479, 13 S. W. R., 774.

An information under this article must set out the "lawful employment" in which the party was engaged. Luter v. State, 32 T. Cr. R., 69, 22 S. W. R., 140.

Art. 1021. [600] **Intimidation of another.**—Any person who shall, by threatening words, or by acts of violence or intimidation, prevent or attempt to prevent another from engaging or remaining in or from performing the

duties of any lawful employment, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by fine of not less than twenty-five nor more than five hundred dollars, or by confinement not less than one nor more than six months in the county jail. [Id., p. 13.]

CHAPTER TWO.

AGGRAVATED ASSAULT AND BATTERY.

Definition ..... Article 1022
Aggravation may be of different degrees. Article 1023
Punishment ..... Article 1024

Art. 1022. [601] **Definition.**—An assault or battery becomes aggravated when committed under any of the following circumstances:

1. When committed upon an officer in the lawful discharge of the duties of his office, if it was known or declared to the offender that the person assaulted was an officer discharging an official duty.

Peace officers. Article 43 of the Code of Criminal Procedure designates the "peace officers" of this state.

"Officer," as used in this article, includes all persons legally authorized to perform public duties. Sanner v. State, 2 T. Cr. R., 458.

Construed. An assault with a deadly weapon is ipso facto aggravated assault. Hunt v. State, 6 T. Cr. R., 664.

No offense to resist arrest by one who is neither a de jure nor a de facto officer. Brown v. State, 43 T. Cr. R., 411, 66 S. W. R., 547.

Conviction for aggravated assault may be had under indictment for assault to murder, though the indictment does not charge the circumstances of aggravation. Bolding v. State, 23 T. Cr. R., 172, 4 S. W. R., 579.

The invalidity of a warrant of arrest can not be pleaded in defense if that fact was unknown to accused when he committed the assault on the officer. Graham v. State, 29 T. Cr. R., 31, 13 S. W. R., 1013.

A de facto officer, known to be such, is charged with the prevention of violations of law in his presence, and may summon the posse comitatus to aid him. A posseman acting within the scope of the officer's authority is justifiable in what he does. Weatherford v. State, 30 T. Cr. R., 530, 21 S. W. R., 251.

An officer making an arrest without authority is no more than a private person—a trespasser who may be resisted to the extreme if necessary. If he attempts to shoot to prevent escape and the escaping party shoots and kills him, the killing is justifiable. Miers v. State, 34 T. Cr. R., 161, 29 S. W. R., 1074.

But a prisoner in legal custody commits murder in killing to effect escape. Washington v. State, 1 T. Cr. R., 647; Wallace v. State, 20 Id., 360; Ex parte Sherwood, 29 Id., 334, 15 S. W. R., 312.

Indictment: Johnson v. State, 26 T., 117; Coffey v. State, 41 Id., 46; Bristow v. State, 36 T. Cr. R., 379, 37 S. W. R., 326.

Evidence: Hodges v. State, 6 T. Cr. R., 615; Lyons v. State, 9 Id., 636; Stockton v. State, 25 T., 772; Massie v. State, 27 T. Cr. R., 617, 11 S. W. R., 638; Franklin v. State, Id., 136, 11 S. W. R., 35.

2. When committed in a court of justice, or in any place of religious worship, or in any place where persons are assembled for the purpose of innocent amusement.

Indictment need not allege an intent to injure or unlawful violence, especially when the transaction as set out imports illegality. Milstead v. State, 19 T. Cr. R., 490.

Need not aver that the court was then in session, or specify the court. Milstead v. State, supra; Hunter v. State, 44 T., 94; State v. Murrah, 25 Id., 759.

Use of the word "at" for "in" referring to the school house used for religious worship, does not invalidate the information. Blackwell v. State, 30 T. Cr. R., 416, 17 S. W. R., 1061. Compare Pederson v. State, 21 Id., 485, 1 S. W. R., 521.

Evidence: Milstead v. State, 19 T. Cr. R., 490; Blackwell v. State, 30 Id., 416, 17 S. W. R., 1061.

Construed. An assault committed in a court room is ipso facto an aggravated assault. Milstead v. State, 19 T. Cr. R., 490.

It is an offense against the laws of this state to assault a justice of the peace. Milstead v. State, supra.

3. When the person committing the offense goes into the house of a private family and is there guilty of an assault and battery.

Construed. Ip so facto aggravated assault to enter the house of a private family and commit an assault and battery. State v. Cass, 41 T., 552.

Essential that a battery as well as an asasult be committed to comprehend the aggravation. Pederson v. State, 21 T. Cr. R., 485, 1 S. W. R., 521.

An assault committed by one in his own house is not, for that reason, aggravated. Hall v. State, 16 T. Cr. R., 6.

Evidence. As against intent, defendant should have been permitted to introduce evidence to show his innocent purpose in going into the house of the prosecutrix. Burns v. State, 23 T. Cr. R., 641, 5 S. W. R., 140.

4. When committed by a person of robust health or strength upon one who is aged or decrepit.

Construed. A "decrepit person" is one who has been so disabled by mental or physical weakness, however produced, as to be practically helpless in a personal conflict with a person of ordinary health and strength. Decrepitude may exist without age. Hall v. State, 16 T. Cr. R., 6.

One who, in a difficulty produced by himself, accidentally struck a decrepid person is guilty of aggravated assault. Powell v. State, 32 T. Cr. R., 230, 22 S. W. R., 667. And see Bowden v. State, 2 Id., 56.

5. When committed by an adult male upon the person of a female or child, or by an adult female upon the person of a child.

Construed. "Adult," as used in this article, means a person who has attained the full age of 21 years. Schenault v. State, 10 T. Cr. R., 410; George v. State, 11 Id., 95; Henkel v. State, 27 Id., 510, 11 S. W. R., 671.

"Child," as used in this article, means a male not over 14 years of age and a female not above 12. Bell v. State, 18 T. Cr. R., 53. The word is not synonymous with "minor." McGregor v. State, 4 Id., 599; Allen v. State, 7 Id., 298.

Indecent familiarity with, or manipulation of a woman, without her consent, by an adult male, is aggravated assault. Gill v. State, 48 T. Cr. R., 39, 85 S. W. R., 1062.

If the female is a child, such indecent familiarity is aggravated assault, with or without consent. Knight v. State, 48 T. Cr. R., 41, 85 S. W. R., 1067; Rogers v. State, 40 Id., 355, 50 S. W. R., 338; Hill v. State, 37 Id., 279, 38 S. W. R., 987.

Presumption of intent follows proof of actual injury, and imposes countervailing burden on the defendant, but such presumption does not obtain if injury be not shown. Stripling v. State, 47 T. Cr. R., 117, 80 S. W. R., 376, overruling Floyd v. State, 29 Id., 341, 16 S. W. R., 188, and following Young v. State, 31 Id., 24, 19 S. W. R., 431.

Husband and wife. The husband's authority over the wife does not extend to corporal punishment. He can resort to violence only in self-defense against her unlawful attack, or her interference with his lawful parental authority. Gorman v. State, 42 T., 221; Leonard v. State, 27 T. Cr. R., 186, 11 S. W. R., 112; Owen v. State, 7 Id., 329.

Parent and child. Quaere: In the absence of serious bodily injury, would a father be guilty of aggravated assault in the moderate chastisement of his son,

simply because he was an adult male and his son a minor under the age of 17 years, and not a child above the age of 14? Thompson v. State, 46 T. Cr. R., 412, 80 S. W. R., 623.

Assault by female. A female who acts with an adult male in assaulting a female is, upon the doctrine of principal offender, guilty of aggravated assault. Kemp v. State, 25 T. Cr. R., 589, 8 S. W. R., 804.

An adult male who induces one female to assault another is guilty of aggravated assault. Dunman v. State, 1 T. Cr. R., 593.

Indictment: Blackburn v. State, 39 T., 153; Griffin v. State, 12 T. Cr. R., 423; Collins v. State, 5 Id., 38; Lawson v. State, 13 Id., 83; Ranch v. State, 5 Id., 363; Rutherford v. State, 13 Id., 92; Bell v. State, 25 T., 574; Webb v. State, 36 T. Cr. R., 41, 35 S. W. R., 380; Kinnard v. St., 35 T. Cr. R., 276, 33 S. W. R., 234.

6. When the instrument or means used is such as inflicts disgrace upon the person assaulted, as an assault or battery with a whip or cowhide.

Construed. Not intended by the latter clause of this subdivision to limit the character of the asasult to the use of whip or cowhide. Any other means which inflicts disgrace comes within the statute. Lifting the dress of the female and against her will and fondling her person is within this subdivision. Slawson v. State, 39 T. Cr. R., 176, 45 S. W. R., 575.

And under this subdivision a male minor could commit an aggravated assault on a female by violent familiarity with her person without her consent. George v. State, 11 T. Cr. R., 95.

7. When a serious bodily injury is inflicted upon the person assaulted.

"Serious bodily injury" is such as justifies apprehension of, or is attended with danger, George v. State, 21 T. Cr. R., 315, 17 S. W. R., 351; Halsell v. State, 29 Id., 22, 18 S. W. R., 418.

An assault with a pistol used as a bludgeon would not be aggravated, unless it was shown that the pistol, as used, was a deadly weapon, or, that by its use serious bodily injury was inflicted. Pierce v. State, 21 T. Cr. R., 540, 1 S. W. R., 463; Jenkins v. State, 30 Id., 379, 17 S. W. R., 938; Stephenson v. State, 33 Id., 162, 25 S. W. R., 784; Melton v. State, 30 Id., 273, 17 S. W. R., 257.

Indictment: Green v. State, 8 T. Cr. R., 71; Bean v. State, 25 Id., 346, 8 S. W. R., 278; Miles v. State, 23 Id., 210, 5 S. W. R., 250; Timon v State, 34 Id., 363, 30 S. W. R., 808; Waechter v. State, Id., 297, 30 S. W. R., 444.

8. When committed with deadly weapons under circumstances not amounting to an intent to murder or maim.

Construed. Assault with a deadly weapon is, ipso facto, aggravated assault. Hunt v. State, 6 T. Cr. R., 664.

Indictment: See notes under the two preceding subdivisions, and Williamson v. State, 5 T. Cr. R., 485; Hunt v. State, 6 Id., 663; Brown v. State, 2 Id., 61; Mayfield v. State, 44 T., 59; Burton v. State, 3 T. C. R., 408; Lutterloh v. State, 22 T., 211.

9. When committed with premeditated design, and by the use of means calculated to inflict great bodily injury.

Construed. A man's fists may come within the meaning of this subdivision. Keley v. State, 12 T. Cr. R., 245.

There must be a combination of means and premeditation to bring the offense within this subdivision. Pinson v. State, 23 T., 579.

Indictment. Conviction under this clause may be had under indictment for assault with intent to murder or rape. Givens v. State, 6 T., 344; Gardenhire v. State, Id., 348; Johnson v. State, 17 Id., 515; Blackwell v. State, 33 T. Cr. R., 278, 26 S. W. R., 397.

Evidence: Pinson v. State, 23 T., 579; Biggs v. State, 6 T. Cr. R., 144; McGrew v. State, 19 Id., 302; Stevens v. State, 27 Id., 461, 11 S. W. R., 459; Chambers v. State, 42 T., 254; Skidmore v. State, 43 T., 93; Wilson v. State, 15 Id., 150; Wilson v. State, 34 Id., 64, 29 S. W. R., 41; Parrish v. State, 32 Id., 583, 25 S. W. R., 420.

10. When committed by any person or persons in disguise.

Art. 1023. [602] **Aggravation may be of different degrees.**—The circumstances of aggravation, mentioned in the preceding article, are of different degress, and the jury are to consider these circumstances in forming their verdict and assessing the punishment. [Act Nov. 6, 1871.]

Art. 1024. [603] **Punishment.**—The punishment for an aggravated assault or battery shall be a fine not less than twenty-five nor more than one thousand dollars, or imprisonment in the county jail not less than one month nor more than two years, or by both such fine and imprisonment.

Generally. One charged with aggravated assault cannot complain of conviction for simple assault when the proof would have justified conviction for the higher grade. Foster v. State, 25 T. Cr. R., 543.

A charge of the court which erroneously states the maximum of the fine assessable, is cause for reversal. Blackwell v. State, 30 T. Cr. R., 416, 17 S. W. R., 1061.

"Month," as used in the criminal statutes, means a solar month of thirty days, and not a calendar or lunar month, as in the civil statutes. McKinney v. State, 43 T. Cr. R., 387, 66 S. W. R., 769.

Verdict, besides assessing the penalty, must find the offense specifically. Hays v. State, 33 T. Cr. R., 546, 28 S. W. R., 203.

CHAPTER THREE.

OF ASSAULTS WITH INTENT TO COMMIT SOME OTHER OFFENSE.

	Article		Article
Assault with intent to maim	1025	With intent to rape	1029
With intent to murder	1026	With intent to rob	1030
"Bowie knife" and "dagger" defined	1027	In attempt at burglary	1031
Test on trial	1028	Ingredients of the offense	1032

Article 1025. [604] **Assault with intent to maim.**—If any person shall assault another with intent to commit the offense of maiming, disfiguring or castration, he shall be punished by fine not exceeding one thousand dollars, or by imprisonment in the penitentiary not less than two nor more than five years; and, if such assault be made by a person or persons in disguise, the penalty shall be double. [Act Nov. 6, 1871, p. 20.]

Art. 1026. [650] **With intent to murder.**—If any person shall assault another with intent to murder, he shall be punished by confinement in the penitentiary not less than two nor more than fifteen years; if the assault be made with a bowie knife or dagger, or in disguise, or by laying in wait, or by shooting into a private residence, the punishment shall be double. [Id., amended, Act 1903, p. 160.]

See murder.

Assault with intent to murder. The same particularity is not required of an indictment for an assault with intent, as is required for the actual commission of the offense. State v. Croft, 15 T., 575; Morris v. State, 13 T. Cr. R., 65.

Assault to "kill" is not an offense against the law—the charge must be assault with intent to murder. Lockwood v. State, 1 T. Cr. R., 749.

Indictment for the higher offense includes not only the inferior grades, but assaults to commit them. Stapp v. State, 3 T. Cr. R., 138.

Conviction for the lower degrees may be had under an indictment for the higher, but conviction for the lower will not bar prosecution for murder, if the assaulted

party dies subsequent to the assault, and as a result thereof. Archer v. State, 34 T., 646; James v. State, 36 Id., 645.

Necessary allegations: Hardin v. State, 26 T., 113; Wimberly v. State, 7 T. Cr. R., 329.

Unnecessary: Jennings v. State, 35 T., 503; Martin v. State, 40 Id., 19; Payne v. State, 5 T. Cr. R., 35.

An essential element of this offense is the specific intent to kill, and it must be embraced in the court's charge to the jury. Hightower v. State, 56 T. Cr. R., 248.

Assault to murder. An accused placing a child, to which his sister-in-law had just given birth, in an exposed position near his house, without any intent to kill it, but to hide his sister-in-law's shame, and his own paternity of it until it could be carried away, would not be guilty of assult to murder, but of some lesser degree of assault. Martin v. State, 122 S. W. R., 558.

Art. 1027. [606] **"Bowie-knife" and "dagger" defined.**—A "bowie-knife" or "dagger," as the terms are here and elsewhere used, means any knife intended to be worn upon the person, which is capable of inflicting death and not commonly known as a pocket-knife.

Art. 1028. [607] **Test on trial.**—Whenever it appears, upon a trial for assault with intent to murder, that the offense would have been murder had death resulted therefrom, the person committing such assault is deemed to have done the same with that intent.

Art. 1029. [608] **With intent to rape.**—If any person shall assault a woman with intent to commit the offense of rape, he shall be punished by confinement in the penitentiary for any term of years not less than two. [Amend. 1895, p. 104.]

Constituent elements: Jones v. State, 18 T. Cr. R., 485; Carroll v. State, 24 Id., 366, 6 S. W. R., 190; Sanford v. State, 12 Id., 196; Shields v. State, 32 Id., 498, 23 S. W. R., 893; Passmore v. State, 29 Id., 241, 15 S. W. R., 286; Melton v. State, 23 Id., 204, 4 S. W. R., 574.

These elements must combine: 1. Assault with specific intent to rape, to have carnal knowledge of the woman. 2. To have that carnal knowledge without her consent. 3. To have it by force. 4. To have it without her consent and by the use of such means as is sufficient to overcome such resistance as the woman should make. Shields v. State, 32 T. Cr. R., 498, 23 S. W. R., 893; Passmore v. State, 29 Id., 241, 15 S. W. R., 286.

Can be committed only by means of force or attempted force—proof of threats or fraud will not suffice. Melton v. State, 23 T. Cr. R., 204, 4 S. W. R., 286.

Nothing short of an intention to commit the entire substantive crime of rape will suffice. Walton v. State, 29 T. Cr. R., 63, 15 S. W. R., 646.

Assault with intent to rape embraces the facts which bring the offense within the definition of assault with intent to commit rape. Carroll v. State, 24 T. Cr. R. 366, 6 S. W. R., 190.

And there must be the use of unlawful violence, or some threatening gesture showing in itself, or by words accompanying it, an immediate attention to commit a battery. Jones v. State, 18 T. Cr. R., 485.

Attempt. We have no statute expressly declaring an attempt to commit rape an offense. Art. 1089, post, authorizes the jury to award the penalty provided in this article if, on a trial for rape, it is disclosed that the accused, though he failed to accomplish rape, attempted it. Warren v. State, 38 T. Cr. R., 152, 41 S. W. R., 635. And see Taylor v. State, 44 Id., 153, 69 S. W. R., 149.

Art. 1030. [609] **With intent to rob.**—If any person shall assault another with the intent to commit the offense of robbery, he shall be punished by confinement in the penitentiary not less than two nor more than ten years. [Act. Feb. 12, 1858, p. 495.]

Robbery defined. See Arts. 1327 and 1328, post.

Indictment: Morris v. State, 13 T. Cr. R., 65; Crumes v. State, 28 Id., 616, 13 S. W. R., 868; Runnels v. State, 34 Id., 431, 30 S. W. R., 1065; Clark v. State, 41 Id., 641, 56 S. W. R., 623.

Art. 1031. [610] **In attempt at burglary.**—If any person, in attempting to commit burglary, shall assault another, he shall be punished by confinement in the penitentiary not less than two nor more than five years. [Id., p. 171.]

Art. 1032. [611] **Ingredients of the offense.**—An assault with intent to commit any other offense is constituted by the existence of the facts which bring the offense within the definition of an assault, coupled with an intention to commit such other offense, as of maiming, murder, rape or robbery.

Indictment. It is only necessary to allege such matters as are necessary to bring the offense within the definition of an assault coupled with an intent to commit such other intent, naming it, without setting out the means used, but giving the constituents of the offense intended to be committed. Morris v. State, 13 T. Cr. R., 65; Hewitt v. State, 15 Id., 80.

CHAPTER FOUR.

OF MAIMING, DISFIGURING AND CASTRATION.

	Article		Article
"Maiming" defined	1033	Punishment	1036
Punishment	1034	"Castration" defined	1037
"Disfiguring" defined	1035	Punishment	1038

Article 1033. [612] **"Maiming" defined.**—To maim is to wilfully and maliciously cut off or otherwise deprive a person of the hand, arm, finger, toe, foot, leg, nose or ear; to put out an eye or in any way to deprive a person of any other member of his body.

Wilfulness and malice must combine to constitute this offense. Bowers v. State, 24 T. Cr. R., 542, 7 S. W. R., 247.

Parts of the body not named in the statute must be proved. Slattery v. State, 41 T., 619.

Indictment for this offense will not sustain a conviction for assault to murder. Davis v. State, 22 T. Cr. R., 45, 2 S. W. R., 630.

Art. 1034. [613] **Punishment.**—If any person shall commit the offense of maiming, he shall be punished by confinement in the penitentiary not less than two nor more than ten years. [Act Feb. 12, 1858, p. 171.]

Art. 1035. [614] **"Disfiguring" defined.**—To disfigure is to wilfully and maliciously place any mark, by means of a knife or other instrument, upon the face or other part of the person.

Art. 1036. [615] **Punishment**—If any person shall disfigure another, he shall be punished by confinement in the penitentiary not less than two nor more than five years, or by fine not exceeding two thousand dollars.

Art. 1037. [616] **"Castration" defined.**—To castrate is to wilfully and maliciously deprive any person of either or both, or any part of either or both of the testicles.

Art. 1038. [617] **Punishment.**—If any person shall commit the offense of castration, he shall be punished by confinement in the penitentiary not less than five nor more than fifteen years.

CHAPTER FIVE.

FALSE IMPRISONMENT.

	Article
"False imprisonment" defined	1039
Assault of violence, same as in assault and battery	1040
What impediment necessary	1041
Threat, effect of	1042
What detention is not	1043
Punishment	1044
Detention after discharge on habeas corpus	1045
Refusal to allow consultation with counsel	1046

Article 1039. [618] **"False imprisonment" defined.**—False imprisonment is the wilfull detention of another against his consent, and where it is not expressly authorized by law, whether such detention be effected by an assault, by actual violence to the person, by threats or by any other means which restrains the party so detained from removing from one place to another as he may see proper.

Art. 1040. [619] **Assault of violence same as in assault and battery.**—The assault of violence may be such as is spoken of in defining the offense of assault and battery.

Art. 1041. [620] **What impediment necessary.**—The impediment must be such as is in its nature calculated to detain the person and from which he can not by ordinary means relieve himself. [P. C., 514.]

Art. 1042. [621] **Threat, effect of.**—The threat must be such as is calculated to operate upon the person threatened and inspire a just fear of some injury to his person, reputation or property, or to the person, reputation or property of another; and the jury are to consider the age, sex, condition, disposition or health of the person threatened in determining whether the threat was sufficient to intimidate and prevent such person from moving beyond the bounds in which he was detained.

Art. 1043. [622] **What detention is not.**—It is not an offense to detain a person in the cases and for the object mentioned in article 1014 as justifying the use of force, but, whenever it is assumed as a justification that such circumstances existed, it must be shown also that the detention was necessary to effect any of the objects set forth in said article.

Construed. It is imprisonment within this article if the party is prevented from going in any direction he wishes or from moving from place to place. Woods v. State, 3 T. Cr. R., 204; Harkins v. State, 6 Id., 452.

If threats are the means alleged, it is not necessary to prove express verbal threats; they may consist of acts, gestures and the like. Maner v. State, 8 T. Cr. R., 362; Staples v. State, 14 Id., 136.

The offense consists in the wilful and unauthorized detention of another against his consent and unauthorized by law, whether that detention be by actual force or restraint by threats. Herring v. State, 3 T. Cr. R., 108.

A peace officer's unavoidable delay in taking bail for a prisoner is not false imprisonment. Cargill v. State, 8 T. Cr. R., 451.

A legally summoned posse is protected by the warrant in the hands of the officer. But a volunteer acts at his peril. Kirbie v. State, 5 T. Cr. R., 60.

Evidence: See foregoing authorities and Staples v. State, 14 T. Cr. R., 136; Beville v. State, 16 Id., 70; Herring v. State, 3 Id., 108; Walker v. State, 45 Id., 443, 8 S. W. R., 647; Smythe v. State, 51 Id., 408, 103 S. W. R., 899.

Art. 1044. [623] **Punishment.**—Any person who shall be guilty of the offense of false imprisonment shall be fined not exceeding five hundred dollars, and may be confined in the county jail not exceeding one year.

Art. 1045. [624] **Detention after discharge on habeas corpus.**—If any officer or other person shall hold or detain in any manner any one who has been ordered to be discharged by any court or judge, upon the hearing of a

writ of habeas corpus, he shall suffer double the punishment prescribed in the preceding article.

Art. 1046. [625] **Refusal to allow consultation with counsel.**—If any officer or other person having the custody of a prisoner in this state shall wilfully prevent such prisoner from consulting or communicating with counsel, or from obtaining the advice or services of counsel in the protection or presecution of his legal rights, he shall be punished by imprisonment in the county jail not less than sixty days nor more than six months, and by fine not exceeding one thousand dollars. [Act Nov. 15, 1864, p. 15.]

CHAPTER SIX.

ENTICING MINORS.

	Article
Enticing minor from legal custody	1047
Sell, etc., pistol, dirk, etc., to minor	1048
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Article 1047. [625a] **Enticing minors from legal custody.**—Any person in this state who shall knowingly entice or decoy any minor in the state away from the custody of his parent or guardian, or person standing in the stead of such parent or guardian, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by fine not less than twenty-five nor more than two hundred dollars. In all cases where charitable and benevolent institutions have established homes for dependent orphans of their deceased members, and the person legally entitled to the guardianship of such orphans surrenders them to such homes for support, maintenance and education, such institutions, under their agencies, rules and regulations, shall have and exercise over such orphans all the rights of natural guardians, as standing in the place of their parents. [Acts of 1893, p. 114.]

Art. 1048. **Sell, etc., pistol, dirk, etc., to minor.**—If any person in this state shall knowingly sell, give or barter, or cause to be sold, given or bartered, to any minor, any pistol, dirk, dagger, slung-shot, sword-cane, spear or knuckles made of any metal or hard substance, bowie knife or any other knife manufactured or sold for the purpose of offense or defense, without the written consent of the parent or guardian of such minor, or of some one standing in lieu thereof, he shall be punished by fine of not less than twenty-five dollars nor more than two hundred dollars, or by imprisonment in the county jail not less than ten nor more than thirty days, or by both such fine and imprisonment. And during the time of such imprisonment such offender may be put to work upon any public work in the county in which such offense is committed. [Act 1897, p. 221.]

Art. 1049. **Sell, etc., cigarette or tobacco to minor.**—Any person who shall sell, give or barter, or cause to be sold, given or bartered, to any person under the age of sixteen years, or knowingly sell to any other person for delivering to such minor, without the written consent of the parent or guardian of such minor, any cigarette or tobacco in any of its forms, shall be fined not less than ten nor more than one hundred dollars. [Act 1899, p. 237.]

Art. 1050. **Employing child under twelve years forbidden, where.**—Any person, or any agent or employe of any person, firm or corporation, who shall hereafter employ any child under the age of twelve years to labor in or about any mill, factory, manufacturing establishment, or other establishment using machinery, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than fifty dollars and not more than two hundred dollars; and each day the provisions of this article are violated shall constitute a separate offense. [Act 1903, p. 40.]

Art. 1051. **Employing child between twelve and fourteen forbidden, where.** Any person, or any agent or employe of any person, firm or corporation, who shall hereafter employ any child between the ages of twelve and fourteen years (who cannot read and write simple sentences in the English language) to labor in or about any mill, factory, manufacturing establishment, or other establishment using machinery, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than fifty dollars nor more than two hundred dollars; and each day the provisions of this article are violated shall constitute a separate offense; provided, that such child who has a widowed mother, or parent incapacitated to support it, may be employed between the hours of 6 a. m. and 6 p. m.; provided, further, that such parent is incapacitated from earning a living, and has no means of support other than the labor of such child; and in no event shall any child between the ages of twelve and fourteen years be permitted to work outside the hours between 6 a. m. and 6 p. m. [Id., p. 40.]

Art. 1052. **Employing child under sixteen forbidden, where.**—Any person, or agent or employe of any person, firm or corporation, owning, operating or assisting in operating, any mine, distillery or brewery, who shall employ any child under the age of sixteen years to labor in or about any mine, distillery or brewery, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than fifty nor more than two hundred dollars. [Id., p. 40.]

Art. 1053. **Permitting minor to remain in pool room, etc.**—If any owner, lessee or manager of any billiard hall, pool hall, ten pin alley or bowling alley, or any employe therein, whether intoxicating liquors are sold in such place or not, shall permit any person under the age of twenty-one years to enter such place of business and remain therein for any length of time, without the consent of the parent of such minor, or some one standing in their place and stead, or shall permit any person under twenty-one years of age to play billiards or pool, or roll on any ten pin or bowling alley in such place of business without the consent of the parent of such minor, or some one standing in their place and stead, shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not less than twenty dollars nor more than one hundred dollars. [Act 1905, p. 105.]

Art. 1054. **Selling or giving intoxicating liquor to minor.**—Any person who shall knowingly sell or give or deliver, or cause to be sold, given or delivered, or be in any way interested in the sale, gift or delivery of any spirituous, vinous, malt or intoxicating liquors to any person under the age of twenty-one years without the written consent of the parent or guardian of such person who is under the age of twenty-one years, shall be guilty of a misdemeanor, and shall be fined therefor not less than twenty-five nor more than one hundred dollars; and any person who is agent for or employed by any express company or other common carrier, or who, as agent for or employe of any other person, firm or corporation, delivers or causes to be delivered any spirituous, vinous or intoxicating liquors to any other person under the age of twenty-one years, whether consigned to such person or some other person, without the written consent of the parent or guardian of such minor or person under the age of twenty-one years, shall be guilty of a misdemeanor,

and shall be punished, upon conviction therefor, by a fine of not less than twenty-five nor more than one hundred dollars. [Act 1909, p. 119.]

Art. 1055. **Encouraging, contributing, etc., to the delinquency or dependency of child.**—In all cases where any child shall be a "delinquent child" or a "neglected or dependent child," as defined in the statutes of this state, the parent or parents, legal guardian or persons having the custody of such child, or any person responsible for, or who, by any act, encourages, causes or contributes to the delinquency or dependency of such child, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not to exceed one thousand dollars, or by imprisonment in the county jail for any period not exceeding one year, or by both such fine and imprisonment. The court may impose conditions on any person found guilty under this law, and, so long as such person shall comply therewith to the satisfaction of the court, the judgment imposed may be suspended. [Act 1907, p. 209.]

CHAPTER SEVEN.

OF KIDNAPING AND ABDUCTION.

	Article		Article
"Kidnaping" defined	1056	Of female under fourteen	1060
Punishment	1057	Offense complete, when	1061
If person kidnaped be actually removed	1058	Punishment	1062
"Abduction" defined	1059		

Article 1056. [626] **"Kidnaping" defined.**—When any person is falsely imprisoned for the purpose of being removed from the state, or if a minor under the age of seventeen years, for the purpose of being concealed or taken from the lawful possession of a parent or guardian, such false imprisonment is "kidnaping." If the person kidnaped be under the age of fifteen years, it is not necessary that there should be force in order to constitute the offense of kidnaping. [Act Feb. 12, 1858, pp. 171-2.]

Art. 1057. [627] **Punishment.**—The punishment for kidnaping shall be imprisonment in the penitentiary not less than two nor more than five years, or fine not exceeding two thousand dollars.

Construed. This is but another species of false imprisonment, and, as in false imprisonment, to constitute the offense, there must be a wilful detention of a person against his will and without authority of law. Castillo v. State, 29 T. Cr. R., 127, 14 S. W. R., 1011.

If the kidnaped person be a female under the age of fifteen, the question of force is eliminated, but there must be want of consent on her part. Castillo v. State, supra.

A person charged with crime in this state is amenable to the laws of this state, though he was kidnaped in another state, and brought thence against his will and without lawful authority. Brooking v. State, 26 T. Cr. R., 121, 9 S. W. R., 735.

A female over the age of fifteen consenting to go with her alleged captor, the latter is guilty of no offense. Mason v. State, 29 T. Cr. R., 24, 14 S. W. R., 71. And see Cooper v. State, 48 Id., 608, 89 S. W. R., 816.

Art. 1058. [628] **If person kidnaped be actually removed.**—If the person so falsely imprisoned be actually removed out of the state, the punishment shall be imprisonment in the penitentiary not less than two nor more than ten years.

Art. 1059. [629] **"Abduction" defined.**—"Abduction" is the false imprisonment of a woman with intent to force her into a marriage or for the purpose of prostitution.

Art. 1060. [630] **Of female under fourteen.**—If a female under the age of fourteen be taken for the purpose of marriage or prostitution from her parent, guardian or other person having the legal charge of her, it is abduction, whether she consent or not, and although a marriage afterward take place between the parties.

If the female is under the age of fourteen years, force and non-consent are not essential to constitute abduction. Castillo v. State, 29 T. Cr. R., 127, 14 S. W. R., 1011.

A female under the age of fourteen cannot be an accomplice to abduction. Mason v. State, 29 T. Cr. R., 24, 14 S. W. R., 71.

Art. 1061. [631] **Offense complete, when.**—The offense of abduction is complete if the female be detained as long as twelve hours, though she may afterwards be relieved from such detention without marriage or prostitution.

Art. 1062. [632] **Punishment.**—Any person who shall be guilty of abduction shall be punished by fine not exceeding two thousand dollars. If, by reason of such abduction, a woman be forced into marriage, the punishment shall be confinement in the penitentiary not less than two nor more than five years; and, if by reason of such abduction, a woman be prostituted, the punishment shall be confinement in the penitentiary not less than three nor more than twenty years. [Act Feb. 12, 1858, p. 172.]

CHAPTER EIGHT.

RAPE.

	Article		Article
"Rape" defined	1063	Penetration only need be proved	1067
Definition of "force"	1064	Defendant must be over fourteen	1068
What threat sufficient	1065	Punishment	1069
"Fraud" defined	1066	Conviction may be had for attempt	1070

Article 1063. [633] **"Rape" defined.**—Rape is the carnal knowledge of a woman without her consent, obtained by force, threats or fraud, or the carnal knowledge of a woman other than the wife of the person having such carnal knowledge with or without consent, and with or without use of force, threats or fraud, such woman being so mentally diseased at the time as to have no will to oppose the act of carnal knowledge, the person having carnal knowledge of her knowing her to be so mentally diseased; or the carnal knowledge of a female under the age of fifteen years, other than the wife of the person, with or without her consent, and with or without the use or force, threats or fraud. [Amended by Act April 13, 1891, p. 96; amend. 1895, p. 79.]

"Ravish" implies force on the part of the accused and the want of the female's consent, and is indispensable in charging this offense. Davis v. State, 42 T., 226; Gibson v. State, 17 T. Cr. R., 574; Alexander v. State, 127 S. W. R., 189.

If force is relied upon, the charge must be that the accused obtained carnal intercourse by force and that he ravished the female. Elschlep v. State, 11 T. Cr. R., 301.

Indictment may charge either force, threats or fraud, or conjunctively that the rape was committed by all these means. Sharp v. State, 15 T. Cr. R., 171; Lawson v. State, 17 Id., 292; Cooper v. State, 22 Id., 419, 3 S. W. R., 334; Nicholas v. State, 23 Id., 317, 5 S. W. R., 539.

Indictment charging force, conviction cannot be had on proof of consent though the female was under fifteen. Jenkins v. State, 34 Id., 201, 29 S. W. R., 1078; Banton v. State, 53 Id., 251, 109 S. W. R., 159.

Further as to indictment: Thompson v. State, 33 T. Cr. R., 472, 26 S. W. R., 987; Owens v. State, 35 Id., 345, 33 S. W. R., 875.

Mental incapacity: Carruth v. State, 25 S. W. R., 778; Lopez v. State, 30 T. Cr. R., 487, 17 S. W. R., 1058; Ellis v. State, 33 Id., 86, 24 S. W. R., 894.

Rape of girl under fifteen. Indictment. Gutierrez v. State, 44 T., 587; Moseley v. State, 9 T. Cr. R., 137; Mayo v. State, 7 Id., 342; Gibson v. State, 17 Id., 574; Rogers v. State, 30 Id., 510, 17 S. W. R., 1077; Rice v. State, 37 Id., 36, 38 S. W. R., 801.

Each separate carnal act with a female under fifteen is rape, and continuous acts of copulation is not adultery, nor the female an accomplice to adultery. Donley v. State, 44 T. Cr. R., 428, 71 S. W. R., 958.

Under an indictment charging the rape of a female so mentally diseased as to have no will to oppose, the female is not a competent witness to prove the corpus delicti. Lee v. State, 43 T. Cr. R., 285, 64 S. W. R., 1047. As to non-expert witness: Id.

In prosecution for rape, the state must elect upon which of several instances of intercourse it will rely. Bader v. State, 57 T. Cr. R., 293, 122 S. W. R., 555.

Art. 1064. [634] **Definition of "force."**—The definition of "force," as applicable to assault and battery, applies also to the crime of rape, and it must have been such as might reasonably be supposed sufficient to overcome resistance, taking into consideration the relative strength of the parties, and other circumstances of the case.

The force contemplated is such as might be necessarily supposed sufficient to overcome resistance, taking into consideration the relative strength of the parties and other circumstances of the case. Sharp v. State, 15 T. Cr. R., 171; Passmore v. State, 29 Id., 241, 15 S. W. R., 286; Brown v. State, 27 Id., 330, 11 S. W. R., 412; Walton v. State, 29 Id., 163, 15 S. W. R., 646, and authorities cited.

There must be something more shown than the mere want of the female's consent; there must have been resistance upon her part, dependent in degree upon the circumstances of her surroundings and the relative strength of herself and the accused. Jenkins v. State, 1 T. Cr. R., 342.

A feigned resistance will not amount to a want of consent. Anschicks v. State, 6 T. Cr. R., 525.

The offense is not committed unless the proof shows beyond a reasonable doubt that defendant intended carnal intercourse with the female at all events and notwithstanding resistance. Porter v. State, 33 T. Cr. R., 385, 26 S. W. R., 626.

The use of chloroform is fraud and not force. Melton v. State, 23 T. Cr. R., 204, 4 S. W. R., 574.

This article has no application when the prosecution is for rape of a female under the age of consent. Rodgers v. State, 30 T. Cr. R., 510, 17 S. W. R., 1077.

In default of resistance by the female, consent is presumed. Mooney v. State, 29 T. Cr. R., 257, 15 S. W. R., 724.

Consent vel non being the issue, charge of the court should have embraced the force and resistance essential to be shown. Tyler v. State, 46 T. Cr. R., 10, 79 S. W. R., 558.

Art. 1065. [635.] **What "threat" sufficient.**—The "threat" must be such as might reasonably create a just fear of death, or great bodily harm, in view of the relative condition of the parties as to health, strength and all other circumstances of the case.

Threats. This general rule is laid down: "To determine the sufficiency of the force or the effect of the threat, when both are in proof, it is proper to consider the cogency which the threats may have contributed to the force, and the intensifying

influence which the force may have imparted to the threat." Sharp v. State, 15 T. Cr. R., 171.

Art. 1066. [636] **"Fraud" defined.**—The "fraud" must consist in the use of some stratagem by which the woman is induced to believe the offender is her husband, or in administering, without her knowledge or consent, some substance producing unnatural sexual desire or such stupor as prevents or weakens resistance, and committing the offense while she is under the influence of such substance. It is a presumption of law, which can not be rebutted by testimony, that no consent was given under the circumstances mentioned in this article.

Construed. The use of strategem is denounced by the statute for the protection of married women only. The fraud must be a strategem by which the female is induced to believe that the offender is her husband. King v. State, 22 T. Cr. R., 650, 3 S. W. R., 342.

"Strategem" is an artifice or trick, and to constitute the fraud contemplated in this article, the accused must have intended it to, and it must have induced the woman to believe the offender to be her husband. Mooney v. State, 29 T. Cr. R., 257, 15 S. W. R., 724; Franklin v. State, 34 Id., 203, 29 S. W. R., 1088; Huffman v. State, 46 Id., 428, 80 S. W. R., 625.

Rape of a married woman sleeping in bed by the side of her husband, who makes no resistance in the belief that the ravisher is her husband, is rape by force and not fraud. Payne v. State, 38 T. Cr. R., 494, 43 S. W. R., 515.

A sham marriage, whereby a single woman is induced to believe the pretended spouse is her husband, and as such cohabit with him, is a strategem under this article. Lee v. State, 44 T. Cr. R., 354, 72 S. W. R., 1005.

Art. 1067. [637] **Penetration only need be proved.**—Penetration only is necessary to be proved upon a trial for rape.

"Penetration" is a limitation upon, and a qualification of, "carnal knowledge;" and by "penetration only" this article means merely to dispense with injection or emission in the commission of rape. Lujano v. State, 32 T. Cr. R., 414, 24 S. W. R., 97.

Penetration is an element of rape and must be proved beyond a reasonable doubt, though such penetration need not be of any particular depth. Johnson v. State, 27 T. Cr. R., 163, 11 S. W. R., 106; Davis v. State, 43 T., 189; Rodgers v. State, 30 T. Cr. R., 510, 17 S. W. R., 1077.

Like other facts, penetration may be proved by circumstantial evidence. Wood v. State, 12 T. Cr. R., 174.

Art. 1068. [638] **Defendant must be over fourteen.**—No person under the age of fourteen, at the time the offense is charged to have been committed, can be convicted of rape, or assault with intent to commit the offense.

Indictment need not charge that defendant was under fourteen years of age at the time the offense was committed. If true, it was matter of defense. Davis v. State., 42 T., 226.

And see Wilcox v. State, 33 T. Cr. R., 392, 26 S. W. R., 989.

Art. 1069. [639] **Punishment.**—Whoever shall be guilty of rape shall be punished by death or by confinement in the penitentiary for life, or for any term of years not less than five, in the discretion of the jury. [Act. Nov. 10, 1886, p. 161.]

Non-age. Defense relying upon distinct, substantive matter of exemption or immunity, such as non-age, has the burden of proof to establish it. Ake v. State, 6 T. Cr. R., 398; Wilcox v. State, 33 Id., 392, 26 S. W. R., 989.

Art. 1070. [640] **Conviction may be had for "attempt."**—If it appear, on the trial of an indictment for rape, that the offense, though not com-

mitted, was attempted by the use of any of the means spoken of in articles 1064, 1065 and 1066, but not such as to bring the offense within the definition of an assault with intent to commit rape, the jury may find the defendant guilty of an attempt to commit the offense, and affix the punishment prescribed in article 1029.

Construed. Attempt to rape is a distinct offense from rape or assault to rape, and may be prosecuted and punished as such. Melton v. State, 24 T. Cr. R., 284, 6 S. W. R., 39, citing Williams v. State, 1 Id., 90; Burney v. State, 21 Id., 565, 1 S. W. R., 458; Moore v. State, 20 Id., 275; Melton v. State, 23 Id., 204, 4 S. W. R., 574; Taylor v. State, 22 Id., 529, 3 S. W. R., 753. And see Reagan v. State, 28 T. Cr. R., 227, 12 S. W. R., 601; Franklin v. State, 34 Id., 203, 26 S. W. R., 989.

An attempt, in legal parlance, means an endeavor to accomplish a crime carried beyond mere preparation, but falling short of the ultimate design in any part of it. Lovett v. State, 19 T., 174; Marthall v. State, 34 T. Cr. R., 22, 36 S. W. R., 1062.

Limitation. Prosecution for rape is barred unless indictment is presented within one year. Code Crim. Proc., Art. 226; Anschicks v. State, 6 T. Cr. R., 524.

No limitation is fixed by the Code with regard to attempt or assault to rape, and those offenses come within the provisions of Art. 228 of the Code of Criminal Procedure, and are not barred for three years. Moore v. State, 20 T. Cr. R., 275.

CHAPTER NINE.

OF ABORTION.

	Article		Article
Definition and punishment	1071	Destroying unborn child	1075
Furnishing the means—an accomplice	1072	Not punishable when procured by medical advice	1076
Attempt at	1073		
In case of death, murder	1074		

Article 1071. [641] **Definition and punishment.**—If any person shall designedly administer to a pregnant woman, or knowingly procure to be administered, with her consent, any drug or medicine, or shall use toward her any violence, or means whatever, externally or internally applied, and shall thereby procure an abortion, he shall be punished by confinement in the penitentiary not less than two nor more than five years; if it be done without her consent, the punishment shall be doubled.

By the term "abortion" is meant that the life of the fetus or embryo shall be destroyed in the woman's womb, or that a premature birth thereof be caused. [Amended, Act 1907, p. 55.]

Construed. A completed abortion should be prosecuted under this article only. If the attempt to commit abortion fails, accused should be prosecuted under both this and Art. 1092. Willingham v. State, 33 T. Cr. R., 98, 25 S. W. R., 424. And see Jackson v. State, 115 S. W. R., 266.

Though the injured female consents, she is not an accomplice to the act of abortion or attempt thereat. Willingham v. State, supra, citing Watson v. State, 9 Id., 237. And see Miller v. State, 37 Id., 575, 40 S. W. R., 313; Hunter v. State, 38 Id., 61, 41 S. W. R., 602.

The female subject of abortion cannot be a principal. The party prescribing and furnishing the means would be principal under this article. The party supplying the means on prescription with the knowledge that it was intended for abortion, would be accomplice under Art. 1091. Moore v. State, 37 T. Cr. R., 552, 40 S. W. R., 287; Cave v. State, 33 Id., 335, 26 S. W. R., 503.

Abortion upon and with consent of the wife by the husband is not such "personal violence" as will qualify the former as a witness against the latter. Miller v. State, 37 T. Cr. R., 575, 40 S. W. R., 313.

Indictment need not allege the name of the drug or medicine, or more than that it was a drug or medicine calculated to produce abortion. Watson v. State, 9 T. Cr. R., 237; Cave v. State, 33 Id., 335, 26 S. W. R., 503.

As to election between counts, see Moore v. State, 37 T. Cr. R., 552, 40 S. W. R., 287.

Evidence. The wife is a competent witness against her husband for abortion by violent assault. Navarro v. State, 24 T. Cr. R., 378, 6 S. W. R., 542.

Art. 1072. [642] **Furnishing the means; an accomplice.**—Any person who furnishes the means for procuring an abortion, knowing the purpose intended, is guilty as an accomplice.

See Willingham v. State, 33 T. Cr. R., 98, 25 S. W. R., 424; Moore v. State, 37 Id., 552, 40 S. W. R., 287.

Art. 1073. [643.] **Attempt at.**—If the means used shall fail to produce an abortion, the offender is nevertheless guilty of an attempt to produce abortion; provided, it be shown that such means were calculated to produce that result, and shall be punished by fine not less than one hundred nor more than one thousand dollars. [Act Feb. 12, 1858, p. 172.]

The injured female, though she consented to the attempt, is not an accomplice. Hunter v. State, 38 T. Cr. R., 61, 41 S. W. R., 602.

For construction of this article, see Fretwell v. State, 43 T. Cr. R., 501, 67 S. W. R., 1021.

Evidence held to show that the father of the injured female was an accomplice. Watson v. State, 9 T. Cr. R., 237.

Art. 1074. [644] **In case of death, murder.**—If the death of the mother is occasioned by an abortion so produced, or by an attempt to effect the same, it is murder.

Homicide committed in procuring or attempting abortion is not per se murder. The express intent to kill must be shown in order to make murder of the first degree. Ex parte Fatheree, 34 T. Cr. R., 594, 31 S. W. R., 403.

Evidence. The dying declarations of the injured female to her mother, the wife of defendant, that her father, defendant, had caused her death, could be proved by the mother, who, subsequent to the declaration, had been divorced from defendant. Ex parte Fatheree, supra.

The dying declaration was not admissible to prove that defendant was the father of his dying daughter's child, but if, at the time he was inflicting the injury which caused deceased's death, he stated he was the father of her child, that fact could be proved. Ex parte Fatheree, supra.

Art. 1075. [645] **Destroying unborn child.**—If any person shall, during parturition of the mother, destroy the vitality or life in a child, in a state of being born, and before actual birth, which child would otherwise have been born alive, he shall be punished by confinement in the penitentiary for life, or any period not less than five years, at the discretion of the jury.

Indictment under this article must set out the means used in the commission of the offense. State v. Rupe, 41 T., 33.

It is not required that the indictment under this article shall negative the exceptions named in Art. 1095; State v. Rupe, supra.

Art. 1076. [646] **Not punishable when procured by medical advice.**—Nothing contained in this chapter shall be deemed to apply to the case of an abortion procured or attempted to be procured by medical advice for the purpose of saving the life of the mother.

CHAPTER TEN.

ADMINISTERING POISONOUS AND INJURIOUS POTIONS.

	Article		Article
Poisoning food, well, etc.	1077	Death within a year, murder	1079
Causing another to inhale injurious substances	1078	Malpractice punishable	1080

Article 1077. [647] **Poisoning food, well, etc.**—If any person shall mingle or cause to be mingled any other noxious potion or substance with any drink, food or medicine, with intent to kill or injure any other person, or shall wilfully poison or cause to be poisoned any spring, well, cistern or reservoir of water with such intent, he shall be punished by imprisonment in the penitentiary not less than two nor more than ten years.

Construed. This article defines an offense. Runnels v. State, 45 T. Cr. R., 446, 77 S. W. R., 458.

It is murder if death ensues from the commission of this offense, but it does not follow that, death not ensuing, the offense is assault with intent to murder or an assault of any kind. Garnett v. State, 1 T. Cr. R., 605.

This article defines two distinct offenses. Indictment for the first need not, as it must in the second, charge that the act was "wilfully" done. Davis v. State, 4 T. Cr. R., 455.

Indictment being drawn under the provisions of this and Art. 1098, post, which require that the defendant "mingle" or casue to be mingled the potion, with intent, etc., charge that he gave the deceased and caused him to swallow the drink in which the potion was mingled, was error. Brooks v. State, 42 T. Cr. R., 347, 60 S. W. R., 53.

Evidence. Ellington v. State, 48 T. Cr. R., 160, 87 S. W. R., 153.

Art. 1078. [648] **Causing another to inhale injurious substances.**—If any person shall, with intent to injure, cause another person to inhale or swallow any substance injurious to health or any of the functions of the body, or, if such substance was administered with intent to kill, he shall be punished by confinement in the penitentiary not less than two nor more than five years. [Act Feb. 12, 1858, p. 172.]

Art. 1079. [649] **Death within a year, murder.**—If by reason of the commission of the offenses named in the two preceding articles, the death of a person be caused within one year, the offender shall be deemed guilty of murder and be punished accordingly.

Notes to Art. 1077, ante.

Art. 1080. [650] **Malpractice punishable.**—If any person engaged in the practice of medicine and claiming to be a physician, shall, by the use of any noxious substance, administered in a grossly ignorant manner, produce death, or other great bodily injury, he shall be punished for the offense as any other person would be who had given such substance, knowing it to be injurious and intending to kill or injure.

Construed. This and the preceding article combine a more specific definition of "homicide" than that inherited from the common law. Under our system, the destruction of life must not only be complete, but it must be complete by the act, agency, procurement or omission of the defendant. Morgan v. State, 16 T. Cr. R., 593.

CHAPTER ELEVEN.

OF HOMICIDE.

	Article		Article
Definition	1081	Body of deceased must be found	1084
Destruction of life must be complete	1082	Persons killed must be in existence	1085
Gross negligence, etc., refers to acts of others	1083	Produced by words, etc.	1086

Article 1081. [651] **Definition.**—"Homicide" is the destruction of the life of one human being by the act, agency, procurement or culpable omission of another.

Construed. For a construction of the first clause of the second sentence of this article, and for an exposition of the principle, see the deciding opinion of Willson, J., Morgan v. State, 16 T. Cr. R., 593, and note that on the question, Williams v. State, 2 Id., 271, and Powell v. State, 13 Id., 244, appear to be overruled.

And as appertaining to the same article, see Hart v. State, 15 T. Cr. R., 202; Treadwell v. State, 16 Id., 560.

When the evidence suggests no supervening cause of death, this article does not apply. Smith v. State, 33 T. Cr. R., 513, 27 S. W. R., 137; Wood v. State, 31 Id., 571, 21 S. W. R., 602.

Art. 1082. [652] **Destruction of life must be complete.**—The destruction of life must be complete by such act, agency, procurement or omission; but, although the injury which caused death might not under other circumstances have proved fatal, yet, if such injury be the cause of death, without its appearing that there has been any gross neglect or manifestly improper treatment of the person injured, it is homicide.

Art. 1083. [653] **Gross negligence, etc., refers to acts of others.**—The foregoing article, in what is said of gross neglect or improper treatment, has reference to the acts of some person other than him who inflicts the first injury, as of the physician, nurse or other attendant. If the person inflicting the injury, which makes it necessary to call aid in preserving the life of the person injured, shall wilfully fail or neglect to call such aid, he shall be deemed equally guilty, as if the injury were one which would inevitably lead to death.

Construed. For an exhaustive construction of this and the preceding article, 1101, see Morgan, 16 T. Cr. R., 593, holding that said articles change the common law rule that the neglect or improper treatment must produce death in order to relieve the person who inflicted the original injury of the homicide, and that "gross neglect and improper treatment," properly construed, mean not only such as produce the destruction of human life, but as well such as allow, permit or suffer the destruction of life. See the deciding opinion of Willson, J., in extenso, and note that it virtually overrules on this point Williams v. State, 2 T. Cr. R., 271, and Powell v. State, 13 Id., 244, which assert the common law rule.

If the party who inflicted the injury wilfully fails to furnish aid, and the injured person dies from the injury, the injury is regarded as inevitably fatal, and pretermits the question of neglect or improper treatment by others as defense. Morgan v. State, supra.

The article does not apply unless the evidence moots a supervening cause of death. Wood v. State, 31 T. Cr. R., 571, 21 S. W. R., 602.

Facts under which the court, properly charging the article, should, in connection therewith, have submitted articles 1168 and 1171, and in connection with these last named articles, have submitted manslaughter and aggravated assault. Lee v. State, 44 T. Cr. R., 460, 72 S. W. R., 195.

Art. 1084. [654] **Body of deceased must be found.**—No person shall be convicted of any grade of homicide, unless the body of the deceased, or por-

tions of it, are found and sufficiently identified to establish the fact of the death of the person charged to have been killed. [Act March 8, 1887, p. 4.]

Corpus delicti, identification and evidence. This article means that, in order to sustain a conviction for any grade of homicide, the corpus delicti must be proved; that is, first, the deceased must be shown to have been killed; second, the killing must be proved to have been criminally caused, and the death of deceased must be shown to have been caused by the act or agency of the defendant. Gay v. State, 40 T. Cr. R., 242, 49 S. W. R., 612, citing Kugadt v. State, 38 Id., 681, 44 S. W. R., 989; Wilson v. State, 41 T., 321; Gay v. State, 42 T. Cr. R., 450, 60 S. W. R., 771.

May be proved by circumstantial evidence. Supra.

As to the identification of the body, or parts of the body, of the deceased, it is only required that such proof be of a legal character and sufficient to clearly establish the death of the party alleged to have been killed. It need not be positive, and if circumstantial, all that is required is that it sufficiently identifies the remains, or portions thereof, as those of deceased. Gay v. State, 40 T. Cr. R., 242, 49 S. W. R., 612, citing Taylor v. State, 35 T., 97; Wilson v. State, 41 Id., 320; s. c., 43 Id., 472; Brown v. State, 1 T. Cr. R., 154; Jackson v. State, 29 Id., 458, 16 S. W. R., 247; Gay v. State, 42 Id., 450, 60 S. W. R., 771.

And further on question, see Walker v. State, 14 T. Cr. R., 609; Puryear v. State, 28 Id., 74, 11 S. W. R., 929.

And on confession and proof of, see Kugadt v. State, 38 T. Cr. R., 681, 44 S. W. R., 989; Anderson v. State, 34 Id., 546, 31 S. W. R., 673; Hunter v. State, Id., 599, 31 S. W. R., 674; Walker v. State, 14 Id., 609; Lovelady v. State, Id., 545; Harris v. State, 28 Id., 308, 12 S. W. R., 1102; Jackson v. State, 29 Id., 458, 16 S. W. R., 247.

Art. 1085. [655] **Person killed must be in existence.**—The person upon whom the homicide is alleged to have been committed must be in existence by actual birth. It is homicide, however, to destroy human life actually in existence, however frail such existence may be, or however near extinction from other causes.

Art. 1086. [656] **Produced by words.**—Although it is necessary to constitute homicide that it shall result from some act of the party accused, yet, if words be used which are reasonably calculated to produce and do produce an act which is the immediate cause of death, it is homicide; as, for example, if a blind man, a stranger, a child, or a person of unsound mind, be directed by words to a precipice or other dangerous place where he falls and is killed; or if one be directed to take any article of medicine, food or drink, known to be poisonous and which does produce a fatal effect; in these and like cases, the person so operating upon the mind or conduct of the person injured shall be deemed guilty of homicide.

CHAPTER TWELVE.

OF JUSTIFIABLE HOMICIDE.

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Article 1087. [657] **When justifiable.**—Homicide is justifiable in the cases enumerated in the succeeding articles of this chapter.

1. OF A PUBLIC ENEMY.

Art. 1088. [658] **Killing a public enemy.**—It is lawful to kill a public enemy, not only in the prosecution of war, but when he may be in the act of hostile invasion or occupation of any part of the state. A public enemy is any person acting under the authority or enlisted in the service of any government at war with this state or with the United States. Persons belonging to hostile tribes of Indians, who habitually commit depredations upon the lives or property of inhabitants of this state, and all persons acting with such tribes are public enemies, and this whether found in the act of committing such depredations or under circumstances which sufficiently show an intention so to do.

Art. 1089. [659] **But not by poison.**—Homicide of a public enemy by poison or the use of poisoned weapons is not justifiable.

Art. 1090. [660] **Nor a deserter, prisoner, etc.**—Homicide of a public enemy who is a deserter or prisoner of war, or the bearer of a flag of truce, is not justifiable.

2. OF A CONVICT.

Art. 1091. [661] **Execution of a convict.**—The execution of a convict for a capital offense, by a legally qualified officer, under the warrant of a court of competent jurisdiction, is justifiable when the same takes place in the manner authorized by law and directed by warrant.

3. BY OFFICERS IN THE PERFORMANCE OF A DUTY, AND BY OTHER PERSONS UNDER CERTAIN CIRCUMSTANCES.

Art. 1092. [662] **By officer in execution of lawful order.**—Homicide by an officer in the execution of the lawful orders of magistrates and courts is justifiable when he is violently resisted and has just ground to fear danger to his own life in executing the order.

Construed. An officer's right of self-defense is limited to danger or apparent danger to his own life, and he is not authorized to slay a party to rescue a prisoner, or a prisoner attempting to escape when his own life is not endangered, and when the weapon used in assault upon him is not a deadly weapon. Williams v. State, 41 T. Cr. R., 365, 54 S. W. R., 759.

Art. 1093. [663] **Even though it is erroneous.**—The officer is justifiable, though there may have been an error of judgment on the part of the magistrate or court, if the order emanated from a proper authority.

Art. 1094. [664] **Qualification of the foregoing.**—The rule set forth in the two preceding articles is subject to the following restrictions:

1. The order must be that of a magistrate or a court having lawful authority to issue it.

Williams v. State, 41 T. Cr. R., 365, 54 S. W. R., 759.

Warrants of Arrest. Article 266 of the Code of Criminal Procedure prescribes when magistrates may issue warrants of arrest. Pierce v. State, 17 T. Cr. R., 232. And see also Arts. 269 and 270 of same Code. Ledbetter v. State, 23 T. Cr. R., 247, 5 S. W. R., 226; Peter v. State, Id., 684, 5 S. W. R., 228; Tolliver v. State, 32 Id., 444, 24 S. W. R., 286; Hart v. State, 15 Id., 202; Miers v. State, 34 Id., 161, 29 S. W. R., 1074.

2. It must have such form as the law requires to give it validity.

Validity of process: Tierney v. Frazier, 57 T., 437; Rainey v. State, 20 T. Cr., R., 455; Alford v. State, 8 Id., 545; Graham v. State, 29 Id., 31, 13 S. W. R., 1013.

3. The person executing the order must be some officer duly authorized by law to execute the order, or some person specially appointed in accordance with law for the performance of the duty.

Peace officers authorized to execute process are named in the Code of Criminal Procedure, Arts. 43 to 47 inclusive. And see Alford v. State, 8 T. Cr. R., 545; Weatherford v. State, 31 Id., 530, 21 S. W. R., 251; Short v. State, 16 Id., 44; C. C. P., Arts, 279, 280.

4. If the person executing the order be an officer, and perfoming a duty which no other person can by law perform, he must have taken the oath of office and given bond, where such is required by law.

De facto officer defined. A de facto officer is one who acts under color of a valid appointment but has not complied with a condition precedent—one who, by reputation is an officer, but in law is not. As such, he is authorized to prevent violations of law in his presence, and may summon the posse comitatus when necessary to arrest offenders. Weatherford v. State, 31 T. Cr. R., 530, 21 S. W. R., 251; Thompson v. Johnson, 84 T., 548, 19 S. W. R., 784; Cox v. Railway, 68 Id., 230, 4 S. W. R., 455; McKinney v. O'Connor, 26 Id., 14.

5. The order must be executed in the manner directed by law, and the person executing the same must make known his purpose and the capacity in which he acts.

C. C. P., Art. 288; Plasters v. State, 1 T. Cr. R., 673. Compare Miers v. State, 34 T. Cr., R., 161, 29 S. W. R., 1074.

6. If the order be a written one, and the person against whom it issues, before resistance offered, wishes to see the same, or hear it read, the person charged with its execution shall produce the order and show it or read it.

A sheriff is not authorized to execute a capias beyond the limits of his county. Jones v. State, 26 T. Cr. R., 1.

7. In making an arrest under a written order, the person acting under such order shall, in all cases, declare to the party against whom it is directed the offense of which he is accused, and state the nature of the warrant, unless prevented therefrom by the act of the party to be arrested.

C. C. P., Art. 289; Stockton v. State, 25 T., 772; Miller v. State, 32 T. Cr. R., 319, 20 S. W. R., 1103; Miers v. State, 34 Id., 161, 29 S. W. R., 1074.

8. The officer or other person executing an order of arrest is required to use such force as may be necessary to prevent an escape when it is attempted, but he shall not in any case kill one who attempts to escape, unless in making or attempting such escape the life of the officer is endangered, or he is threatened with great bodily injury.

Force. Giroux v. State, 40 T., 97; Skidmore v. State, 43 T. Cr. R., 93; English v. State, 34 Id., 191, 30 S. W. R., 233; Beauverts v. State, 4 Id., 175.

Same to prevent escape. Caldwell v. State, 41 T., 86; Tiner v. State, 44 Id., 128; James v. State, Id., 314; Giebel v. State, 28 T. Cr. R., 153, 12 S. W. R., 591; Carter v. State, 30 Id., 551; 17 S. W. R., 1102; Miers v. State, 34 Id., 161, 29 S. W. R., 1074.

9. In overcoming a resistance to the execution of an order, the officer or person executing the same may oppose such force as is necessary to overcome the resistance, but he shall not take the life of the person resisting, unless he has just ground to fear that his own life will be taken, or that he will suffer great bodily injury in the execution of the order.

Plasters v. State, 1 T. Cr. R., 673; Jones v. State, 26 Id., 1, 9 S. W. R., 53; Carter v. State, 30 Id., 551, 17 S. W. R., 1102; Miller v. State, 32 Id., 319, 20 S. W. R., 1103; English v. State, 34 Id., 190, 30 S. W. R., 233.

10. A prisoner under sentence of death, or of imprisonment in the penitentiary, or attempting to escape from the penitentiary, may be killed by the officer having legal custody of him, if his escape can in no other manner be prevented.

Convict and convict guard. Wright v. State, 44 T., 645; Washington v. State, 1 T. Cr. R., 647; Wallace v. State, 20 Id., 360; Waite v. State., 13 Id., 369; Ex parte Sherwood, 29 Id., 239, 15 S. W. R., 812; Williams v. State, 41 Id., 365, 54 S. W. R., 759.

Art. 1095. [665] **Order may be written or verbal.**—The order referred to in this chapter may be either written or verbal, where a verbal order is allowed for the arrest of a person.

Code Crim. Proc., Arts. 265 to 291.

Art. 1096. [666] **Written order includes, what.**—Under written orders are included all process in a criminal or civil action which directs the seizure of the person or of property.

Art. 1097. [667] **Verbal order justifies only in felony.**—No officer or other person ordered verbally to arrest another is justified in killing, except the arrest be in a case of felony, or for the prevention of a felony.

Carter v. State, 30 T. Cr. R., 551, 17 S. W. R., 1102.

Art. 1098. [668] **Persons aiding officer justified.**—Persons called in aid of an officer, in the performance of a duty, are justified in the same manner as the officer himself.

Weatherford v. State, 31 T. Cr. R., 530, 21 S. W. R., 251; C. C. P., Art. 45.

Art. 1099. [669] **Persons aiding escape may be killed.**—All persons opposing the execution of the order, or aiding in an escape, may be treated in the same manner as the person against whom the order is directed, or who is attempting to escape.

Art. 1100. [670] **Federal officers included.**—Officers acting under the authority of the laws or courts of the United States have the rights and are liable to the rules prescribed in this chapter.

The only circumstances under which a peace officer may arrest without warrant, except to prevent the commission of an offense, are prescribed by the Code of Criminal Procedure, Arts. 358 to 363.

Arrest without warrant. By express provision of the statute, arrest without warrant may be made for unlawful carrying arms. Authorities, supra, and Jacobs v. State, 28 T. Cr. R., 79, 12 S. W. R., 408.

See generally, Miers v. State., 34 T. Cr. R., 161, 29 S. W. R., 1074; English v. State, 34 Id., 190, 30 S. W. R., 233; Weaver v. State, 19 Id., 547; Staples v. State, 14 Id., 136; Ross v. State, 10 Id., 455; Lacy v. State, 7 Id., 408; Johnson v. State, 5 Id., 43; Russell v. State, 37 Id., 314, 39 S. W. R., 674; Mundine v. State, Id., 5, 38 S. W. R., 619; Moore v. State, 40 Id., 439, 50 S. W. R., 942; Lynch v. State, 41 Id., 510, 57 S. W. R., 1130; Montgomery v. State, 43 Id., 304, 65 S. W. R., 537; Cortez v. State, Id., 375, 66 S. W. R., 453; s. c., 44 Id., 169, 69 S. W. R., 536; Vann v. State, 45 Id., 434, 77 S. W. R., 813; Earles v. State, 47 Id., 559, 85 S. W. R., 1; Johnson v. State, 49 Id., 250, 92 S. W. R., 257; Early v. State, 50 Id., 344, 97 S. W. R., 82.

Art. 1101. [671] **In suppressing riots.**—Homicide is justifiable when necessary to suppress a riot, when the same is attempted to be suppressed in the manner pointed out in the Code of Criminal Procedure, and can in no way be suppressed except by taking life.

Art. 1102. [672] **In adultery.**—Homicide is justifiable when committed by the husband upon the person of any one taken in the act of adultry with the wife; provided, the killing take place before the parties to the act of adultery have separated.

Construed. Not essential that the husband shall be an actual eye-witness of the physical act of coition between his wife and her paramour. It is sufficient if he apprehend them in any such situation with respect to each other as to indicate with reasonable certainty to a rational mind that they had just copulated or were about to copulate with each other. See this case in extenso. Price v. State, 18 T. Cr. R., 474. And see Gregory v. State, 50 Id., 73, 94 S. W. R., 1041.

One who apprehends his wife and another in the actual physical act of copulation slays the seducer before the parties have separated, is guilty of no grade of homicide. Massie v. State, 30 T. Cr. R., 64, 16 S. W. R., 770; Morrison v. State, 39 Id., 519, 47 S. W. R., 369.

Art. 1103. [673] **But not in case of connivance.**—Homicide cannot be justified by reason of the existence of the circumstances spoken of in the preceding article, where it appears that there has been, on the part of the husband, any connivance in or assent to the adulterous connection.

4. DEFENSE OF PERSON OR PROPERTY.

Art. 1104. [674] **In defense of person and property.**—Homicide is permitted in the necessary defense of person or property, under the circumstances and subject to the rules herein set forth.

Art. 1105. [675] **In preventing other felonies.**—Homicide is permitted by law when inflicted for the purpose of preventing the offense of murder, rape, robbery, maiming, disfiguring, castration, arson, burglary and theft at night, or when inflicted upon a person or persons who are found armed with deadly weapons and in disguise in the night time on premises not his or their own, whether the homicide be committed by the party about to be injured or by some person in his behalf, when the killing takes place under the following circumstances:

1. It must reasonably appear by the acts or by words, coupled with the acts of the person killed, that it was the purpose and intent of such person to commit one of the offenses above named.

2. The killing must take place while the person killed was in the act of committing the offense, or after some act done by him showing evidently an intent to commit such offense.

Self-defense generally: See notes to Art. 1033, subdivision 6, ante.

Danger and apparent danger: See notes to Art. 1033, subdivision 6, ante.

In self-defense against violent attack by deceased, when deceased was in the act of killing him or doing him great bodily harm, or had done some act showing such intention, accused would have the right, without resorting to other means, to act at once and by the most effective means at hand. Woodring v. State, 33 T. Cr. R., 26, 24 S. W. R., 93. And see Horbach v. State, 43 T., 242; Boddy v. State, 14 T. Cr. R., 528; Short v. State, 15 Id., 370; Ainsworth v. State, 8 Id., 532; Orman v. State, 22 Id., 604, 3 S. W. R., 468; s. c., 24 Id., 496, 6 S. W. R., 544; High v. State, 26 Id., 545, 10 S. W. R., 238; Barrett v. State, 9 Id., 33; Hunnicutt v. State, 20 Id., 632; Aycock v. State, 55 Id., 142; Penland v. State, 19 Id., 365; Vinson v. State, 55 Id., 490, 117 S. W. R., 846.

3. It must take place before the offense committed by the party killed is actually completed; except that, in case of rape, the ravisher may be killed at any time before he has escaped from the presence of his victim, and except, also, in the cases hereinafter enumerated.

4. Where the killing takes place to prevent the murder of some other person, it shall not be deemed that the murder is completed so long as the offender is still inflicting violence, though the mortal wound may have been given.

Construed. The Code of Criminal Procedure, Art. 115, expressly provides that what one about to be injured may do in repelling the aggression, another who interposes in his behalf may lawfully do. For a general discussion and exposition of the doctrines, see notes to Art. 1033, subdivision 6, ante, and Robins v. State, 9 T. Cr. R., 666; Foster v. State, 8 Id., 248; Ainsworth v. State, Id., 532; Ross v. State, 10 Id., 455; North v. State, 12 Id., 111; Glover v. State, 33 Id., 224, 26 S. W. R., 204; Snell v. State, 29 Id., 236, 15 S. W. R., 722; Mealer v. State, 32 Id., 102, 22 S. W. R., 142; Hargrove v. State, 33 Id., 431, 26 S. W. R., 993.

A mere threatened injury to another would not justify or reduce the homicide. Reyons v. State, 33 T. Cr. R., 143, 25 S. W. R., 786.

Charge of court, conformity to proof and to this subdivision held correct. Welch v. State, 57 T. Cr. R., 111, 122 S. W. R., 880.

5. If homicide takes place in preventing a robbery, it shall be justifiable if done while the robber is in the presence of the person robbed, or is flying with the money or other article taken by him.

6. In cases of maiming, disfiguring or castration, the homicide may take place at any time while the offender is mistreating with violence the person injured, though he may have completed the offense.

High v. State, 26 T. Cr. R., 545, 10 S. W. R., 238.

7. In case of arson, the homicide may be inflicted while the offender is in or at the building or other property burnt, or flying from the place before the destruction of the same.

8. In cases of burglary and theft by night, the homicide is justifiable at any time while the offender is in the building, or at the place where the theft is committed, or is within reach of gunshot from such place or building.

"Night time" is any time between thirty minutes after sunset and thirty minutes before sunrise. Laws v. State, 26 T. Cr. R., 643, 10 S. W. R., 220. And see Whitten v. State, 29 Id., 504, 16 S. W. R., 296; Luera v. State, 12 Id., 257.

9. When the party slain in disguise is engaged in any attempt, by word, gesture or otherwise, to alarm some other person or persons and put them in bodily fear.

Art. 1106. [676] **Presumption from the use of weapons.**—When the homicide takes place to prevent murder, maiming, disfiguring or castration, if the weapons or means used by the party attempting or committing such murder, maiming, disfiguring or castration are such as would have been calculated to produce that result, it is to be presumed that the person so using them designed to inflict the injury.

This presumption is as imperative upon courts as juries, and, when arising in the case, must be given in charge. Kendall v. State, 8 T. Cr. R., 569; Cochran v. State, 28 Id., 422, 13 S. W. R., 651, and authorities cited; Renow v. State, 56 Id., 343, 120 S. W. R., 174; Deneaner v. State, 127 S. W. R., 201.

Presumptions of law adverse to a defendant should rarely be given in charge, and then great care should be observed to protect his rights. Shaw v. State, 34 T. Cr. R., 435, 31 S. W. R., 361.

Omission to charge this article must be raised by bill of exception or on motion for new trial. Pratt v. State, 127 S. W. R., 827.

Art. 1107. [677] **In protecting person or property from attacks.**—Homicide is justifiable also in the protection of the person or property against any other unlawful and violent attack besides those mentioned in the preceding article, and, in such cases, all other means must be resorted to for the prevention of the injury, and the killing must take place while the person killed is in the very act of making such unlawful and violent attack; and any person interfering in such case in behalf of the party about to be injured is not justifiable in killing the aggressor, unless the life or person of the injured party is in peril by reason of such attack upon his property.

Construed. Resort to all other means except retreat must be had to avoid slaying when the violent attack upon the slayer was not to murder, maim, disfigure or castrate. "All other means," however, does not import all possible means, but all means reasonably possible and proper under the circumstances. Kendall v. State, 8 T. Cr. R., 569; Horbach v. State, 43 T. 242.

This article does not authorize a killing when the party is about to attack or is doing some act preparatory to the attack, but he must be then making such unlawful and violent attack. One is not compelled to wait until a battery has been inflicted upon him, but the attack must be then imminent, immediate and impending; otherwise he is not to slay, and even then all other means except retreat must be resorted to in order to avoid killing. Bryant v. State, 56 T. Cr. R., 66, 100 S. W. R., 371. And see Patterson v. State, 49 Id., 613, 95 S. W. R., 129; Baltrip v. State, 30 Id., 545, 17 S. W. R., 1106; Garello v. State, 31 Id., 56, 20 S. W. R., 179; Woodring v. State, 33 Id., 26, 24 S. W. R., 293; Hunnicutt v. State, 18 Id., 499.

On charge of court, see authorities cited, supra, and Orman v. State, 22 T. Cr. R., 464, 3 S. W. R., 468; s. c., 24 Id., 495, 6 S. W. R., 544; Hill v. State, 10 Id., 618; Jordan v. State, 11 Id., 435; Foster v. State, Id., 105; Morgan v. State, 16 Id., 593; Gonzales v. State, 30 Id., 203, 16 S. W. R., 978; Fuller v. State, Id., 559, 17 S. W. R., 1108; Warren v. State, 22 Id., 383, 3 S. W. R., 240; Skaggs v. State, 31 Id., 563, 21 S. W. R., 257; Kelley v. State, 27 Id., 562, 11 S. W. R., 627.

Art. 1108. [678] **Retreat not necesary.**—The party whose person or property is so unlawfully attacked is not bound to retreat in order to avoid the necessity of killing his assailant.

Retreat. It is, under this article, a part of the law of self-defense that a party unlawfully assailed is not bound to retreat in order to avoid the necessity of slaying his assailant. Voight v. State., 53 T. Cr. R., 268, 109 S. W. R., 205; Hix v. State, 51 Id., 431, 102 S. W. R. 405; Watson v. State, 50 Id., 171, 95 S. W. R., 115; Cooper v. State, 49 Id., 28, 89 S. W. R., 1068; Arto v. State, 19 Id., 126; Parker v. State, 22 Id., 105, 3 S. W. R., 100; Smith v. State, 123 S. W. R., 698.

Art. 1109. [679] **Requisites of the attack.**—The attack upon the person of an individual, in order to justify homicide, must be such as produces a reasonable expectation or fear of death, or some serious bodily injury.

Construed. The attack contemplated by this article must be such as produces a reasonable expectation or fear of death or serious bodily injury. A person thus attacked is not bound to retreat nor resort to other means of prevention before slaying his assailant. But if the attack was not made with a deadly weapon, and, resisting it, the slayer killed his assailant with a deadly weapon, the result would probably be to present a complex question as to whether the homicide was culpable or justifiable. See the opinion in extenso for an exhaustive exposition of the doctrine. High v. State, 26 T. Cr. R., 545, 10 S. W. R., 238.

And on same question generally, see Hinton v. State, 24 T., 454; Bell v. State, 29 Id., 494; Irwin v. State, 43 Id., 236; Weaver v. State, 19 T. Cr. R., 547; Holt v. State, 9 Id., 571; Sims v. State, Id., 586; Penland v. State, 19 Id., 365; Smith v. State, 15 Id., 338; Jones v. State, 17 Id., 603; Allen v. State, Id., 637.

Art. 1110. [680] **Circumstances justifying in defense of property.**—When, under article 1107, a homicide is committed in the protection of property, it must be done under the following circumstances:

1. The possession must be of corporeal property, and not of a mere right, and the possession must be actual and not merely constructive.

2. The possession must be legal, though the right of the property may not be in the possessor.

3. If possession be once lost, it is not lawful to regain it by such means as result in homicide.

Construed. This subdivision will not cover the case of an accused who, owning the land on which was situate a house in the wrongful possession of the deceased, whom he killed in an effort to eject. Gray v. State, 125 S. W. R., 896.

And note the case for facts held to raise the question of rightful possession. Id.

4. Every other effort in his power must have been made by the possessor to repel the aggression before he will be justified in killing.

Construed. See Art. 1126, ante, and notes.

It is not essential that the assault should have imperiled the person as well as the property of the slayer. The latter may resort to any means at hand necessary to protect his property from violent assault; to proceed to extremity if necessary to protect it, but only if necessary; must make every effort to repel the aggression before resorting to extremity, and the trespasser must be in the very act of making a violent assault upon his property. Weaver v. State, 19 T. Cr. R., 547; Lilly v. State, 20 Id., 1; Woodring v. State, 33 Id., 26, 24 S. W. R., 293; Ledbetter v. State, 26 Id., 22, 9 S. W. R., 60; Ross v. State, 10 Id., 455; Tolliver v. State, 53 Id., 329, 111 S. W. R., 655; Wenzel v. State, 48 Id., 625, 90 S. W. R., 28; Gilcrease v. State, 33 Id., 619, 28 Id., 531; Dean v. State, 47 Id., 243, 83 S. W. R., 816.

Manslaughter under this article: Ross v. State, 10 T. Cr. R., 456; Roach v. State, 21 Id., 249, 17 S. W. R., 464; Ledbetter v. State, 26 Id., 22, 9 S. W. R., 60; Milrainey v. State, 33 Id., 577, 28 S. W. R., 537; Gilcrease v. State, 33 Id., 619, 28 S. W. R., 531; Glover v. State, Id., 224, 26 S. W. R., 204.

This defense is not available to one interposing in behalf of another owner of property unless the life of such other owner was imperiled by reason of the attack on the property. Ledbetter v. State, 26 T. Cr., R. 22, 9 S. W. R., 60; Lilly v. State, 20 Id. 1.

Defense of habitation. One's right to defend his own habitation is limited only in extent by the same rules which govern in defense of the person. It is not necessary that there be actual danger, provided the party acted on a reasonable apprehension of danger. Richardson v. State, 7 T. Cr. R., 486, citing Munden v. State, 37 T., 353; Horbach v. State, 43 Id., 242; Cheek v. State, 4 T. Cr. R., 444; Blake v. State, 3 Id., 581; May v. State, 6 Id., 191; Marnoch v. State, 7 Id., 269.

Threats by deceased against defendant are admissible as independent evidence without first establishing the predicate of overt acts showing an intention on part

of deceased to execute them. They will not justify without overt acts but may mitigate the offense. Horbach v. State, 43 T., 242; Howard v. State, 23 T. Cr. R., 265, 5 S. W. R., 231.

The same rule applies as to uncommunicated threats—they will not justify homicide in the absence of overt acts manifesting the intention to execute them. Horbach v. State, supra; Johnson v. State, 27 T., 757; Franklin v. State, 34 T. Cr. R., 625; 31 S. W. R., 643; Lynch v. State, 24 Id., 350, citing Penland's case, 19 Id., 365, Hinton's case, 24 T., 454, and Holt's case, 9 Id., 666. And see Huddleston v. State, 54 Id., 93, 112 S. W. R., 64; Jay v. State, 52 Id., 567, 109 S. W. R., 131; Mitchell v. State, 50 Id., 180, 96 S. W. R., 43; Tankersley v. State, 31 Id., 595, 21 S. W. R., 767; Reeves v. State, 34 Id., 483, 31 S. W. R., 382; Pratt v. State, 50 Id., 227, 96 S. W. R., 8.

In no case will mere threats, unattended by some demonstration, clearly indicating deceased's intention to execute them, justify homicide or reduce it from murder to manslaughter. Johnson v. State, 27 T., 758; McDade v. State, 27 T. Cr. R., 641, 11 S. W. R., 672.

Threats by defendant: Manning v. State, 51 T. Cr. R., 211, 98 S. W. R., 251; McMahan v. State, 46 Id., 540, 81 S. W. R., 296; Pratt v. State, 50 Id., 227, 96 S. W. R., 8; Reinhard v. State, 52 Id., 59, 106 S. W. R., 128; Smith v. State, 15 Id., 338; Parker v. State, 18 Id., 72; White v. State, 23 Id., 154, 3 S. W. R., 110; Slade v. State, 29 Id., 381, 16 S. W. R., 253; Gilcrease v. State, 33 Id., 620, 28 S. W. R., 531; Utzman v. State, 32 Id., 426, 24 S. W. R., 412.

CHAPTER THIRTEEN.

OF EXCUSABLE HOMICIDE.

Definition ..... Article 1111
The lawful act must be done by lawful means ..... Article 1112

Article 1111. [681] **Definition.**—Homicide is excusable when the death of a human being happens by accident or misfortune, though caused by the act of another, who is in the prosecution of a lawful object by lawful means.

If a person acting in his own necessary self-defense shoots and kills a third person by accident, he is guilty of no offense. Clark v. State, 19 T. Cr. R., 495, citing Plummer v. State, 4 Id., 310.

Art. 1112 [682] **The lawful act must be done by lawful means.**—The lawful act causing the death of another must be done by lawful means and used in a lawful degree. Though lawful for the parent, guardian, schoolmaster or master to chastise the child, ward, scholar or apprentice, yet, if this be done with an instrument likely to produce death, or, if with a proper instrument the chastisement be cruelly inflicted and death result, it is murder.

CHAPTER FOURTEEN.

HOMICIDE BY NEGLIGENCE.

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Article 1113. [683] **Of two kinds.**—Homicide by negligence is of two kinds:

1. Such as happens in the performance of a lawful act; and 2. That which occurs in the performance of an unlawful act.

1. IN THE PERFORMANCE OF A LAWFUL ACT.

Art. 1114. [684] **In the performance of a lawful act.**—If any person in the performance of a lawful act shall, by negligence and carelessness, cause the death of another, he is guilty of negligent homicide of the first degree.

Construed. The doing of a wrongful act in a negligent manner, with no apparent intention to kill, if death results, is negligent homicide of the first degree. Blalock v. State, 40 T. Cr. R., 154, 49 S. W. R., 100.

The intentional and reckless firing of a pistol into a private residence and the killing thereby of an inmate, is not negligent homicide. Russell v. State, 38 T. Cr. R., 590, 44 S. W. R., 159.

If defendant was attempting to shoot deceased, and, in the struggle for the pistol, it was discharged and deceased shot and killed, it would not be negligent homicide. Williams v. State, 45 T. Cr. R., 218, 75 S. W. R., 859.

Accident is implied in negligent homicide of both degrees. If, on a trial for murder there was evidence showing an accidental killing, and the court charged on that phase, defendant can not complain of failure to charge on negligent homicide. Combs v. State, 52 T. Cr. R., 613, 108 S. W. R., 649.

And generally, see Spears v. State, 41 T. Cr. R., 527, 56 S. W. R., 347; Morton v. State, 43 Id., 533, 67 S. W. R., 115; Posey v. State, 46 Id., 190, 78 S. W. R., 689; Saye v. State, 50 Id., 569, 99 S. W. R., 551; Holland v. State, 55 Id., 27, 115 S. W. R., '48.

Art. 1115. [685] **"Lawful act" defined.**—A "lawful act" is one not forbidden by the penal law, and which would give no just occasion for a civil action.

Art. 1116. [686] **Must be an apparent danger of causing death.**—To constitute this offense, there must be an apparent danger of causing the death of the person killed, or some other.

Art. 1117. [687] **How distinguished from excusable homicide.**—The want of proper care and caution distinguishes this offense from excusable homicide. The degree of care and caution is such as a man of ordinary prudence would use under like circumstances.

Negligence by omission is the omission to perform an act with which the party is specially charged, and there can be no criminal negligence in failing to perform an act not imposed upon the party. Anderson v. State, 27 T. Cr. R., 177, 11 S. W. R., 33. And see Austin v. Cameron, 83 T., 351, 18 S. W. R., 437.

Two of the essentials to constitute negligent homicide of the second degree, are: 1, A killing while the accused is in the performance of an illegal act; 2, There must be no apparent intention to kill. Flynn v. State, 43 T. Cr. R., 407, 66 S. W. R., 551.

Art. 1118. [688] **Examples.**—Throwing timbers by a workman from the roof or upper part of a house in a public street or highway, or where a number of persons are known to be around the house, or discharging firearms on or near a public highway, other than a street in a town or city, in such manner as would be likely to injure persons who might be passing, are examples of negligent homicide of the first degree, in case of death resulting therefrom. If death is caused by the careless discharge of firearms in a public street of a town or city, the offense will be of a higher degree.

Art. 1119. [689] **Must be no apparent intention to kill.**—To bring the offense within the definition of homicide by negligence, either of the first or second degree, there must be no apparent intention to kill.

Art. 1120. [690] **Homicide must be consequence of the act.**—The homicide must be consequence of the act done or attempted to be done.

Art. 1121. [691] **Punishment.**—Negligent homicide of the first degree shall be punished by confinement in the county jail not exceeding one year, or by fine not exceeding one thousand dollars.

2. IN THE PERFORMANCE OF AN UNLAWFUL ACT.

Art. 1122. [692] **"Of second degree" defined, etc.**—The definitions, rules and provisions of the preceding articles of this chapter, with respect to negligent homicide of the first degree, apply also to the offense of negligent homicide of the second degree, or such as is committed in the prosecution of an unlawful act, except when contrary to the following provisions:

Art. 1123. [693] **Can only be committed, when.**—Negligent homicide of the second degree can only be committed when the person guilty thereof is in the act of committing or attempting the commission of an unlawful act.

Art. 1124. [694] **"Unlawful act" includes what.**—Within the meaning of an "unlawful act" as used in this chapter are included—

1. Such acts as by the penal law are called misdemeanors; and, 2. Such acts, not being penal offenses, as would give just occasion for a civil action.

Defined. To constitute negligent homicide of the second degree the act must be unlawful and a misdemeanor; it must be accompanied by a want of proper care and caution, and there must be an apparent danger of causing the death of the person killed, and no apparent intention to kill. Talbot v. State, 125 S. W. R., 906.

Art. 1125. [695] **Homicide in an attempt at felony not negligent.**—When one, in the execution of or in attempting to execute an act made a felony by the penal law, shall kill another, though without an apparent intention to kill, the offense does not come within the definition of negligent homicide.

Construed. One who, committing an assault to murder accidently kills a third party, is guilty of murder in the second degree, and not negligent homicide. McCoy v. State, 25 T., 33; Ferrell v. State, 43 Id., 503; Musick v. State, 21 T. Cr. R., 69, 18 S. W. R., 95; Leggett v. State, Id., 382, 17 S. W. R., 159; McConnell v. State, 13 Id., 390; Thomas v. State, 53 Id., 272, 109 S. W. R., 155.

If one, attempting to kill another under circumstances that would reduce such killing to manslaughter, accidentally kills a third person, his offense would be manslaughter and not negligent homicide. Ferrell v. State, 43 T., 503; Breedlove v. State, 26 T. Cr. R., 445, 9 S. W. R., 768.

No accomplices to this offense. Ante, Art. 85.

Art. 1126. [696] **In an attempt at misdemeanor, punished, how**—When the unlawful act attempted or executed is known as a misdemeanor, the punishment of negligent homicide committed in the execution of such unlawful act shall be imprisonment in the county jail not exceeding three years, or by fine not exceeding three thousand dollars.

Art. 1127. [697] **In a trespass, etc., how punished.**—If the act intended is one for which an action would lie, but not an offense against the penal law, the homicide resulting therefrom is a misdemeanor, and may be punished by fine not exceeding one thousand dollars, and by imprisonment in the county jail not exceeding one year.

CHAPTER FIFTEEN.

OF MANSLAUGHTER.

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Article 1128. [698] **Definition of.**—Manslaughter is voluntary homicide committed under the immediate influence of sudden passion arising from an adequate cause, but neither justified nor excused by law.

Construed. Limitation applies in manslaughter, and conviction for that offense can not be had under an indictment for murder, unless the indictment was filed within the period of limitation for manslaughter. White v. State, 4 T. Cr. R., 488; Temple v. State, 15 Id., 304; Fulcher v. State, 33 Id., 22, 24 S. W. R., 292.

For essentials of indictment, see Jennings v. State, 7 T. Cr. R., 350.

Art. 1129. [699] **"Under the influence of sudden passion" explained.**—By the expression "under the immediate influence of sudden passion" is meant—

1. That the provocation must arise at the time of the commission of the offense, and that the passion is not the result of a former provocation.

2. The act must be directly caused by the passion arising out of the provocation. It is not enough that the mind is merely agitated by passion arising from some other provocation, or a provocation given by some person other than the party killed.

The provocation must have been legally sufficient to produce passion, and that provocation must have actually produced such passion, as, when under its influence, defendant was rendered incapable of cool reflection, and for the time being deprived of the power of comprehending the consequences of the act about to be committed. Maria v. State, 28 T., 698.

The provocation must arise at the time of the killing, and the act must be directly caused by the passion arising from the provocation. Johnson v. State, 43 T., 612; Boyett v. State, 2 T. Cr. R., 93; Barbee v. State, 50 Id., 426, 97 S. W. R., 1055. See also Miles v. State, 18 T. Cr. R., 156; Johnson v. State, 22 Id., 206, 2 S. W. R., 609; Orman v. State, 24 Id., 495, 6 S. W. R., 544; Baltrip v. State, 30 Id., 545, 17 S. W. R., 1106.

Illegal Arrest. Homicide in resistance to illegal arrest, if committed under the influence of sudden passion rendering the mind incapable of cool reflection, is manslaughter. Ledbetter v. State, 23 T. Cr. R., 447, 5 S. W. R., 26; Peter v. State Id., 684, 5 S. W. R., 228; Jones v. State, 26 Id., 1, 9 S. W. R., 53; Meuly v. State, Id., 274, 9 S. W. R., 563; Lynch v. State, 41 Id., 510, 57 S. W. R., 1130.

3. The passion intended is either of the emotions of the mind, known as anger, rage, sudden resentment, or terror, rendering it incapable of cool reflection.

"Sudden Passion." Manslaughter is gauged by sudden passion. Hinton v. State, 24 T., 454; Maria v. State, 28 Id., 698; Williams v. State, 15 T. Cr. R., 617.

Adequate Cause must combine with the passion contemplated by the statute to reduce murder to manslaughter. Massie v. State, 30 T. Cr. R., 64, 16 S. W. R., 770; Ex parte Jones, 31 Id., 422, 20 S. W. R., 983, following Breedlove v. State, 26 Id., 453, 9 S. W. R., 768.

Art. 1130. [700] **"Adequate cause" explained.**—By the expression "adequate cause" is meant such as would commonly produce a degree of anger, rage, resentment or terror in a person of ordinary temper sufficient to render the mind incapable of cool reflection.

Art. 1131. [701] **What are not adequate causes.**—Insulting words or gestures, or an assault and battery, so slight as to show no intention to inflict pain or injury, or an injury to property, unaccompanied by violence, are not adequate causes.

Sudden passion, though overpowering the reflective qualities of the mind, will not, unless produced by adequate cause, reduce murder to manslaughter. Clore v. State, 26 T. Cr. R., 264, 10 S. W. R., 242, citing McKinney v. State, 8 Id., 626; Hill v. State, 11 Id., 456; Neyland v. State, 13 Id., 536; Childers v. State, 33 Id., 509, 27 S. W. R., 133.

Art. 1132. [702] **What are.**—The following are deemed adequate causes:

1. An assault and battery by the deceased, causing pain or bloodshed.

Adequate cause. The four subdivisions of this article do not comprise all of the adequate causes sufficient to reduce murder to manslaughter. Any circumstance or condition which is capable of creating and does create sudden passion, such as anger, sudden resentment or terror, rendering the mind incapable of cool reflection, whether attended by bodily pain or not, is adequate cause. Childers v. State, 33 T. Cr. R., 509, 27 S. W. R., 133, following Williams v. State, 15 Id., 617. And see Bonner v. State, 29 Id., 223, 15 S. W. R., 821; Renow v. State, 49 Id., 281, 92 S. W. R., 801; Milrainey v. State, 33 Id., 577, 28 S. W. R., 537.

Both pain and bloodshed are not required by this subdivision; either will suffice. Childers v. State, 33 T. Cr. R., 509, 27 S. W. R., 133; Williams v. State, 15 Id., 617; Washington v. State, 19 Id., 274; Spivey v. State, 30 Id., 343, 17 S. W. R., 546.

2. A serious personal conflict, in which great injury is inflicted by the person killed, by means of weapons, or other instruments of violence, or by means of great superiority of personal strength, although the person guilty of the homicide was the aggressor; provided, such aggression was not made with intent to bring on a conflict and for the purpose of killing.

See Wheeler v. State, 125 S. W. R., 29.

3. Adultery of the person killed with the wife of the person guilty of the homicide; provided, the killing occurs as soon as the fact of an illicit connection is discovered.

Adultery as adequate cause. Adultery of the deceased with the wife of the slayer is an adequate cause that need not arise at the time of the killing, but the killing must occur at the first meeting of the parties after the slayer's discovery of the illicit trespass on his conjugal rights. But such adultery is eliminated as adequate cause when it appears that several meetings had occurred after the slayer became advised of the fact. Pickens v. State, 31 T. Cr. R., 554, 21 S. W. R., 362, citing Massie v. State, 30 Id., 64, 16 S. W. R., 770, and Ex parte Jones, 31 Id., 422, 20 S. W. R., 983. And see Paulin v. State, 21 Id., 436, 1 S. W. R., 453.

4. Insulting words or conduct of the person killed towards a female relation of the party guilty of the homicide.

Art. 1133. [703] **For insult to female, killing must be immediate.**—When it is sought to reduce the homicide to the grade of manslaughter, by reason of the existence of the circumstances specified in the fourth subdivision or article 1132 of the Penal Code, it must appear that the killing took place immediately upon the happening of the insulting conduct, or the uttering of the insulting words, or so soon thereafter as the party killing may meet with the party killed, after having been informed of such insults. [Act Feb. 12, 1858, pp. 172-3.]

Insult to female relative as adequate cause is governed by the same rules that apply when adultery with the slayer's wife is the provocation. See authorities under preceding note, and Hill v. State, 5 T. Cr. R., 2; Whaley v. State, 9 Id., 305.

The state of case contemplated by this and the preceding article presents these four issues of fact: I, Deceased's insulting words or conduct toward defendant's female relative; 2, was that the real provocation for the killing? 3, did the killing take place immediately on the happening of the insults, or as soon after being apprised the defendant met the deceased? 4, was accused at the time of the killing affected by a degree of anger, rage, etc., to render his mind incapable of cool reflection? And the evidentiary circumstances are to be viewed from the defendant's standpoint. Eanes v. State, 10 T. Cr. R., 421; Niland v. State, 19 Id., 166; Jones v. State, 33 Id., 492, 26 S. W. R., 1082; Knowles v. State, 31 Id., 383, 20 S. W. R., 829.

Not essential that the insulting words be addressed to the female relative or in her presence, or that she be actually affronted thereby. Garrett v. State, 36 T. Cr. R., 230, 36 S. W. R., 454; Smith v. State, 15 Id., 338; Hudson v. State, 6 Id., 565.

Immaterial that the imputed insults were never uttered or occurred; if defendant was so informed and believed, and in the passion aroused by such information he killed deceased, his offense would be manslaughter. Eanes v. State, 10 T. Cr. R., 421; Jones v. State, 33 Id., 492, 26 S. W. R., 1082.

Art. 1134. [704] **General character of female in issue.**—In every case where the defense spoken of in the preceding article is relied on, it shall be competent to prove the general character of the female insulted, in order to ascertain the extent of the provocation. [Id., p. 173.]

Presumption of the chastity of a female obtains in the absence of proof of general bad reputation, and that language impeaching such chastity is such as would provoke the anger, rage and resentment on the part of the relative to reduce the killing of deceased to manslaughter. Hammond v. State, 28 T. Cr. R., 413, 13 S. W. R., 605. For an elaborate discussion of the principle, see Fuller v. State, 50 Id., 14, 95 S. W. R., 541.

It is only the general reputation of the female for chastity, as bearing upon the question of provocation, that is provable under this article. Wood v. State, 31 Id., 571, 21 S. W. R., 602.

Art. 1135. [705] **Discretion of jury in such cases.**—The jury shall be at liberty to determine in every case whether, under all the circumstances, the insulting words or gestures were the real cause which provoked the killing. [Id.]

The controlling question is whether or not the homicide was, in fact, the result of passion aroused by the adequate cause, or the result of deliberation, and this is always a question of fact for the jury alone. Eanes v. State, 10 T. Cr. R., 421; Halliburton v. State, 32 Id., 51, 22 S. W. R., 48; Fuller v. State, 50 Id., 14, 95 S. W. R., 541.

Art. 1136. [706] **"Relation" includes whom.**—Any female under the permanent or temporary protection of the accused, at the time of the killing, shall also be included within the meaning of the term "relation." [Id.]

Construed; actual and statutory relationship. Any female under permanent or temporary protection, at the time of the killing, is included in the term "relative" under this article. In both cases the insult must be given while the relationship exists, but in the last case the killing must occur while the statutory relationship exists, and not after it has been dissolved. Ex parte Jones, 31 T. Cr., R., 422, 20 S. W. R., 983.

The relationship of step-father and step-daughter subsists as long as the marriage creating it subsists, and in such case it is not essential that the step-daughter shall be under the protection of the slayer at the time either of the insult or killing. Clanton v. State, 20 T. Cr. R., 615.

Art. 1137. [707] **"Adequate cause" must produce the passion.**—In order to reduce a voluntary homicide to the grade of manslaughter, it is necessary not only that adequate cause existed to produce the state of mind referred to in the third subdivision of article 1129, but also that such state of mind did actually exist at the time of the commission of the offense.

Passion must rest upon adequate cause: Blackwell v. State, 29 T. Cr. R., 194, 15 S. W. R., 597; Clore v. State, 26 Id., 624, 10 S. W. R., 242; Neyland v. State, 13 Id., 536; Hill v. State, 11 Id., 456.

Art. 1138. [708] **Provoking contest with intent to kill, not manslaughter.**—Though a homicide may take place under circumstances showing no deliberation, yet, if the person guilty thereof provoked a contest with the apparent intention of killing, or doing serious bodily injury to the deceased, the offense does not come within the definition of manslaughter.

Provoking difficulty, etc. One who provokes a difficulty with the apparent intention of slaying or seriously injuring his adversary and slays him, even in his own extremity, is guilty of murder and not manslaughter. But, provoking it without such intention, and killing suddenly and without premeditation, the killing, while not justifiable, might be a homicide of a lower grade than murder. Jackson v. State, 32 T. Cr. R., 192, 22 S. W. R., 831; Polk v. State, 30 Id., 657, 18 S. W. R., 466; Johnson v. State, 26 Id., 631, 10 S. W. R., 235; Varnell v. State, Id., 56, 9 S. W. R., 65; Alexander v. State, 25 Id., 260, 7 S. W. R., 867; Gray v. State, 55 Id., 90, 114 S. W. R., 635.

Art. 1139. [709] **Punishment.**—Manslaughter is of various degrees of culpability, according to the circumstances under which it was committed. It shall be punished by imprisonment in the penitentiary not less than two nor more than five years. [Id., p. 173.]

Williams v. State, 25 T. Cr. R., 76, 7 S. W. R., 661.

CHAPTER SIXTEEN.

OF MURDER.

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Article 1140. [710] **"Murder" defined.**—Every person with a sound memory and discretion who shall unlawfully kill any reasonable creature in being within this state, with malice aforethought, either express or implied, shall be deemed guilty of murder. Murder is distinguishable from every other species of homicide by the absence of the circumstances which reduce the offense to negligent homicide or manslaughter, or which excuse or justify the homicide. [Act Feb. 12, 1858, p. 173.]

See notes to Art. 1074, ante.

Murder of first degree. There is no invariable rule as to the length of time that must elapse between a formed design to kill and its execution, but it is only required that the killing must have been deliberate and that a formed design to kill existed. Snowberger v. State, 126 S. W. R., 878.

Failure to indict one of a number of conspirators to commit robbery, in the perpetration of which the murder was committed, does not prejudice the right of the state to a conviction of the other members of the conspiracy, nor prevent the court from submitting, as justified by the evidence, proof of the conspiracy to which the indicted number was a party. Bass v. State, 127 S. W. R., 1020.

Homicide. Evidence. The sister of the accused testified that a few days before the homicide she told the accused that the decedent was the cause of her removal from one school to another, denied on cross-examination that the school superintendent told her, prior thereto, that decedent had nothing to do with her removal. Held that it was competent to contradict her with the testimony of the superintendent. And note other contradicting testimony, held properly admitted. Long v. State, 127 S. W. R., 551.

Practice. That on a trial for murder of a school teacher, the public schools adjourned and teachers and scholars attended a part of the trial, will not reverse a conviction on the ground that the combined events were by concert of action to influence the jury. Id .

Facts held not to raise the issue of self-defense. Id.

Art. 1141. [711] **The two degrees.**—All murder committed by poison, starving, torture, or with express malice, or committed in the perpetration, or in the attempt at the perpetration, of arson, rape, robbery or burglary, is murder in the first degree; and all murder not of the first degree is murder of the second degree. [Id., p. 174.]

Construed. "Malice aforethought" is an indispensable prerequisite of murder. Evans v. State, 6 T. Cr. R., 513; Babb v. State, 12 Id., 491; Aineworth v. State, 29 Id., 599, 16 S. W. R., 652.

Malice aforethought includes all those states of the mind under which the killing of a person takes place without any cause which will in law justify, excuse or extenuate the homicide. It is the doing of a wrongful act intentionally, without just cause or excuse. It is a condition of the mind which shows a heart regardless of social duty and fatally bent on mischief, the existence of which is inferred from acts committed or words spoken. Vela v. State, 33 T. Cr. R., 322, 26 S. W. R., 396; Powell v. State, 28 Id., 393, 13 S. W. R., 599; Gallagher v. State, Id., 247, 12 S. W. R., 1087, citing McKinney's case, 8 T. Cr. R., 626, Harris' case, Id., 90, and Landers' case, 12 Id., 481. See also, Harrell v. State, 39 Id., 204, 45 S. W. R., 581, following Martinez v. State, 30 Id., 120, 16 S. W. R., 767.

Express malice is where one with a sedate and deliberate mind and formed design unlawfully kills another, which formed design is evidenced by external circumstances discovering that inward intention, as lying in wait, antecedent menaces, former grudges, concerted schemes to do the person slain some bodily harm, or any other circumstances showing such sedate and deliberate mind and formed design unlawfully to kill another, or to inflict serious bodily harm which might probably end in the death of the person upon whom the same was inflicted. Martinez v. State, 30 T. Cr. R., 129, 16 S. W. R., 767; Farrer v. State, 42 T., 271; Sharpe v. State, 17 T. Cr. R., 486; Lewis v. State, 15 Id., 647; McCoy v. State, 25 T., 33; Jordan v. State, 10 Id., 479; Harrell v. State, 41 T. Cr. R., 507, 55 S. W. R., 824; Benson v. State, 51 Id., 367, 101 S. W. R., 224.

Express malice must be proved and can not be inferred, and circumstantial evidence is available to prove it. Its actual existence is manifested by external acts transpiring before, at the time or immediately after the killing. Snowberger v. State, 126 S. W. R., 878.

I. Murder of first degree on express malice. The killing must result from an act done in pursuance of a formed design, of a sedate and deliberate mind to kill deceased, or by an unlawful act to inflict upon him some serious bodily harm which might probably end in depriving him of life, and the malevolence must be directed toward deceased as its object. For the comprehensive rule for determining the grade of malice, see opinion in extenso. McCoy v. State, 25 T., 33. And see Jones v. State, 3 T. Cr. R., 150; Murray v. State, 1 Id., 417; Sherer v. State, 30 Id., 349, 17 S. W. R., 621; Hall v. State, 33 Id., 191, 26 S. W. R., 72, citing Farrer v. State, 42 T., 265, Duebbe v. State, 1 T. Cr. R., 159; Benson v. State, 51 Id., 367, 101 S. W. R., 224.

Express malice can not be implied or inferred from any act, but must be proved aliunde. Farrer v. State, 42 T., 265; Drake v. State, 29 T. Cr. R., 265, 15 S. W. R., 725.

II. By poison. This article makes all murder committed by poison murder of the first degree; and it embraces articles 1096, 1097 and 1098, and makes all murder under them murder of the first degree. Rupe v. State, 42 T. Cr. R., 477, 61 S. W. R., 929, following Tooney v. State, 5 Id., 163.

Torture. Chapman v. State, 43 T. Cr. R., 328, 65 S. W. R., 1098.

III. Murder per se. This article expressly denounces as murder of the first degree all murder committed in the perpetration or attempted perpetration of arson, rape, robbery or burglary. The evidence and charge of the court must be confined to the case as specifically alleged in the indictment. Roach v. State, 8 T. Cr. R., 478, approving and distinguishing Tooney v. State, 5 T. Cr. R., 163. And see Reyes v. State, 10 Id., 1; Sharpe v. State, 17 Id., 486; Mendez v. State, 29 Id., 608, 16 S. W. R., 766; Isaacs v. State, 36 Id., 505, 38 S. W. R., 40; Johnson v. State, 44 Id., 332, 71 S. W. R., 25.

Mob violence. The act of the special session of the Twenty-fifth Legislature, page 40, defining murder by mob violence, is not unconstitutional, as embracing more than one subject in its title, but because indefinite, uncertain and of doubtful construction, is held inoperative and void. Augustine v. State, 41 T. Cr. R., 59, 52 S. W. R., 77.

IV. Implied malice; murder in second degree. If the facts and circumstances do not show that the homicide was committed by poison, starving or torture, or with express malice, or in the perpetration or attempted perpetration of arson, rape, robbery or burglary, and yet show no excuse, justification or extenuation, the law implies malice, and the homicide is murder of the second degree. McCoy v. State, 25 T., 33; Farrer v. State, 42 Id., 265; Thomas v. State, 53 T. Cr. R., 272, 109 S. W. R., 155.

A homicide committed in sudden passion, and without adequate cause, is murder of the second degree. Ex parte Jones, 31 T. Cr. R., 422, 20 S. W. R., 983; Puryear v. State, 56 Id., 231, overruling Clark v. State, 51 Id., 519, 102 S. W. R., 1136, and Kannmacher v. State, Id., 118, 101 S. W. R., 238.

And see Reyons v. State, 32 T. Cr. R., 151, 22 S. W. R., 590; English v. State, 34 Id., 190, 30 S. W. R., 233; Baltrip v. State, 30 Id., 545, 17 S. W. R., 1106; McGrath v. State, 35 Id., 413, 34 S. W. R., 127.

Art. 1142. [712] **Verdict must find of what degree.**—If the jury shall find any person guilty of murder, they shall also find by their verdict whether it

is of the first or second degree; and, if any person shall plead guilty to an indictment for murder, a jury shall be summoned to find of what degree of murder he is guilty, and in either case they shall also find the punishment. [Id.]

Verdict. A verdict of conviction must specify the degree of murder found. Buster v. State, 42 T., 315, overruling Holland v. State, 38 T., 474. And see Johnson v. State, 30 T. Cr. R., 419, 17 S. W. R., 1070; Blocker v. State, 27 Id., 16, 10 S. W. R., 439; Giles v. State, 23 Id., 281, 4 S. W. R., 886.

Evidence clearly showing that the homicide was committed in the perpetration of robbery, the court properly, on a plea of guilty, ignored second degree murder in its charge. Miller v. State, 126 S. W. R., 864.

And as homicide in the perpetration of robbery is per se murder of the first degree the court did not err in refraining from defining generally murder of the first degree. Id.

Art. 1143. [713] **Evidence of threats and deceased's character admissible, when.**—Where a defendant accused of murder seeks to justify himself on the ground of threats against his own life, he may be permitted to introduce evidence of the threats made, but the same shall not be regarded as affording a justification for the offense, unless it be shown that at the time of the homicide, the person killed by some act then done manifested an intention to execute the threat so made. In every instance where proof of threats has been made, it shall be competent to introduce evidence of the general character of the deceased. Such evidence shall extend only to an inquiry as to whether the deceased was a man of violent or dangerous character, or a man of kind and inoffensive disposition, or whether he was such a person as might reasonably be expected to execute a threat made. [Id.]

Threats. See notes to Art. 1110, ante. And see Alexander v. State, 25 T. Cr. R., 260, 7 S. W. R., 867; Reed v. State, 32 Id., 25, 22 S. W. R., 22; Ball v. State, 29 Id., 107, 14 S. W. R., 1012; Ex parte Mosby, 32 T., 566.

Conditional threats: Gilleland v. State, 44 T., 356; Knowles v. State, 31 T. Cr. R., 383, 20 S. W. R., 829; Slade v. State, 29 Id., 381, 16 S. W. R., 253.

Character of deceased. The general character of deceased can be put in evidence only after proving a predicate tending to show threats by deceased, or some act by him at the time of the homicide, which evidence, as to his character, would aid in explaining. Horbach v. State, 43 T., 242; Irwin v. State, Id., 236; Brooks v. State, 24 T. Cr. R., 274, 5 S. W. R., 852; Johnson v. State, 28 Id., 17, 11 S. W. R., 667; Childers v. State, 30 Id., 160, 16 S. W. R., 903.

Not permissible for the state to prove deceased's good character in the first instance, nor unless it has been attacked by the defense. Miers v. State, 34 T. Cr. R., 161, 29 S. W. R., 1074. And see Cornelius v. State, 54 Id., 173, 112 S. W. R., 1050; Arnwine v. State, 50 Id., 477, 99 S. W. R., 97; Hunter v. State, 54 Id., 224, 114 S. W. R., 124.

"Malice;" "malice aforethought:" See notes to Art. 1160, ante.

Burden of proof: See notes to Art. 52, ante.

Presumption of innocence and reasonable doubt: See notes to Art. 11, ante.

This article does not specify what acts will justify the threatened party in resorting to force to defend himself, and consequently it is error for the charge of the court to undertake to do so. Graves v. State, 124 S. W. R., 676.

Art. 1144. [714] **Punishment.**—The punishment of murder in the first degree shall be death or confinement in the penitentiary for life, and the punishment of murder in the second degree shall be confinement in the penitentiary for not less than five year. [Id.]

Punishment. Verdict of murder in the first degree, assessing penalty at 99 years in the penitentiary, being not only informal but contrary to the charge of the court, and not such a finding as the court could receive, it was not only proper but the duty of the court to reject the verdict, call the attention of the jury to the

charge and send them out again to consider of their verdict. Taylor v. State, 14 T. Cr. R., 340.

Sentence. When the verdict is for murder of the first degree with the death penalty, and an appeal is taken, sentence must be suspended until the decision of the Court of Criminal Appeals thereon has been received. On a conviction of murder of the first degree, with a life term in the penitentiary, sentence may be pronounced after notice of appeal has been given. Taylor v. State, supra.

An accused under 17 years old, convicted of a capital offense, can not be punished with death. Ex parte Walker, 28 T. Cr. R., 246, 13 S. W. R., 861; Walker v. State, Id., 503, 13 S. W. R., 860; Ingram v. State, 29 Id., 453, 14 S. W. R., 457.

Former conviction or acquittal of assault with intent to murder will not bar subsequent prosecution for murder resulting from the same assault. Johnson v. State, 19 T. Cr. R., 453; Curtis v. State, 22 Id., 227, 3 S. W. R., 86.

Under Art. 1, Sec. 14 of the Bill of Rights, a person can not be put on trial for the second time after a verdict of not guilty in a court of competent jurisdiction. Article 581 of the Code of Criminal Procedure provides that a plea of former acquittal in a court of competent jurisdiction shall be valid whether the acquittal was regular or irregular. Under these provisions a conviction for manslaughter under a defective indictment for murder of the first degree is a bar to a subsequent trial for murder. Mixon v. State, 35 T. Cr. R., 458, 34 S. W. R., 290.

Conviction for murder of second degree operates as acquittal of murder of the first degree, and conviction of manslaughter operates as acquittal of murder of both degrees. Fuller v. State, 30 T. Cr. R., 559, 17 S. W. R., 1108; Grisham v. State, 19 Id., 504.

A second trial being had in the same court and on the same indictment, no plea of former jeopardy or former conviction need be pleaded, as the whole record is before the court. De Leon v. State, 55 T. Cr. R., 39, 114 S. W. R., 828, following Robinson v. State, 21 Id., 160, 17 S. W. R., 632.

CHAPTER SEVENTEEN.

OF DUELING.

Dueling, etc., how punished.....Article 1145 | Homicide in, murder in the first degree.Article 1146

Article 1145. [715] **Dueling, etc., how punished.**—Any person who shall, within this state, fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within the state or out of it, or who shall act as a second, or knowingly aid or assist in any manner those thus offending, shall be deemed guilty of a felony, and, upon conviction, shall be punished by confinement in the penitentiary not less than two nor more than five years.

Art. 1146. [716]. **Homicide in, murder in first degree.**—If, in any duel hereafter fought in this state, either of the combatants be killed, or receive a wound from which he afterwards dies within three months, the survivor shall be deemed guilty of murder in the first degree and be punished accordingly.

CHAPTER EIGHTEEN.

GENERAL PROVISIONS RELATING TO HOMICIDE.

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Article 1147. [717] **Means or instruments used must be considered.**—The instrument or means by which a homicide is committted are to be taken into consideration in judging of the intent of the party offending; if the instrument be one not likely to produce death, it is not to be presumed that death was designed, unless, from the manner in which it was used, such intention evidently appears.

Construed. The weapon or means used must possess the quality of a "deadly weapon," without regard to the manner in which it is used; or, if not deadly, the manner of its use must show an evident intention to kill. In other words, the character of the weapon can not be fixed or determined by the manner of its use—it must ordinarily be a deadly weapon per se to warrant any presumption arising from its use; or if not such a weapon, the intent to kill must evidently appear from the manner of its use. Shaw v. State, 34 T. Cr. R., 435, 31 S. W. R., 361.

Looking to the means used to determine intent, the inference is almost conclusive that, if a deadly weapon is used in a deadly manner, the intent was to kill. But if the weapon was not dangerous or was not used in a deadly manner, then the intention must be established by other facts. Martinez v. State, 35 T. Cr. R., 386, 33 S. W. R., 970; McDowell v. State, 55 Id., 596, 117 S. W. R., 830; Johnson v. State, 42 Id., 377, 60 S. W. R., 48; Washington v. State, 53 Id., 480, 110 S. W. R., 751; Crow v. State, 55 Id., 200, 116 S. W. R., 53; and see Betts v. State, 124 S. W. R., 424.

Art. 1148. [718] **If injury be done in a cruel manner.**—If any injury be inflicted in a cruel manner, though with an instrument not likely under ordinary circumstances to produce death, the killing will be manslaughter or murder, according to the facts of the case.

Though the instrument used was not one likely to produce death under ordinary circumstances, yet the injury with it being inflicted in a cruel manner and death resulting therefrom, the killing, if committed on implied malice, would be murder of the second degree. Whitaker v. State, 12 T. Cr. R., 436; Bell v. State, 17 Id., 538; Garcia v. State, 48 Id., 528, 89 S. W. R., 647; McCoy v. State, 25 T., 33.

Art. 1149. [719] **If in sudden passion not with deadly weapon.**—Where a homicide occurs under the influence of sudden passion, but by the use of means not in their nature calculated to produce death, the person killing is not deemed guilty of the homicide, unless it appear that there was an intention to kill, but the party from whose act the death resulted may be prosecuted for and convicted of any grade of assault and battery.

Construed. This article comprehends the law of a case in which there was no intention to kill, and when the homicidal act was divested of the elements of an evil and cruel disposition. Under it an offender may be prosecuted and convicted of any grade of assault and battery. See notes to Art. 1168; Hill v. State, 11 T. Cr. R., 456. And see also Thompson v. State, 24 Id., 383; Boyd v. State, 28 Id., 137, 12 S. W. R., 737; Wilson v. State, 49 Id., 50, 90 S. W. R., 312; Lucas v. State, Id., 135, 90 S. W. R., 880; Terrell v. State, 53 Id., 604, 111 S. W. R., 152.

Art. 1150. [720] **If evil or cruel disposition be exhibited.**—Where the circumstances attending a homicide show an evil or cruel disposition, or that it was the design of the person offending to kill, he is deemed guilty of murder

or manslaughter, according to the other facts of the case, though the instrument or means used may not in their nature be such as to produce death ordinarily.

Dones v. State, 8 T. Cr. R., 112.

A deadly weapon is one which, as used, is likely to produce death or great bodily harm. Skidmore v. State, 43 T., 93; McDowell v. State, 55 T. Cr. R., 596, 117 S. W. R., 830; Pierce v. State, 21 Id., 540, 1 S. W. R., 463; Peacock v. State, 52 Id., 432, 107 S. W. R., 346.

TITLE 16.

OF OFFENSES AGAINST REPUTATION.

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1. Of Libel.
2. Of Slander.
3. Sending Anonymous Letters.
4. Of False Accusation and Threats of Prosecution.
5. Blacklisting.

CHAPTER ONE.

OF LIBEL.

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Article 1151. [721] **"Libel" defined.**—He is guilty of "libel" who, with intent to injure, makes, writes, prints, publishes, sells or circulates any malicious statement affecting the reputation of another in respect to any matter or thing pointed out in this chapter.

Belo v. Wren, 63 T., 686.

Constitutional law. The libel law of this state does not intrench upon the freedom of the press nor the constitutional right of a person to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege. Morton v. State, 3 T. Cr. R., 510.

Extent to which the freedom of the press may be restrained to protect private character from falsehood and slander, and prevent the publication of testimony, libelous in its nature, required by the policy of the law to be kept absolutely secret, see Belo v. Wren, 63 T., 686; Express Co. v. Copeland, 64 Id., 354.

Construed. Libel is, eo nomine, an offense which is defined by our statute, and a recognizance on appeal which recites the offense as "libel," without setting out the constituent elements, is sufficient. Jones v. State, 38 T. Cr. R., 364, 43 S. W. R., 78.

It is a violation of our statute to libel any sect, company or class of men without naming any person in particular who may belong to such class. Jones v. State, supra.

Indictment must set out the libelous instrument in haec verba, and profess, upon its face, to set forth an accurate copy of the alleged libel in words and figures;

otherwise it is bad on motion to quash or in arrest of judgment. Coulson v. State, 16 T. Cr. R., 189.

Not essential that the indictment allege that the acts of the defendant were libelous, nor that they were wickedly committed. Baldwin v. State, 39 T. Cr. R., 245, 45 S. W. R., 714.

If the indictment, by fair construction of its terms, unmistakably conveys the idea that the person libeled has been guilty of some penal offense, or of such conduct as is disgraceful to him as a member of society, such as would bring him into contempt among honorable people, it is sufficient. Mankins v. State, 41 T. Cr. R., 662, 57 S. W. R., 950; Lockhard v. State, 43 Id., 61, 63 S. W. R., 566. See Gonzales v. State, 124 S. W. R., 937.

And see Jones v. State, 38 T. Cr. R., 364, 43 S. W. R., 78; Woody v. State, 16 Id., 252; Smith v. State, 39 Id., 320, 45 S. W. R., 1013.

Innuendo: McKie v. State, 37 T. Cr. R., 504, 40 S. W. R., 305; Squires v. State, 39 T. Cr. R., 96, 45 S. W. R., 147.

Publication. Signing a libelous paper circulated for signatures and then delivering it to another is publication of it before it is printed if no protest by the signer is made against it being printed; and it is no defense for the signer that he did not intend or direct its publication. Cotulla v. Kerr, 74 T., 89, 11 S. W. R., 1058.

A newspaper publication in a newspaper owned and published by a corporation is the act of the corporation and not the individual members. Belo v. Fuller, 84 T., 450, 19 S. W. R., 616.

Art. 1152. [722] **Punishment.**—If any person be guilty of libel, he shall be punished by fine not less than one hundred nor more than two thousand dollars, or by imprisonment in the county jail not exceeding two years; and the court may enter up judgment and issue an order thereupon directing the sheriff to seize and destroy all the publications, prints, paintings or engravings constituting the libel as charged in the indictment or information.

Art. 1153. [723] **Publishing writing purporting to be done by another.**—If any person, with intent to injure the reputation of another, shall, without lawful authority, make, publish or circulate a writing purporting to be the act of some other person, and which comes within the definition of libel, as given in this chapter, he shall be punished in the same manner as if the act purported to be his own; and the rules with respect to libel apply also to the making and circulation of such false writing.

Art. 1154. [724] **"Maker" explained.**—He is the maker of a libel who originally contrived and either executed it himself by writing, printing, engraving or painting, or dictated or caused it to be done by others.

Art. 1155. [725] **"Publisher."**—He is the publisher of libel who, either of his own will or by the persuasion or dictation of another, executes the same in any of the modes pointed out as constituting a libel; but if any one by force or threats is compelled to execute such libel he is guilty of no offense.

Art. 1156. [726] **Circulating.**—He is guilty of circulating a libel who, knowing its contents, either sells, distributes or gives, or who, with malicious design, reads or exhibits it to others.

Construed. It is "circulating" to read and exhibit a libelous statement to others. Woody v. State, 16 T. Cr. R., 252.

Depositing a libel in the postoffice for transmission to the party addressed is circulation or publishing. Coulson v. State, 16 T. Cr. R., 189; Mankins v. State, 41 Id., 662, 57 S. W. R., 950.

Circulation of a libel is an offense committed in any place where the libel is sold or distributed. Belo v. Wren, 63 T., 686.

Art. 1157. [727] **The ideas the statement must convey.**—The written, printed or published statement, to come within the definition of libel, must convey the idea either—

1. That the person to whom it refers has been guilty of some penal offense; or

Construed. It is not necessary that the language of the libel shall, in express terms, charge crime; it is sufficient if calculated to induce persons who read it to believe the person of whom it was written is guilty of crime. The words of a publication may be literally true, yet, if the sense is to impute a crime, it is libelous. Democrat Pub. Co. v. Jones, 83 T., 302, 18 S. W. R., 652.

Indictment, with sufficient particularity, must set out specifically one of the grounds named in the article. Byrd v. State, 38 T. Cr. R., 630, 44 S. W. R., 521.

This article makes the various acts mentioned libelous per se, and declares the person guilty who, "with intent to injure, either makes or writes, prints or publishes, sells or circulates, any malicious statement affecting the reputation of another," etc. Mankins v. State, 41 T. Cr. R., 662, 57 S. W. R., 950.

It is libel to: Charge a person with being a "hireling murderer," if written and published. Smith v. State, 32 T., 594. That a person had been several times indicted for maintaining a gambling house. Knapp v. Campbell, 36 S. W. R., 765. That a party was guilty of embezzlement, and denounce him as a "liar, swindler and deadbeat." Leader v. State, 4 T. Cr. R., 162. That a party was arrested and jailed on a charge of theft. Belo v. Fuller, 84 T., 450, 19 S. W. R., 616. That a merchant was dishonest in business. Hirshfield v. Bank, 83 T., 452, 18 S. W. R., 743.

2. That he has been guilty of some act or omission which, though not a penal offense, is disgraceful to him as a member of society, and the natural consequence of which is to bring him into contempt among honorable persons; or

3. That he has some moral vice, or physical or mental defect or disease, which renders him unfit for intercourse with respectable society, and such as should cause him to be generally avoided; or

4. That he is notoriously of bad or infamous character; or

5. That any person in office, or a candidate therefor, is dishonest, and therefore unworthy of such office, or that while in office he has been guilty of some malfeasance rendering him unworthy of the place.

Construed. There must be, under this subdivision, an imputation that the candidate is dishonest, and therefore unworthy to hold office; that his want of honesty is such as would go to his personal integrity and render him unfit to be trusted with official duties. Treachery to his putative political party, and connivance with the opposing party for support, does not imply personal dishonesty within the meaning of this subdivision. Squires v. State, 39 T. Cr. R., 96, 45 S. W. R., 147. And see Express Co. v. Copeland, 64 T., 354; Cotulla v. Kerr, 74 Id., 89, 11 S. W. R., 1058.

Art. 1158. [728] **Mode of publication.**—A libel may be either written, printed, engraved, etched or painted, but no verbal defamation comes within the meaning thereof; and whenever a defendant is accused of libel by means of a painting, engraving or caricature, it must clearly appear therefrom that the person said to be defamed was, in fact, intended to be represented by such painting, engraving or caricature.

Art. 1159. [729] **A manuscript must be circulated.**—In order to render any manuscript a libel, it must be circulated or posted up in some public place.

Art. 1160. [730] **Editor, etc., prima facie guilty.**—If the libel be in printed form, and issues or is sold in any office or shop where a public newspaper is conducted, or where books or other printed works are sold or printed, the editor, publisher and proprietor of such newspaper, or any one of them, or the owner of such shop, is to be deemed guilty of making or circulating such libel until the contrary is made on the trial to appear.

Construed. The business manager of the paper writing the libelous article, it was immaterial whether or not he was responsible for its publication. Noble v. State, 38 T. Cr. R., 368, 43 S. W. R., 80.

Art. 1161. [731] **But may avoid responsibility, how.**—The editor, publisher or proprietor of a public newspaper may avoid the responsibility of making or publishing a libel by giving the true author of the same; provided, such author be a resident of this state and a person of good character, except in cases where it is shown that such editor, publisher or proprietor caused the libel to be published with malicious design.

Art. 1162. [732] **Mechanical executor not guilty, unless.**—No person shall be convicted of libel merely on evidence that he has made a manuscript copy of a libel or has performed the manual labor of printing it, unless it be shown positively that such person was actuated by a malicious design against the person defamed. But the person for whose account or by whose order it was printed shall be presumed to have known the intent of the publication, and shall be liable for the offense.

Art. 1163. [733] **Actual injury not necessary.**—It is sufficient to constitute the offense of libel if the natural consequence of the publication of the same is to injure the person defamed, although no actual injury to his reputation has been sustained.

Art. 1164. [734] **Intent to injure presumed.**—The intent to injure is to be presumed if such would be the natural consequence of the libel, though no actual proof be made that the defendant had such design; and in all trials of libel the jury are to judge from the facts proved relative to the malicious design of the defendant as to what penalty ought to be imposed under the restrictions herein prescribed.

Presumption of malice or the intent to injure attends the writing, printing or publication of libelous matter, and imposes the burden of proof on defendant to bring the matter within the category of privileged communications. Smith v. State, 32 T., 594.

Non-privileged communications may be presumed malicious from their falsity. Bradstreet v. Gill, 72 T., 115, 9 S. W. R., 753.

Art. 1165. [735] **True statement concerning candidate not libel.**—It is no offense to make true statements of fact or express opinions as to the integrity or other qualifications of a candidate for any office or public place or appointment.

Const., Art. 1, Sec. 8; Express Co. v. Copeland, 64 T., 354.

Art. 1166. [736] **Nor concerning qualifications of professional men.**—It is no offense to publish true statements of fact as to the qualifications of any person for any occupation, profession or trade.

Const., Art. 1, Sec. 8.

Art. 1167. [737] **No criticism of any book, work of art, etc.**—It is no offense to publish any criticism or examination of any work of literature, science or art, or any opinion as to the qualifications or merits of the author of such work.

Const., Art. 1, Sec. 8.

Art. 1168. [738] **The offense relates to persons only.**—To constitute libel, there must be some injury intended to the reputation of persons, and no publication as to the government, or any of the branches thereof, as such is an offense under the name of seditious writings or any other name.

Art. 1169. [739] **Respecting religious systems, etc.**—It is no libel to make publication respecting the merits or doctrines of any particular religion, system of morals or politics, or of any particular form of government.

Art. 1170. [740] **Corporations can not be libeled.**—It is no libel to make any publication respecting a body politic or corporate as such.

Art. 1171. [741] **Nor legislative or judicial proceedings, unless, etc.**—It is no libel to publish any statement respecting any legislative or judicial proceedings, whether the statement be in fact true or not, unless in such statement a charge of corruption is made against some person acting in a legislative or judicial capacity.

Privileged communications are those made in good faith in reference to a matter in which the person communicating has an interest, or in which the public has an interest, provided it is made to another to protect his interest; and a communication made in the discharge of a duty, and looking to the prevention of wrong toward another, or the public, is privileged when made in good faith. Railway Co. v. Richmond, 73 T., 568, 11 S. W. R., 555.

And see Belo v. Wren, 63 T., 686; Runge v. Franklin, 72 Id., 585, 10 S. W. R., 721; Holt v. Parsons, 23 Id., 1; Cotulla v. Kerr, 74 Id., 89, 11 S. W. R., 1058; Behee v. Railway, 71 Id., 424, 9 S. W. R., 449. And see Stayton v. State, 46 T. Cr. R., 205, 78 S. W. R., 1071.

Art. 1172 [742] **Recorder of minutes, etc., not liable.**—Where any person by virtue of his office is required to record the proceedings of any department of the government or of any body corporate or politic, or of any association organized for purposes of business, or as a religious, moral, benevolent, literary or scientific institution, he can not be charged with libel for any entry upon the minutes or records of such department, body or association made in the course of his official duties.

Construed. This article makes a false statement, entered upon the minutes or records of proceedings of any corporate body or association, a libel, if made with a malicious intent to injure. The baptismal record of a church comes within the category of records of a corporation. Kubricht v. State, 44 T. Cr. R., 94, 69 S. W. R., 157.

Art. 1173. [743] **But all members of the association who assent are.**—If any false statement be entered upon the minutes or record of proceedings of any corporate body or association included within the meaning of the preceding article, which would be libel if written, printed published or circulated by an individual, according to the previous articles of this chapter, the persons being members of such body or association, who assent to and direct such libelous statement to be made, are guilty of libel under the same rules as if the false statement had been written, published or circulated in any other manner than as a part of the record or proceedings of such body or association, subject, however, to the restrictions contained in the succeeding article.

Holt v. Parsons, 23 T., 1.

Art. 1174. [744] **Intent to injure not presumed, unless, etc.**—The libelous statement referred to in the preceding article is not to be presumed to have been made with intent to injure, from the mere fact that such would be the natural result thereof, unless it appear from other facts that the statement was in fact made with that intention.

Holt v. Parsons, 23 T., 1.

Art. 1175. [745] **"Malicious" signifies what.**—The word "malicious" is used to signify an act done with evil or mischievous design, and it is not necessary to prove any special facts showing ill feeling on the part of the person who is concerned in making, printing, publishing or circulating a libelous statement against the person injured thereby.

Malice is an essential element of libel, and it may be presumed from the falsity of the defamatory matter. Holt v. Parsons, supra; Behee v. Railway, 71 T., 424, 9 S. W. R., 449; Bradstreet v. Gill, 72 Id., 115, 9 S. W. R., 753.

Held in Railway v. Richmond, 73 T., 568, 11 S. W. R., 555, that malice will not be inferred from the publication, but its existence as a fact must be established by other evidence.

Failure to prove an allegation of the truth of the libelous matter is not a circumstance tending to prove malice. Express Co. v. Copeland, 64 T., 354.

Art. 1176. [746] **Statement in legislative or judicial proceedings not included.**—No statement made in the course of a legislative or judicial proceeding, whether true or false, although made with intent to injure and from malicious purposes, comes within the definition of libel.

Construed. It is immaterial whether a charge made in the course of a legal proceeding be true or false, it is absolutely privileged, and is so though the civil court had no jurisdiction of the subject-matter. Runge v. Franklin, 72 T., 585, 10 S. W. R., 721. And see Lindsey v. State, 18 T. Cr. R., 280.

Art. 1177. [747] **Truth of statement may be shown, when.**—In the following cases, the truth of any statement charged as libel may be shown in justification of the defendant:

1. Where the publication purports to be an investigation of the official conduct of officers or men in a public capacity.

2. Where it is stated in the libel that a person has been guilty of some penal offense, and the time, place and nature of the offense is specified in the publication.

See Williams v. State, 40 T. Cr. R., 497, 51 S. W. R., 220; Williams v. State, Id., 565, 51 S. W. R., 224; Morton v. State, 3 Id., 510; Leader v. State, 4 Id., 162; Johnson v. State, 31 Id., 464, 20 S. W. R., 980; Johnson v. State, Id., 569, 21 S. W. R., 541.

3. Where it is stated in the libel that a person is of notoriously bad or infamous character.

4. Where the publication charges any person in office, or a candidate therefor, with a want of honesty, or of having been guilty of some malfeasance in office, rendering him unworthy of the place. In other cases, the truth of the facts stated in the libel can not be inquired into.

Truth as justification: See Democrat Pub. Co. v. Jones, 83 T., 302, 18 S. W. R., 652; Behee v. Railway, 71 Id., 424, 9 S. W. R., 449; Express Co. v. Copeland, 64 Id., 354; Smith v. State, 32 Id., 594; Johnson v. State, 31 T. Cr. R., 456, 20 S. W. R., 985; Const., Art. 1, Sec. 8.

Art. 1178. [748] **Province of jury.**—The jury in every case of libel are not only the judges of the facts and of the law, under the direction of the court, in accordance with the constitution, but they are judges of the intent with which a libel may have been published or circulated, subject to the rules prescribed in this chapter; and in rendering their verdict they are to be governed by a consideration of the nature of the charge contained in the libel, the general reputation of the person said to be defamed, and the degree of malice exhibited by the defendant in the commission of the offense.

Construed. While under this article the jury are the judges of the law and the evidence, they must construe the law, as in other cases, under the charge of the court as to the law. McArthur v. State, 41 T. Cr. R., 635, 57 S. W. R., 847.

Art. 1179. [749] **This title relates only to penal action.**—This title regulates the law with regard to libel when prosecuted as a penal offense, and is not intended to have any operation upon the subject so far as relates to civil remedies for the recovery of damages.

CHAPTER TWO.

OF SLANDER.

Definition and punishment.....Article 1180 | Procedure in prosecution for.....Article 1181

Article 1180. [750] **Definition and punishment.**—If any person shall, orally or otherwise, falsely and maliciously or falsely and wantonly impute to any female in this state, married or unmarried, a want of chastity, he shall be deemed guilty of slander, and, upon conviction, shall be fined not less than one hundred nor more than one thousand dollars; and the jury may, in addition thereto, find a verdict for the imprisonment of defendant in the county jail not exceding one year.

Construed. The law presumes the chastity of every woman, and in a prosecution for slander the State is not required to prove chastity of the injured female. Collins v. State, 39 T. Cr. R., 30, 44 S. W. R., 846; Lagrone v. State, 12 Id., 426; Richmond v. State, 126 S. W. R., 596.

But the burden is on the state to show the imputation malicious and wanton, the only defense to which is the truth of the same, or that the female's reputation for chastiy was bad. McMahan v. State, 13 T. Cr. R., 220; Shaw v. State, 28 Id., 236, 12 S. W. R., 741; Crane v. State, 30 Id., 464, 17 S. W. R., 939. And see Richmond v. State, 126 S. W. R., 596.

To constitute slander, the false words must not only have been uttered by accused, but they must have been uttered maliciously and wantonly. Rainwater v. State, 46 T. Cr. R., 496, 81 S. W. R., 38.

The defendant is not required to prove the bad reputation of the impugned female beyond a reasonable doubt. Ballew v. State, 48 T. Cr. R., 46, 85 S. W. R., 1063, approving Manning v. State, 37 Id., 180, 39 S. W. R., 118.

Indictment: Kyle v. State, 55 T. Cr. R., 360, 116 S. W. R., 598; Melton v. State, 12 Id., 552; Wiseman v. State, 14 Id., 74; Combs Id., 222; Humbard v. State, 21 Id., 200, 17 S. W. R., 126; Neeley v. State, 32 Id., 370, 23 S. W. R., 798.

Innuendo. If the meaning of the language used by the accused is obscure, indictment should allege its meaning; otherwise proof of its meaning is not admissible. Berry v. State, 27 T. Cr. R., 483, 11 S. W. R., 521; Rogers v. State, 30 Id., 462, 17 S. W. R., 548; Neeley v. State, 32 Id., 370, 23 S. W. R., 798; Whitehead v. State, 39 Id., 89, 45 S. W. R., 10; Roberts v. State, 51 Id., 27, 100 S. W. R., 150.

See indictment, which, without innuendo averments, is held to charge no offense under this article. Woods v. State, 124 S. W. R., 918.

Indictment alleging a specific imputation, the state is bound by it, and can convict upon no other than the alleged imputation. Id.

Evidence. See Richmond v. State, 126 S. W. R., 596.

Art. 1181. [751] **Procedure in prosecution for.**—In any prosecution under this chapter, it shall not be necessary for the state to show that such imputation was false, but the defendant may in justification show the truth of the imputation, and the general reputation for chastity of the female alleged to have been slandered may be inquired into.

See notes under preceding article and Kelly v. State, 37 T. Cr. R., 641, 40 S. W. R., 803; Jackson v. State, 42 Id., 497, 60 S. W. R., 963; West v. State, 44 Id., 417, 71 S. W. R., 967; Bowers v. State, 45 Id., 185, 75 S. W. R., 299; Kyle v. State, 55 Id., 357, 116 S. W. R., 596.

CHAPTER THREE.

SENDING ANONYMOUS LETTERS.

	Article		Article
Prohibited, penalty for so doing	1182	Two or more persons concerned in, either may be compelled to testify	1184
Definition of	1183		

Article 1182. **Prohibited, penalty for so doing.**—If any person shall send, or cause to be sent, deliver, or cause to be delivered, to any other person any anonymous letter or written instrument of any character whatsoever, reflecting upon the integrity, chastity, virtue, good character or reputation of the person to whom such letter or written instrument is sent or addressed, or of any other person, or wherein the life of such person is threatened, said person so sending such letter or written instrument shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than two hundred and fifty dollars nor more than one thousand dollars, and by imprisonment in the county jail for not less than one month nor more than twelve months. [Act 1909, p. 138.]

Art. 1183. **Definition of.**—By an anonymous letter or written instrument, within the meaning of this law, is meant where the sender of such letter or written instrument withholds his or her full and true name from the same, or where no name is signed thereto, or where a fictitious name is signed thereto, or where any description of such sender instead of a name is used, such as "a friend," or "a true friend" or the like. [Id., p. 138.]

Art. 1184. **Two or more persons concerned in, either may be compelled to testify.**—If two or more persons are concerned in the composition or sending of any anonymous letter or written instrument, as hereinbefore prohibited by this law, then either of such persons shall be compelled to testify thereto; and the fact that such testimony will incriminate such person shall not exempt such person from testifying in regard thereto; provided, that where such person has been compelled to testify in regard thereto as above stated, then, in that event, when such person has testified fully, fairly and truthfully in regard thereto, then such person shall not be prosecuted under this law for the particular offense about which such person has so testified. [Id., p. 138.]

CHAPTER FOUR.

OF FALSE ACCUSATION AND THREATS OF PROSECUTION.

	Article		Article
Combination to falsely accuse another	1185	Publishing another as a coward	1188
To extort money	1186	"Whitecapping" defined, punishment for	1189
Threats of prosecution to extort money	1187		

Article 1185. [752] **Combination to falsely accuse another.**—If any two or more persons shall combine falsely to accuse another of an offense, and shall, in pursuance of such combination, make such accusation before a court or magistrate, or in any newspaper or other public print, or by the circulation of hand bills, or in any other public manner, by writing, they shall be punished by fine not exceeding two thousand dollars, or by imprisonment in the county jail not exceeding two years.

Art. 1186. [753] **To extort money.**—If the purpose of such combination be to extort money or any pecuniary advantage, the punishment shall be by fine not to exceed two thousand dollars, and imprisonment in the penitentiary not to exceed three years.

Art. 1187. [754] **Threats of prosecution to extort money.**—If any person, with intent to extort money, or any pecuniary advantage, shall threaten to accuse another of a felony, before any court, or to publish any other statement respecting him which would come within the meaning of libel, he shall be punished in the manner set forth in article 1185.

Art. 1188. [755] **Publishing another as a coward.**—If any person shall, in any newspaper or hand bill, or by notice posted up in any place, publish another as a coward, or use toward him other opprobrious language, he shall be fined in an amount not exceeding two hundred dollars; and, if such publication or posting be in consquence of a refusal to fight a duel, the punishment shall be by fine of not less than five hundred nor more than one thousand dollars.

Art. 1189. **"Whitecapping" defined, punishment for.**—Any person who shall post any anonymous notice, or make any threats or signs, or skull and cross bones, or shall, by any other method, post any character or style of notice or threat to do personal violence or injury to property on or near the premises of another, or who shall cause the same to be sent with the intention of interfering in any way with the right of such person to occupy said premises, or to follow any legitimate occupation, calling or profession, or with the intention of causing such person to abandon such premises, or precincts, or county, in which such person may reside, shall be deemed guilty of the offense of whitecapping, and, upon conviction therefor, shall be punished by confinement in the state penitentiary for any period of time not less than two years nor more than five years. [Act 1899, p. 215.]

CHAPTER FIVE.

BLACKLISTING.

	Article
What constitutes discrimination against persons seeking employment	1190
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Article 1190. **What constitutes discrimination against persons seeking employment.**—Either or any of the following acts shall constitute discrimination against persons seeking employment:

1. Where any corporation, or receiver of the same, doing business in this state, or any agent or officer of any such corporation or receiver, shall blacklist, prevent, or attempt to prevent, by word, printing, sign, list or other means, directly or indirectly, any discharged employe, or any employe who may have voluntarily left said corporation's service, from obtaining employment with any other person, company, or corporation, except by truthfully stating in writing, on request of such former employe, the reason why such employe was discharged, or why his relationship to such company ceased.

2. Where any corporation, or receiver of the same, doing business in this state, or any officer or agent of such corporation or receiver, shall by any means, directly or indirectly, communicate to any other person or corporation any information in regard to a person who may seek employment of such person or corporation, and fails to give such person in regard to whom the communication may be made, within ten days after demand therefor, a complete copy of such communication, if in writing, and a true statement, if by sign or other means not in writing, and the names and addresses of all persons or corporations to whom said communication shall have been made.

3. Where any corporation, or receiver of the same, doing business in this state, or any agent or employe of such corporation or receiver, shall have discharged an employe, and such employe demands a statement in writing of the cause of his discharge, and such corporation, receiver, agent or employe thereof fails to furnish a true statement of the same to such discharged employe within ten days after such demand, or where any corporation or receiver of the same, or any officer or agent of such corporation, or receiver, shall fail, within ten days after written demand for the same, to furnish to any employe voluntarily leaving the service of such corporation or receiver, a statement in writing that such employe did leave such service voluntarily, or where any corporation or receiver of the same doing business within this state, shall fail to show in any statement under the provision of this law the number of years and months during which such employe was in the service of the said corporation or receiver in each and every separate capacity or position in which he was employed, and whether his services were satisfactory in each such capacity or not, or where any such corporation or receiver shall fail, within ten days after written demand for the same, to furnish to any such employe a true copy of the statement originally given to such employe for his use in case he shall have lost, or is otherwise deprived of the use of, the said original statement.

4. Where any corporation, or receiver of same, doing business in this state, or any agent or officer of the same, shall have received any request, notice or communication, either in writing or otherwise, from any person, company or corporation, preventing or calculated to prevent the employment of a person seeking employment, and shall fail to furnish to such person seeking em-

ployment, within ten days after a demand in writing therefor, a true statement of such request, notice or communication, and, if in writing, a true copy of same, and, if otherwise than in writing, a true statement thereof, and a true interpretation of its meaning, and the names and addresses of the persons, company or corporation furnishing the same.

5. Where any corporation, or receiver of the same, doing business in this state, or any officer or agent of such corporation or receiver, discharging an employe, shall have failed to give such employe a true statement of the causes of his discharge within ten days after a demand in writing therefor, and shall thereafter furnish any other person or corporation any statement or communication in regard to such discharge, unless at the request of the discharged employe.

6. Where any corporation, or receiver of same, doing business in this state, or any officer or agent of such corporation or receiver shall discriminate against any person seeking employment on account of his having participated in a strike.

7. Where any corporation, or receiver of the same, doing business in this state, or any officer or agent of such corporation, or receiver, shall give any information or communication in regard to a person seeking employment, having participated in any strike, unless such person violated the law during his participation on such strike, or in connection therewith, and unless such information is given in compliance with subdivision 1 of article 1190. [Act 1909, p. 160.]

Art. 1191. **Penalty for violating preceding article.**—Every person violating any of the provisions of the preceding article shall be guilty of a misdemeanor, and, upon conviction, shall be punished by imprisonment in the county jail for not less than one month nor more than one year. [Act 1907, p. 143.]

Art. 1192. **Prosecutions under, what is prima facie proof.**—In prosecutions for the violation of any of the provisions of this law, evidence that any person has acted as the agent of a corporation in the transaction of its business in this state shall be received as prima facie proof that his act in the name, behalf or interest of the corporation, of which he was acting as the agent, was the act of the corporation. [Id., p. 143.]

Art. 1193. **"Blacklisting" defined.**—He is also guilty of "blacklisting" who places, or causes to be placed, the name of any discharged employe, or any employe who has voluntarily left the service of any individual, firm, company or corporation on any book or list, or publishes it in any newspaper, periodical, letter or circular, with the intent to prevent said employes from securing employment of any kind with any other person, firm, corporation or company, either in a public or private capacity. [Act 1901, p. 264.]

Art. 1194. **Same prohibited.**—No corporation, company, or individual shall blasklist or publish, or cause to be blacklisted or published, any employe, mechanic or laborer discharged by such corporation, company or individual, with the intent and for the purpose of preventing such employe, mechanic or laborer from engaging in or securing similar or other employment from any other corporation, company or individual. [Id., p. 264.]

Art. 1195. **Penalty for.**—If any officer or agent of any corporation, company or individual, or other person, shall blacklist or publish, or cause to be blacklisted or published, any employe, mechanic or laborer discharged by such corporation, company or individual, with the intent and for the purpose of preventing such employe, mechanic or laborer from engaging in or securing similar or other employment from any other corporation, company or individual, or shall in any manner conspire or contrive by correspondence or otherwise, to prevent such discharged employe from procuring employment, as provided in articles 1193 and 1194, he shall be deemed guilty of a misde-

meanor, and, upon conviction thereof, shall be fined not less than fifty nor more than two hundred and fifty dollars, or be imprisoned in the county jail not less than thirty nor more than ninety days or both. [Id., p. 264.]

Art. 1196. **Exceptions, when.**—But this law shall not be construed as prohibiting any corporation, company or individual, from giving in writing, on application from such discharged employe, or any corporation, company or individual who may desire to employ such discharged employe, a truthful statement of the reason for such discharge; provided, that said written cause of discharge, when so made by such person, agent, company or corporation, shall never be used as the cause for an action for libel, either civil or criminal, against the person, agent, company or corporation so furnishing same. [Id., p. 264.]

Art. 1197. **Servants or employes not to be coerced.**—It shall be unlawful for any person or persons, corporation or firm, or any agent, manager or board of managers, or servant, of any corporation or firm in this state to coerce or require any servant or employe to deal with or purchase any article of food, clothing or merchandise of any kind whatever, from any person, association, corporation or company, or at any place or store whatever. And it shall be unlawful for any such person or persons, or agent, manager, or board of managers, or servants, to exclude from work, or to punish or blacklist any of said employes for failure to deal with any such person or persons, or any firm, company or corporation, or to purchase any article of food, clothing or merchandise whatever at any store or any place whatever. [Act 1903, p. 89.]

Art. 1198. **Penalty for.**—Any person or persons, company or corporation, or association, or any agent, manager or managers, or servant of any company, corporation or association, described in the foregoing article, who shall violate any of the provisions of the preceding article, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than fifty nor more than two hundred dollars for each offense. [Id., p. 89.]

Art. 1199. **Witness summoned and examined, when.**—Upon the application of the attorney general, or of any district or county attorney, made to any justice of the peace in this state, and stating that he has reason to believe that a witness, who is to be found in the county of which such justice of the peace is an officer, knows of a violation of any of the provisions of this chapter, it shall be the duty of the justice of the peace to whom such application is made, to have summoned and to have examined such witness in relation to violations of any of the provisions of this chapter, said witness to be summoned as provided for in criminal cases. The said witness shall be duly sworn, and the justice of the pease shall cause the statements of the witness to be reduced to writing and signed and sworn to before him; and such sworn statement shall be delivered to the attorney general, district or county attorney, upon whose application the witness was summoned. Should the witness, summoned as aforesaid, fail to appear or to make statements of the facts within his knowledge, under oath, or to sign the same after it has been reduced to writing, he shall be guilty of contempt of court, and may be fined not exceeding one hundred dollars, and may be attached and imprisoned in the county jail until he shall make a full statement of all the facts within his knowledge with reference to the matter inquired about. Any person so summoned and examined shall not be liable to prosecution for any violation of the provisions of this chapter about which he may testify fully and without reserve. [Act 1907, p. 143.]

TITLE 17.

OF OFFENSES AGAINST PROPERTY.

Chapter.
1. Of Arson.
2. Of Other Wilful Burning.
3. Of Malicious Mischief.
4. Of Infectious Diseases Among Animals and Bees.
5. Of Cutting and Destroying Timber.
6. Of Burglary.
7. Of Offenses on Board of Vessels, Steamboats and Railroad Cars.
8. Of Robbery.
9. Of Theft in General.
10. Of Theft from the Person.
11. Theft of Animals.
12. Miscellaneous Provisions Relating to the Recovery of Stolen Animals and the Detection and Punishment of Thieves.
13. Illegal Marking and Branding and Other Offenses Relating to Stock.
14. Offenses Relating to Estrays.
15. Offenses Against Labels, Trade Marks, etc.
16. Offenses Relating to the Protection of Stock Raisers in Certain Localities.
17. Embezzlement.
18. Of Swindling and the Fraudulent Disposition of Mortgaged Property.
    1. Swindling.
    2. Fraudulent Disposition of Mortgaged Property.
19. Of Offenses Committed in Another Country or State.

CHAPTER ONE.

OF ARSON.

Article
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Article 1200. [756] **Definition of.**—"Arson" is the wilful burning of any house included within the meaning of the succeeding article of this chapter.

Indictment need not charge the burning as felonious and malicious, but must charge it as wilful. Thomas v. State, 41 T., 27; Tuller v. State, 8 T. Cr. R., 501.

Need not allege the occupant (Tuller v. State, supra), but if it unnecessarily does so, must prove it as alleged. Rogers v. State, 26 Id., 404, 9 S. W. R., 762.

Allegation that, when burned, the house contained a little child, who was seriously injured by the fire, not obnoxious as duplicitous, and, if true, was proper under Art. 1222, post. Beaumont v. State, 1 T. Cr. R., 533.

As against the owner for burning his own house, indictment must allege the ownership in accused and the facts to bring it within the exceptions to Art. 1208, post. Kelley v. State, 44 T. Cr. R., 187, 70 S. W. R., 20; Mulligan v. State, 25 Id., 199, 7 S. W. R., 664; Tuller v. State, 8 S. W. R., 501.

Further on indictment, see Landers v. State, 39 T. Cr. R., 671, 47 S. W. R., 1008; Baker v. State, 25 Id., 1, 8 S. W. R., 23; Wyley v. State, 34 Id., 514, 31 S. W. R., 393.

Evidence generally: Smith v. State, 52 T. Cr. R., 80, 105 S. W. R., 501; Moore v. State, 51 Id., 468, 103 S. W. R., 188; Rice v. State, 50 Id., 648, 100 S. W. R., 771; Goldsmith v. State, 46 Id., 556, 81 S. W. R., 710; Ray v. State, 43 Id., 234, 64 S. W. R., 1057; Dawson v. State, 38 Id., 50, 41 S. W. R., 599; Bluman v. State, 33 Id., 43, 21 S. W. R., 1027.

Art. 1201. [757] **"House" defined.**—A "house" is any building, edifice or structure inclosed with walls and covered, whatever may be the materials used for building.

"House." While sufficient under this article, this definition of house would not be sufficient when used in relation to or in connection with the offense of perjury. Waul v. State, 33 T. Cr. R., 228, 26 S. W. R., 199. And see Smith v. State, 25 Id., 357, 5 S. W. R., 219.

Indictment charged the burning of a "house," but the proof showed that defendant, a tenant, first demolished the house and then burned the structural material. Held, insufficient to support conviction for arson. Mulligan v. State, 25 T. Cr. R., 199, 7 S. W. R., 664.

Art. 1202. [758] **Offense complete, when.**—The burning is complete when the fire has actually communicated to a house, though it may be neither destroyed nor seriously injured.

Arson. The offense is not complete if the house is merely scorched or smoked, or the fire is not communicated to the building. Woolsey v. State, 30 T. Cr. R., 346, 17 S. W. R., 546.

A prisoner setting fire to a calaboose or jail in which he is confined to effect his escape, is guilty of arson. Willis v. State, 32 T. Cr. R., 534, 25 S. W. R., 123, following Smith v. State, 23 Id., 357, 5 S. W. R., 219, which latter overrules Delaney v. State, 41 T., 601.

Art. 1203. [759] **"Design" the essence of the offense.**—It is of no consequence by what means the fire is communicated to a house, if the burning is with design. It may be by setting fire to any combustible material communicating therewith, by an explosion, or by any other means.

Smith v. State, 23 T. Cr. R., 357, 5 S. W. R., 219; Woolsey v. State, 30 Id., 346, 17 S. W. R., 546.

Art. 1204. [760] **Intent presumed, when.**—When fire is communicated to a house by means of the burning of another house, or some combustible matter, it shall be presumed that the intent was to destroy every house actually burnt; provided there was any apparent danger of such destruction.

Art. 1205. [761] **Explosions included.**—The explosion of a house by means of gunpowder, or other explosive matter, comes within the meaning of arson.

Explosion. The destruction of a house by means of explosives does not come within the definition of arson, unless it results in setting the house on fire. It is not enough that certain portions of the house, detached by the explosion, were afterwards found to be on fire, if the fire was not communicated to the house itself. Landers v. State, 39 T. Cr. R., 671, 47 S. W. R., 1008.

Art. 1206. [762] **Except, when.**—A house, blown up or otherwise destroyed for the purpose of saving another house from fire, is not within the meaning of arson.

Art. 1207. [763] **Owner may destroy, except when.**—The owner of a house may destroy it by fire or explosion without incurring the penalty of arson, except in the cases mentioned in the succeeding article.

Art. 1208. [764] **Exceptions.**—When a house is within a town or city, or when it is insured, or when there is within it any property belonging to another, or when there is apparent danger by reason of the burning thereof, that the life or person of some individual, or the safety of some house belonging to another will be endangered, the owner, if he burn the same, is guilty of arson, and shall be punished accordingly.

Construed. As to indictment under this article, see Kelley v. State, 44 T. Cr. R., 87, 70 S. W. R., 20; Baker v. State, 25 Id., 1, 8 S. W. R., 23; Tuller v. State, 8 Id., 501.

Art. 1209. [765] **Part owner can not burn.**—One of the part owners of a house is not permitted to burn it.

Art. 1210. [766] **Punishment.**—If any person be guilty of arson, he shall be punished by confinement in the penitentiary not less than five nor more than twenty years.

Post, Arts. 1237 and 1238; Davis v. State, 15 T. Cr. R., 594.

Art. 1211. [767] **Burning a state building.**—If any person shall wilfully burn the capitol building of the state, the treasury building or comptroller's office, the supreme court building, the executive mansion or the general land office, he shall be punished by confinement in the penitentiary for life.

Art. 1212. [768] **Attempt at arson.**—If any person shall, by any means calculated to effect the object, attempt to commit the offense of arson, he shall be punished by confinement in the penitentiary not less than two nor more than seven years.

"Attempt" defined. An attempt to commit a crime is an endeavor to accomplish it carried beyond mere preparation, but falling short of the ultimate design in any part of it. Lovett v. State, 19 T., 174; Wood v. State, 27 T. Cr. R., 393, 11 S. W. R., 449; Watts v. State, 30 Id., 533, 17 S. W. R., 1092; Walton v. State, 29 Id., 163, 15 S. W. R., 646.

CHAPTER TWO.

OF OTHER WILFUL BURNING.

Article		Article
Rules of arson applicable	1213	Burning personal property of another	1221
Burning of other buildings, hay, lumber, etc	1214	Punishment double in case of personal injury	1222
Ship, or other vessel, or boat	1215	When death ensues, murder	1223
Offense complete, when	1219	Attempt at other wilful burning	1224
Bridge burning	1217	Wilfully firing grass in inclosure of another	1225
Burning woodland or prairie	1218	Wilfully firing grass with intent to injure	1226
Offense complete, when	1219		
Burning personal property insured	1220		

Article 1213. [769] **Rules of arson applicable.**—The rules and definitions, contained in the preceding chapter with respect to arson, apply also to wilful burnings under the provisions of this chapter, where they are not clearly inapplicable.

Art. 1214. [770] **Burning other buildings, hay, lumber, etc.**—If any person shall wilfully burn any building, not coming within the description of a house, as defined in the preceding chapter, or shall wilfully burn any stack of corn, hay, fodder, grain or flax, or any pile of boards, lumber or wood, or any fence or other inclosure, the property of another, he shall be punished by confinement in the penitentiary not less than two nor more than five years, or by fine not exceeding two thousand dollars.

Art. 1215. [771] **Ship, or other vessel, or boat.**—If any person shall wilfully burn any ship or other vessel, or any boat of any kind whatsoever, he shall be punished by confinement in the penitentiary not less than two nor more than seven years, or by fine not exceeding two thousand dollars.

Art. 1216. [772] **Offense complete, when.**—This offense is complete only when some person other than the person offending has an interest in the property by insurance or otherwise at the time the burning takes place.

Art. 1217. [733] **Bridge burning.**—If any person shall wilfully burn any bridge, which, by law or usage, is a public highway, he shall be punished by

imprisonment in the penitentiary not less than two nor more than seven years, or by fine not exceeding five thousand dollars. [Act Feb. 12, 1858, p. 177.]

Art. 1218. [774] **Burning woodland or prairie.**—If any person shall wilfully or negligently set fire to, or burn, or cause to be burned, any woodland or prairie, not his own, he shall be punished by fine not less than fifty nor more than three hundred dollars. [Act April 14, 1883, p. 102.]

Art. 1219. [775] **Offense complete, when.**—The offense named in the foregoing article is complete where the person offending sets fire to his own woodland or prairie and the fire communicates to the woodland or prairie of another.

Art. 1220. [776] **Burning personal property insured.**—If any person, with intent to defraud, shall wilfully burn any personal property owned by himself, which shall be at the time insured against loss or damage from fire, he shall be punished by confinement in the penitentiary not less than two nor more than five years. [Act Feb. 12, 1858, p. 178.]

Art. 1221. [777] **Burning personal property of another.**—If any person shall wilfully burn any personal property belonging to another, the punishment for which is not otherwise provided for in this chapter, he shall be fined not exceeding two thousand dollars.

Art. 1222. [778] **Punishment doubled in case of personal injury.**—If any bodily injury less than death is suffered by any person by reason of the commission of any of the offenses named in this and the preceding chapter, the punishment may be increased by the jury so as not to exceed double that which is prescribed in cases where no such injury is suffered.

Indictment charging that the house when burned contained a little child who was seriously injured by the fire, is not obnoxious as duplicitous, and the allegation, if true, was proper under this article. Beaumont v. State, 1 T. Cr. R., 533.

Art. 1223. [779] **When death ensues, murder.**—Where death is occasioned by any of the offenses described in this and the preceding chapter, the offender is guilty of murder.

Art. 1224. [780] **Attempts at other wilful burning.**—If any person shall, by any means calculated to effect the object, attempt to commit any of the offenses enumerated in this chapter, he shall receive such punishment as may be assessed by the jury, not to exceed one-half of the penalty which would have been affixed in case the offense attempted had been actually committed; provided, that, when the punishment shall be confinement in the penitentiary in no case shall the lowest term be less than two years. [Act Feb. 12, 1858, p. 178.]

Art. 1225. [781] **Wilfully firing grass in inclosure of another.**—Any person who shall wilfully fire any grass within any inclosure, not his own, in this state, with intent to destroy the grass in such pasture, or any part thereof, or any person who shall fire the grass on the outside of any inclosure with the intent to destroy the grass in such inclosure, by the communication of said fire to the grass within, shall be deemed guilty of a felony, and, upon conviction, punished by confinement in the state penitentiary for a term of not less than two nor more than five years. [Act Feb. 7, 1884, pp. 66-67.]

Proof of ownership or title by possession may be made by parol testimony, and the State, under this article, could be required to prove no more than a possessory title in some person other than the defendant. Phillips v. State, 17 T. Cr. R., 169.

Indictment sufficient in alleging the venue in P. county; that the grass fired was the grass in T. S.'s pasture, inside of his inclosure; that defendant was not the owner of said inclosure, and that defendant set fire to said grass unlawfully, and with intent to destroy it. Phillips v. State, supra.

Art. 1226. [782] **Wilfully firing grass with intent to injure, etc.**—If any person shall wilfully, and with intent to injure the owner or owners of the stock grazing thereon, set fire to any grass upon land not his own, with intent to destroy the same, he shall be confined in the state penitentiary for a period not less than one year nor more than three years. [Id.]

CHAPTER THREE.

MALICIOUS MISCHIEF.

	Article
Wilfully sinking vessels, etc.	1227
Destroying telegraph or obstructing message	1228
Obstructing railway track, etc.	1229
Killing animal to injure owner	1230
Wantonly killing dumb animal, etc.	1231
Using animals without consent of owner	1232
Removing buoy, etc.	1233
Robbing orchards, gardens, etc.	1234
Destroying fruit, corn, etc.	1235
Introducing Johnson grass	1236
Requisites of indictment	1237
Injuring, etc., baggage	1238
Throwing stones or firing at railway cars, etc.	1239
Injuring fence, leaving open gates, etc.	1240
Where stock law adopted, what constitutes offense	1241
Wantonly and wilfully, etc., cutting, etc., fence	1242
Unlawful to remove party fence	1243
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"Insufficient fence" defined	1247
Removing rock, earth, etc., from premises of another	1248
When horses, mules, cattle, etc., are prohibited from running at large	1249
Herding stock in half mile of residence	1250
Each hour a separate offense	1251
Wilful destruction of irrigation canal	1252
Filling up, injuring, etc., drainage canal, water course, ditch, etc.	1253
Cut, destroy or injure levee	1254
Entering upon inclosed land of another and hunt or take fish	1255
Counties exempted from foregoing article	1256
Preventing the moving, etc., of railroad trains	1257
Each day a separate offense	1258
Wilfully injuring railroad, etc.	1259

Art. 1227. [783] **Wilfully sinking vessels, etc.**—If any person shall wilfully and maliciously cast away, sink or destroy, in any way other than by fire, any vessel or boat which, together with its cargo, if any, shall be of the value of one hundred dollars or more, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years, or by fine not exceeding two thousand dollars. If the life of any person is lost by such act, the offender is guilty of murder. [Act Feb. 12, 1858, p. 178.]

Construed. Malice is the gravamen of this offense, and the intent is a material element. Any evidence tending to rebut malice or going to show that defendant acted in good faith, is admissible in defense. Woodward v. State, 33 T. Cr. R., 554, 28 S. W. R., 204.

Indictment for this offense (except in cases of wanton cruelty to animals) must allege the ownership or possession of the property injured to be in some person other than accused, and all averments must be certain and positive, and not by way of argument or inference. Woodward v. State, supra.

Art. 1228. [784] **Destroying telegraph or obstructing message.**—If any person shall intentionally break, cut, pull or tear down, misplace, or in any other manner injure any telegraph or telephone wire, post, machinery or other necessary appurtenance to any telegraph or telephone line, or in any way wilfully obstruct or interfere with the transmission of messages along such telegraph or telephone line, he shall be punished by confinement in the penitentiary not less than two nor more than five years, or by fine not less than one hundred nor more than two thousand dollars. [Act Feb. 10, 1885, p. 10.]

Indictment and evidence: Craighead v. State, 55 T. Cr. R., 386, 117 S. W. R., 128.

Art. 1229. [785] **Obstructing railroad tracks, etc.**—If any person shall wilfully place any obstruction upon the track of any railroad, or remove any rail therefrom, or displace or interfere with any switch thereof, or in any way injure such road, or shall do any damage to any railroad, locomotive, tender or car, whereby the life of any person might be endangered, he shall be punished by imprisonment in the penitentiary not less than two nor more than seven years. If the life of any person be lost by such unlawful act, the offender is guilty of murder. [Act March 8, 1887, p. 14.]

Construed. That the obstruction placed on the track was such as might have endangered human life is the gist of the offense. Evidence insufficient on this point. Bullion v. State, 7 T. Cr. R., 462.

Indictment need not allege the names of the persons whose lives were endangered. Barton v. State, 28 T. Cr. R., 483, 13 S. W. R., 783.

Evidence. Stanfield v. State, 43 T. Cr. R., 10, 62 S. W. R., 917; Kirby v. State, 49 Id., 517, 93 S. W. R., 1030.

Contemporaneous crime provable: Stanfield v. State, 43 T. Cr. R., 10, 62 S. W. R., 917; Barton v. State, 28 Id., 483, 13 S. W. R., 783.

Art. 1230. [786] **Killing animal to injure owner.**—If any person shall wilfully kill, maim, wound, poison or disfigure any horse, ass, mule, cattle, sheep, goat, swine, dog or other domesticated animal, or any domesticated bird, of another, with intent to injure the owner thereof, he shall be fined not less than ten nor more than two hundred dollars. And in prosecutions under this article, the intent to injure may be presumed from the perpetration of the act. [Act Feb. 12, 1858, p. 178.]

See notes to Art. 1227, ante.

Jurisdiction. The courts of justice of the peace have jurisdiction of this offense, the maximum penalty being two hundred dollars fine. Uecker v. State, 4 T. Cr. R., 234; Ex parte Phillips, 33 Id., 126, 25 S. W. R., 629.

Construed. Malice or wanton intent must be shown to constitute this crime. Caldwell v. State, 55 T. Cr. R., 164, 115 S. W. R., 597; Henderson v. State, 53 Id., 533, 111 S. W. R. 736.

An owner has the right to defend his property against the depredations of animals and birds. Huffman v. State, 53 T. Cr. R., 489, 110 S. W. R., 749; Swinger v. State, 51 Id., 397, 102 S. W. R., 114.

Defense, under an alibi, can not set up the vicious character of the animal shot. Atcheson v. State, 44 T. Cr. R., 551, 72 S. W. R., 998.

Indictment need not now allege the amount of damage done the owner, the penalty being no longer controlled thereby. Shaw v. State, 23 T. Cr. R., 493, 5 S. W. R., 317; Green v. State, 28 Id., 493, 13 S. W. R., 784.

Must charge the act as wilfully done and with intent to injure. Uecker v. State, 4 T. Cr. R., 234; Nicholson v. State, 3 Id., 31. And generally see Swinger v. State, 51 Id., 397, 102 S. W. R., 114; Woodward v. State, 33 Id., 554, 28 S. W. R., 204; State v. Lange, 22 T., 591; Parchman v. State, 44 Id., 192.

Evidence. Malice and intent are essential elements, but may be rebutted by evidence. Huffman v. State, 53 T. Cr. R., 489, 110 S. W. R., 749; Woodward v. State, 33 Id., 554, 28 S. W. R., 204; Lane v. State, 16 Id., 172; Farmer v. State, 21 Id., 423, 2 S. W. R., 767.

And, generally: Reed v. State, 8 T. Cr. R., 430; Henderson v. State, 53 Id., 533, 111 S. W. R., 736; Nicholson v. State, 49 Id., 102, 90 S. W. R., 1011; Atchison v. State, 44 Id., 551, 72 S. W. R., 998.

Art. 1231. [787] **Wantonly killing dumb animals, etc.**—If any person shall wilfully or wantonly kill, maim, wound, disfigure, poison or cruelly and unmercifully beat or abuse any horse, ass, mule, cattle, sheep, goat, swine, dog or other domesticated animal, or any domesticated bird, he shall be fined not less than five nor more than one hundred dollars. [Amended Act 1901, p. 289.]

Construed. This article is distinguished from Art. 1230 in that it is for the protection of the animal or bird, whereas said Art. 1230 is for the protection of the owner. Turman v. State, 4 T. Cr. R., 586; Irvin v. State, 7 Id., 78.

Indictment under this article need not allege ownership of the animal or bird. Turman v. State, supra; Woodward v. State, 33 Id., 554, 28 S. W. R., 204; McLaurin v. State, 28 Id., 530, 13 S. W. R., 992.

And see generally: Rountree v. State, 10 T. Cr. R., 110; Thomas v. State, 14 Id., 200; Rivers v. State, 10 Id., 177; Minter v. State, 26 Id., 217, 9 S. W. R., 561.

On evidence, see notes to preceding articles.

Art. 1232. [788] **Using animals without consent of owner.**—Any person who shall hereafter take and use, or take up and use, any horse, mare, gelding, mule, ox, cow, or any other dumb animal, the property of another, and without the consent of the owner thereof, shall be fined in any sum not less than ten nor more than one hundred dollars; provided, that nothing herein contained shall prevent a prosecution for the theft of such animal whenever the offense of which said party shall be guilty shall come within the meaning of that crime; provided, that this article shall not be construed as in any way to interfere with the laws regulating estrays. [Acts of 1879, p. 129; amended Act 1899, p. 319.]

Art. 1416, post, defines the specific offense of taking up and milking a cow.

Construed. This article applies only to animals running at large. A horse saddled, bridled and hitched to a tree does not come within the article. Cochran v. State, 36 T. Cr. R., 115, 35 S. W. R., 968.

Art. 1233. [789] **Removing buoy, etc.**—If any person shall wilfully and mischievously remove any buoy, beacon, light or any other mark or signal erected for the purpose of indicating the channel in any bay, river, lake or other navigable water within the state, or shall erect any false buoy, beacon, light or mark or signal to indicate the channel in any such bay, river, lake or other navigable water, with intent to mislead or deceive, he shall be punished by confinement in the penitentiary not less than two nor more than five years, or by fine not exceeding two thousand dollars; and, if death occurs by reason of such unlawful conduct, the offender is guilty of murder. [Act Feb. 12, 1858, p. 179.]

Art. 1234. [790] **Robbing orchards, gardens, etc.**—If any person shall take or carry away from the farm, orchard, garden or vineyard of another, without his consent, any fruit, melons or garden vegetables, he shall be fined in any sum not exceeding one hundred dollars. [Act April 4, 1874.]

Art. 1235. [791] **Destroying fruit, corn, etc.**—If any person shall wilfully and mischievously injure or destroy any growing fruit, corn, grain, or other like agricultural products, or if any person shall wilfully or mischievouly injure or destroy any real or personal property of any description whatever, in such manner as that the injury does not come within the description of any of the offenses against property otherwise provided for by this Code, he shall be punished by fine not exceeding one thousand dollars; provided, that when the value of the property injured is fifty dollars or less, then, in that event, he shall be punished by fine not exceeding two hundred dollars. [Amended by Act March 22, 1889, p. 35.]

Construed. Under this article, the injury must be wilful and malicious, and any evidence that would rebut those elements is admissible. Adams v. State, 47 T. Cr. R., 35, 81 S. W. R., 963.

It involves the actual ownership of and title to the property, and not the mere possessory right of the land, and trial and proof must be from the standpoint of actual ownership. Adams v. State, supra.

There must be either a destruction of, or injury to, the property to bring the act within this article. Mere annoying interference with the property will not suffice. Patterson v. State, 41 T. Cr. R., 412, 55 S. W. R., 338.

Value is a necessary element of the offense, because it is the criterion by which the penalty is determined. It must, therefore, be alleged and proved. Beaufire v. State, 37 T. Cr. R., 50, 38 S. W. R., 608.

Art. 1236. [791a] **Introducing Johnson grass.**—If any person in this state shall knowingly, wilfully, and with intent to injure, sow, scatter or place, on any land, not his own, the seed or roots of Johnson grass or Russian thistle, or wilfully and knowingly sell or give away any oats, hay, straw, seed or grain, containing or intermixed with the seeds or roots of Johnson grass, to any one who is ignorant of the fact that such seeds or roots are so contained in or intermixed with such oats, hay, straw, seed or grain, he shall be deemed guilty of a misdemeanor, and, on conviction thereof, he shall be punished by fine of not less than twenty-five dollars and not more than one thousand dollars. [Act 1895, p. 160.]

Art. 1237. [791b] **Requisites of indictment.**—In prosecutions under the preceding article, it shall not be necessary for the indictment to allege the name of the owner of the land, nor shall it be necessary for the state to prove the name of such owner, but it shall be sufficient to allege and prove that the land was not the property of the person accused. [Id.]

Art. 1238. [792] **Injuring, etc., baggage.**—Any baggagemaster, express agent, stage or hack driver, or other common carrier, whose duty it is to handle remove, transfer or to take care of trunks, valises, boxes or other baggage while loading, transporting, unloading, transferring, delivering, storing or handling the same, whether or not in the employ of any transportation company or common carrier, who shall maliciously or carelessly or recklessly break, injure or destroy the said baggage, shall be deemed guilty of a misdemeanor, and, on conviction, be fined a sum not exceeding one hundred dollars; provided, that a prosecution for a misdemeanor as provided in this article shall not be a bar to a civil action for damages. [Act March 5, 1881, p. 17.]

Art. 1239. [793] **Throwing stone or firing gun or pistol at railroad car, etc.**—Any person who shall wilfully or maliciously throw a stone or other missile, or fire any gun, or pistol, at, against, or into, any engine, tender, coach, passenger car, whether moving or not, or any other car of any moving train on any railway, or any railway depot, or any private residence, school house, church house, court house, store house, hotel, or other public or private building, public or private tent, sail-boat or steam-boat, in this state, shall be deemed guilty of a misdemeanor, and, on conviction therefor, shall be fined in any sum of not less than five dollars nor more than one thousand dollars, or be confined in the county jail for any term of not less than ten days nor more than two years. During such term, such convict may be put to hard labor. [Act March 22, 1889; amend. 1895, p. 161; amended, Act 1897, p. 41.]

Art. 1240. [794] **Injuring fence, leaving open gates.**—If any person shall break, pull down or injure, the fence of another without his consent, or shall wilfully and without the consent of the owner thereof open and leave open any gate leading into the inclosure of another, or shall knowingly cause any hogs, cattle, mules, horses or other stock to go within the inclosed lands of another without his consent, or shall tie or stake out, or cause to be tied or staked out, to graze within any inclosed lands not his own and without the consent of the owner, any horse, mule or other animal, he shall be fined in any sum not less than ten nor more than one hundred dollars, and, in addition thereto, may be imprisoned in the county jail not exceeding one year. [Act April 23, 1873, pp. 41-42.]

Construed. The design of this article is to better protect agriculturists against wanton or reckless depredation of live stock upon their crops by providing another and more efficient remedy than a suit for damages. Cleveland v. State, 8 T. Cr. R., 44; Jones v. State, 18 Id., 366; Becker v. State, 56 Id., 92, 119 S. W. R., 95.

The inquiry under this article should be confined to the actual, quiet and peaceable possession, and not extend to the rightful possession of the fence. Behrens v. State, 14 T. Cr. R., 121.

Joint owners and tenants. A joint owner is not justifiable in breaking the fence without the other's consent. Hurlbut v. State, 12 T. Cr. R., 252. But if no injury results from the act, conviction can not be had under this article. Woodyard v. State, 19 Id., 516; Becker v. State, 56 T. Cr. R., 192, 119 S. W. R., 95.

A tenant in possession of leased premises is the owner thereof until the lease expires, and may, during such time, make any legitimate use of the premises, such as opening any convenient passway in a fence, when such passway does not expose the growing crops of the owner to depredation. Hooks v. State, 25 T. Cr. R., 601, 8 S. W. R., 803.

Recognizance on appeal must set out the constituent elements of the particular offense, as there is no such offense per se as malicious mischief. Koritz v. State, 27 T. Cr. R., 53, 10 S. W. R., 757; Killingsworth v. State, 7 Id., 28; Waterman v. State, 8 Id., 671.

The prosecutor not being in peaceable possession of the land protected by a fence, but being himself a trespasser in the construction of such fence, prosecution could not be sustained against defendant for its destruction. Farmer v. State, 124 S. W. R., 925.

Art. 1241. **Where stock law adopted, what constitutes offense.**—Any person who shall wilfully turn out, or cause to be turned out, on land not his own or under his control, or who shall wilfully fail or refuse to keep up any stock, prohibited by law from running at large in any county or subdivision of any county in this state, in which the stock law has been adopted, or who shall wilfully allow such stock to trespass upon the land of another, in such county, or subdivision thereof, or who shall wilfully permit to run at large any stock of his own, or of which he is the agent, or of which he has the control, and not permitted to run at large in any county or subdivision of any county in this state, in which the stock law has been adopted, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by fine in any sum not less than five dollars and not more than fifty dollars. [Act 1897, p. 112.]

Validity of election. Neither the petition for the election, nor the order of the commissioners court thereon, nor the notice of election, nor the proclamation of the county judge putting the same into operation, contained a particular description by metes and bounds of the territory to be affected by said election. Held, that such election was invalid. Ex parte Gulledge, 57 T. Cr. R., 156, 122 S. W. R., 21, citing Cox v. State, 88 S. W. R., 812.

Art. 1242. [795] **Wantonly and wilfully, etc., cutting, etc., fence.**—Any person who shall wantonly or with intent to injure the owner, wilfully cut, injure or destroy any fence or part of a fence (without such fence is the property of the person so cutting or destroying the same) shall be deemed guilty of an offense, and, upon conviction therefor, shall be punished by confinement in the state penitentiary for a term not less than one nor more than five years. A fence, within the meaning of this law, is any structure of wood, wire, or of both, or of any other material, intended to prevent the passage of cattle, horses, mules, asses, sheep, goats or hogs; provided, however, that it shall constitute no offense for any person owning and residing upon land inclosed by the fence of another, who refuses permission to such person or persons so residing within said inclosure free egress and ingress to their said land, for said person or persons to open a passage way through said inclosure. [Act Feb. 6, 1884, p. 34.]

Art. 1243. [796] **Unlawful for owner of party fence to remove, etc.**—Hereafter it shall be unlawful for any person who is a joint owner of any separating or dividing fence, or who is in any manner interested in any fence attached to, or connected with, any fence owned or controlled by any other person, to remove the same, except by mutual consent, or as hereinafter provided. [Act April 6, 1889, § 1.]

Art. 1244. [797] **Notice of intention to remove.**—Any person who is the owner or part owner of any fences connected with or adjoined to any fences, owned in part or in whole by any other person, shall have the right to withdraw or separate his fence or part of fence from the fence of any other person or persons in this state; that such person who desires to withdraw or separate such fence from the fence of any other person shall give notice in writing to such person, his agent, attorney, or lessee, of his intention to separate or withdraw his fence or part thereof for at least six months prior to the time of such intended withdrawal or separation. Any person, failing to comply with the provisions of this article, shall be fined in any sum not less than two dollars nor more than fifty dollars, and every ten days shall constitute a separate offense for the violation of this article. [Id., § 2.]

Construed. To constitute this offense, the party removing the fence must do so without the consent of the other joint owner or owners and without giving the required written notice of his intention to remove it. Indictment must charge all the constituent elements of the offense. Warder v. State, 29 T. Cr. R., 534, 16 S. W. R., 338.

Art. 1245. [798] **Notice requiring removal.**—Any person who is the owner of any fence wholly upon his own land to which the fence of another is adjoined, or connected in any manner, may require the owner of any such fence to disconnect and withdraw the same back on his own land by first giving notice, in writing, for at least six months, to such person, his agent, attorney, or lessee, to disconnect and withdraw his fence back on his own land. Any person who shall negligently or wilfully fail to disconnect his fence and remove the same back upon his own land, after the expiration of said notice, shall be fined in any sum not less than ten nor more than fifty dollars; and each ten days' failure, after such notice shall constitute a separate offense for the violation of the provisions of this article. [Id., § 3.]

Art. 1246. [799] **Dogging stock when fence insufficient.**—Any owner, proprietor, lessee, or other person, in charge of cleared and cultivated land surrounded with an insufficient fence, or the agent or employe of such person, who shall, with fire-arms, dogs, or otherwise, maim, wound or kill any cattle, horses or hogs of another within such inclosure, or who shall cause or procure the same to be done, shall be fined not less than ten nor more than two hundred dollars. [Act Oct. 18, 1871, p. 10.]

See indictment under this article held bad for duplicity. Porter v. State, 48 T. Cr. R., 125, 86 S. W. R., 767.

Art. 1247. [800] **"Insufficient fence" defined.**—An "insufficient fence," as used in the preceding article, means a fence less than five feet high, or with openings or crevices in some part thereof sufficiently large for the passage of the animal so maimed, wounded or killed.

Construed. The offense denounced by this article is separate and distinct from that denounced by Art. 1232, ante. Payne v. State, 17 T. Cr. R., 40; McRay v. State, 18 Id., 331.

Evidence to rebut wilfulness and wantonness is always admissible for the defense. Brewer v. State, 28 T. Cr. R., 565, 13 S. W. R., 1004; McMahan v. State, 29 Id., 348, 16 S. W. R., 171.

Art. 1248. [801] **Removing rock, earth, etc., from premises of another.**—If any person shall knowingly enter upon the land or premises of another, and take or remove therefrom any rock, earth, sand, coal, slate or mineral of any description, without the consent of the owner of such land or premises, he shall be fined in any sum not exceeding one thousand dollars.

Art. 1249. **When horses, mules, etc., are prohibited from running at large.**—If any person or persons shall knowingly permit any horses, mules, jacks, jennets, and cattle to run at large in any territory in this state where the provisions of the laws of this state have been adopted prohibiting any of such animals from running at large, such person or persons shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than five dollars nor more than two hundred dollars. [Act 1907, p. 123.]

Art. 1250. [802] **Herding stock in half mile of residence.**—If any person shall herd any drove of horses, mules, cattle, sheep, goats, or hogs, numbering more than five head, upon any land not his own, and within one-half mile of the residence of any citizen of this state, whenever the owner, lessee or legal representative of such land shall forbid such herding, and shall fail, neglect or refuse to remove such drove at once upon the request of such owner, lessee or legal representative; or whenever any person shall herd any such drove of horses, mules, cattle, sheep, goats or hogs upon the inclosed lands or pasture of another, or cause the same to be so herded, without the consent of such owner, lessee or legal representative, he shall be fined in any sum not exceeding one hundred dollars; provided, that this article shall not apply to droves which are driven through pastures, by the usual route of travel through such pastures, in the most direct and practicable route to any named point of destination, traveling at the greatest practicable speed, and where there is no public road leading to the point of destination; and provided, further, that no person shall be authorized, under the provisions of this article, to drive any drove or herd of stock of any kind into any inclosure belonging to another, for the purpose of grazing or holding such drove or herd of stock for any length of time whatever, without the consent of the owner, lessee or person in charge of such inclosure. This article shall not apply to herds or droves of stock while being held for shipment; provided, that the owner or agent of such stock shall pay the owner of the premises so herded upon, reasonable pasturage and all damages done by said stock. [Act March 13, 1885, p. 29; amended, Act 1897, p. 183.]

Art. 1251. [803] **Each hour a separate offense.**—Each hour of delay, after notice given or request made, shall constitute a separate offense under the preceding article. [Act June 2, 1873, p. 18.]

Art. 1252. [803b] **Wilful destruction of irrigating canal, etc.**—Any person who shall wilfully or maliciously injure or destroy any irrigation canal or its appurtenances, or any irrigation reservoir, dam, well, or any of the appurtenances thereto to the extent of fifty dollars, or if said injury shall amount in value to fifty dollars, shall be deemed guilty of a felony, and for each offense shall be punished by confinement in the state penitentiary for not less than two nor more than ten years. [Act 1895, p. 25.]

Art. 1253. **Filling up, injuring, etc., drainage canal, water course, ditch, etc.**—Any person who shall wrongfully or purposely fill up, cut, injure or destroy, or in any manner impair the usefulness of any canal, drain, ditch or water-course or other work constructed, repaired or improved for the purpose of drainage or protection from an overflow of water, shall be deemed guilty of a misdemeanor, and, upon conviction, may be fined in any sum not exceeding one hundred dollars, or imprisoned in the county jail not exceeding two months. [Act 1907, p. 88.]

Art. 1254. **Cut, destroy or injure levee.**—Any person who shall wrongfully or purposely cut, injure, or destroy, or in any manner impair the usefulness

of any levee or other improvement constructed for the purpose of improving rivers, etc., and preventing overflows of water, shall be deemed guilty of a misdemeanor, and, upon conviction, may be fined in any sum not exceeding one hundred dollars, or imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment. [Act 1909, p. 152.]

Art. 1255. [804] **Entering upon inclosed land of another and hunt or take fish.**—Any person who shall enter upon the inclosed land of another without the consent of the owner, proprietor or agent in charge, and therein hunt with firearms, or therein catch or take any fish from any pond, lake, tank or stream, or in other manner depredate upon the same, shall be punished by fine not less than ten nor more than one hundred dollars. Provided, that this article shall not apply to inclosures including two thousand acres or more in one inclosure. [Act 1903, p. 159.]

Art. 1256. [805] **Counties exempted from foregoing article.**—That the following counties be and the same are hereby exempted, and the provisions of the preceding article shall not have effect or be operative therein, or in any thereof, viz: Atascosa, Caldwell, Coke, Coryell, Hamilton, Hardin, McCulloch, Mills, Maverick, Polk, San Augustine, San Saba, San Jacinto, Upton, Walker and Wilson. [Act 1909, p. 135.]

Art. 1257. [806] **Preventing the moving, etc., of railroad trains.**—Any person or persons who shall, by force, threats, or intimidation of any kind whatever, against any railroad engineer or engineers, or any conductor, brakeman, or other officer or employe employed or engaged in running any passenger train, freight train, or construction train, running upon any railroad in this state, prevent the moving or running of said passenger, freight or construction train, shall be deemed guilty of an offense, and, upon conviction thereof, each and every person so offending shall be fined in a sum not less than one hundred dollars nor more than five hundred dollars, and also imprisoned in the county jail for any period of time not less than three months nor more than twelve months. [Act March 30, 1887, pp. 72-73.]

Art. 1258. [807] **Each day a separate offense.**—Each day said train or trains mentioned in the preceding article are prevented from moving on their road, as specified in the preceding article, shall be deemed a separate offense, and shall be punished as prescribed in the preceding article. [Id.]

Art. 1259. [808] **Wilfully injuring railroad, etc.**—Any person who shall wilfully injure any railroad, locomotive engine, or tender, or baggage, passenger or freight car of any railroad in this state, so as to prevent the use of same, shall be punished by fine in any sum not less than one hundred dollars, and imprisoned in the county jail not less than three nor more than twelve months. [Id.]

CHAPTER FOUR.

OF INFECTIOUS DISEASES AMONG ANIMALS AND BEES.

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Article 1260. [809] **Failing to confine horses with glanders or farcy.**—If any person shall wilfully and knowingly fail, neglect or refuse to place and keep in secure confinement, separate and apart from all other stock, any animal of the horse or ass species, diseased with glanders or farcy, belonging to him or subject to his control, he shall be fined not less than twenty-five nor more than two hundred dollars, or imprisoned in the county jail not less than ten days nor more than three months. [Act Aug. 19, 1876, p. 211.]

Art. 1261. **Sell or trade or offer to sell or trade animal affected with glanders.**—If any person or persons shall trade or sell, or offer to trade or sell, any animal of the horse or ass species, known or suspected to be affected with glanders, he shall be fined in any sum not less than five nor more than one hundred dollars, or imprisoned in the county jail not less than ten days nor more than ninety days. [Act 1897, p. 216.]

Art. 1262. **Driving sheep affected with scab or other contagious diseases.**—If any person owning or controlling sheep affected with the scab, or other infectious or contagious disease, shall drive or permit to be driven, such sheep over or along any public road or highway in this state, or shall drive such sheep so affected, or direct or permit such sheep so affected to be driven, on or over the inclosed lands of another without first obtaining the written consent of the owner or person in charge of such inclosed lands, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars. [Act 1909, p. 114.]

Art. 1263. [810] **Using horse with glanders or farcy.**—If any person shall ride, drive or in any manner use any animal of the horse or ass species diseased with glanders or farcy, knowing the same to be so diseased, he shall be punished as prescribed in the preceding article. [Act Nov. 8, 1866, p. 102.]

Art. 1264. [811] **Penalty for riding or driving infected animals, etc.; cumulative of other laws.**—Any person who may drive, lead or ride any animal infected with said diseases of glanders or farcy, knowing them to be so infected, on, along or across any public highway in this state, or allow any such animal so diseased (knowing them to be so diseased and owning such animal) to run at large on the open range of any county in this state, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than ten dollars nor more than two hundred dollars. [Act April 12, 1892, 22d Leg., S. S.]

Art. 1265. [812] **Permitting sheep with scab to run at large.**—If any person, owning or controlling sheep affected with the scab or other infectious or contagious disease, shall permit such sheep to run at large or in charge of any one beyond the limits of his own land, he shall be fined not exceeding one thousand dollars. [Act Dec. 28, 1861, p. 21.]

Art. 1266. **Import same into state or move from one county to another.**—It shall be unlawful to import into this state, or to move from one county to another, or to move from their accustomed range onto lands owned or leased by any person, without permission of such person, any flock of sheep in which one or more of such animals are infected with scab; and any person moving from one county into an adjoining county, with sheep, shall, before crossing the boundary line of said adjoining county, notify the county judge of said county wherein he proposes to enter or cross, and the said county judge shall appoint two competent persons, well versed in the knowledge of the scab disease, to examine said flock or flocks; and, if the same shall be found free of scab, or other infectious disease, then said sheep shall be allowed to proceed through said county; and the county judge shall receive the sum of two dollars and fifty cents for his services; and the said persons so appointed by him shall receive the sum of two dollars per day for their services. Said money to be paid by the party owning said sheep. Any person violating any of the provisions of this law shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum of not less than fifty dollars and not more than one hundred dollars for each such offense. Provided, that this law shall not apply to any person en route from his ranch for the purpose of delivery of his sheep at a railroad shipping point, or any point designated by the buyer thereof; provided, that said party can show a written contract signed by himself and the party to whom he has sold said sheep, specifying the place of delivery; said contract being witnessed by two reputable and creditable persons, citizens of the county in which said sheep were sold; provided, that the person desiring to import into this state, or to move from one county to another, any flock of sheep, shall not be required to have said sheep examined, except in the first county through which he proposes to pass with said sheep; and he shall indicate to the persons making the examination the destination of said sheep; and the county judge of said county making the examination shall issue to the owner or persons in charge of said sheep a certificate showing said sheep to be free from scab and other infectious diseases, which certificate shall be good for one continuous journey of not exceeding thirty days. [Act 1905, p. 222.]

Art. 1267. **Penalty to move sheep affected with scab along public road.**—Any person who shall move sheep infected with scab along a public road in this state shall be fined in any sum not less than fifty hundred nor more than one hundred dollars. [Id., p. 222.]

Art. 1268. **Persons refusing to permit sheep to be examined.**—Any person who shall refuse to permit his sheep to be examined for scab or other infectious diseases, or to place the sheep in pen for such purpose, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than fifty dollars nor more than one hundred dollars. [Id., p. 223.]

Art. 1269. [813] **Inspector of sheep to be appointed, when, etc.**—Whenever it appears from the assessor's rolls of any county that there are as many as five hundred sheep owned and assessed for taxes in any county of this state, it shall be the duty of the commissioners' court of said county, upon the application of one or more resident owners of sheep of said county, to appoint an inspector of sheep, who shall be a resident citizen of such county, and well versed in the scab and diseases which usually affect sheep; and said inspector shall hold his office for two years, or until his

successor is appointed and qualified. Said inspector may appoint one or more deputies, who shall likewise be well versed in scab and other diseases of sheep, who shall take the oath of office prescribed by the constitution, and may lawfully perform the same acts as the inspector of sheep; and the inspector may require of his deputies so appointed bonds payable to himself for the faithful performance of their duty as such deputies. [Acts 22d Leg., p. 140, § 1.]

Art. 1270. [814] **Bond of inspector.**—Said inspector of sheep shall, within twenty days after receiving notice of his appointment, and before entering upon the duties of his office, execute a bond with two or more good and sufficient sureties, in a sum to be fixed by the commissioners' court, not less than one thousand dollars nor more than five thousand dollars, payable to the county judge and his successors in office, conditioned that he will faithfully and impartially discharge and perform all the duties incumbent upon him as inspector of sheep. Said bond shall be approved by the commissioners' court and be recorded in the office of the county clerk of the county as other official bonds. [Id., § 2.]

Art. 1271. [815] **Duties of Inspector.**—It shall be the duty of the inspector of sheep or his deputy to carefully and minutely examine and inspect, at any time, sheep in his county, or which may be driven into or through his county, and which he has reason to believe, or is informed in writing by any one or more sheep owners of his county, or of any adjacent and contiguous county, is infected with scab or any other infectious or contagious disease; and, when one or more sheep affected with scab are found in any flock so inspected, the entire flock shall be condemned by said inspector or deputy and considered as affected with said disease. [Id., § 3.]

Art. 1272. [816] **Fees of inspector.**—The inspector shall be entitled to receive the sum of two cents per head, unless otherwise provided in this law, for sheep inspected and condemned under the provisions of this law; provided, the inspector shall be entitled to receive only one cent per head of any he may inspect for any one person in excess of two thousand head. In no one case shall his fee exceed fifty dollars; such fee to be paid by the owner or person in charge of the sheep so inspected and condemned; provided, that when an inspector shall inspect any sheep and find no scab to exist in the flock of sheep so inspected, then the fees for such service shall be paid by the person at whose instance such inspection was made; and provided, further, that the inspector shall have a lien on all sheep so inspected and condemned by him for his fees as provided in this article; provided, further, that, if any owner or person in charge of sheep affected with scab or other contagious disease shall report the same in writing to said inspector or his deputy, and that he proposes to take means forthwith to cure such disease, it shall not be lawful for the inspector to inspect such flock within twenty days after such report; provided, that if, after the expiration of the twenty days aforesaid, the sheep have not been thoroughly cured, then the said sheep shall be subject to inspection as hereinbefore provided. [Id., § 4.]

Art. 1273. [817] **Duty of inspector where owners of sheep do not reside in the county, etc.**—It shall be the duty of the inspector of sheep or his deputy to arrest and take in charge any flock or flocks of sheep, the property of owners who do not reside in his county, or have no certain or fixed ranch therein, found traveling through his county, and found, after inspection, to be affected with scab, and to hold and dip said sheep at the cost of the owner or person in charge of such flock or flocks, until the same shall be cured; and said inspector shall be entitled to recover from the owner or person in charge of such flock or flocks of sheep so held by him the sum of two dollars per day as compensation for holding such sheep, in excess of inspection fees provided for in article 1272; and said inspector shall have a lien upon all sheep so held by him until all fees and expenses for holding and dipping incurred

by him are paid; provided, that said inspector shall not in any case hold said flock or flocks of sheep exceeding twenty days. [Id., § 5.]

Art. 1274. [818] **Sheep found to have scab must be cured by owner, etc.**—Whenever any flock of sheep in any county in this state has been inspected as provided for in this law, and found to be affected with scab, it shall be the duty of the owner or person in charge of such flock to thoroughly cure the same within twenty days from said inspection. [Id., § 6.]

Construed. Information or indictment must allege in terms, or in words equivalent, that the owner, or person in charge, had knowledge of the inspection—that he was present at the inspection or was duly informed of it and failed, after being so informed, to cure the sheep within the twenty days. Hand v. State, 37 T. Cr. R., 310, 39 S. W. R., 676.

Art. 1275. [819] **Penalty for violation of this law, etc.**—Any inspector of sheep or his deputy who shall fail to comply with any of the provisions of this chapter, or who shall wilfully or with intent to harass, vex or put to expense, any owner or person in charge of sheep, notify such owner or person in charge that his flock is diseased, or who shall unlawfully demand or receive any fee or compensation where none is allowed by law, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than fifty nor more than two hundred dollars; and thereupon the office shall be deemed vacant, and the commissioners' court may appoint another inspector for such county. [Id., § 7.]

Art. 1276. [820] **Penalty for violation by owners.**—Any owner or person in charge of sheep who shall wilfully and knowingly violate any of the provisions of this chapter, when the penalty is not otherwise provided by this chapter, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than fifty nor more than two hundred dollars. [Id., § 8.]

Art. 1277. [821] **Wool growers may pay inspectors, etc.**—Whenever in any county in this state there shall not be sufficient scab or other contagious and infectious diseases among the sheep to pay the sheep inspector a fair remuneration, under the fees provided by this law, it shall be lawful for any association of wool growers in such county to pay such inspector such additional sums of money as to them may seem right and proper in order to keep such inspector in the performance of the duties of his office. [Id., § 9.]

Art. 1278. [822] **Counties exempt.**—The counties of Freestone, Gonzales, Morris, Titus, Cass, Marion, Bowie, Red River, Trinity, San Jacinto, Polk, Anderson, Van Zandt, Cameron, Collin, Colorado, Grimes, Houston, Webb, Encinal, Hunt, Hopkins, Ellis, Dallas, Rockwall, Denton, Fannin, Henderson, Brazos, Smith, Panola, Gregg, Lamar, Wood, Rains, Limestone, Cooke, Brown, Comanche, Cherokee, Mills, Montgomery, Shelby, Lee, Burleson, Rusk, Lavaca, Milam, Wise, Upshur, Robertson, Camp, Parker, Franklin, Navarro, Karnes, Wilson, Atascosa, Harrison, San Augustine, Sabine, Fayette, Austin, Leon, Madison, Hill, Bosque, Waller, Fort Bend, Washington, Guadalupe, Caldwell, Hays, Tarrant, Johnson, Clay, Montague, Erath, Hood, Somervell, Bastrop, Harris, Harrison, Orange, Jefferson, Hardin, Liberty, Chambers, Newton, Tyler, Jasper, Kaufman, Nacogdoches, DeWitt, Victoria, Jackson, Calhoun, Refugio, Goliad and Aransas counties are exempted from the provisions of this chapter. [Id., § 10; amended, Act 1903, p. 117.]

Art. 1279. [823] **To graze along public road.**—If any person shall drive or graze, or cause to be driven or grazed, along or upon any public road in this state, any sheep affected with scab, knowing the same to be so affected, he shall be fined not exceeding one thousand dollars. [Act Aug. 21, 1876, p. 227.]

Art. 1280. [824] **Importation of sheep with scab.**—If any person shall drive or cause to be driven into this state from any other state or country, any sheep

affected with scab or any other infectious or contagious disease, knowing the same to be so affected, he shall be fined not exceeding one thousand dollars. [Act Dec. 28, 1861, p. 21.]

Art. 1281. [824a] **Bringing infected animal into the state.**—Any person who shall knowingly bring into this state any domestic animal which is infected with any contagious or infectious disease, or any animal which has been exposed to any contagous or infectious disease, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than five hundred nor more than five thousand dollars. [Act 1893, p. 72.]

Art. 1282. [824b] **Obstructing live stock commissioner.**—Any person who owns or is in possession of live stock, which is reported to be affected with any infectious or contagious disease, who shall refuse to allow the state live stock sanitary commissioners to examine such stock, or shall hinder or obstruct the said commissioners in any examination of, or in any attempt to examine, such stock, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars. [Id.]

Art. 1283. [824c] **Owner permitting infected animal to run at large.**—Any person who shall have in his possession any domestic animal affected with any contagious or infectious disease, knowing such animal to be affected, who shall permit such animal to run at large, or who shall keep such animal where other domestic animals, not affected by or previously exposed to such disease, may be exposed to its contagion or infection, or who shall ship, drive, sell, trade, or give away, such diseased animal or animals which have been exposed to such infection or contagion, or who shall move or drive any domestic animal in violation of any direction, rule, regulation, or order of the live stock sanitary commission of Texas establishing and regulating live stock quarantine, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars for each of such exposed or diseased domestic animals which he shall permit to run at large, or sell, ship, drive, trade or give away in violation of the provisions of this article; provided, that any owner of a domestic animal, which has been affected with or exposed to any contagious or infectious disease, may dispose of the same, after having obtained from the state live stock sanitary commissioners a bill of health for such animal or animals. [Id.]

Art. 1284. [824d] **Penalties.**—Except as otherwise provided in this law, any person who shall violate, disregard, or evade, or attempt to violate, disregard or evade, any of the provisions of this law, or who shall violate, disregard, or evade, or attempt to violate, disregard, or evade, any of the rules, regulations, orders, or directions of the live stock sanitary commission, establishing and governing quarantine, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than one hundred nor more than five thousand dollars.

Art. 1285. **Persons having possession of honey bees with contagious disease.**—If any owner of, or any person having control or possession of, any honey bees in this state, knows that any bees so owned or controlled are affected with foul brood, or any other contagious disease, it shall be, and is hereby made, his duty to at once report said fact to the state entomologist, setting out in his said report all the facts known with reference to said infection. The state entomologist shall have full power in his discretion to order any owner or possessor of bees dwelling in hives without movable frames, or not permitting of ready examination, to transfer such bees to a movable frame hive within a specified time. In default of such transfer, the state entomologist may destroy, or order destroyed, such hives, together with the honey,

comb, frames and bees contained therein, without recompense to the owner, lessee or agent thereof. [Act 1903, p. 196.]

Art. 1286. **State entomologist shall prescribe rules and regulations for.**—The state entomologist shall prescribe such rules and regulations as may in his judgment seem necessary for the eradication of all contagious diseases of bees; and, if at any time the entomologist finds, or has reason to believe, that the owner or keeper of any bees, or the owner of any apiary has refused or is refusing to comply with all of any such rules and regulations, then, and in that event, the state entomologist is hereby authorized to inspect said bees, and, if necessary, burn diseased colonies, appliances and honey, and do any and all things necessary in the premises to eradicate foul blood or any other infectious disease of bees. [Id., p. 196.]

Art. 1287. **Failing to carry out instructions of state entomologist.**—When any owner or possessor of bees shall fail to carry out the instruction of the state entomologist, as set forth in articles 1285 and 1286, the state entomologist or his assistant shall carry out such destruction or treatment, and shall present to the owner of said bees a bill for the actual cost of such destruction or treatment. In the failure of the owner or possessor of such bees to pay said bill within thirty days after the delivery of same to himself, tenant or agent, or within thirty days after mailing same to his usual postoffice address, the state entomologist shall certify to the county attorney of the county wherein such bees are located, the amount and items of such bill; and the county attorney shall file suit for the recovery of said account. All moneys recovered by the county attorney for such destruction or treatment shall be paid into the hands of the county treasurer, to become a part of the fund for carrying out the provisions of this law. [Id., p. 196.]

Art. 1288. **Keeper of diseased colony of bees, when guilty of offense.**—If any owner or keeper of any diseased colonies of bees shall barter or give away any infected bees, honey or appliances, or shall expose any other bees to the danger of infection of the disease, or shall refuse or neglect to make report as provided in article 1283, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding two hundred dollars. [Id., p. 196.]

CHAPTER FIVE.

OF CUTTING AND DESTROYING TIMBER.

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Article 1289. [825] **Punishment for.**—If any person, without the consent of the owner, shall knowingly cut down or destroy any tree or timber upon any land not his own, or shall knowingly, and without such consent, carry away any such timber, he shall be fined not less than ten nor more than five hundred dollars.

Art. 1290. [826] **"Timber" and "owner" include what.**—The word "timber," as used in the preceding article, includes rails or other articles manufactured from timber; and the word "owner" includes the state and any corporation, public or private, owning lands within this state.

Construed. "Timber," within the meaning of this article, is that sort of wood that is suitable for building, or for tools, utensils, furniture, carriages, fences, ships and the like, usually said of fallen trees, but sometimes of those standing. Wood suitable only for fuel does not come within the article. Wilson v. State, 17 T. Cr. R., 393.

Art. 1291. [827] **Procedure in prosecutions.**—In any prosecution under article 1289, the indictment or information need not allege the name of the owner of the timber, but it shall be sufficient for it to state that the timber was not the property of the accused; and it shall be sufficient to describe the land by the name of the owner, or of the original grantee, or by any name or names by which it may be commonly known in the neighborhood in which the alleged offense was committed.

Indictment is sufficient which charges that accused cut and carried away timber "upon land not his own." Unnecessary to describe the land by metes and bounds, or name of grantee or other matter of identity. State v. Warren, 13 T., 45.

The same count may include both the cutting and carrying away, and evidence sustaining either will sustain conviction. Welsh v. State, 11 T. Cr. R., 368.

Art. 1292. [828] **Modes of proving ownership.**—Upon the trial of any case coming within the provisions of article 1289, the state may prove the ownership of the land to be in some person other than the defendant by either of the following modes:

1. By the copy of a grant duly certified from the general land office.
2. By a deed, or a copy of a deed, or other evidence of title, duly certified, from the office of the clerk of the county court of the county where the prosecution is pending.
3. By a certificate from the comptroller's office, or from the assessor and collector of the county, that some person other than the defendant pays taxes on the land.
4. By verbal testimony of title, or of notorious use and possession of the land by some person other than the defendant; and such proof shall be held sufficient until contradicted by competent evidence on the part of the defendant that he is the owner of the land. [Act Feb. 12, 1858, p. 179.]

Evidence. One of the modes by which the State can prove title in another than defendant, is by "parol testimony of title, or of notorious use and possession of the land" by such other person. White v. State, 14 T. Cr. R., 449.

Prima facie proof of another's title by the State throws the onus of proving the owner's license, or his superior title, on the defendant. Belverman v. State, 16 T., 130.

Owner's consent is defensive matter with the burden of proof on the accused. Welsh v. State, 11 T., 368.

Art. 1293. [829] **Road repairs, etc., not included.**—Nothing in the foregoing articles of this chapter contained shall render any person guilty of an offense who cuts or uses timber for the purpose of making or repairing any public road or bridge passing over or immediately adjacent to the land on which such tree or timber may be found, or who uses a reasonable amount of wood standing outside of an inclosure for the purpose of making fires while traveling upon the road.

Art. 1294. [830] **If the offense is theft, punishable as such.**—Nothing contained in the foregoing articles of this chapter shall exempt a person from the penalty affixed to the offense of theft whenever timber is taken in such manner as to come within the definition of that offense.

Art. 1295. [831] **Destroying pecan or walnut timber.**—If any person shall cut down or otherwise destroy or injure any pecan or walnut tree on land not his own without authority in writing from the owner of such pecan or walnut tree, he shall be punished by fine of not less than twenty-five nor more than fifty dollars. [Act April 20, 1871, p. 42.]

Art. 1296. **Gathering pecans or injuring pecan timber without consent of owner.**—Any person who shall, hereafter, gather any pecan nuts upon inclosed land not owned, leased or controlled by him, unless it be made to appear in defense that it was done by the consent of the owner, lessor or person in control, or any person who shall cut, destroy, or injure any pecan timber upon lands not his own, unless it be made to appear in defense that it was done with the consent of the owner thereof, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than five dollars and not more than three hundred dollars, or by imprisonment in the county jail not more than three months, or by both such fine and imprisonment. [Act 1897, p. 53.]

Art. 1297. [832] **Person floating timber shall brand same.**—Any person engaged in floating or rafting timber upon the waters of any river or creek of this state shall have a log brand with which to brand every log or stick that he may float or haul and put into the waters for sale or market, the same to be distinctly branded. [Act April 7, 1879, p. 81, § 1.]

Art. 1298. [833] **Shall have brand recorded.**—He shall have said brand recorded in every county in which he cuts any of said timber, and in the county where he proposes to sell or market said timber, by the county clerk, in a book to be kept by said clerk for that purpose, for which said clerk shall receive a fee the same as is by law allowed for recording stock brands. [Id., § 2.]

Art. 1299. [834] **Shall make report of logs cut, etc.**—Any persons who float any logs or timber in this state shall, on the first day of April, first day of July, first day of October and the first day of Janury of each year, or within fifteen days of such dates, make a written report, under oath, showing the number of logs cut or floated during the next preceding three months, the survey or surveys of land from which they were cut or carried, and the number cut from each, and a description of the brand placed thereon, and shall file the same with the county clerk of the county in which the timber was cut; and such clerk shall record the same in a book kept for that purpose, and index it, and receive therefor the sum of fifty

cents from the party presenting the same; provided, this act shall not apply to pickets, posts, rails or firewood. [Id., § 3.]

Art. 1300. [835] **Certificate of clerk evidence of ownership.**—A certificate, under the hand of the county clerk, containing a description of a log brand and the name of the owner thereof, with a transfer on the back of it, signed and acknowledged by such owner or proved as other instruments for record, shall be prima facie evidence that the person to whom the transfer is made owns the logs described thereon. [Id., § 5.]

Art. 1301. [836] **Offenses and punishment; definitions.**—Any person who shall buy or sell any timber or log floating or that has been floated in this state, before the same has been branded, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not more than ten dollars for each log or piece of timber so purchased, sold or traded for. Any person who shall float any unbranded log or timber for market, or who shall fail to make the reports required by this act, or any person who shall brand any log or timber of another without his authority, or any person who shall deface any brand on any log or timber otherwise than when it is in the act of being sawed or manufactured into lumber or other commodity for use in building, or any person not an employe of the owner, who shall, without the written consent of the owner, take into possession any branded or unbranded log or timber cut for floating or sawing, or any sawed timber, lumber or shingle, floating in any of the waters of this state, or deposited upon the banks of any river or stream in this state, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by fine not exceeding two hundred dollars for each offense. By "lumber" is meant lumber attached or bound together in some way for floating, and not loose lumber, and by "shingles" is meant shingles in bunches or bundles, and not loose shingles. [Id., § 5.]

Art. 1302. [837] **Venue.**—The courts of the county in which the timber or lumber was deposited in the water, or in which it was unlawfully taken into possession or unlawfully defaced, sold, purchased or branded, as the case may be, shall have jurisdiction of the violation of the act or omission complained of or constituting an offense under this chapter. [Id., § 6.]

CHAPTER SIX.

OF BURGLARY.

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Article 1303. [838] **"Burglary" defined.**—The offense of burglary is constituted by entering a house by force, threats or fraud, at night; or in like manner by entering a house at any time, either day or night, and remaining concealed therein, with the intent in either case of committing a felony or the crime of theft. [Act Aug. 21, 1876, p. 231; amended, Act 1897, p. 65.]

Art. 1304. [839] **Same subject.**—He is also guilty of burglary who, with intent to commit a felony or theft by breaking, enters a house in the daytime.

Construed. To constitute burglary, whether the entry be day or night time, the entry must have been accomplished by breaking. Bates v. State, 50 T. Cr. R., 568, 99 S. W. R., 551; Newman v. State, 55 Id., 576, 116 S. W. R., 577.

Burglary and theft, committed in one and the same transaction, may be prosecuted and punished as separate, though not as joint offenses. Rust v. State, 31 T. Cr. R., 74, 19 S. W. R., 763; Loakman v. State, 32 Id., 563, 25 S. W. R., 22, overruling Shepherd's case, 42 T., 501, Robertson's case, 6 T. Cr. R., 669, Struckman's case, 7 Id., 581, Howard's case, 8 Id., 447, and Smith's case, 22 Id., 350, 3 S. W. R., 238. Compare Miller v. State, 16 Id., 417; Turner v. State, 22 Id., 42, 2 S. W. R., 619; Williams v. State, 24 Id., 69, 5 S. W. R., 838, and Crawford v. State, 31 Id., 51, 19 S. W. R., 766, in which cases the two offenses were charged in the same indictment.

Former conviction for theft committed in the same burglary is not a bar to prosecution for the burglary. Fielder v. State, 40 T. Cr. R., 184, 49 S. W. R., 376.

Indictment must allege the entry as by one of the statutory modes, that is, force, threats or fraud, or it may allege all these modes conjunctively; and this whether to charge daytime or night time burglary. Sullivan v. State, 13 T. Cr. R., 462; Melton v. State, 24 Id., 287, 6 S. W. R., 303.

Though not always necessary, it is best that the indictment allege the burglary as daytime or nighttime as the case may be. Conoly v. State, 2 T. Cr. R., 412; Buchanan v. State, 24 Id., 195, 5 S. W. R., 847, and authorities cited; Montgomery v. State, 55 Id., 502, 116 S. W. R., 1160; Walker v. State, Id., 546, 117 S. W. R., 797.

Indictment silent as to day or night, but proof showing an entry by force at night, conviction for nocturnal burglary is sustained. Buchanan v. State, 24 T. Cr. R., 195, 5 S. W. R., 847, citing Carr's case, 19 Id., 635, and Martin's case, 21 Id., 1, 17 S. W. R., 430.

Charging an entry by force, but not averring it at night or in the daytime, by a party who lay concealed until night, the indictment charged a daylight breaking. Summers v. State, 9 T. Cr. R., 396; Bravo v. State, 20 Id., 188.

For a daytime burglary it is only essential to charge actual breaking; not necessary in charging nocturnal burglary to allege a breaking—entry by force being sufficient. Garner v. State, 31 T. Cr. R., 22, 19 S. W. R., 333, citing Summers v. State, supra, and Carr's case, 19 T. Cr. R., 635.

And on indictment, see Coates v. State, 31 T. Cr. R., 257, 20 S. W. R., 585; Gonzales v. State, 12 Id., 657; Alexander v. State, 31 Id., 359, 20 S. W. R., 756; Jester v. State, 26 Id., 369, 9 S. W. R., 616.

It need not allege that the entry was made "feloniously" or "burglariously." Reed v. State, 14 T. Cr. R., 662; Sullivan v. State, 13 Id., 462.

Alleging that accused "did break and enter" the house, the indictment was sufficient without alleging the want of consent, overruling Brown v. State, 7 T. Cr. R., 619; Sullivan v. State, supra. Nor, under such allegation, need non-consent be proved. Buchanan v. State, 24 Id., 195, 5 S. W. R., 847.

If, however, the entry be to commit theft, the indictment must allege the non-consent of the owner to the taking of the property (Reed v. State, 14 T. Cr. R., 662; Treadwell v. State, 16 Id., 643), and if there be joint owners, the consent of each must be specifically negatived. Taylor v. State, 23 T. Cr. R., 639, 5 S. W. R., 141; and see Willis v. State, 33 Id., 168, 25 S. W. R., 1119; Hurley v. State, 35 Id., 282, 33 S. W. R., 354.

As to "house" and "occupant" in the indictment, see Bigham v. State, 31 T. Cr. R., 244, 20 S. W. R., 577; Sullivan v. State, 13 Id., 462; Carr v. State, 19 Id., 635; Scroggins v. State, 36 Id., 117, 35 S. W. R., 968; Linhart v. State, 33 Id., 504, 27 S. W. R., 260.

Conviction can not be had under this article, unless the indictment charges that the burglarized house was a private dwelling. Mallory v. State, 126 S. W. R., 598.

Variance. Indictment for burglary under the preceding article is not sustained by proof of the burglary of a private residence as defined by this article. Sedgwick v. State, 57 T. Cr. R., 420, 123 S. W. R., 702.

Intent of the burglarious entry must be expressly alleged. Hammons v. State, 29 T. Cr. R., 445, 16 S. W. R., 99; Black v. State, 18 Id., 124.

And the allegations must comprehend the particular felony intended, with its statutory elements. Portwood v. State, 29 T., 47; State v. Williams, 41 Id., 98; Hammons v. State, 29 Id., 445, 16 S. W. R., 99.

Under Art. 480 of the Code of Criminal Procedure, a count for burglary and a conspiracy to commit burglary may be joined in the same indictment. Dill v. State, 35 T. Cr. R., 240, 33 S. W. R., 126.

Art. 1305. **"Burglary of private residence" defined.**—The offense of burglary of a private residence is constituted by entering a private residence by force, threats or fraud, at night, or in any manner by entering a private residence at any time, either day or night, and remaining concealed therein until night, with the intent, in either case, of committing a felony, or the crime of theft. [Act 1899, p. 318.]

A daytime burglary of a private residence is not affected by the act of the Twenty-sixth Legislature, page 318, of which this article is a part, but is an offense under Art. 1324 as simply the burglary of a house. Williams v. State, 42 T. Cr. R., 602, 62 S. W. R., 1057, overruling Osborne v. State, Id., 557, 61 S. W. R., 491.

A room in a hotel, rented and occupied as a private residence, is a private residence in the contemplation of law. Holland v. State, 45 T. Cr. R., 172, 74 S. W. R., 763.

The personal presence in the private residence of the occupants, at the very time of the burglary, is not necessary. Handy v. State, 46 T. Cr. R., 406, 80 S. W. R., 526.

Though the indictment charged both day and night burglary, the evidence showing only a night entry, it was error to submit both to the jury. Jones v. State, 47 T. Cr. R., 126, 80 S. W. R., 530.

Indictment. Failing to charge that the house was occupied and actually used by some person named at the time of the offense, as a place of residence, the indictment was fatally defective. Jones v. State, 50 T. Cr. R., 100, 96 S. W. R., 44; Johnson v. State, Id., 116, 96 S. W. R., 45; Lewis v. State, 54 Id., 636, 114 S. W. R., 818.

Art. 1306. [840] **"Entry" defined.**—The "entry" into a house, within the meaning of article 1303, includes every kind of entry but one made by the free consent of the occupant, or of one authorized to give such consent; it is not necessary that there should be any actual breakage to constitute the offense of burglary, except when the entry is made in the day time.

Construed. The entry of a room or house with the free consent of proprietor or occupant, is not a burglarious entry. Turner v. State, 24 T. Cr. R., 12, 5 S. W. R., 511.

Entrance through an open door without proof of breaking or force will not sustain burglary. Melton v. State, 24 T. Cr. R., 287, 6 S. W. R., 303.

Entering a store at night, during business hours, through an open door, and remaining concealed until business was closed and the store locked, and then committing theft and breaking out, will not constitute burglary. Edwards v. State, 36 T. Cr. R., 387, 37 S. W. R., 438.

One who breaks a railroad car and enters in person and takes property is guilty under this article, without reference to value. Boyd v. State, 57 T. Cr. R., 647, 124 S. W. R., 651.

Indictment under this article not sustained by proof of the burglary of a private residence. Rodgers v. State, 127 S. W. R., 834.

Art. 1307. [841] **Further defined.**—The entry is not confined to the entrance of the whole body; it may consist of the entry of any part for the purpose of committing a felony; or it may be constituted by the discharge of fire-arms or other deadly missile into the house, with intent to injure any person therein; or it may be constituted by the introduction of any instrument for the purpose of taking from the house any personal property, although no part of the body of the offender should be introduced.

Entry defined: Franco v. State, 42 T., 276; Nash v. State, 20 T. Cr. R., 384; Ross v. State, 16 Id., 554; Carr v. State, 19 Id., 635; Martin v. State, 21 Id., 1, 17 S. W. R., 430; Melton v. State, 24 Id., 287, 6 S. W. R., 303; Allen v. State, 18 Id., 120; Collins v. State, 20 Id., 197; Williams v. State, 53 Id., 2, 108 S. W. R., 371, overruling Jones v. State, 48 Id., 336, 87 S. W. R., 1157; Taylor v. State, 52 Id., 190, 107 S. W. R., 58.

Burglary by discharge of fire arms. An entry effected by the discharge of fire arms, with intent to injure any person therein, is made burglary per se by this article. Garner v. State, 31 T. Cr. R., 22, 19 S. W. R., 330, following Searcy v. State, 1 Id., 440.

Specific intent to commit the crime alleged, as well as entry, must be proved beyond a reasonable doubt. Mitchell v. State, 33 T. Cr. R., 575, 28 S. W. R., 475; s. c., 32 Id., 479, 24 S. W. R., 280; Walton v. State, 29 Id., 163, 15 S. W. R., 646.

Art. 1308. [842] **"Breaking" defined.**—By the term "breaking," as used in article 1304, is meant that the entry must be made with actual force. The slightest force, however, is sufficient to constitute breaking; it may be by lifting the latch of the door that is shut, or by raising a window, the entry at a chimney, or other unusual place, the introduction of the hand or any instrument to draw out the property through an aperture made by the offender for that purpose.

"Breaking" implies actual force, but not such force as would necessarily amount to violence. The slightest force—the lifting of a latch, raising a window, or entering through a chimney or other unusual place, will suffice. Burke v. State, 5 T. Cr. R., 74; Franco v. State, 42 T., 276; Alexander v. State, 31 T. Cr. R., 359, 20 S. W. R., 756; Bates v. State, 50 Id., 568, 99 S. W. R., 551.

Art. 1309. [843] **"House" defined.**—A "house," within the meaning of this chapter, is any building or structure erected for public or private use, whether the property of the United States, of this state, or of any public or private corporation or association, or of any individual, and of whatever material it may be constructed.

"House," "building," etc. defined. A "house" is any building or structure erected for public or private use, of whatever material it may be constructed. A "building" is a fabric or edifice constructed, a thing built as a house, church, etc. A "structure" is a building of any kind, but chiefly a building of some size or of magnificence; an edifice. An "office" is a place where a particular kind of business for others

is transacted, as the register's office, a lawyer's office. Anderson v. State, 17 T. Cr. R., 305. And see Bigham v. State, 31 Id., 244, 20 S. W. R., 577; Willis v. State, 33 Id., 168, 25 S. W. R., 1119.

Art. 1310. [844] **"Day time" defined.**—By the term "day time," is meant any time of the twenty-four hours from thirty minutes before sunrise until thirty minutes after sunset.

See notes to Art. 1304, ante.

Art. 1311. [845] **Punishment.**—The punishment for burglary shall be imprisonment in the penitentiary not less than two nor more than twelve years.

Art. 1312. **Punishment for burglary of private residence.**—The punishment for burglary of a private residence shall be by imprisonment in the penitentiary for any term of years not less than five. [Act 1899, p. 318.]

Construed. Mallory v. State, 126 S. W. R., 598.

Penalty for daytime burglary of a private residence is not less than two nor more than twelve years in the penitentiary; for nocturnal burglary of private residence, not less than five years. Holland v. State, 45 T. Cr. R., 172, 74 S. W. R., 763.

Thirty years for nocturnal burglary of a private residence is not, under this article, excessive penalty. Handy v. State, 46 T. Cr. R., 406, 80 S. W. R., 526.

Art. 1313. **Burglary of private residence at night distinct offense.**—Nothing in articles 1305 and 1312 shall be construed to alter or in any manner repeal articles 1303 and 1304, nor any part thereof, but shall be construed to make burglary of a private residence at night a separate and distinct offense from burglary, as defined in articles 1303 and 1304. [Id., 318.]

The Act of the Twenty-sixth Legislature, page 318, of which this article is a part, makes the nocturnal burglary of a private residence a distinct offense. Williams v. State, 42 T. Cr. R., 602, 62 S. W. R., 1057.

Art. 1314. **"Private residence" defined.**—The term "private residence," mentioned in this and articles 1305 and 1313, shall be construed to mean any building or room occupied and actually used, at the time of the offense, by any person or persons as a place of residence. [Id., p. 318.]

"Residence" means the domicile occupied as a habitation for the time being. A room in a hotel, rented and occupied as a private residence, is such. Holland v. State, 45 T. Cr. R., 172, 74 S. W. R., 763.

A room in a school dormitory occupied as sleeping quarters by pupils is a private residence. Mays v. State, 50 T. Cr. R., 391, 97 S. W. R., 703; and see Johnson v. State, 52 Id., 201, 107 S. W. R., 52; Lewis v. State, 54 Id., 636, 114 S. W. R., 818.

Art. 1315. **Burglary with explosives.**—Any person who shall commit burglary, as defined by the Penal Code of this state, and in the commission of the offense uses nitro-glycerine, dynamite, gunpowder, or other high explosives, shall be deemed guilty of burglary with explosives. [Act 1907, p. 210.]

Art. 1316. **Punishment for same.**—Any person who shall be convicted of burglary with explosives shall be punished by imprisonment in the state prison for not less than twenty-five years and not more than forty years. [Id., p. 210.]

Art. 1317. [846] **Other offenses committed after entry punishable.**—If a house be entered in such manner as that the entry comes within the definition of burglary, and the person guilty of such burglary shall, after so entering, commit theft, or any other offense, he shall be punished for burglary, and also for whatever other offense is so committed. [Act Feb. 12, 1858, p. 180.]

Art. 1318. [847] **Same subject.**—If the burglary was effected for the purpose of committing one felony, and the person guilty thereof shall, while

in the house, commit another felony, he shall be punishable for any felony so committed as well as for the burglary.

Construed. Under this and the preceding article, it is held that the common law rule merging a burglary and a felony committed contemporaneously, and making conviction for one a bar to prosecution for the other, is abrogated, and that under separate indictments convictions can be had for both. Loakman v. State, 32 T. Cr. R., 563, 25 S. W. R., 22, overruling Shepherd's case, 42 T., 501, Robertson's case, 6 T. Cr. R., 669; Struckman's case, 7 Id., 581; Howard's case, 8 Id., 447, and Smith's case, 22 Id., 350, 3 S. W. R., 238.

Query? Does the Loakman case, supra, also overrule Miller's case, 16 T. Cr. R., 417, Turner's case, 22 Id., 42, 2 S. W. R., 619, and Rust's case, 31 Id., 75, 19 S. W. R., 763?

Art. 1319. [848] **Actual breaking necessary in case of domestic.**—An entry into a house for the purpose of committing theft, unless the same is effected by actual breaking, is not burglary when the same is done by a domestic servant or other inhabitant of such house; but a theft committed by such person after entering a house is punishable as in other cases.

"Breaking." To constitute burglary under this article, the entry must be by an actual, and not a constructive breaking. Peters v. State, 33 T. Cr. R., 170, 26 S. W. R., 61. The exception to this rule is where the servant is a co-conspirator with others and admits such others to his master's house. Neiderluch v. State, 23 Id., 38, 3 S. W. R., 573.

"Domestic;" "inhabitant." A "domestic" is one who resides in the same house with his master, and not a workman or laborer employed out of doors. An "inhabitant" is one who has his fixed residence in the house as distinguished from an occasional lodger or visitor. Wakefield v. State, 41 T., 556; Ullman v. State, 1 T. Cr. R., 220.

A farm hand who sleeps and eats outside of his master's house, though he performs chores in the house when required, is not a domestic servant. Waterhouse v. State, 21 T. Cr. R., 663, 2 S. W. R., 889.

Art. 1320. [849] **Attempt at burglary; how punished.**—If any person shall attempt to commit the crime of burglary, he shall be punished by confinement in the penitentiary not less than two nor more than four years. [Act Feb. 11, 1860, pp. 100-01.]

Art. 1321. [850] **"Attempt" defined.**—An "attempt," in the sense in which the word is used in the preceding article, is an endeavor to accomplish the crime of burglary carried beyond mere preparation, but falling short of the ultimate design in any part of it. [Id.]

"Attempts." On attempts and conspiracy to commit burglary, see Whitford v. State, 24 T. Cr. R., 489, 6 S. W. R., 537; Munsen v. State, 34 Id., 498, 31 S. W. R., 387; Robinson v. State, Id., 71, 29 S. W. R., 40.

CHAPTER SEVEN.

OF OFFENSES ON BOARD OF VESSELS, STEAMBOATS AND RAILROAD CARS.

	Article		Article
Burglarious entry on board of vessel	1322	Rules, etc., of burglary applicable	1325
By actual breaking, in day time	1323	Theft by a servant on board punishable as such	1326
Other offense committed after entry punishable	1324		

Art. 1322. [851] **Burglarious entry on board of vessel.**—If any person, by any of the means enumerated in article 1303, shall at night enter any vessel, steamboat or railroad car, with intent to commit a felony or theft, he shall be punished by confinement in the penitentiary not less than two nor more than five years.

Art. 1323. [852] **By actual breaking in daytime.**—If any person shall, by breaking, enter a vessel, steamboat or railroad car in the daytime, with intent to commit a felony or theft, he shall be punished as prescribed in the preceding article.

To bring the entry within the purview of this article, it must be by a breaking, whether in the day or nighttime. Newman v. State, 55 T. Cr. R., 273, 116 S. W. R., 577, following Bates v. State, 50 Id., 568, 99 S. W. R., 551.

On indictment, see Hamilton v. State, 26 T. Cr. R., 206, 9 S. W. R., 687; Smith v. State, 34 Id., 124, 29 S. W. R., 775; Pyland v. State, 33 Id., 382, 26 S. W. R., 621.

And on evidence, see foregoing cases, and Dawson v. State, 32 T. Cr. R., 535, 25 S. W. R., 21, and Buller v. State, 52 Id., 528, 107 S. W. R., 840, 668; Kirk v. State, 35 Id., 224, 32 S. W. R., 1045; Wade v. State, 35 Id., 170, 32 S. W. R., 772; Coffelt v. State, 27 Id., 608, 11 S. W. R., 639.

Indictment generally: Gallagher v. State, 34 T. Cr. R., 306, 30 S. W. R., 557; Parker v. State, 9 Id., 351; Trimble v. State, 16 Id., 115; Evans v. State, 34 Id., 110, 29 S. W. R., 266; Weaver v. State, 52 Id., 11, 105 S. W. R., 189.

Art 1324. [853] **Other offenses committed after entry punishable.**—If a vessel, steamboat or railroad car be entered in such manner as that the entry, if made in a house, would be burglary, and the person so entering shall commit theft or any other offense after entry, he shall be punished for the offense defined in article 851, and also for whatever other offense he may so commit.

Art. 1325. [854] **Rules, etc., of burglary applicable.**—The definitions, rules and explanations of terms in the preceding chapter are applicable to such terms in this chapter; and the rules prescribed in articles 1303, 1304, 1305, 1306 and 1307 of the preceding chapter shall also apply to similar cases on board of a vessel, steamboat or railroad car.

Art. 1326. [855] **Theft by a servant on board punishable as such.**—A theft on board a steamboat, vessel or railroad car, committed by a servant or employe, except in cases where there has been an actual breaking in, is punishable simply as theft.

CHAPTER EIGHT.

OF ROBBERY.

"Robbery" defined and punished.....Article 1327 | Fraudulent acquisition of property by threats.....Article 1328

Article 1327. [856] **"Robbery" defined and punished.**—If any person by assault or violence or by putting in fear of life or bodily injury shall fraudulently take from the person or possession of another any property with intent to appropriate the same to his own use, he shall be punished by confinement in the penitentiary for life, or for a term of not less than five years; and, when a firearm or other deadly weapon is used or exhibited in the commission of the offense, the punishment shall be death, or by confinement in the penitentiary for any term not less than five years. [Act April 12, 1883, pp. 80-81; amend. 1895, p. 89.]

Construed. The three modes in which robbery may be committed are: 1. By assault. 2. By violence. 3. By putting in fear of life or bodily injury. Violence without the occurrence of either of the other modes if sufficient. Leonard v. State, 20 T. Cr. R., 442; Bond v. State, Id., 421.

While it would not be robbery for one to recover his own specific property by violence from a trespasser, he cannot escape liability for robbery if he resorts to force and violence to compel his debtor to pay him a debt. Fannin v. State, 51 T. Cr. R., 41, 100 S. W. R., 916.

Indictment alleging robbery by assault and violence and putting in fear need not allege that the property was taken against the will, etc. Chancey v. State, 124 S W. R., 426.

Robbery by putting in fear is committed by one who, falsely claiming to be an officer, covers another with a pistol and alarms and compels such other, under belief that he is an officer, to permit the taking of his money. McCormick v. State, 26 T. Cr. R., 678, 9 S. W. R., 277; and see Williams v. State, 51 Id., 361, 102 S. W. R., 1134.

Force: Barnes v. State, 9 T. Cr. R., 128; Fannin v. State, 51 Id., 41, 100 S. W. R., 916.

It is no defense that the money taken by force from the injured party was money lost to him by the accused in a gambling game. Blain v. State, 34 T. Cr. R., 448, 31 S. W. R., 368.

Indictment need not allege asportation. Thompson v. State, 34 S. W. R., 629.

Robbery is but aggravated theft, and indictment therefor must observe the same descriptive particularity as required in theft. Winston v. State, 9 T. Cr. R., 143.

Need not allege value of property taken. Williams v. State, 10 T. Cr., 8.

Descriptive averments as to money: Winston v. State, 9 T. Cr. R., 143; Blain v. State, 34 Id., 448, 31 S. W. R., 368; Moore v. State, 36 Id., 88, 35 S. W. R.

Art. 1328. [857] **Fraudulent acquisition of property by threats.**—If any person, by threatening to do some illegal act injurious to the character, person or property of another, shall fraudulently induce the person so threatened to deliver to him any property, with intent to appropriate the same to his own use, he shall be punished by confinement in the penitentiary not less than two nor more than five years. [Act Feb 12, 1858, p. 180.]

Construed. In a prosecution under this article, the threat must be to do an illegal act, and consequently the threat to do a legal act would not come within the offense defined. Burnsides v. State, 51 T. Cr. R., 399, 102 S. W. R., 118.

For constituents of the offense defined by this article, see in extenso Williams v. State, 13 T. Cr. R., 285. And see Coffelt v. State, 27 Id., 608, 11 S. W. R., 639; Williams v. State, 523, 31 S. W. R., 405.

Distinguished from theft from the person: Gallagher v. State, 34 T. Cr. R., 306, 30 S. W. R., 557.

CHAPTER NINE.

OF THEFT IN GENERAL.

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Article 1329. [858] **"Theft" defined.**—"Theft" is the fraudulent taking of corporeal personal property belonging to another from his possession, or from the possession of some person holding the same for him, without his consent, with intent to deprive the owner of the value of the same, and to appropriate it to the use or benefit of the person taking.

Construed. Indictment. Venue must be alleged in the county of the prosecution, and it is met by proof that the offense was committed within 400 yards of the county line. Cox v. R. Q. T., 1; Cameron v. State, 9 T. Cr. R., 232; Code Crim. Proc., Art. 237; McElroy v. State, 53 T. Cr. R., 111 S. W. R., 948.

Venue lies either in the county of the theft or the county into or through which the thief takes the stolen property. Code Crim. Proc., Art. 244; West v. State, 28 T. Cr. R., 1, 11 S. W. R., 635; Wampler v. State, Id., 352, 13 S. W. R., 144; Givens v. State, 32 Id., 457, 24 S. W. R., 287; Pearce v. State, 50 Id., 507, 98 S. W. R., 861.

Taking and intent. The taking of the property must have been fraudulent, and with this taking must concur the intent to deprive the owner of the value of the same, and appropriate it to the taker's use and benefit. State v. Sherlock, 26 T., 106; Ridgeway v. State, 41 Id., 231; Williams v. State, 12 T. Cr. R., 395; Tallant v. State, 14 Id., 234. And see Muldrew v. State, 12 Id., 617; Chance v. State, 27 Id., 441, 11 S. W. R., 457.

"Felonious" is not equivalent to "fraudulent" in the definition of theft. Sloan v. State, 18 T. Cr. R., 225, overruling Musquez v. State, 41 T., 226.

Same. Indictment. Ownership and want of consent are likewise ingredients and must be alleged. Williams v. State, 12 T. Cr. R., 395; Roberson v. State, 51 Id., 335, 101 S. W. R., 800.

Same. "Names." Allegations as to names of parties: Musquez v. State, 41 T., 226; Brown v. State, 28 T. Cr. R., 379, 13 S. W. R., 150; Victor v. State, 15 Id., 90; Harris v. State, 2 Id., 102; Brewer v. State, 18 Id., 456; Smith v. State, 52 Id., 344, 106 S. W. R., 1161.

Same. Descriptive averments. A general description of property by name, kind, quantity, number and ownership, if known, is all that is required of an indictment. Code Crim. Proc., Art. 457; Taylor v. State, 29 T. Cr. R., 466, 16 S. W. R., 302; Green v. State, 28 Id., 493, 13 S. W. R., 784.

And generally see: Bryant v. State, 16 T. Cr. R., 144; Wade v. State, 35 Id., 170, 32 S. W. R., 772, overruling Bravo v. State, 20 Id., 177; Lewis v. State, 28 Id., 140, 12 S. W. R., 736; Kimbrough v. State, Id., 367, 13 S. W. R., 218; Jackson v. State, 34 Id., 90, 29 S. W. R., 265.

Same. Value. The property stolen must have some specific value capable of being ascertained, but it is only in cases where the character of the offense and its punishment is made dependent upon the value of the property stolen that value need be alleged or proved. Green v. State, 493, 13 S. W. R., 784; Shaw v. State, 23 Id., 493, 5 S. W. R., 317.

Not necessary to allege value in thefts that are made felonies per se, that is, theft from the person, or of a horse, ass, mule, cattle or hog. In other thefts, value must be alleged and proved. Ellison v. State, 25 T. Cr. R., 328, 8 S. W. R., 462; White v. State, 33 Id., 94, 25 S. W. R., 290; Lunn v. State, 44 T., 85; Johnson v. State, 29 Id., 492; Lopez v. State, 20 Id., 780.

When the value of several alleged stolen articles has been alleged in the aggregate, the theft of all must be shown. Thompson v. State, 43 T., 268; Duren v. State, 15 Id., 624.

And see Clark v. State, 23 Id., 612, 5 S. W. R., 178, to the effect that the allegation of value has reference to the market value in the county of the prosecution.

Same. Ownership and possession. The name of the owner or possessor must be correctly charged. The given name may be stated by initials. Code Crim. Proc., Art. 445; Collins v. State, 43 T., 577, overruling Brown v. State, 32 T., 125; Spoonemore v. State, 25 T. Cr. R., 358, 8 S. W. R., 280.

Possession from which the property was taken must be alleged and at least substantially proved. Littleton v. State, 20 T. Cr. R., 168; White v. State, 33 Id., 94, 25 S. W. R., 290; Mixon v. State, 28 Id., 347, 13 S. W. R., 143; Hill v. State, 55 Id., 407, 117 S. W. R., 823.

Variance as to middle initial to the given name as charged and proved, is immaterial (Spencer v. State, 34 T. Cr. R., 65, 29 S. W. R., 129); but this rule does not extend to the first initial, unless it be shown that defendant was as well known by the name alleged as by his true name. Code Crim. Proc., Art. 455; Willis v. State, 24 T. Cr. R., 487, 6 S. W. R., 200; Young v. State, 30 Id., 308, 17 S. W. R., 413.

If the ownership of the property is unknown to the grand jury, an allegation to that effect will suffice. Code Crim. Proc., 456; McCarty v. State, 36 T. Cr. R., 135, 35 S. W. R., 994; Swink v. State, 32 Id., 530, 24 S. W. R., 893.

Though Art. 457 of the Code of Criminal Procedure authorizes the allegation of ownership in either the actual or special owner, it is better practice, in most instances, to allege the ownership in him who has the actual control, care and management—in short, the possession—of the property. Shelton v. State, 52 T. Cr. R., 611, 108 S. W. R., 679; Frazier v. State, 18 Id., 434, overruling Erskine v. State, 1 Id., 405, Jackson v. State, 7 Id., 363, Bowling v. State, 338, Williamson v. State, 8 Id., 514; Wilson v. State, 12 Id., 481.

Alleging possession in the special owner, and the want of his consent, indictment need not allege possession of the actual owner nor negative his consent. Frazier v. State, 18 T. Cr. R., 434; Bailey v. State, 20 Id., 68; Littleton v. State, Id., 168; Ledbetter v. State, 35 Id., 195, 32 S. W. R., 903.

As to temporary possession:. Blackburn v. State, 44 T., 457; Bailey v. State, 18 Id., 426; Frazier v. State, Id., 434; Emmerson v. State, 33 Id., 89, 25 S. W. R., 289.

Same. Corporate ownership: Indictment must not only describe the corporation by its corporate name, but allege that it was a corporation, allege the name of the special owner from whose possession the property was taken and that he was holding the same for the corporation, negative his consent and aver that the property was taken with the intent to deprive the owner of the value of the same. Thurmond v. State, 30 T. Cr. R., 539, 17 S. W. R., 1098; White v. State, 24 Id., 231, 5 S. W. R., 857; Barnes v. State, 46 Id., 513, 81 S. W. R., 735; Kersh v. State, 45 Id., 451, 77 S. W. R., 790. But contra, see Price v. State, 41 T., 215.

Same as to estrays. One who takes up and legally estrays an animal acquires a special property in it, and ownership may be alleged in him. Swink v. State, 32 T. Cr. R., 530, 24 S. W. R., 593; Jinks v. State, 5 Id., 68; Cox v. State, 43 T., 101. And see Blackburn v. State, 44 Id., 457; Tinney v. State, 24 T. Cr. R., 112; 5 S. W. R., 831.

This rule does not apply upon a mere partial compliance with the estray laws, and in such case the indictment should allege ownership in an unknown person. Lowe v. State, 11 T. Cr. R., 253. But see Tinney v. State, supra.

Same. Married women. The property belonging to a married woman, ownership and possession is properly alleged in the husband, and the indictment need not negative the wife's consent. Burt v. State, 7 T. Cr. R., 578; Sinclair v. State, 34 Id., 453, 30 S. W. R., 1070; Coombes v. State, 17 Id., 258; Code Crim. Proc., Art. 456.

Same. Property of estate. If the property belonged to an estate, it is proper to allege ownership and possession in the person who had the actual and legal control of the same. The son or widow of decedent, having such actual control and management, come within this rule. Dreyer v. State, 11 T. Cr. R., 503; Crockett v. State, 5 Id., 526; and see Henry v. State, 45 T., 84.

The property belonging to a widow, non compos mentis, and her children, they living with the former's father, S., who had sole control and care of the property, and was guardian for the children, indictment should have alleged the taking from

the possession of S., or, alleging the ownership in the widow and children, that it was taken from the possession of S., who was holding it for them. Briggs v. State, 20 T. Cr. R., 106.

Art. 1330. [859] **Property must have some value.**—The property must be such as has some specific value capable of being ascertained. It embraces every species of personal property capable of being taken.

See notes under Art. 1329, ante, "value."

Asportation need not be alleged. Hall v. State, 41 T., 287; Austin v. State, 42 Id., 345; Coombes v. State, 17 T. Cr. R., 258, overruling Martin v. State, 44 T., 172; Madison v. State, 16 T. Cr. R., 435; Doss v. State, 21 Id., 505, 2 S. W. R., 814, overruling Lott v. State, 20 Id., 220; Conner v. State, 24 Id., 245, 6 S. W. R., 138; Coward v. State, 24 Id., 590, 7 S. W. R., 302.

Art. 1331. [860] **Asportation not necessary.**—To constitute "taking," it is not necessary that the property be removed any distance from the place of taking; it is sufficient that it has been in the possession of the thief, though it may not be moved out of the presence of the person deprived of it; nor is it necessary that any definite length of time shall elapse between the taking and the discovery thereof; if but a moment elapse, the offense is complete.

Art. 1332. [861] **The "taking" must be wrongful.**—The taking must be wrongful, so that if the property came into the possession of the person accused of theft by lawful means, the subsequent appropriation of it is not theft, but if the taking, though originally lawful, was obtained by any false pretext, or with any intent to deprive the owner of the value thereof, and appropriate the property to the use and benefit of the person taking, and the same is so appropriated, the offense of theft is complete.

See Art. 1369, post., and notes.

Construed. This article provides two modes under which the acquisition of the property will constitute theft: 1, that the taker obtained the lawful possession of the property by some false pretext which induced or deceived the owner to surrender it to him; or, 2, that at the time he obtained the possession of it with the consent of the owner, he intended to deprive the owner of the value of the same and appropriate it to his own use. Cases supra, and Porter v. State, 23 T. Cr. R., 295, 4 S. W. R., 889; Stokely v. State, 24 Id., 509, 6 S. W. R., 538; Boyd v. State, Id., 570, 6 S. W. R., 853; Cunningham v. State, 27 Id., 480, 11 S. W. R., 485; Williams v. State, 30 Id., 153, 16 S. W. R., 760.

Indictment must allege the false pretext, the owner's consent to the taking thereby, the falsity of the pretext, the taking of the property and the fraudulent intent. Warrington v. State, 1 T. Cr. R., 168; Jones v. State, 8 Id., 648.

Under an ordinary indictment for theft, charging a taking without consent, it is competent to prove a taking with the owner's consent, but obtained by a false pretext. Berg v. State, 2 T. Cr. R., 148, noting that Marshall's case, 31 T., 471, has been overruled; Dow v. State, 12 Id., 343; Morrison v. State, 17 Id., 34; Atterberry v. State, 19 Id., 401.

This statute is broad enough to comprehend any pretext by which the possession of the property is obtained, although such pretext be in itself illegal. Lovell v. State, 48 T. Cr. R., 85, 86 S. W. R., 758.

Theft of lost property. The finding of lost property is not per se theft, yet lost property can be stolen. Robinson v. State, 11 T. Cr. R., 403.

To constitute a finding theft, the intent to defraud the owner and appropriate the property must exist in the mind of the finder at the time he took possession. If the intent to steal did not exist at that time no subsequent intent to steal will render the original taking theft. Stepp v. State, 31 T. Cr. R., 349, 20 S. W. R., 753. And see Reed v. State, 40; Wilson v. State, 14 Id., 205; Warren v. State, 17 Id., 207.

A party may be convicted of the theft of money paid him by mistake if, at the time he received it, he formed the criminal design to appropriate it, and did so appropriate it. Fulcher v. State, 32 T. Cr. R., 621, 25 S. W. R., 625.

The finder of lost proeprty is not guilty of theft though he may expect reward, when he does not withhold and conceal it until he gets a reward. Martin v. State, 44 T. Cr. R., 538, 72 S. W. R., 386.

Art. 1333. [862] **Possession and ownership need not be in same person.**—It is not necessary, in order to constitute theft, that the possession and ownership of the property be in the same person at the time of taking.

Indictment alleging the ownership of the burglarized house was sustained by proof of joint ownership, possession and custody in the person alleged. Clark v. State, 125 S. W. R., 12.

Art. 1334. [863] **Possession; how constituted.**—Possession of the person so unlawfully deprived of property is constituted by the exercise of actual control, care and management of the property, whether the same be lawful or not.

Possession, within the meaning of this article, is constituted by the concurrence of actual control, actual care and actual management of the property. Pippin v. State, 9 T. Cr. R., 269; Frazier v. State, 18 Id., 434, (overruling Erskine v. State, 1 Id., 405); Ledbetter v. State, 35 Id., 195, 32 S. W. R., 903; Tinney v. State, 24 Id., 112, 5 S. W. R., 831. And such possession need not be lawful. King v. State, 43 T., 351; Crockett v. State, 5 T. Cr. R., 526; Moore v. State, 8 Id., 496.

Animals on their accustomed range are in the possession of their owners. Cameron v. State, 44 T., 652; Mackey v. State, 20 T. Cr. R., 603; Hayes v. State, 30 Id., 404, 17 S. W. R., 940; McGrew v. State, 31 Id., 336, 20 S. W. R., 740.

Art. 1335. [864] **Theft of one's own property, when.**—No person can be guilty of theft by taking property belonging to himself, except in the following cases:

1. Where the property has been deposited with the person in possession as a pledge or security for debt.

2. Where it is in the possession of an officer of the law by process from a court of competent jurisdiction.

3. Where the property is in the possession of an executor or administrator for the purpose of administration.

4. In all other cases where the person so deprived of possession is, at the time of taking, lawfully entitled to the possession thereof as against the true owner.

Construed. Under this article it is immaterial whether the fraudulent taking of his own property from his bailee would operate to charge the bailee; it would be theft. Taylor, 7 T. Cr. R., 659; State v. Stephens, 32 T., 155.

See generally: Overton v. State, 43 T., 616; Duren v. State, 15 T. Cr. R., 624; Cornell v. State, 2 Id., 422; Evans v. State, 15 Id., 31; Smith v. State, 42 T., 444; Seymour v. State, 12 Id., 391; Harris v. State, 17 T. Cr. R., 177; Bray v. State, 41 T., 203; Donahue v. State, 23 Id., 457, 5 S. W. R., 245.

The taking of his own property under either clause of this article must be fraudulent to constitute theft. The taking of one's own property from the possession of an officer who has levied on it is not necessarily theft; nor is the taking from an officer any more fraudulent than from an individual. Bullard v. State, 41 T. Cr. R., 225, 53 S. W. R., 637.

Art. 1336. [865] **Part owner can not commit, unless.**—If the person accused of the theft be part owner of the property, the taking does not come within the definition of theft, unless the person from whom it is taken be wholly entitled to the possession at the time.

Fairy v. State, 18 T. Cr. R., 314; Duren v. State, 15 Id., 624; Bell v. State, 7 Id., 25; Connell v. State, 2 Id., 422.

Art. 1337. [866] **"Property" defined.**—The term "property," as used in relation to the crime of theft, includes money, bank bills, goods of every description commonly sold as merchandise, every kind of agricultural produce, clothing, any writing containing evidence of an existing debt, contract, liability, promise or ownership of property real or personal, any receipts for money, discharge, release, acquittance and printed book or manuscript, and, in general, any and every article commonly known as and called personal property, and all writings of every description; provided such property possesses any ascertainable value.

"Property" defined. See notes to Art. 1350 ante, and Ex parte Wilke, 34 T., 155; Harberger v. State, 4 T. Cr. R., 26; Brown v. State, 23 Id., 214, 4 S. W. R., 588; Bryant v. State, 16 Id., 144; Block v. State, 44 T., 620; Lewis v. State, 28 T. Cr. R., 140, 12 S. W. R., 784; Kimbrough v. State, Id., 367, 13 S. W. R., 218; Green v. State, Id., 493, 13 S. W. R., 784; Davis v. State, 32 Id., 377, 23 S. W. R., 794.

Art. 1338. [867] **Animals of domestic breed included.**—Within the meaning of "personal property" which may be the subject of theft, are included all domesticated animals and birds, when they are proved to be of any specific value.

Art. 1339. [868] **Particular penalties exclude general punishment.**—Theft of certain particular kinds of property, as of a horse, property wrecked, etc., have a punishment affixed differing from the general punishment of the crime of theft; whenever, therefore, the law provides a particular punishment for theft committed in regard to a special kind of property, theft of such property is not included within the law affixing a general penalty to the offense; but in other cases, whenever it is declared to be an offense to steal or otherwise fraudulently approprite property, the provision is intended to include any and every species of personal property according to its general and broadest signification.

Art. 1340. [869] **Theft of fifty dollars and over.**—Theft of property of the value of fifty dollars or over shall be punished by confinement in the penitentiary not less than two nor more than ten years. [Amend. 1895, p. 15.]

Art. 1341. [870] **Petty theft; how punished.**—Theft of property under the value of fifty dollars shall be punished by imprisonment in the county jail not exceeding two years, during which time the prisoner may be put to hard work on the county roads or otherwise, and by fine not exceeding five hundred dollars, or by such imprisonment without fine. [Id.]

Art. 1342. [871] **General penalties not applicable, when.**—The two preceding articles do no apply to theft of property from the person, nor to cases of theft of any particular kind of property where the punishment is specially prescribed.

Value need not be either alleged or proved in theft cases made by statutes felony **per se.** Art. 1339, ante.

"Value" is the market value of the article if it has such value, and if not, the amount it would cost to replace it. And any evidence from which the jury can infer the value of the stolen chattel is admissible. Martinez v. State, 16 T. Cr. R., 122; Cannon v. State, 18 Id., 172; Rollins v. State, 32 Id., 567, 25 S. W. R., 125.

Prosecution being in the county into which the stolen property was carried, its value in that county and not in the county of the original taking must be proved, it being necessary to show a complete offense in the county of the forum. Clark v. State, 612, 5 S. W. R., 178, citing Roth v. State, 10 T. Cr. R., 27, and Gage v. State, 22 Id., 123, 2 S. W. R., 638, and for review of rules applicable, Martinez v. State, 16 T. Cr. R., 122; Saddler v. State, 20 Id., 195.

If the theft be a felony per se the accused cannot be convicted of a misdemeanor theft. Roberts v. State, 33 T. Cr. R., 83, 24 S. W. R., 895.

Art. 1343. [872] **Voluntary return of stolen property.**—If property, taken under such circumstances as to constitute theft, be voluntarily returned within a reasonable time, and before any prosecution is commenced therefor, the punishment shall be by fine not exceeding one thousand dollars. [Act Feb. 12, 1858, p. 181.]

Voluntary return. To be voluntary, the return must be: 1, Willingly made and not under compulsion, fear of punishment or threats; 2, within reasonable time after the theft and before prosecution is instituted; 3, must be an actual and not a mere constructive return to the possession of the owner; and, 4, the property returned must be the identical property stolen, unchanged and all of it. Bird v. State, 16 T. Cr. R., 528; Stepp v. State, 31 Id., 349, 20 S. W. R., 753; and see Allen v. State, 12 Id., 190; Moore v. State, 8 Id., 496; Dupree v. State, 17 Id., 591; and compare Stephenson v. State, 4 Id., 591.

The offer of the thief to return the property comes too late after he has been caught in possession. Elkins v. State, 35 T. Cr. R., 206, 32 S. W. R., 1046; Harris v. State, 29 Id., 101, 14 S. W. R., 390; Boze v. State, 31 Id., 347, 20 S. W. R., 752.

And see generally: Shultz v. State, 5 T. Cr. R., 390; Trafton v. State, Id., 480; Owen v. State, 44 T., 248; Horseman v. State, 43 Id., 353; Grant v. State, 2 T. Cr. R., 164; Blount v. State, 34 Id., 640, 31 S. W. R., 652.

Art. 1344. [873] **"Steal" or "stolen" include, what.**—The words "steal" or "stolen," when used in this code in reference to the acquisition of property, include property acquired by theft.

"Steal" and "stolen" and "theft" are synonymous terms. Carr v. State, 9 T. Cr. R., 463; Sands v. State, 30 Id., 578, 18 S. W. R., 86.

Art. 1345. [874] **Stealing agricultural products.**—The stealing or feloniously taking any growing, standing or ungathered Indian corn, wheat, cotton, potatoes, rice or other agricultural product, shall hereafter be deemed theft; and any person who shall hereafter steal or feloniously take, pluck, sever or carry away any Indian corn, or wheat, cotton, potatoes, rice or other agricultural product, growing, standing or remaining ungathered in any plantation, field or other ground, shall, on conviction thereof, be deemed guilty of theft, and suffer punishment as in other cases of theft.

Art. 1346. [875] **Stealing record books or filed papers.**—If any person shall take and carry away any record book or filed paper from any clerk's office, public office, or other place where the same may be lawfully deposited, or from the lawful possession of any person whatsoever, with intent to destroy, suppress, alter or conceal, or in any wise dispose of the same, so as to prevent the lawful use of such record book or filed paper, he shall be deemed guilty of theft, and punished by imprisonment in the penitentiary not less than three nor more than seven years. [Act Feb. 12, 1878, p. 181.]

Art. 1347. [876] **Stealing from a wreck.**—If any person, with intent to deprive the true owner of the value thereof, shall appropriate to his own use, or dispose of to his own benefit, any property taken or driven on shore from any vessel wrecked, stranded or burned on the seashore, or on any river, bay or harbor of the state, he shall be punished by confinement in the penitentiary not less than two nor more than five years.

Art. 1348. [877] **Conversion by a bailee is theft.**—Any person having possession of personal property of another by virtue of a contract of hiring or borrowing, or other bailment, who shall, without the consent of the owner, fraudulently convert such property to his own use with intent to deprive the owner of the value of the same, shall be guilty of theft, and shall be punished

as prescribed in the Penal Code for theft of like property. [Act March 8, 1887, p. 14.]

Construed. The constituent elements of this offense are: 1, possession by virtue of bailment; 2, fraudulent conversion of same by bailee to his own use without consent; 3, conversion by the bailee with intent to deprive the owner of the value, etc. "Intent to appropriate" is not an essential ingredient. Purcelly v. State, 29 T. Cr. R., 1, 13 S. W. R., 993.

The proof must show the accused a party to the bailment. Calkins v. State, 34 T. Cr. R., 251, 29 S. W. R., 1081.

Conviction for this offense can not be sustained under an indictment charging theft in general terms—and vice versa. Torres v. State, 33 T. Cr. R., 125, 25 S. W. R., 128; Williams v. State, 30 Id., 153, 16 S. W. R., 760.

Because the act may, under this article, constitute theft by bailee is no reason why it should not also constitute embezzlement under the general statute. Wilson v. State, 47 T. Cr. R., 159, 82 S. W. R., 651.

A conversion that is fradulent is the essential ingredient of this offense. Smith v. State, 45 T. Cr. R., 251, 76 S. W. R., 434.

Not necessary under this article to allege the particular character of the bailment which makes the conversion theft, but where the bailment arises through an agent, the agcency and want of the agent's consent, should be alleged by direct and positive averment, and not be left to inference. McCarty v. State, 45 T. Cr. R., 510, 78 S. W. R., 506.

"Bailment" defined. A bailment is a delivery of personal property to another for some purpose, express or implied, that such purpose shall be carried out. Fulcher v. State, 32 T. Cr. R., 621, 25 S. W. R., 625. And see Neel v. State, 33 Id., 408, 26 S. W. R., 726; Malz v. State, 36 Id., 447, 37 S. W. R., 748; Abbey v. State, 35 Id., 589, 34 S. W. R., 930; Taylor v. State, 25 Id., 96, 7 S. W. R., 861; Jaimes v. State, 32 Id., 473, 24 S. W. R., 297.

Offenses distinguished. Under this article, the fraudulent intent arises after the property has been obtained; under Art. 1353, the fraudulent intent must exist at the time of obtaining the property, which must be by a false pretense. Price v. State, 49 T. Cr. R., 131, 91 S. W. R., 571.

Art. 1349. [878] **Receiving stolen property.**—If any person shall receive or conceal property which has been acquired by another in such manner as that the acquisition comes within the meaning of the term theft, knowing the same to have been so acquired, he shall be punished in the same manner as if he had stolen the property. [Act Feb. 12, 1858, pp. 180-81; amended, Act 1899, p. 26.]

Construed. Conviction cannot be had for this offense under an indictment for theft. Wheeler v. State, 34 T. Cr. R., 350, 30 S. W. R., 913; Ferandez v. State, 25 Id., 538, 8 S. W. R., 667; Ray v. State, 24 Id., 611, 7 S. W. R., 339.

If not in some way connected with the original taking so as to make him a principal, accused could not be convicted of theft, though he received the property knowing it to be stolen. Jackson v. State, 47 T. Cr. R., 85, 80 S. W. R., 631.

One cannot be convicted under this article when it is shown that he purchased the goods from one who had the legal power to sell them, though that sale involved a breach of trust by the latter. Bismark v. State, 45 T. Cr. R., 54, 73 S. W. R., 965.

The original theft of the property by another must be proved, and then that the accused received the same knowing it to be stolen. Johnson v. State, 42 T. Cr. R., 440, 60 S. W. R., 667; Wilson v. State, 12 Id., 481.

A mere receiver of stolen property cannot be convicted of accessory to theft thereof. Street v. State, 39 T. Cr. R., 134, 45 S. W. R., 577.

The gist of this offense is receiving the stolen property "knowing" it to have been stolen. Grande v. State, 37 T. Cr. R., 382, 33 S. W. R., 875.

And see generally: Murio v. State, 31 T. Cr. R., 210, 20 S. W. R., 356; Arcia v. State, 26 Id., 193, 9 S. W. R., 685; Arcia v. State, 28 Id., 198, 12 S. W. R., 599; Prator v. State, 15 Id., 363; Moseley v. State, 35 Id., 210, 32 S. W. R., 1042; Morgan v. State, 31 Id., 1, 18 S. W. R., 647; C. C. P., Art. 247.

As to punishments, see Ramsey v. State, 34 T. Cr. R., 16, 28 S. W. R., 808; Spradling v. State, 30 Id., 595, 17 S. W. R., 1117; Nourse v. State, 2 Id., 305; Vincint v. State, 10 Id., 330.

For a comprehensive construction of this article, see Piper v. State, 56 T. Cr. R., 121.

CHAPTER TEN.

OF THEFT FROM THE PERSON.

Punishment for .....Article 1350
Ingredients of the offense.....Article 1351
Attempt to commit the offense.....Article 1352

Article 1350. [879] **Punishment for.**—If any person shall commit theft by privately stealing from the person of another, he shall be punished by confinement in the penitentiary not less than two nor more than seven years.

Construed. Theft from the person is felony per se without regard to the value of the property, if it has any value at all. Chitwood v. State, 44 T. Cr. R., 439, 71 S. W. R., 973.

The theft must be "from" the "person," and not merely from the presence of the taking of any one will be sufficient. Grissom v. State, 40 T. Cr. R., 146, 49 S. W. R., 93.

Indictment charging the theft from the person, of several articles, proof of the taking of any one will be sufficient. Grissom v. State, 40 T. Cr. R., 146, 49 S. W. R., 93.

The theft must be "from" the "person" and not merely from the presence of the dispossessed party, and not merely without his consent, but also without his knowledge, or so suddenly as to preclude resistance to the taking. Woodard v. State, 9 T. Cr. R., 412.

Same. Jurisdiction. This offense can be prosecuted only in the county of the taking. Gage v. State, 22 T. Cr. R., 123, 2 S. W. R., 638; Nichols v. State, 28 Id., 105, 12 S. W. R., 500.

Asportation is not essential to the completion of this offense; sufficient if in either mode denounced the property is reduced to possession. Clemmons v. State, 39 T. Cr. R., 279, 45 S. W. R., 911.

Indictment may include counts for theft and theft from the person, and conviction under the first count operates as acquittal of the second count. Hooten v. State, 53 T. Cr. R., 6, 108 S. W. R., 651; Flynn v. State, 47 Id., 26, 206.

Indictment generally: Kerry v. State, 17 T. Cr. R., 180; Green v. State, 28 Id., 493, 13 S. W. R., 784; McCollom v. State, 29 Id., 162, 14 S. W. R., 1020; Flynn v. State, 42 T., 301; Shaw v. State, 23 T. Cr. R., 493, 5 S. W. R., 317.

Art. 1351. [880] **Ingredients of the offense.**—To constitute the offense it is necessary that the following circumstances occur:

1. The theft must be from the person; it is not sufficient that he property be merely in the presence of the person from whom it is taken.

2. The theft must be committed without the knowledge of the person from whom the property is taken, or so suddenly as not to allow time to make resistance before the property is carried away.

3. It is only necessary that the property stolen should have gone into the possession of the thief; it need not be carried away in order to complete the offense.

Constituent elements: 1, the theft must be from the person, and not merely from the presence of the person; 2, must be without the dispossessed party's knowl-

edge, or so suddenly as to preclude resistance; 3, asportation is not necessary, but actual possession must have been secured. Green v. State, 28 T. Cr. R., 493, 13 S. W. R., 784. And see Duke v. State, 22 Id., 192, 2 S. W. R., 500; Clemmons v. State, 39 Id., 279, 45 S. W. R., 911; Grant v. State, 127 S. W. R., 173.

Want of knowledge of the taking must not only be alleged but proved. McLin v. State, 29 T. Cr. R., 171, 15 S. W. R., 600; Files v. State, 36 Id., 206, 36 S. W. 557.

R., 93. And see Roquemore v. State, 50 Id., 542, 99 S. W. R., 547.

Distinguished from robbery. Gallagher v. State, 34 T. Cr. R., 306, 30 S. W. R., 557.

Art. 1352. [888] **Attempt to commit the offense.**—If any person shall attempt to commit the offense of theft from the person, as defined in the two preceding articles, he shall be punished by confinement in the penitentiary not less than one nor more than three years. [Act 1909, p. 70.]

CHAPTER ELEVEN.

THEFT OF ANIMALS.

	Article		Article
Theft of horse, etc.	1353	Wilfully driving stock from range, theft.	1356
Theft of cattle	1354	Party may drive stock in range	1357
Theft of sheep, hogs, etc., how punished.	1355	What proof sufficient for the state	1358

Article 1353. [881] **Theft of horse, etc.**—If any person shall steal any horse, ass or mule, he shall be punished by confinement in the penitentiary not less than two nor more than ten years. [Act Feb. 12, 1858, p. 181; amended Act 1897, p. 83.]

Indictment. Sufficient to describe the stolen animal by the generic term "horse," "ass," "mule" or "cattle." But if the descriptive averments unnecessarily include color, brand or sex, such averments must be proved. Hill v. State, 41 T., 253; Coleman v. State, 21 T. Cr. R., 520, 2 S. W. R., 859; Loyd v. State, 22 Id., 646, 3 S. W. R., 670; Smythe v. State, 17 Id., 244.

Under an indictment for theft, a conviction can be had for wilfully driving stock from accustomed range. Counts v. State, 37 T., 593; Bawcom v. State, 41 T., 189; Guest v. State, 24 T. Cr. R., 530, 7 S. W. R., 242.

Construed. This article, as amended, does not abrogate the punishment for theft as a bailee. Brown v. State, 57 T. Cr. R., 570, 124 S. W. R., 101.

Evidence in horse-theft: Howard v. State, 42 T. Cr. R., 290, 92 S. W. R., 804; Trevinio v. State, 48 Id., 207, 87 S. W. R., 1162; Young v. State, 47 Id., 468, 83 S. W. R., 808.

Same. Extra-territorial theft. The fact that the statutes of Oklahoma classifies animals of the horse species will not invalidate a Texas indictment describing the animal stolen in Oklahoma and brought into this state, by its generic term. Beard v. State, 47 T. Cr. R., 183, 83 S. W. R., 824.

Art. 1354. [882] **Theft of cattle.**—If any person shall steal any cattle or hog, he shall be punished by confinement in the state penitentiary not less than two nor more than four years. [Act May 17, 1873, p. 80.]

Indictment. Description. Sufficient to describe the animal as "one cattle," "one hog," etc. Further description will only necessitate unnecessary proof. State v. Garrett, 34 T., 674; Smith v. State, 24 T. Cr. R., 290, 6 S. W. R., 40.

Possession. Cattle and hogs in their accustomed range are in the possession of their owners. Cameron v. State, 44 T., 652; Crockett v. State, 5 T. Cr. R., 526;

Moore v. State, 8 Id., 496; Mackey v. State, 20 Id., 603; McGrew v. State, 31 Id., 336, 20 S. W. R., 740.

If, however, they are in the custody and care of a special owner, though on the range, they are in his possession. Littleton v. State, 20 T. Cr. R., 168; Hall v. State, 22 Id., 632, 3 S. W. R., 338; Williams v. State, 26 Id., 131, 9 S. W. R., 357, citing Tinney v. State, 24 Id., 112, 5 S. W. R., 831 and Alexander v. State, Id., 126, 5 S. W. R., 840.

Generally: Davis v. State, 55 T. Cr. R., 495, 117 S. W. R., 159; Warren v. State, 51 Id., 616, 103 S. W. R., 853; Parks v. State, 46 Id., 100 S. W. R., 79; O'Quinn v. State, 55 Id., 18; McBride v. State, 48 Id., 213, 88 S. W. R., 237.

Art. 1355. [883] **Theft of sheep, goat, etc.; how punished.**—If any person shall steal any sheep or goat, he shall be punished by confinement in the state penitentiary for not less than two nor more than four years. [Amended Act 1905, p. 16.]

Construed. The punishment prescribed by this article depending upon value, the indictment must allege value, and the proof must establish it. Blunt v. State, 9 T. Cr. R., 234; Lunn v. State, 44 T., 85; Hall v. State, 15 T. Cr. R., 40. And see Whitsett v. State, 9 Id., 198; Hargrave v. State, 33 Id., 165, 25 S. W. R., 967; Spradling v. State, 30 Id., 595, 17 S. W. R., 1117; Cannon v. State, 18 Id., 172.

Art. 1356. [884] **Wilfully driving stock from range, theft.**—If any person shall wilfully take into possession and drive, use or remove from its accustomed range, any live stock not his own, without the consent of the owner, and with intent to defraud the owner thereof, he shall be deemed guilty of theft, and, on conviction, shall be confined in the penitentiary not less than two nor more than five years, or be fined in a sum not to exceed one thousand dollars, or by both such imprisonment and fine, at the discretion of the jury trying the case. [Act Nov. 12, 1866, p. 188.]

Indictment. If the proof upon which the state depends leaves it in doubt whether the offense is theft per se or wilfully driving stock from the range, the indictment should charge both in different counts. Smith v. State, 34 T., 612.

It is not necessary that the indictment allege intent to appropriate the value of the property. Smith v. State, supra.

If the driving includes several different animals belonging to different owners, all may be embraced in one count. Long v. State, 43 T., 467.

It is not necessary to allege the owner, but if the allegation is made it must be proved. Smith v. State, 43 T., 433.

And see generally: State v. Faucett, 15 T., 585; Fowler v. State, 38 Id., 559; Darnell v. State, 43 Id., 147; Woods v. State, 26 T. Cr. R., 490, 10 S. W. R., 108.

An ordinary indictment for theft does not include a charge of wilfully driving stock from its accustomed range without the consent of the owner, and conviction for latter offense cannot be held under an indictment only charging theft generally. Long v. State, 39 T. Cr. R., 461, 46 S. W. R., 821, overruling Counts v. State, 37 T., 593, Campbell v. State, 42 Id., 591; Bawcom v. State, 41 Id., 189, Marshall v. State 4 T. Cr. R., 549; Powell v. State, 7 Id., 467; Turner v. State, Id., 596; Foster v. State, 21 Id., 80, 175 R., 548; Smith v. State, Id., 133, 17 S. W. R., 558, and Guest v. State, 24 Id., 530, 7 S. W. R., 242.

Art. 1357. [885] **Party may drive stock in range.**—Nothing in the preceding article contained shall be construed to prevent any person from driving his own and other stock that may be mixed therewith to the nearest convenient point within the usual range of such stock, for separation. [Id., p. 187.]

Art. 1358. [886] **What proof sufficient for the state.**—In any prosecution under article 1356, it shall only be necessary for the state to prove the act of driving, using or removing from its accustomed range, any live stock not belonging to, or under the control of, the accused; and it shall devolve upon the accused to show any fact under which he can justify or mitigate the offense. [Id., p. 188.]

Construed. To come within this article, the driving must be "wilful," that is, committed with evil intent, etc., a fact that is presumed from the driving. It devolves upon the defense to prove mitigating or justifying facts. Owens v. State, 19 T. Cr. R., 242.

Conviction for the theft of the animal will bar a subsequent prosecution under article 1377. McElmurray v. State, 21 T. Cr. R., 691, 2 S. W. R., 892.

But a previous conviction for driving from the range with a pecuniary fine, which conviction was set aside and a new trial awarded, will not preclude subsequent conviction for felonious theft. Campbell v. State, 22 T. Cr. R., 262, 2 S. W. R., 825, overruling Sisk's case, 9 Id., 90.

Verdict. Indictment being for theft, but the charge submitting only driving from the range, a general verdict will be good for that offense. Marshall v. State, 4 T. Cr. R., 539; and see Foster v. State, 21 Id., 80, 17 S. W. R., 548.

CHAPTER TWELVE.

MISCELLANEOUS PROVISIONS RELATING TO THE RECOVERY OF STOLEN ANIMALS AND THE DETECTION AND PUNISHMENT OF THIEVES.

	Article
Want of bill of sale prima facie evidence of illegal possession	1359
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This chapter not to apply to Karnes county	1375

Article 1359. [887] **Want of bill of sale prima facie evidence of illegal possession.**—Upon the trial of any person charged with the theft of any animal of the horse, ass or cattle species, the possession of such stolen animal by the accused, without a written transfer or bill of sale, containing a specific description of such animal, shall be prima facie evidence against the accused that such possession was illegal. [Act Nov. 13, 1886, p. 223; amended, Act 1899, p. 87.]

Constitutional law. The several articles of this chapter declared constitutional. State v. Dietz, 30 T., 511; Faith v. State, 32 Id., 373.

Construed. The presumption arising from possession without a written bill of sale is not conclusive, and may be rebutted by competent evidence. Flores v. State, 13 T. Cr. R., 665; Garcia v. State, 12 Id., 335.

See generally: Gomez v. State, 15 T. Cr. R., 64; Schindler v. State, Id., 394; White v. State, 21 Id., 339, 17 S. W. R., 727; Willey v. State, 22 Id., 408, 3 S. W. R., 570; Gilleland v. State, 24 Id., 524; 7 S. W. R., 241; Morrow v. State, 22 Id., 239, 2 S. W. R., 624; Graves v. State, 28 Id., 354; 13 S. W. R., 149; Abrigo v. State, 29 Id., 143, 15 S. W. R., 408.

Art. 1360. [888] **Driving stock to market without bill of sale.**—Any person who may be found in any county of this state driving to market any animals, such as are specified in the preceding article, and who has not in his possession a bill of sale or transfer for each and all of said animals, containing their marks and brands, or a list of such marks and brands of any of such animals

as were raised by himself, both said bill of sale and list being duly certified as recorded by the clerk of the county court of the county from which such animals have been driven, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not exceeding two thousand dollars. [Id., p. 224; amended, Act 1899, p. 87.]

Art. 1361. [889] **Butchering unmarked or unbranded animals.**—If any butcher or other person, engaged in the slaughter of animals, shall kill, or cause to be killed, any unmarked or unbranded animal for market, or shall purchase and kill, or cause to be killed, any animal, without having taken a bill of sale or written transfer from the person selling the same, he shall be fined not less than fifty nor more than three hundred dollars. [Act Nov. 13, 1866, p. 244; amended, Act 1899, p. 87.]

Construed. He is guilty under this article who slaughters an unmarked and unbranded animal and subsequently purchases the same from a stranger who claims to be the owner. In other words, a subsequent purchase will not condone the offense. Hunt v. State, 33 T. Cr. R., 93, 25 S. W. R., 127.

Art. 1362. [890] **Not applicable to animals raised by butchers.**—The preceding article shall not apply to the slaughter of any animal raised by the person slaughtering the same. [Id.; amended, Act 1899, p. 87.]

Art. 1363. [891] **Butcher failing to make report of animals slaughtered.**—If any person engaged in the slaughter and sale of animals for market in any county, city, town or village in this state, shall fail to report to the commissioners' court of the county in which he transacts such business, at each regular term thereof, the number, color, age, sex, marks and brands of every animal slaughtered by him since the last term of said court, accompanied with a bill of sale or written conveyance to him of every animal slaughtered, save such as were raised by himself, which shall be specified, he shall be punished by a fine of not less than fifty nor more than three hundred dollars. [Id.; amended, Act 1899, p. 87.]

Construed. The report contemplated by this article must designate the animals raised and slaughtered by the butcher, and those purchased and slaughtered by him, supported by a bill of sale or written conveyance. Kinney v. State, 21 T. Cr. R., 348, 17 S. W. R., 423.

Constitutional law. This article defines a substantive offense, and there is no conflict between it and article 4943 of the Revised Statutes of 1895. Dreyer v. State, 10 T. Cr. R., 97. Nor does it conflict with Section 10 of the Bill of Rights. Aston v. State, 27 Id., 574, 11 S. W. R., 637.

The report required must be made to each regular term of the court, and must be verified for that term. Bruns v. State, 33 T. Cr. R., 415, 26 S. W. R., 722.

Art. 1364. **Before engaging in business of slaughter and sale of animals, what is required.**—Before engaging in the business of slaughter and sale of animals for market, every person, firm or corporation, desiring to so engage, must first register his name or their names with the county clerk, indicating their purpose to engage in such business, and, upon failure to so first register their names, they may be fined in any sum not less than five dollars nor more than twenty-five dollars. Provided, nothing in this law shall be construed to apply to slaughter houses in this state slaughtering as many as three hundred cattle per day. [Act 1907, p. 240.]

Art. 1365. [892] **Butchers and slaughterers required to file bond.**—Every person, before he shall set up and carry on the trade or occupation of a butcher or slaughterer of cattle in the state of Texas, shall file a bond, to be approved by the county judge of the county in which he resides to carry on the business, in a sum not less than two hundred dollars, nor more than one thousand dollars, payable to the state of Texas, conditioned that he shall keep a true and faithful record, in a book kept for that purpose, of all cattle purchased or

slaughtered by him, with a description of the animal, including marks, brands, age, color, weight and from whom purchased and the date thereof, that he will have the hide and ear of such animal inspected by the inspector, or some magistrate of the county, within twenty days after it is slaughtered, and that he will not purchase any cattle that has been slaughtered by another, unless the hide and ears of such slaughtered animal accompany said animal offered for sale, and that he will not purchase any animal that has been slaughtered by another, when the ear marks or brands on the hide accompanying such animal, when offered for sale, have been changed, mutilated or destroyed. [Act April 6, 1889, § 1; amend. 1893, p. 38; amended, Act 1899, p. 87.]

Art. 1366. [893] **Penalty for failure to make such bond.**—Every person who shall carry on the business of butcher or slaughterer of animals, without having filed with the clerk of the county court of the county in which he conducts such business the bond provided for in article 1365, shall be fined in any sum not less than five dollars nor more than two hundred dollars. [Id., § 2; amend., Id.; amended, Act 1899, p. 87.]

Art. 1367. [894] **Required to keep record of cattle purchased or slaughtered.**—Every person who shall carry on the business of butcher or slaughterer of animals and shall fail to keep a true and faithful record, in a book kept for the purpose, of all cattle purchased and slaughtered by him, together with a description of each animal, including brand, age, color, weight and from whom purchased and the date of purchase, or shall fail to give the hide and ears of such animal or animals inspected by the inspector or some magistrate, within twenty days after such animal is slaughtered, shall be fined in any sum not less than twenty dollars nor more than two hundred dollars. [Id., § 3; amended, Act 1899, p. 87.]

Art. 1368. [895] **Penalty for purchasing slaughtered cattle, unless accompanied by hide and ears, etc.**—Any person engaged in butchering or slaughtering, and who shall purchase any cattle that have been slaughtered by another without the hide and ears of such animal accompanying the same, or shall purchase any animal that has been slaughtered by another when the ear mark or brand on the hide accompanying the same, when offered for sale, have been changed, mutilated or destroyed, shall be fined in any sum not less than fifty nor more than two hundred dollars. [Id., § 4; amend. Id.; amended, Act 1899, p. 87.]

Art. 1369. [896] **The record provided for in article 1367 to be open for inspection.**—The record provided for in article 1367 of this charter shall be open to the inspection of all parties; and any butcher refusing to permit such inspection at any reasonable hour shall be fined in any sum not exceeding twenty-five dollars. [Id., § 5; amended, Act 1899, p. 87.]

Art. 1370. [897] **Duty of county attorney.**—In addition to the criminal prosecution that may be brought under this law, it is the duty of the county attorney to bring a civil action against any butcher or slaughterer of animals for any violations of the terms of the bond prescribed in article 1365. [Act 1893, p. 38; amended, Act 1899, p. 87.]

Art. 1371. [898] **Inspector to keep record.**—It shall be the duty of the inspector or magistrate to keep a record of the marks, brands, color and general description of such hides, and for whom inspected, with the date of inspection, and return a copy of the same to the clerk of the county court of the county in which it was inspected within thirty days after said inspection; and said inspector or magistrate shall be entitled to receive ten cents for each hide so inspected, to be paid by the party having the hide inspected; and any inspector or magistrate failing to keep such book, or failing to make such report as above provided for, may be fined in any sum not less than one dollar nor more than twenty-five dollars. [Id.; amended, Act 1899, p. 87.]

Art. 1372. [899] **Counties exempt.**—The provisions of this law shall not apply to either of the following counties: Collin, DeWitt, Goliad, Lamar, Bee, Victoria, Calhoun, Refugio, Bell, Coryell, Hamilton, Mills, Brown, Comanche, Lavaca, Llano, San Saba, Anderson, Concho, Runnels, Coleman, Travis, Grayson, Cooke, Montague, Colorado, Bexar, Jasper, Newton, Orange, Jefferson, Polk, San Jacinto, Tyler, Chambers, Hardin, Liberty, Harrison, Smith, Upshur, Gregg, Wood, Rains, Bowie, Cass, Morris, Titus, Lee, Bastrop, Fayette, Hill, Johnson, Ellis, McLennan, Falls, Robertson, Milam, Brazos, Galveston, Brazoria, Matagorda, San Patricio, Guadalupe, Caldwell, Hays, Blanco, Comal, Tarrant, Wise, Parker, Jack, Dallas, Nacogdoches, San Augustine, Shelby, Sabine, Panola, Rusk, Hunt, Hopkins, Delta, Franklin, Camp, Angelina, Houston, Leon, Grimes, Madison, Kaufman, Rockwall, Fannin, Red River, Van Zandt, Henderson, Cherokee, Bosque, Hood, Erath, Somervell, Denton, Trinity, Walker, Montgomery, Harris, Austin, Washington, Wharton, Fort Bend, Waller, Burleson, Limestone, Freestone, Navarro, Mason, Medina, Kimble, Kerr, Kendall, Bandera, Sutton, Gillespie, Williamson, Lampasas, Burnet, Presidio, Brewster, Midland, Reeves, Marion, Ward, Jeff Davis, Palo Pinto, Eastland, Jones, Shackelford, Callahan, Baylor, Knox, Haskell, Wilson and Wilbarger and El Paso. [Id.; amended, Act 1905, p. 104.]

Art. 1373. [901] **Auctioneer selling animal without written statement, etc.**—If any auctioneer or other person shall sell at auction any horse, mule or ox, without first requiring from the party for whom such sale is made, a written statement signed by him of the manner in which, and the name and residence of the person from whom, he acquired such animal, he shall be fined not less than fifty nor more than one hundred dollars. [Act April 14, 1874, p. 98; amended, Act 1899, p. 89.]

Art. 1374. [902] **Auctioneer failing to report sales of animals.**—If any auctioneer or other person shall sell at auction any horse, mule or ox, and shall fail, within ten days after such sale, to file with the clerk of the county court the written statement specified in the preceding article, duly attested with his certificate as to its genuineness, and accompanied with a further certificate containing an accurate description of the animal sold, together with the names and residences of the seller and purchaser, he shall be punished as prescribed in the preceding article. [Id.; amended, Act 1899, p. 89.]

Art. 1375. **This chapter not to apply to Karnes county.**—The provisions of chapter 12, title 17, of the Penal Code, in so far as the same relate to and require the inspection by a magistrate, or an inspector, of the ears and hides of animals slaughtered by butchers, shall not apply to Karnes county. [Act 1909, p. 132.]

CHAPTER THIRTEEN.

ILLEGAL MARKING AND BRANDING AND OTHER OFFENSES RELATING TO STOCK.

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Altering or defacing mark or brand	1377
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Driving cattle from range	1386
Preceding article qualified	1387
Procedure in such cases	1388
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Article 1376. [903] **Illegal marking and branding.**—Every person who shall mark or brand any horse, mule, ass or cattle, or who shall mark any sheep, goat or hog, not being his own, and without the consent of the owner, and with intent to defraud, shall be punished in the same manner as if he had committed a theft of such animal.

Requisites of indictment. State v. Faucett, 15 T., 584; State v. Haws, 41 Id., 161; State v. Hall, 27 Id., 333; Creasap v. State, 28 T. Cr. R., 529, 13 S. W. R., 992; Mayes v. State, 33 T., 340; Adams v. State, 16 T. Cr. R., 162; House v. State, 15 Id., 522.

Art. 1377. [904] **Altering or defacing mark or brand.**—Every person who shall alter or deface the mark or brand of any horse, mule, ass or cattle, or shall alter or deface the mark of any sheep, goat or hog, not being his own property, and without the consent of the owner, and with intent to defraud, shall be punished in the same manner as if he had committed a theft of such animal. [Act Feb. 12, 1858, pp. 181-82.]

Terms defined. Defacing means obliterating; altering means changing, and the terms are not synonymous. Putting an additional brand on an animal is alteration of brand. Linney v. State, 6 T., 1.

Alteration is accomplished by any means whereby the contour of the brand is changed. Slaughter v. State, 7 T. Cr. R., 123.

Indictment: Davis v. State, 215; House v. State, 522; Alford v. State, 31 Id., 299, 20 S. W. R., 553.

Art. 1378. [905] **Using mark or brand not on record.**—If any person shall mark or brand any unmarked or unbranded stock with a mark or brand not upon record, he shall be punished by fine not exceeding five hundred dollars. [Act Nov. 12, 1866, p. 188.]

Art. 1379. [906] **Same subject.**—If any person shall alter or change any mark or brand upon any stock of his own, or that is under his control, without first having such changed mark or brand recorded, he shall be punished as prescribed in the preceding article. [Id.]

Art. 1380. [907] **Killing unmarked or unbranded cattle.**—If any person shall knowingly kill any unmarked or unbranded animal of the cattle species, or any unmarked hog, sheep or goat, not his own, he shall be fined not less than twenty-five nor more than one hundred dollars. [Id.]

Art. 1381. [908] **Procedure in prosecutions for.**—In prosecutions under the preceding article, it shall only be necessary for the state to allege and prove that the animal killed was not the property of the accused, without stating or proving the true owner of such animal.

Art. 1382. [909] **Skinning cattle.**—If any person shall remove the hide, or any part thereof, from any cattle not his own, and without the consent of the owner, he shall be fined in a sum not less than twenty nor more than one

hundred dollars; and the removal of each separate hide from each animal shall constitute a separate offense. [Act April 2, 1887, p. 105.]

Art. 1383. [910] **Having possession of hide without owner's consent.**—If any person shall be found in possession of any hide of any cattle not his own, and possession of said hide is obtained without the consent of the owner or his legal representative, he shall be fined in a sum not less than twenty nor more than one hundred dollars. [Id.]

Art. 1384. [911] **Having possession of hide with brand cut out, etc.**—If any person be found in possession of any hide of any cattle with brand cut out or disfigured, and shall offer the same for sale, he shall be fined in a sum not less than twenty nor more than one hundred dollars; and the possession and offer of sale of each hide with the brand cut out or disfigured shall constitute a separate offense; provided, that nothing in this act shall prevent any person who shall be guilty of the offense of theft of such hide from being prosecuted and convicted for such offense. [Id.]

Art. 1385. [912] **Milking another's cow.**—If any person, without the consent of the owner, shall take up, use or milk any cow, not his own, he shall, for every such offense, be punished by fine not exceeding ten dollars. [Act Nov. 12, 1866, p. 188.]

Art. 1386. [913] **Driving live stock from range.**—If any person shall wilfully kill, or destroy, or drive, or remove from its accustomed range, any live stock, not his own, without the consent of the owner, under such circumstances as not to constitute theft, he shall, nevertheless, be guilty of a misdemeanor, and shall be punished by fine not exceeding one thousand dollars. [Id.]

Construed. Though under an indictment charging theft of cattle, a conviction may be had either for the theft defined in Article 1377, or for the misdemeanor defined in this article, the verdict must show with reasonable certainty of which offense it convicts. Guest v. State, 24 T. Cr. R., 530, 7 S. W. R., 242. And see Foster v. State, 21 Id., 80, 17 S. W. R., 548, and authorities cited.

Art. 1387. [914] **Preceding article qualified.**—Nothing in the preceding article shall be construed to prevent any person from driving his own and other stock, which may be mixed therewith, until the same can be conveniently separated; provided, that nothing herein shall be construed to authorize any person under any circumstances to remove any live stock, not his own, from their usual range. [Id., p. 187.]

Art. 1388. [915] **Procedure in such cases.**—In any prosecution under article 1386, it shall only be necessary to prove the act of killing, or destroying or driving, using, or removing from the range of any stock not belonging to, or under the control of, the accused; and it shall devolve upon the accused to show any fact under which he can justify or mitigate the offense. [Id.]

Art. 1389. [916] **False pedigree and certificate in sale of animals; penalty.**—Any person who shall knowingly and wilfully furnish or give to a purchaser of any animal any false pedigree or false certificate of sale of such animal, and every person who shall knowingly and wilfully use, for the purpose of deceiving, any false pedigree or false certificate of sale of any animal, whether such false pedigree or false certificate of sale was furnished, given or procured in this state or elsewhere, shall, upon conviction thereof, be punished by a fine in any sum not less than twenty-five nor more than five hundred dollars, or be imprisoned in the county jail for a term not exceeding six months, or by both such fine and imprisonment. [Act April 13, 1891, § 1.]

CHAPTER FOURTEEN.

OFFENSES RELATING TO ESTRAYS.

Unlawfully disposing of an estray....Article 1390 | Taking up and using without complying with the law.....Article 1391

Article 1390. [917] **Unlawfully disposing of an estray.**—If any person shall unlawfully remove, sell or in any other manner dispose of, any animal which has been taken up by him as an estray, he shall be punished by fine not exceeding two hundred and fifty dollars. [Act Feb. 12, 1858, p. 184.]

Construed. The gravamen of this offense is the unlawful disposition of an estrayed animal, and the venue is the place of the disposition and not the estrayal. Brodgen v. State, 44 T., 103.

Indictment need not set out age, color, sex or marks and brands. State v. Crist, 32 T., 99. But compare with State v. Meshac, 30 T., 518.

The allegation that the animal is an estray is a sufficient averment that the ownership is unknown. State v. Anderson, 34 T., 611.

Further on indictment, see State v. Appel, 14 T., 431; State v. Fletcher, 35 T., 740; Swink v. State, 32 T. Cr. R., 530, 24 S. W. R., 893.

Art. 1391. [918] **Taking up and using without complying with the law.**—If any person shall, without complying with the laws regulating estrays, take up and use, or otherwise dispose of, any animal coming within the meaning of an estray, he shall be punished as prescribed in the preceding article. If the unlawful taking or disposition of an estray animal be effected in such manner as to come within the meaning of theft, the person guilty of the same shall be punished for that offense. [Id.]

Indictment. See State v. Hutchinson, 26 T., 111; State v. Moreland, 27 Id., 726; State v. Meshac, 30 Id., 518; State v. Crist, 32 Id., 99; State v. Ivy, 33 Id., 646; State v. Carabin, Id., 697.

CHAPTER FIFTEEN.

OFFENSES AGAINST LABELS, TRADE MARKS, ETC.

	Article		Article
Unlawful to use trade mark of another	1392	Counterfeiting trade marks, etc	1395
Possession prima facie evidence	1393	Unlawfully using, penalty	1396
Penalties	1394		

Article 1392. [918a] **Trade marks of carbonated goods, etc., how established.**—All manufacturers or dealers in carbonated goods, mineral waters, soda water, wine, cider, or other beverage, or manufacturers of medicine or other compound requiring the use of kegs, casks, barrels, boxes, syphons, bottles, or any other vessels for containers, upon which the names, brands, marks, or trade marks, or other designation of ownership or proprietorship, is stamped, engraved, etched, blown in, impressed, or otherwise produced upon such boxes, syphons, bottles, or any other vessels for containers, may file in the office of the county clerk of the county in which the principal place or office of business is situated, a fac simile or description of the name or names, marks or devices, so used by such manufacturer or dealer in such wares herein enumerated, and cause such description to be published in a public newspaper published in such county for three successive weeks; and the act of so filing and causing to be recorded by the county clerk, and publishing, shall operate as a trade mark, securing to the said manufacturer the full protection of the law as a trade mark, entitling the said manufacturer to the sole and exclusive use in Texas of said mark, name, or device; for which services the clerk shall be allowed the sum of one dollar, to be paid by the party having such brands, etc., recorded.

Unlawful to use, etc., trade mark of another.—It is hereby declared to be unlawful for any person or persons, corporate or otherwise, other than the proprietor, or by his written consent, to fill, for the purpose of traffic, or for sale, with any compound whatever, any box, syphon, bottle or other container so marked, recorded in the office of the county clerk, and published as provided in this article, or to deface, erase, obliterate, cover up or otherwise remove or cancel any such mark or device. [Acts 1893, p. 125; amended, Act 1901, p. 288.]

Art. 1393. [918b] **Possession prima facie evidence, etc.**—To knowingly and wilfully have in possession, otherwise than by contract with the proprietor of the goods herein enumerated, or with his duly accredited agents, any of the vessels in said article enumerated, or to use, buy, sell, or dispose of any such vessel, with or without contents of any kind, except by authority of the proprietor, or to wantonly and wilfully break, damage, mar, injure, or destroy any such vessel, is declared hereby to be prima facie evidence of such unlawful use, and shall constitute a misdemeanor, punishable by fine, upon conviction in a court of competent jurisdiction, an employe being equally liable with the principal so offending. [Id.]

Art. 1394. [918c] **Penalties.**—Any person violating any of the provisions of the two preceding articles shall be deemed guilty of a misdemeanor, and, upon conviction before a justice of the peace, shall be fined for such unlawful use of each and every box, five dollars, for each and every syphon, five dollars, for each and every bottle, five dollars, and for every other receptacle, except a fountain, five dollars, and for each fountain, twenty-five dollars; the fines so designated to be the minimum in each case, the maximum not to exceed double the minimum. [Id.]

Art. 1395. [918d] **Counterfeiting trade mark, etc.; penalty.**—Whenever any person, association, private corporations or union of working men, in-

corporated or unincorporated, have adopted, or shall hereafter adopt, for their protection any label, trade mark, design, device, imprint or form of advertisement, indicating that goods to which such label, trade mark, design, device, imprint, or form of advertisement, shall be attached, were manufactured by such person, association, private corporations or union, or by a member or members of such association or union, it shall be unlawful for any person, inclusive of officers, agents, receiver or receivers of corporations, to counterfeit or imitate such label, trade mark, design, device, imprint or form of advertisement, or to use such counterfeit or imitation of such label, trade mark, design, device, imprint, or form of advertisement, knowing the same to be counterfeit or imitation, or to aid, assist, countenance or knowingly permit such counterfeit or imitation, or the use of such counterfeit or imitation, for his own use or benefit, or for the use or benefit of any corporation of which he may then be an officer, agent or receiver. Every person, whether in his individual capacity or as an officer, agent or receiver of a corporation, violating this article, shall, upon conviction, be punished by fine of not less than twenty-five nor more than one hundred dollars; and each day's violation of this article shall be considered a separate offense. [Act 1895, p. 108.]

Art. 1396. [918e] **Unlawfully using; penalty.**—Every person, whether in his individual capacity or as the officer, agent or receiver of a corporation, who shall wilfully and knowingly use or display the genuine label, trade mark, design, device, imprint, or form of advertisement, or name of any such person, association or union, incorporated or unincorporated, not being authorized to use or display the same, or shall aid, assist, countenance or knowingly permit the use of same, not being authorized to use the same, shall, upon conviction, be punished by fine of not less than twenty-five nor more than one hundred dollars. [Id.]

CHAPTER SIXTEEN.

OFFENSES RELATING TO THE PROTECTION OF STOCK RAISERS IN CERTAIN LOCALITIES.

	Article
Inspector giving a fraudulent certificate	1397
Inspector to examine hides	1398
Inspector failing to keep books	1399
Certified by inspector	1400
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Selling hides without inspection	1405
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Branding or marking outside of a pen	1411
Clerk improperly recording brand	1412
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Counties exempted from the operations of this chapter	1414
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Article 1397. [919] **Inspector giving a fraudulent certificate.**—Any inspector of hides and animals who shall give a certificate of inspection without having first made such inspection in accordance with law, or who shall fraudulently issue any certificate of inspection of any hides or animals, shall be fined not less than fifty nor more than five hundred dollars. [Act Aug. 23, 1876, p. 302, § 31.]

Art. 1398. [920] **Inspector or deputy failing to examine hides, etc.; penalty.**—If any inspector or deputy inspector of hides and animals shall knowingly

fail or refuse to faithfully examine and inspect all hides or animals known or reported to him as sold, or as leaving or going out of the county for sale or shipment, and all animals driven or sold in his district for slaughter, packeries or butcheries, shall be fined not less than twenty-five dollars nor more than two hundred dollars. [Act April 4, 1889, § 1.]

Art. 1399. [921] **Inspector failing to keep book and record; penalty.**—Any inspector of hides and animals who shall fail to provide and keep a well-bound book, and record therein a correct statement, showing the number, ages and marks and brands of each animal inspected by him or by his deputy or deputies, and the number and all the marks and brands of all hides inspected by him or by his deputies, and whether the hides are dry or green, and the name or names of the vendor or vendors and of the purchaser or purchasers of said animals or hides, shall be fined not less than fifty dollars nor more than three hundred dollars. [Id., § 2.]

Art. 1400. [922] **Certificate by inspector.**—Any inspector or deputy inspector of hides and animals who shall fail to correctly state in his certificate of inspection, or in his certificate of acknowledgement, all the marks and brands of all animals and hides inspected by him, shall be fined not less than twenty-five dollars nor more than three hundred dollars. [Id., § 3.]

Art. 1401. [923] **Return of certified copies, etc.**—Any inspector of hides and animals who shall fail to return a certified copy of all entries made in his record during each month to the clerk of the county court of his county, on the last day of each month, shall be fined not less than fifty nor more than three hundred dollars. [Id., § 4.]

Art. 1402. [924] **Counterbranding cattle without consent of owner.**—Any person who shall counterbrand any cattle without the consent of the owner, or his agent, shall be fined not less than ten nor more than fifty dollars for each animal so counterbranded. [Act Aug. 23, 1876, p. 302, § 32.]

See notes to article 1376, et seq.

Art. 1403. [925] **Clandestine driving cattle across the Rio Grande.**—Any person who shall drive any cattle across the Rio Grande into Mexico, at any other point than where a United States custom house is established, or where there is a place of inspection by United States custom house officers, or without first having the same inspected in accordance with law, shall be confined in the penitentiary not less than two nor more than five years. [Id., § 35.]

Art. 1404. [926] **Shipping hides imported from Mexico without inspection.** Any person who shall ship from any port in this state any hides of cattle imported from Mexico, without first having procured a certificate of importation and inspection in accordance with law, shall be fined not less than one nor more than five dollars for each hide so shipped. [Id.]

Art. 1405. [927] **Selling hides without inspection.**—Any person who shall sell any hides of cattle, without the same having been inspected, shall be punished as prescribed in the preceding article. [Id., § 36.]

Art. 1406. [928] **Driving cattle out of county to market without road brand.**—Any person who shall drive any cattle out of any county, with the intention of driving the same beyond the limits of the state, to a market, without first having road-branded the same in acordance with law, shall be fined not less than twenty nor more than one hundred dollars for each animal so driven. [Id., § 37.]

Art. 1407. [929] **Driving stock out of county without owner's consent.**—Any person who shall drive any cattle or horses out of any county, without the written authority of the owner thereof, duly authenticated as the law requires, and without first having the same duly inspected, shall be punished as prescribed in the preceding article. [Id., § 39.]

Venue under this article is either the county from or into which the animal was driven, and the offense is complete in either, the moment the animal is driven across the line of the coterminous counties. Rogers v. State, 9 T. Cr. R., 43, distinguishing Senterfeit's case, 41 T., 186.

The indictment must negative the fact that the cattle were the property of the defendant and allege affirmatively that they were driven without the written authority of the owner. Heard v. State, 8 T. Cr. R., 466, citing Long v. State, Id., 642, and Covington v. State, 6 Id., 512.

Art. 1408. [930] **Failing to take bill of sale in purchasing animals.**—Any person who shall purchase any animals or hides of cattle without obtaining a bill of sale from the owner or his agent, shall be fined not less than twenty nor more than one hundred dollars for each animal or hide so purchased. [Id., § 39.]

The venue of this offense is the county in which the cattle were purchased. Brockman v. Stare, 16 T. Cr. R., 54.

The bill of sale must be executed at the time of the delivery of the cattle. Houston v. State, 13 T. Cr. R., 595.

And as to purchase by agent, see Brockman v. State, supra, and Houston v. State, supra, and on the admissibility of bills of sale as evidence, Graves v. State, 28 T. Cr. R., 354, 13 S. W. R., 149; Lockwood v. State, 32 Id., 137, 22 S. W. R., 413, and authorities cited.

Art. 1409. [931] **Agent selling without power of attorney.**—Any person who shall, as the agent of another, sell any cattle without first having obtained a power of attorney from the owner, duly authenticated, shall be fined not less than fifty nor more than five hundred dollars. [Id., § 40.]

On power of attorney: Turner v. State, 7 T. Cr. R., 596.
Revocation of agency: Massey v. State, 31 T. Cr. R., 91, 19 S. W. R., 908.

Art. 1410. [932] **More than one brand or mark.**—Any person who shall, in originally branding or marking cattle, use more than one mark or brand, shall be fined not less than twenty-five nor more than one hundred dollars for each animal so branded or marked. [Id., § 41.]

Art. 1411. [933] **Branding or marking outside a pen.**—Any person who shall brand or mark any animal, except in a pen, shall be fined not less than ten nor more than fifty dollars for each animal so branded or marked. [Id., § 42.]

Art. 1412. [934] **Clerk improperly recording brand.**—Any clerk of the county court who shall record any brand when the person having the same recorded fails to designate the part of the animal upon which the same is to be placed, shall be fined not less than ten nor more than fifty dollars. [Id., § 43.]

Record as evidence. To be legal, the record must designate the part of the animal upon which it is to be impressed. Variance, however, between its recitation and the place upon which it was actually placed would not exclude it, but would impair its probative force as evidence. Harwell v. State, 22 T. Cr. R., 251, 2 S. W. R., 606.

Such a record, unsupported by other evidence, is not sufficient proof of ownership. Priesmith v. State, 1 T. Cr. R., 480; Myers v. State, 24 Id., 341, 6 S. W. R., 194.

The statute does not mean that the record shall show the side, flank, shoulder or hip, etc., of the animal on which the brand must be placed. Thompson v. State, 25 T. Cr. R., 161, 7 S. W. R., 589.

And see Hayes v. State, 30 T. Cr. R., 404, 17 S. W. R., 940; Massey v. State, 31 Id., 91, 908; Tittle v. State, 30 Id., 597, 17 S. W. R., 1118; McKenzie v. State, 32 Id., 568, 25 S. W. R., 426; McGrew v. State, 31 Id., 336, 20 S. W. R., 740.

Art. 1413. [935] **Agent of railroad, etc., receiving for shipment uninspected animals.**—If any agent of any railroad, steamship, sailing vessel, or shipping company of any kind, shall receive for shipment any horses or cattle, unless such horses or cattle have been duly inspected according to law, he shall be fined not less than twenty-five nor more than one thousand dollars for each animal so unlawfully shipped. [Act April 10, 1883, p. 71.]

Art. 1414. [936] **Counties exempted.**—The counties of Anderson, Austin, Angelina, Bell, Bowie, Brazos, Bastrop, Bosque, Burleson, Brazoria, Burnet, Caldwell, Camp, Calhoun, Cass, Chambers, Cherokee, Collin, Colorado, Cooke, Dallas, Delta, Denton, Ellis, Erath, Fannin, Franklin, Falls, Freestone, Gonzales, Eastland, Stephens, Fayette, Fort Bend, Galveston, Goliad, Grayson, Gregg, Grimes, Hardin, Harrison, Hays, Henderson, Hill, Hood, Hunt, Hopkins, Houston, Jackson, DeWitt, Jasper, Jefferson, Johnson, Kaufman, Lamar, Lee, Leon, Lampasas, McLennan, Madison, Marion, Montgomery, Montague, Morris, Nacogdoches, Newton, Orange, Panola, Parker, Polk, Palo Pinto, Rains, Red River, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, Shackelford, Shelby, Smith, Tarrant, Titus, Trinity, Tyler, Upshur, Van Zandt, Walker, Washington, Wharton, Wise, Wood, Jack, Harris, Clay, Young, Wheeler, Lavaca, Nueces, Bee, Refugio, Limestone, San Patricio, Somervell, Matagorda, Waller, Karnes, Victoria, Milam, Live Oak, Williamson, Liberty, Wichita, Wilbarger, Archer, Hardeman, Childress, Hall, Collingsworth, Donley, Gray, Armstrong, Briscoe, Floyd, Randall, Kendall, Comal, Travis, Navarro, Brown, Coryell, Hamilton, Mills, Duval, Comanche, Bailey, Deaf Smith, Dallam, Oldham, Hartley, Hockley, Cochran, and Foard, are hereby exempt from the operation of this law, and the provisions of the same shall in nowise relate or apply to the aforesaid counties; provided, that in those counties bordering on the line of the state, except those bordering on Red river, and the Rio Grande, where there is a depot or place for the shipment of cattle, no inspector of hides and animals shall be elected, but one for each of such counties shall be appointed by the governor, who shall hold office for two years, and until his successor shall be appointed; and said inspector so appointed to take the constitutional oath of office and give the bond now required of inspectors of hides and animals; and such inspector shall receive the same fees now allowed to inspectors of hides and animals, and perform the same duties; provided, that such cattle shall not be subject to inspection on board of any railroad, unless the same have been placed on board of such train for the purpose of evading the provisions of this law; and provided, further, that the counties of Limestone, Fayette, Lavaca, Gonzales, Colorado, Bell, Calhoun, Hays, Caldwell, Blanco, Llano, Kendall, Comal, Houston, Austin, Johnson, Hill, Ellis, Jackson, Victoria, DeWitt, Freestone, Hamilton, Williamson, Milam, Live Oak, Harris, Bosque, Erath, Hood, Somervell, Liberty, Coryell, Lampasas, Mills, Wichita, Wilbarger, Hardeman, Childress, Hall, Collingsworth, Donley, Gray, Armstrong, Briscoe, Floyd, Randall, Kendall, Fannin, Camp, Delta, Franklin, Hopkins, Hunt and Navarro, shall be exempt from all laws regulating inspection of hides. All laws and parts of laws in conflict with the provisions of this law are hereby repealed. [Act March 29, 1889, § 1; amend, 1893, p. 162.]

Art. 1415. [937] **Counties placed under the law.**—The counties of Wichita, Wilbarger, Hardeman, Childress, Donley, Armstrong, Carson, Potter, Oldham, Hartley, Dallam, Gray, Hemphill, Roberts, Lipscomb, Callahan, Taylor, Nolan, Mitchell, Howard, Martin and Karnes are placed under the operations of the inspection laws now in force and which may be in force under the provisions of this law. [Id., § 2.]

CHAPTER SEVENTEEN.

EMBEZZLEMENT.

	Article		Article
Defined and punished	1416	"Money" and "property" defined	1419
By factor or commission merchant	1417	Fraudulently receiving, etc., embezzled property	1420
By carrier	1418		

Article 1416. [938] **Defined and punished.**—If any officer, agent, clerk or attorney at law or in fact, of any incorporated company or institution, or any clerk, agent, attorney at law or in fact, servant or employe of any private person, copartnership or joint stock association, or any consignee or bailee of money or property, shall embezzle, fraudulently misapply or convert to his own use, without the consent of his principal or employer, any money or property of such principal or employer which may have come into his possession or be under his care by virtue of such office, agency or employment, he shall be punished in the same manner as if he had committed a theft of such money or property. [Act May 25, 1876, p. 9.]

Constituent elements: These four must concur: 1. That the accused did occupy some one of the fiduciary relations specified in this article, and that, by the terms of his office or employment, he was charged with the duty of receiving the money or having the care of the property of his principal; 2, that he did so receive the money or care of the property; 3, that he received it in the course of his employment; 4, that he embezzled, misapplied, converted it to his own use. Taylor v. State, 29 T. Cr. R., 466, 16 S. W. R., 302; Brady v. State, 21 Id., 659, 1 S. W. R., 462; Webb v. State, 8 Id., 310. See Bryant v. State, 122 S. W. R., 543.

Concisely defined, emezzlement, which is akin to theft, is the fraudulent appropriation of the personal property of another by one to whom it had been entrusted. Leonard v. State, 7 T. Cr. R., 417; Simco v. State, 8 Id., 406; Cole v. State, 16 Id., 461.

Fraudulent intent must concur with conversion to constitute embezzlement. Eilers v. State, 34 T. Cr. R., 344, 30 S. W. R., 811.

And see generally: Golden v. State, 22 T. Cr. R., 1, 2 S. W. R., 531; Johnson v. State, 21 T., 775; Aldrich v. State, 29 T. Cr. R., 394, 16 S. W. R., 251; Baker v. State, 6 Id., 344; Cole v. State, 16 Id., 461; Malcolmson v. State, 25 Id., 267, 8 S. W. R., 468; Epperson v. State, 22 Id., 694, 3 S. W. R., 789.

Venue is in the county in which the offender may have taken or received the property or into or through which he may have undertaken to transport it. Cole v. State, 16 T. Cr. R. 461; Reed v. State, Id., 586; Cohen v. State, 20 Id., 224; Brown v. State, 23 Id., 214, 4 S. W. R., 588; C. C. P., Art. 248.

Indictment. For essential allegations, see preceding notes under this article, and Riley v. State, 32 T., 763; Reside v. State, 10 T. Cr. R., 675; Baker v. State, 6 Id., 344; Gaddy v. State, 8 Id., 127; Jaimes v. State, 32 Id., 473, 24 S. W. R., 297.

Art. 1417. [939] **By factor or commission merchant.**—If any factor or commission merchant shall embezzle or fraudulently misapply or convert to his own use any money, goods, produce, commodity or other property, which shall have come into his possession or shall be under his care by virtue of his office, agency or employment, he shall be punished in the same manner as if he had committed a theft of such money, goods, produce, commodity or other property. [Act Feb. 12, 1858, p. 182.]

See notes to preceding article.

An indictment following the language of the statute, and its terms importing a fraudulent intent ex vi termini, is sufficient under this article. Bridgers v. State, 8 T. Cr. R., 145.

Art. 1418. [940] **By carrier.**—If any carrier, to whom any money, goods or other property, shall have been delivered to be carried by him, or if any other person who shall be intrusted with such property, shall embezzle or fraudulently convert to his own use any such money, goods or property, either in the mass, as the same were delivered, or otherwise, he shall be deemed guilty of theft, and shall be punished as prescribed for that offense according to the value of the money, goods or other property so embezzled or converted. [Id.]

Generally: See notes under preceding articles of this chapter, and Smith v. State, 34 T. Cr. R., 265, 30 S. W. R., 236; Stallings v. State, 29 Id., 220, 15 S. W. R., 716; Livingston v. State, 16 Id., 652; Aldrich v. State, 29 Id., 394, 16 S. W. R., 251; Felsenthal v. State, 30 Id., 675, 18 S. W. R., 644; Cooksie v. State, 26 Id., 72, 9 S. W. R., 58.

Art. 1419. [941] **"Money" and "property" defined.**—The term "money," as used in this chapter, includes, besides gold, silver, copper or other coin, bank bills, government notes or other circulating medium current as money; and the term "property" includes any and every article commonly known and designated as personal property, and all writings of every description that may possess any ascertainable value.

"Property," as appertaining to the offense of embezzlement, includes any and every article commonly known and designated as personal property, and all writings of every description that may possess any ascertainable value, and this includes money. Taylor v. State, 29 T. Cr. R., 466, 16 S. W. R., 302.

"Money," under this article, includes, beside gold, silver, copper or other coin, bank bills, government notes, or other circulating medium, current as money. Taylor v. State, supra; Malcolmson v. State, 25 T. Cr. R., 267, 8 S. W. R., 468.

Art. 1420. [942] **Fraudulently receiving, etc., embezzled property.**—If any person shall fraudulently receive or conceal any property which has been acquired by another in such manner as that the acquisition comes within the meaning of embezzlement, knowing the same to have been so acquired, he shall be punished in the same manner as the person embezzling the same would be liable to be punished. [Act March 16, 1883, p. 24.]

CHAPTER EIGHTEEN.

OF SWINDLING AND THE FRAUDULENT DISPOSITION OF MORTGAGED PROPERTY.

Article

1. Swindling.

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2. Fraudulent disposition of mortgaged property.

Fraudulent disposition of mortgaged property 1430

1. SWINDLING.

Article 1421. [943] **"Swindling" defined.**—"Swindling" is the acquisition of any personal or movable property, money or instrument of writing conveying or securing a valuable right, by means of some false or deceitful pretense or device, or fraududent representation, with intent to appropriate the same to the use of the party so acquiring, or of destroying or impairing the rights of the party justly entitled to the same. [Act Feb. 12, 1858, p. 183.]

Defined. To constitute this offense there must be: 1, an intent to defraud; 2, an actual fraud committed; 3, false pretenses made by the accused; and 4, the fraud must have been accomplished by means of the false pretenses made use of for the purpose. Blum v. State, 20 T. Cr. R., 578, citing Buckalew v. State, 352, and other authorities, and generally see Cline v. State, 43 T., 494; Robinson v. State, 33 Id., 341; Allen v. State, 16 T. Cr. R., 150; Moody v. State, 24 Id., 458, 6 S. W. R., 321; May v. State, 15 Id., 430; Stringer v. State, 13 Id., 520; Buntain v. State, 15 Id., 575; Johnson v. State, 123 S. W. R., 143.

The mere act of giving a check on a bank with an itemized account attached and representing that the check would be paid, which check was not paid for want of funds, was not swindling, no property or rights being acquired or impaired. Allen v. State, 126 S. W. R., 571.

Art. 1422. [944] **Certain wrongful acts included.**—Within the meaning of the term "swindling" are included the following wrongful acts:

1. The exchange of property upon the false pretense that the party is the owner or has the right to dispose of the property given in exchange.

Construed. It is essential under this subdivision, and must be alleged, that some false representation as to existing facts or past events was made by accused. Mere false promise or false profession of intention will not suffice. Martin v. State, 36 T. Cr. R., 125, 35 S. W. R., 976, citing Allen v. State, 16 Id., 150; Epperson v. State, 42 T., 79; Curtis v. State, 31 T. Cr. R., 39, 19 S. W. R., 604; Thorpe v. State, 40 Id., 346, 50 S. W. R., 383.

No statement of anything to occur in the future is a pretense under this article, though a false pretext may be implied from the acts and conduct of the party without false or fraudulent verbal representations. Blum v. State, 20 T. Cr. R., 578; Hurst v. State, 39 Id., 196, 45 S. W. R., 573; Brown v. State, 37 Id., 104, 38 S. W. R., 1008; Johnson v. State, 41 T., 65; Boscow v. State, 33 T. Cr. R., 390, 26 S. W. R., 625.

The mere act of drawing a check upon a bank in which the drawer has neither funds nor credit will not alone, or without attending false representations, constitute swindling. Ayers v. State, 37 T. Cr. R., 1, 38 S. W. R., 792; Brown v. State, Id., 104, 38 S. W. R., 1008.

Indictment for swindling by exchange or disposition of property must allege an actual sale and delivery by defendant. Cummings v. State, 36 T. Cr. R., 152, 36 S. W. R., 266.

Indictment generally: Baker v. State, 14 T. Cr. R., 332; Moore v. State, 20 Id., 233, distinguishing Marwilsky v. State, 9 Id., 377; Littman v. State, Id., 461; Buntain v. State, 15 Id., 515; Lutton v. State, 14 Id., 518; Glover v. State, 122 S. W. R., 396.

Under this article and Arts. 1424 and 1427, it is not necessary, in order to constitute the offense of swindling, that any benefit shall accrue to the person guilty of the fraud, or that any injury shall result to the person intended to be defrauded; and the grade of the offense must be fixed by the value of the property yielded on the fraudulent representation at the time it was made. La Moyne v. State, 53 T. Cr. R., 221, 111 S. W. R., 950; Baxter v. State, 51 Id., 576, 105 S. W. R., 195.

That the injured party could, after the failure of the security given falsely by the accused, have secured himself by marshaling other properties owned by accused, is no defense. La Moyne v. State, supra, overruling Gaskins v. State, 38 S. W. R., 470, Perry v. State, 39 T. Cr. R., 495, 46 S. W. R., 816, and Lively v. State, 74 S. W. R., 321.

Distinguished from theft. The indictment must allege that the injured party was induced to part not only with the possession but also with the title of his property, which is essential to show that the act was swindling and not theft. Cline v. State, 43 T., 494; Curtis v. State, 31 Id., 39, 19 S. W. R., 604; Burk v. State, 50 Id., 445, 98 S. W. R., 863, following Witherspoon v. State, 37 S. W. R., 433, Hirshfield v. State, 11 T. Cr. R., 207, and overruling Sims v. State, 21 Id., 649, 1 S. W. R., 465.

If the owner was induced to part with his property finally, by means of the false pretenses, the offense is swindling. But when the possession, delivered to him by the owner, was obtained in a manner not to pass title, the owner only intending to part with the possession and custody, and not title, and the acquiring person then and there intending to appropriate it, and did appropriate it, the offense is theft. State v. Vickery, 19 T., 326; Cline v. State, 43 Id., 494; Curtis v. State, 31 T. Cr. R., 39, 19 S. W. R., 604; Taylor v. State, 32 Id., 110, 22 S. W. R., 148; Bink v. State, 50 Id., 445, 98 S. W. R., 863.

It has been held that, on proper proof, a conviction can be had for swindling under an indictment for theft. Davidson v. State, 12 T. Cr. R., 214, but compare Huntsman v. State, Id., 619.

Venue. The statutes fixing the venue of certain offenses in coterminous counties do not embrace swindling, and that offense must be prosecuted in the county in which the property was acquired. Sims v. State, 28 T. Cr. R., 447, 13 S. W. R., 653, and authorities cited. And see Williams v. State, 27 Id., 258, 11 S. W. R., 114.

A written instrument being the basis of the swindle, the indictment must set out the instrument in full, or show good reason for not doing so. State v. Baggerly, 21 T., 757; Scott v. State, 27 T. Cr. R., 264, 11 S. W. R., 320; Ferguson v. State, 25 Id., 451, 8 S. W. R., 479; Hardin v. State, Id., 74, 7 S. W. R., 534.

Generally: Mays v. State, 28 T. Cr. R., 484, 13 S. W. R., 787; Graves v. State, 31 Id., 65, 19 S. W. R., 895; Mays v. State, 15 Id., 430; Wills v. State, 24 Id., 400, 6 S. W. R., 316; Dyer v. State, 41 T., 520.

2. The purchase of property upon the faith and credit of some other person upon the false pretense that such other person has given the accused the right to use his name or credit in making the acquisition.

Under this subdivision, see Boscow v. State, 33 T. Cr. R., 390; 26 S. W. R., 625; Curtis v. State, 31 Id., 39, 19 S. W. R., 604; Tomkins v. State, 33 T., 228; Robinson v. State, Id., 341; Epperson v. State, 42 Id., 79; Hirshfield v. State, 11 T. Cr. R., 207; May v. State, 15 Id., 430; s. c., 17 Id., 213.

3. The obtaining by false pretense the possession of any instrument of writing, certificate, field-notes or other paper relating to lands, the property of another, with the intent that thereby the proper owner shall be defeated of a valuable right in such lands.

State v. Vickery, 19 T., 326.

4. The special enumeration of cases of swindling, above set forth, shall not be understood to exclude any case which, by fair construction of the language, comes within the meaning of the preceding article. [Id., p. 12.]

Note a device with trick locks, manipulated under a wager, held to be a clear case of swindling. McFarland v. State, 45 T. Cr. R., 248, 75 S. W. R., 788.

Art. 1423. [945] **"Money" includes bank bills.**—Within the meaning of "money," as used in this chapter, are included also bank bills or other circulating medium current as money. [Act Feb. 12, 1858, p. 183.]

See Art. 1419, ante, and notes.

An unnecessary description of the money by the indictment imposes the necessity of proving it as alleged. Childers v. State, 16 T. Cr. R., 524. And see Lewis v. State, 28 Id., 140, 12 S. W. R., 736; Block v. State, 44 T., 620.

Indictment described "current money;" proof was "national bank notes." Held, no variance. Baxter v. State, 51 T. Cr. R., 576, 105 S. W. R., 195.

The money being placed to accused's credit in a bank instead of being paid to him, there is no merit in contention that he did not receive it in cash. Medders v. State, 54 T. Cr. R., 494, 113 S. W. R., 270.

Art. 1424. [946] **No benefit need accrue to defendant.**—It is not necessary, in order to constitute the offense of swindling, that any benefit shall accrue to the person guilty of the fraud or deceit, nor that any injury shall result to the persons intended to be defrauded, if it is sufficiently apparent that there was a wilful design to receive benefit or cause an injury. [Id.]

Construed. Immaterial that any benefit accrue to the person guilty of the fraud, or that any injury shall result to the person intended to be defrauded, the intent of accused being shown. La Moyne v. State, 53 T. Cr. R., 221, 111 S. W. R., 950; Baxter v. State, 51 Id., 576, 105 S. W. R., 195.

Art. 1425. [947] **If the act constitutes any other offense.**—Where property, money or other articles of value enumerated in the definition of swindling are obtained in such manner as to come within the meaning of theft, or some other offense known to the law, the rules herein prescribed with regard to swindling shall not be understood to take any such case out of the operation of the law which defines any such other offense. [Id.]

Construed. When the transaction on which the charge of swindling is based constitutes another offense, the prosecution must be for such other offense and not the swindling. Cline v. State, 43 T., 494; Bink v. State, 50 T. Cr. R., 445, 98 S. W. R., 863, following Witherspoon v. State, 37 S. W. R., 433, Hirshfield v. State, 11 T. Cr. R., 207, and overruling Sims v. State, 21 Id., 649, 1 S. W. R., 465.

Art. 1426. [948] **Executor, etc., converting estate, guilty of swindling.**—If any executor, administrator or guardian, having charge of any estate, real, personal or mixed, shall unlawfully, and with intent to defraud any creditor, heir, legatee, ward or distributee interested in such estate, convert the same, or any part thereof, to his own use, he shall be deemed guilty of the offense of swindling. [Id.]

See notes to Art. 1421, ante.

Constitutional law. This article was within the constitutional power of the Legislature to enact, notwithstanding articles 1442 and 1443, though it fails to embrace an essential ingredient of swindling as defined in the said two articles. Walls v. State, 45 T. Cr. R., 329, 77 S. W. R., 8.

Art. 1427. [949] **Punishment.**—Every person guilty of swindling shall be punished in the same manner as is provided for the punishment of theft, ac-

cording to the amount of the money or the value of the property or instrument of writing so fraudulently acquired. [Id.]

See Arts. 1440, 1441; La Moyne v. State, 53 T. Cr. R., 221, 111 S. W. R., 950.

Art. 1428. **Obtaining board or lodging by false or fraudulent representations, trick, etc.**—Every person who shall obtain board or lodging in any hotel or boarding house by means of any trick or deception or false or fraudulent representations, or statement or pretense, and shall fail or refuse to pay therefor, shall be held to have obtained the same with the intent to cheat and defraud such hotel or boarding house keeper, and shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding one month, or by both such fine and imprisonment. [Act 1899, p. 172.]

See Jannin v. State, 42 T. Cr. R., 631, 51 S. W. R., 1126.

Art. 1429. **Conviction can be had under foregoing article, when.**—It shall be the duty of every hotel and boarding house keeper in the state to post a printed copy of this law in a conspicuous place in each room of his or her hotel or boarding house; and no conviction shall be had under the foregoing article until it shall be made to appear to the satisfaction of the court that the provisions of said article have been substantially complied with by the hotel or boarding house keeper making the complaint. [Id., p. 172.]

See Jannin v. State, 42 T. Cr. R., 631, 51 S. W. R., 1126.

2. FRAUDULENT DISPOSITION OF MORTGAGED PROPERTY.

Art. 1430. [950] **Fraudulent disposition of mortgaged property.**—If any person has given, or shall hereafter give, any mortgage, deed of trust or other lien, in writing, upon any personal or movable property or growing crop of farm produce, and shall remove the same, or any part thereof, out of the state, or shall sell or otherwise dispose of the same, with intent to defraud the person having such lien, either originally or by transfer, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years. [Act March 31, 1885, p. 85.]

Fraudulent intent is the gist of the offense and must be sufficiently alleged and proved. Glass v. State, 23 T. Cr. R., 425, 5 S. W. R., 131; Robberson v. State, 3 Id., 502; Satchell v. State, 1 Id., 438.

Removal of the property is an offense only when the removal is from the State. Robberson v. State, supra.

Construed. The several ways in which this article may be violated: 1, by removing the mortgaged property or any part thereof, out of the state; 2, by selling the mortgaged property; 3, by otherwise disposing of the mortgaged property—the intent being in either case to defraud the mortgagee or lien-holder. The lien must be in force, valid and subsisting. Robberson v. State, supra.

And for allegation as to the mortgage, see Hardeman v. State, 16 T. Cr. R., 1; Moye v. State, 9 Id., 88; Jones v. State, 35 Id., 565, 34 S. W. R., 631.

On venue, see Robberson v. State, supra; Williams v. State, 27 Id., 258, 11 S. W. R., 114.

As to growing crops, see Money v. State, 25 T. Cr. R., 31, 7 S. W. R., 587.

Decisions generally: Thornton v. State, 34 T. Cr. R., 469, 31 S. W. R., 372; Presley v. State, 24 Id., 494; Honeycut v. State, 23 Id., 71, 3 S. W. R., 716.

CHAPTER NINETEEN.

OF OFFENSES COMMITTED IN ANOTHER COUNTRY OR STATE.

Bringing stolen property into this state. Article 1431 | Requisites of guilt under preceding article ..... Article 1432

Article 1431. [951] **Bringing stolen property into this state.**—If any person having committed an offense in any foreign country, state or territory, which, if committed in this state, would have been robbery, theft, embezzlement or receiving of stolen goods or property, knowing the same to have been stolen, or fraudulently receiving or concealing property acquired by another by embezzlement, knowing the same to have been so acquired, shall bring into this state any property so acquired or received, he shall be deemed guilty of robbery, theft, embezzlement, or receiving of goods or property stolen or embezzled, as the case may be, knowing the same to have been stolen or embezzled, and shall be punished as if the offense had been committed in this state. And, in cases herein mentioned, the offense may be charged to have been committed in any county into or through which the property may be brought in the same manner as if the act constituting such offense had taken place wholly within this state. [Amend. 1895, p. 116.]

Swindling is not included among the inhibited crimes enumerated in this article, and this State has no extra territorial jurisdiction over such offenses. Bink v. State, 50 T. Cr. R., 450, 98 S. W. R., 249.

Art. 1432. [252] **Requisites of guilt under preceding article.**—To render a person guilty under the preceding article, it must appear that by the law of the foreign country, state or territory from which the property was taken and brought to this state, the act committed would also have been robbery, embezzlement, theft or receiving stolen goods or property, or receiving or concealing goods or property embezzled. [Amend. 1895, p. 116.]

Constituent elements of bringing stolen property into the state: 1, the acts and intent must constitute theft by the law of the country in which the property was taken; 2, such acts and intent must constitute theft under the law of this state. The thief must bring the stolen property into this state. McKenzie v. State, 32 T. Cr. R., 568, 25 S. W. R., 426. And see also Morales v. State, 21 T., 298; Carmisalis v. State, 11 Id., 474; Fernandez v. State, 25 Id., 538, 8 S. W. R., 667; Edwards v. State, 29 Id., 452, 16 S. W. R., 98.

The venue in such a case is the county in this state in which the accused is found. McKenzie v. State, 32 T. Cr. R., 568, 25 S. W. R., 426.

Indictment must allege that the act charged as committed in another state was a criminal act by the law of that state, and was one of the offenses enumerated in this article as the case may be. Morales v. State, 21 T., 298.

The law of the foreign state or country is an issuable fact in such cases, and must be alleged in the indictment. Carmisalis v. State, 11 T. Cr. R., 474; Cummins v. State, 12 Id., 121; Edwards v. State, 29 Id., 452, 16 S. W. R., 98.

It need not, however, allege that the accused was punishable by, or amenable to, the laws of the foreign jurisdiction. Cummins v. State, supra.

On questions of evidence: Preceding authorities, and Carter v. State, 37 T., 362; Sutton v. State, 16 T. Cr. R., 490; Clark v. State, 27 Id., 405, 11 S. W. R., 374; Sinclair v. State, 34 Id., 453, 30 S. W. R., 1070.

TITLE 18.

OF MISCELLANEOUS OFFENSES.

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4. Employment of Sailors and Crew.
5. Protection of Settlers on School Lands.
6. Trusts—Conspiracies Against Trade.
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8. Corporations—Permitting the Attorney General and His Representatives to Examine Books.
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15. Offenses by Railway Officials or against Railways.
16. Railroads, etc.—Prohibiting the Issuance of Free Passes, etc.
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19. Railroad Companies — Requiring Engineers or Conductors to Serve First as Firemen or Brakemen.
20. Railroad Companies — Required to Do Repair Work in Texas, and Furnish Sufficient Motive Power.
21. Railroad Companies — Prohibited Establishing Name for a Station Other Than Name of Postoffice.
22. Street Railway — Regulating Fare in Certain Cities and Towns.
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CHAPTER ONE.

OF CONSPIRACY.

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Article 1433. [934] **Definition.**—A "conspiracy" is an agreement entered into between two or more persons to commit any one of the offenses hereafter named in this chapter. [Act Oct. 26, 1871, p. 15.]

Art. 1434. [954] **When offense complete.**—The offense of conspiracy is complete, although the parties conspiring do not proceed to effect the object for which they have so unlawfully combined. [Id.]

Art. 1435. [955] **Agreement must be positive.**—Before any conviction can be had for the offense of conspiracy, it must appear that there was a positive agreement to commit one of the offenses hereafter named in this chapter. It will not be sufficient that such agreement was contemplated by the parties charged. [Id.]

Art. 1436. [956] **Mere threat not sufficient.**—A threat made by two or more persons acting in concert will not be sufficient to constitute conspiracy. [Id.]

Art. 1437. [957] **What crimes the subject of.**—The agreement, to come within the definition of conspiracy, must be to commit one or more of the following offenses, to-wit: Murder, robbery, arson, burglary, rape or any other offense of the grade of felony. [Act Feb. 5, 1884, p. 25.]

Conspiracy is a substantive offense. Myers v. State, 6 T. C. R., 1.

"Agreement" is a coming together of parties in opinion or determination; the union of two or more minds in a thing done or to be done; a mutual assent to do a thing. See the opinion in extenso. Woodworth v. State, 20 Id., 375.

For comprehensive statements of acts sufficient to establish conspiracy, see Smith v. State, 21 T. Cr. R., 107, 17 S. W. R., 572; Lyles v. State, 30 Id., 642, 18 S. W. R., 416; Blain v. State, Id., 702, 18 S. W. R., 862.

Where several combine to commit an offense, all are amenable for whatever offense resulted from the acts of each done in accordance with their common plan. But if one, independent of the others, and of his own malice, turns aside to commit a felony foreign to the original design, the others do not participate in his acts. Kirby v. State, 23 T. Cr. R., 13, 5 S. W. R., 165, citing Mercersmith v. State, 8 Id., 211; Stevenson v. State, 17 Id., 619. And see Blain v. State, 30 Id., 702, 18 S. W. R., 862; Cox v. State, 8 Id., 254; Renner v. State, 43 Id., 347, 65 S. W. R., 1102.

A conspiracy to commit crime must be proved aliunde the acts and declarations of a co-conspirator. Sessions v. State, 37 T. Cr. R., 62, 38 S. W. R., 605.

There must be at least two principals, and they must be named in the indictment. Dever v. State, 37 T. Cr. R., 396, 30 S. W. R., 1071.

Indictment. The same particularity is not required in charging an unexecuted conspiracy as in charging an executed one. Brown v. State, 2 T. Cr. R., 115.

Evidence generally: See foregoing authorities and Cox v. State, 8 T. Cr. R., 254; Loggins v. State, 12 Id., 65; Pierson v. State, 18 Id., 254; Kennedy v. State, 19 Id., 618; Smith v. State, 21 Id., 107, 17 S. W. R., 552; Willeys v. State, 22 Id., 408, 3 S. W. R., 570; Richards v. State, 53 Id., 400, 110 S. W. R., 432; Proctor v. State, 54 Id., 254, 112 S. W. R., 770; O'Quinn v. State, 55 Id., 18, 115 S. W. R., 39; Williams v. State, Id., 65, 115 S. W. R., 35; Roma v. State, Id., 394, 116 S. W. R., 398.

As to conspiracy in theft: Welch v. State, 3 T. Cr. R., 413; Scales v. State, 7 Id., 361; Cohea v. State, 11 Id., 153; O'Neal v. State, 14 Id., 582; Burke v. State, 15 Id., 156; McKenzie v. State, 32 Id., 568, 25 S. W. R., 426; Rix v. State, 30 Id., 353, 26 S. W. R., 505; Trimble v. State, Id., 397, 26 S. W. R., 727; Whitford v. State, 24 Id., 489, 6 S. W. R., 537; Bailey v. State, 42 Id., 289, 59 S. W. R., 900.

In swindling: Marwilsky v. State, 9 T. Cr. R., 377; Gray v. State, 32 Id., 598, 25 S. W. R., 627; Cowan v. State, 41 Id., 617, 56 S. W. R., 751.

In arson: Dawson v. State, 38 T. Cr. R., 9, 40 S. W. R., 731.

In robbery: Nite v. State, 41 T. Cr. R., 340, 54 S. W. R., 763.

In rape: Williams v. State, 55 T. Cr. R., 65, 115 S. W. R., 35.

In murder: Hudson v. State, 43 T. C. R., 420, 66 S. W. R., 668; Moore v. State, 44 Id., 526, 72 S. W. R., 595; Williams v. State, 45 Id., 240, 75 S. W. R., 509; Kipper v. State, Id., 377, 77 S. W. R., 607; Chapman v. State, Id., 479, 76 S. W. R., 477; Carbough v. State, 49 Id., 452, 93 S. W. R., 738; Parnell v. State, 50 Id., 419, 98 S. W. R., 269; Banks v. State, 52 Id., 480, 108 S. W. R., 693; Richards v. State, 53 Id., 400, 110 S. W. R., 432; Proctor v. State, 54 Id., 254, 112 S. W. R., 770; Roma v. State, 55 Id., 344, 116 S. W. R., 398.

Art. 1438. [958] **Punishment.**—Conspiracy to commit murder shall be punished by confinement in the penitentiary not less than two nor more than ten years. Conspiracy to commit any one of the other offenses named in the preceding article shall be punished by confinement in the penitentiary not less than two nor more than five years. [Act Oct. 26, 1871, p. 15.]

Art. 1439. [959] **To kill, same as murder.**—A conspiracy to kill a human being shall be deemed a conspiracy to commit murder. [Id., p. 16.]

Art. 1440. [960] **Conspiracy to commit an offense in another state.**—A conspiracy entered into in this state for the purpose of committing any one of the offenses named in article 1437 in any other of the states or territories of the United States, or in any foreign territory, shall be punished in the same manner as if the conspiracy so entered into was to commit the offense in this state. [Id.]

Art. 1441. [961] **Conspiracy in another state to commit offense in this.**—A conspiracy entered into in another state or territory of the United States

to commit any one of the offenses named in article 1437 in this state, shall be be punished in the same manner as if the conspiracy had been entered into in this state..

CHAPTER TWO.

OF THREATS.

	Article		Article
Threat to take life, etc.	1442	Certain threats not included	1445
Threat must be seriously made	1443	Sending threatening letter	1446
Which is a question of fact	1444		

Article 1442. [962] **Threats to take life, etc.**—If any person shall threaten to take the life of any human being, or to inflict upon any human being any serious bodily injury, he shall be punished by fine of not less than one hundred nor more than two thousand dollars, and, in addition thereto, he may be imprisoned in the county jail not exceeding one year. [Act Feb. 22, 1875, p. 51.]

Art. 1443. [963] **Threats must be seriously made.**—In order to render a person guilty of the offense provided in the preceding article, it is necessary that the threat be seriously made. [Id.]

Art. 1444. [964] **Which is a question of fact.**—It is for the jury to determine, in every case of prosecution under article 1442, whether the threat was seriously made or was merely idle and with no intention of executing the same. [Id.]

Art. 1445. [965] **Certain threats not included.**—A threat that a person will do any act merely to protect himself, or to prevent the commission of some unlawful act by another, does not come within the meaning of this chapter. [Id., p. 52.]

Construed. To construe this offense, there must be first, a threat to take life or do serious bodily injury; and, second, the then existing serious intention entertained to execute it. McFain v. State, 41 T., 385; Buie v. State, 1 T. Cr. R., 58.

But a mere rash, inconsiderate expression provoked by an angry altercation will not suffice. March v. State, 3 T. Cr. R., 107.

The intent to execute the threat must attend its utterance. Haynie v. State, 2 T. Cr. R., 168; and that is a question of fact. Longley v. State, 43 T., 490.

And see Thrasher v. State, 3 T. Cr. R., 281; Aycock v. State, 2 Id., 381; Vincent v. State, 3 Id., 678; Woods v. State, 37 Id., 459, 36 S. W. R., 96.

Art. 1446. [966] **Sending threatening letter.**—If any person shall knowingly send or deliver to another any letter or writing, whether signed or not, threatening to accuse such other person of a criminal offense, with a view of extorting money, property, thing of value, or any advantage whatever from such other person, or threatening to kill or in any manner injure the person of such other, or to burn or otherwise destroy or injure any of his property, real or personal, or to do any other injury to such other person, he shall be punished by fine not less than one hundred nor more than one thousand dollars, and, in addition thereto, may be imprisoned in the county jail not exceeding one year.

Construed. It is knowingly sending or delivering a threatening letter which constitutes this offense. "Knowingly did threaten by sending," etc., is not a sufficient allegation. Castle v. State, 23 T. Cr. R., 286, 4 S. W. R., 892.

Indictment should set out the letter or writing in haec verba. Tynes v. State, 17 T. Cr. R., 123; Hansen v. State, 35 Id., 593, 34 S. W. R., 929.

Venue is in the county from whence the letter was sent, and not in the county to which it was sent. Landa v. State, 26 T. Cr. R., 580, 10 S. W. R., 218.

CHAPTER THREE.

SEDUCTION.

	Article		Article
Punishment	1447	Abandonment after seduction and marriage, offense defined	1450
"Seduction," how used	1448	Married man not liable, if known	1451
Marriage obliterates offense	1449		

Article 1447. [967] **Punishment.**—If any person, by promise to marry, shall seduce an unmarried female under the age of twenty-five years, and shall have carnal knowledge of such female, he shall be punished by imprisonment in the penitentiary not less than two nor more than ten years. [Act Feb. 12, 1858, p. 185; amended, Act 1903, p. 221.]

Art. 1448. [968] **"Seduction," how used.**—The term "seduction" is used in the sense in which it is commonly understood.

Construed and defined. "Seduction" means to "lead away" a female from the path of virtue; to entice or persuade her by means of a promise of marriage to surrender her chastity, and have carnal intercourse with the man making such promise. Putman v. State, 29 T. Cr. R., 454, 16 S. W. R., 97.

It must be shown that the carnal intercourse with the female was accomplished by means of a promise to marry her made at the time of the illicit intercourse. That promise, and the yielding of her virtue by the female in consideration thereof, is the gist of the offense. See the opinion in extenso. Putman v. State, supra; Cole v. State, 40 T., 147.

Our criminal statutes on seduction are intended mainly to redress a frailty which has been induced by a promise of marriage. Carnal intercourse on a promise of marriage with a woman who has already sacrificed her virtue and reputation, and the promise of marriage only induces a change of lovers, whether the promisor knew it or not, is not seduction. Kelly v. State, 33 T. Cr. R., 31, 24 S. W. R., 295, following Mrous v. State, 31 Id., 597, 21 S. W. R., 764.

Accomplice. Under the present law, the seduced female is competent to testify, but conviction can not be had on her testimony unless corroborated. The corroborating evidence, however, need not be direct or positive, or such as, independently, would sustain a conviction, but simply such as would tend to support her testimony and satisfy the jury that she is worthy of credit. Wright v. State, 31 T. Cr. R., 354, 20 S. W. R., 756; McCullar v. State, 36 Id., 213, 36 S. W. R., 585.

On character of prosecutrix, see Kelly v. State, 33 T. Cr. R., 31, 24 S. W. R., 295; Mrous v. State, 31 Id., 597, 21 S. W. R., 764; Parks v. State, 35 Id., 378, 33 S. W. R., 872.

Art. 1449. [969] **Marriage obliterates offense.**—If the parties marry each other at any time before the defendant pleads to the indictment before a court of competent jurisdiction, then the prosecution, if begun, shall be suspended, but not dismissed; and, if indictment has been returned, the case shall be continued on the docket of the court from term to term; and, if the defendant, after said marriage in good faith continues to live with the person so seduced for two years after said marriage, the said prosecution shall be dismissed; but, if the defendant within two years after said marriage, with-

out the fault of his said wife, such fault amounting to acts committed by her after said marriage as would entitle him to a divorce, shall abandon her or refuse to live with her, or shall be so cruel to her as to compel her to leave him, or shall be guilty of such outrages or cruelties toward her as to render their living together insupportable, then the prosecution shall be revived, and said marriage shall be no bar to the same, and the female so seduced shall be a competent witness against the defendant; provided, however, that if, after the prosecution is begun, and prior to the time he pleads to the indictment before a court of competent jurisdiction, the defendant, in good faith, offers to marry the female so seduced, and if she refuses to marry him, such refusal shall be a bar to further prosecution; but the benefit of this article shall not apply to the case of a defendant who was in fact married at the time of committing the offense. [Amended, Act, 1903, p. 221.]

Offer in good faith to marry: See in extenso opinion in Wright's case, 31 T. Cr. R., 354, 20 S. W. R., 756.

Art. 1450. **Abandonment after seduction and marriage, offense defined.**—If any person, by promise of marriage, shall seduce an unmarried female under the age of twenty-five years, and shall have carnal knowledge of such female, and if, after prosecution has begun, the parties marry each other, at any time before the defendant pleads to the indictment before a court of competent jurisdiction, and if the defendant within two years after said marriage, without the fault of his said wife, such fault amounting to acts committed by her after said marriage as would entitle him to a divorce under the laws of this state, shall abandon her or refuse to live with her, or shall be so cruel to her as to compel her to leave him, or shall be guilty of such outrages or cruelties towards her as to make their living together insupportable, thereby leaving her or forcing her to leave him and live apart from each other, shall be guilty of the offense of abandonment after seduction and marriage; and any person convicted of said offense shall be confined in the penitentiary for a term not less than two nor more than ten years; and said marriage shall be no bar to the qualifications of said female to testify against the defendant; and the female so seduced and subsequently married and abandoned, as herein provided, shall be a competent witness against said defendant. [Act 1909, p. 97.]

Art. 1451. [970] **Married man not liable if known.**—No person who was, at the time of committing the offense, married, and the fact of marriage known to the woman, shall be held liable for the offense defined in this chapter.

CHAPTER FOUR.

EMPLOYMENT OF SAILORS AND CREW.

Restriction on employment of crew of vessel..... Article 1452

Article 1452. [971] **Restriction on employment of crew of vessel.**—No sailor or portion of the crew of any foreign sea-going vessel shall engage in working on the wharves or levees of ports in the state of Texas beyond the end of the vessel's tackle. Any officer, sailor or member of the crew of a foreign sea-going vessel violating this law shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in a sum not less than ten dollars nor more than one hundred dollars, or be imprisoned in the county jail for not less than ten nor more than thirty days, or both, in the discretion of the court or jury. [Act March 26, 1885, ch. 54, p. 52.]

CHAPTER FIVE.

PROTECTION OF SETTLERS ON SCHOOL LANDS.

Punishment for certain threats, etc..... Article 1453

Article 1453. [972] **Punishment for certain threats, etc.**—Any person who, by force, threats or intimidation shall prevent, or attempt to prevent, or shall combine and confederate with others to prevent, or attempt to prevent, any person who has acquired a right thereto in accordance with the laws of the state, from peaceably entering upon and establishing a settlement on any parcel or tract of land belonging to the common school, university, the lunatic, blind, deaf and dumb and orphan asylum lands, subject to purchase and settlement under and in accordance with the laws of this state, shall be deemed guilty of a misdemeanor, and, upon conviction therefor, shall be fined in any sum not less than two hundred nor more than one thousand dollars, and, in addition thereto, shall be imprisoned in the county jail not less than one nor more than six months. [Act March 31, 1885, ch. 89, p. 83.]

CHAPTER SIX.

TRUSTS—CONSPIRACIES AGAINST TRADE.

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Article 1454. **Defining trusts.**—A "trust" is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or either two or more of them for either, any, or all of the following purposes:

1. To create, or which may tend to create or carry out, restrictions in trade or commerce or aids to commerce, or in the preparation of any product for market or transportation, or to create or carry out restrictions in the free pursuit of any business authorized or permitted by the laws of this state.

2. To fix, maintain, increase or reduce the price of merchandise, produce, or commodities, or the cost of insurance, or of the preparation of any product for market or transportation.

3. To prevent or lessen competition in the manufacture, making, transportation, sale or purchase of merchandise, produce, or commodities, or the business of insurance, or to prevent or lessen competition in aids to commerce, or in the preparation of any product for market or transportation.

4. To fix or maintain any standard or figure whereby the price of any article or commodity of merchandise, produce or commerce, or the cost of transportation, or insurance, or the preparation of any product for market or transportation, shall be in any manner affected, controlled or established.

5. To make, enter into, maintain, execute or carry out any contract, obligation or agreement by which the parties thereto bind, or have bound, themselves not to sell, dispose of, transport or to prepare for market or transportation any article or commodity, or to make any contract of insurance at a price below a common standard or figure, or by which they shall agree, in any manner, to keep the price of such article or commodity, or charge for transportation or insurance, or the cost of the preparation of any product for market or transportation, at a fixed or graded figure, or by which they shall, in any manner, affect or maintain the price of any commodity or article, or the cost of transportation or insurance, or the cost of the preparation of any product for market or transportation, between them or themselves and others, to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity or business of transportation or insurance, or the preparation of any product for market or transportation, or by which they shall agree to pool, combine or

unite any interest they may have in connection with the sale or purchase of any article or commodity, or charge for transportation or insurance, or charge for the preparation of any product for market or transportation, whereby its price or such charge might be in any manner affected.

6. To regulate, fix or limit the output of any article or commodity which may be manufactured, mined, produced or sold, or the amount of insurance which may be undertaken, or the amount of work that may be done in the preparation of any product for market or transportation.

7. To abstain from engaging in or continuing business, or from the purchase or sale of merchandise, produce or commodities partially or entirely within the state of Texas, or any portion thereof. [Act 1903, p. 119.]

Art. 1455. **"Monopoly" defined.**—A "monopoly" is a combination or consolidation of two or more corporations when effected in either of the following methods:

1. When the direction of the affairs of two or more corporations is in any manner brought under the same management or control for the purpose of producing, or where such common management or control tends to create a trust as defined in the first section of this chapter.

2. Where any corporation acquires the shares or certificates of stock or bonds, franchise or other rights, or the physical properties, or any part thereof, of any other corporation or corporations, for the purpose of preventing or lessening, or where the effect of such acquisition tends to affect or lessen competition, whether such acquisition is accomplished directly or through the instrumentality of trustees or otherwise. [Id., p. 120.]

Art. 1456. **"Conspiracy in restraint of trade" defined.**—Either or any of the following acts shall constitute a conspiracy in restraint of trade:

1. Where any two or more persons, firms, corporations or associations of persons, who are engaged in buying or selling any article of merchandise, produce or any commodity, enter into an agreement or understanding to refuse to buy from or sell to any other person, firm, corporation or association of persons, any article of merchandise, produce or commodity.

2. Where any two or more persons, firms, corporations or associations of persons, shall agree to boycott or threaten to refuse to buy from or sell to any person, firm, corporation or association of persons for buying from or selling to any other person, firm, corporation or association of persons. [Id., p. 120.]

Art. 1457. **Trusts, monopolies and conspiracies in restraint of trade prohibited.**—Any and all trusts, monopolies and conspiracies in restraint of trade, as herein defined, are hereby prohibited and declared to be illegal. [Id., p. 121.]

Art. 1458. **Corporations forfeit charter for violation of this law.**—Any corporation holding a charter under the laws of the state of Texas, which shall violate any of the provisions of this chapter, shall thereby forfeit its charter and franchise, and its corporate existence shall cease and determine. [Id., p. 121.]

Art. 1459. **Duty of attorney general.**—For a violation of any of the provisions of this chapter by any corporation mentioned herein, it shall be the duty of the attorney general, upon his own motion, and without leave or order of any judge or court, to institute suit or quo warranto proceedings in Travis county, at Austin, or at the county seat of any county in the state, where such corporation exists, does business, or may have a domicile, for the forfeiture of its charter rights and franchise, and the dissolution of its corporate existence. [Id., p. 121.]

Trusts. Conspiracies against trade. Construed. Article 981 of the old law, substituted by this chapter, which declares the parties who are amenable to, and the penalties for, a violation of the provisions of the law of trusts and conspiracies against trade, creates two distinct characters of offenses: 1, as to all persons who

may become engaged in the conspiracy or take part therein, or aid or advise in its commission; 2, as to all who shall, as principals, managers, directors, agents, servants or employes, or in any other capacity, knowingly carry out any of the stipulation, purposes, prices, rates or orders thereunder, or in pursuance thereof; that is, two or more persons may enter into the conspiracy originally, or others after the conspiracy is formed may enter into it, or after the conspiracy is formed any person not an original conspirator may knowingly serve as principal, manager, director, agent, servant or employe of the trust or combination in carrying out its purposes—and in each of such condition the party is amenable to, and liable under the law. Hathaway v. State, 36 T. Cr. R., 261, 36 S. W. R., 465. Compare this and the old article.

Constitutional law. Our Supreme Court has held that our statutes on trusts and conspiracies against trade are constitutional. Welch v. Windmill Co., 89 T., 653, 36 S. W. R., 71, citing Coal Co. v. Lawson, 89 Id., 394, 34 S. W. R., 919; Houck v. Association, 88 Id., 184, 30 S. W. R., 869.

For penalties, see Art. 1487, post.

Art. 1460. **When corporation of this state has forfeited its charter, no other corporation to which property of defaulting corporation has been transferred shall be incorporated or be permitted to do business in this state.**—When a corporation, organized under the laws of this state, shall have been convicted of a violation of any of the provisions of this chapter, and its charter and franchise has been forfeited, as provided in article 1458, no other corporation to which the defaulting corporation may have transferred its properties and business, or which has assumed the payment of its obligations, shall be permitted to incorporate or do business in Texas. [Id., p. 121.]

Art. 1461. **Foreign corporation violating this law forbidden to do business.**—Every foreign corporation violating any of the provisions of this chapter is hereby denied the right, and is prohibited from doing any business within this state; and it shall be the duty of the attorney general to enforce this provision by injunction or other proceedings in the district court of Travis county, in the name of the state of Texas. [Id., p. 121.]

Art. 1462. **Quo warranto proceedings.**—The provisions of the Revised Statutes of this state, prescribing the remedy and regulating the proceedings by quo warranto, etc., shall, except in so far as they conflict herewith, govern and control the proceedings when instituted to forfeit any charter under this chapter. [Id., p. 121.]

Art. 1463. **Foreign corporations convicted of violating this law, no other corporation to which the defaulting corporation has transferred its business or property shall be permitted to incorporate or do business in this state.**—When any foreign corporation has been convicted of a violation of any of the provisions of this chapter, and its right to do business in this state has been forfeited, as provided in article 1461, no other corporation to which the defaulting corporation may have transferred its properties and business, or which has assumed the payment of its obligations, shall be permitted to incorporate or do business in Texas. [Id., p. 121.]

Art. 1464. **Penalty may be recovered for violating this law.**—Each and every firm, person, corporation or association of persons, who shall in any manner violate any of the provisions of this chapter, shall, for each and every day that such violation shall be committed or continued, forfeit and pay the sum of fifty dollars, which may be recovered in the name of the state of Texas in any county where the offense is committed or where either of the offenders reside, or in Travis county; and it shall be the duty of the attorney general, or the district or county attorney under the direction of the attorney general, to prosecute for the recovery of the same; and the fees of the prosecuting attorney for representing the state in proceedings under this chapter shall be over and above the fees allowed him under the general fee bill. [Id., p. 121.]

Art. 1465. **Contract in violation of provisions of this law void.**—Any contract or agreement in violation of the provisions of this chapter shall be absolutely void and not enforcible either in law or equity. [Id., p. 122.]

Art. 1466. **Punishment for violating this law.**—And, in addition to all other penalties and forfeitures herein provided for, every person violating the provisions of this chapter shall be further punished by imprisonment in the penitentiary not less than two nor more than ten years. [Act 1907, p. 194.]

Art. 1467. **In prosecutions for violating this law, what evidence used.**—In prosecutions for the violations of any of the provisions of this chapter, evidence that any person has acted as the agent of a corporation in the transaction of its business in this state shall be received as prima facie proof that his act in the name, behalf or interest of the corporation of which he was acting as the agent, was the act of the corporation. [Act 1903, p. 122.]

Art. 1468. **Persons may be summoned and required to testify when, shall not be subject to indictment or prosecution.**—Upon the application of the attorney general or of any of his assistants, or of any district or county attorney, acting under the direction of the attorney general, made to any county judge, or any justice of the peace, in this state, stating that he has reason to believe that a witness, who is to be found in the county in which such county judge or justice of the peace is an officer, knows of a violation of any of the provisions of this chapter, it shall be the duty of the county judge, or of the justice of the peace, as the case may be, before whom such application is made, to have summoned and to have examined such witness in relation to violations of any of the provisions of this chapter, said witness to be summoned as provided for in criminal cases. The said witness shall be duly sworn; and the county judge, or justice of the peace, as the case may be, shall cause the statements of the witness to be reduced to writing and signed and sworn to before him; such sworn statement shall be delivered to the attorney general, his assistants, or the district or county attorney, upon whose application the witness was summoned. Should the witness summoned as aforesaid fail to appear, or to make statements of the facts within his knowledge, under oath, or to sign the same after it has been reduced to writing, he shall be guilty of contempt of court, and may be fined not exceeding one hundred dollars, and may be attached and imprisoned in the county jail until he shall make a full statement of all the facts within his knowledge with reference to the matter inquired about. Any person who shall testify before any county judge, or justice of the peace, as provided for in this chapter, or who shall testify as a witness for the state in the course of any statutory proceeding to secure testimony for the enforcement of this law, or in the course of any judicial proceeding to enforce the provisions of this chapter, shall not be subject to indictment or prosecution for any transaction, matter or thing concerning which he shall so give evidence, documentary or otherwise. [Act 1907, p. 221.]

Art. 1469. **Actions brought under this law have precedence.**—All actions authorized and brought under this chapter shall have procedence, on motion of the prosecuting attorney or the attorney general, of all other business, civil and criminal, except criminal cases where the defendants are in jail. [Act 1903, p. 122.]

Art. 1470. **Entering into agreement to form trust, monopoly, etc., penalty.**—If any person shall enter into an agreement or understanding of any character to form a trust, or to form a monopoly, or to form a conspiracy in restraint of trade, as these offenses are defined in this chapter, or shall form a trust, monopoly or conspiracy in restraint of trade, or shall be a party to the formation of a trust or monopoly or conspiracy in restraint of trade, or shall become a party to a trust or monopoly or conspiracy in restraint of trade, or shall do any act in furtherance of or aid to such trust or monopoly or con-

spiracy in restraint of trade, he shall be punished by imprisonment in the penitentiary for a period of not less than two years nor more than ten years. [Act 1907, p. 457.]

Art. 1471. **Person, member, agent, employe, etc., operating in violation of this law, penalty.**—If any person shall, as a member, agent, employe, officer, director or stockholder of any business, firm, corporation or association of persons, form, in violation of the provisions of this chapter, or shall operate, in violation of the provisions of this chapter, any such business, firm, corporation or association formed in violation of this chapter, or shall make any sale, or purchase, or any other contract, or do business for such business, firm, corporation or association, or shall do any other act which has the effect of violating or aiding in the violation of any of the provisions of this chapter, or shall, with the intent or purpose of driving out competition or for the purpose of financially injuring competitors, sell within this state at less than cost of manufacture or production, or sell in such a way or give away within this state, products for the purpose of driving out competition or financially injuring competitors engaged in a similar business, or give secret rebates on such purchase for the purpose aforesaid, he shall be punished by confinement in the penitentiary for a period of not less than two years nor more than ten years. [Id., p. 457.]

Art. 1472. **Persons outside state liable to punishment, when.**—If any person shall, outside of this state, do anything which, if done within this state, would constitute the formation of a trust or monopoly or conspiracy in the restraint of trade, as defined in this chapter, and shall cause or permit the trust or monopoly so formed by him to do business within this state, or shall cause or permit such trust, monopoly, or conspiracy in restraint of trade to have any operation or effect within this state, or, if such trust, monopoly or conspiracy in restraint of trade, having been formed outside of said state, any person shall give effect to such trust, monopoly or conspiracy in this state, or he shall do anything to help or aid it doing business in this state, or otherwise violate the anti-trust laws of this state, or if any person shall buy or sell or otherwise make contracts for or aid any business, firm, corporation or association of persons, formed or operated in violation of the provisions of this chapter, or so formed or operated as would be in violation of the laws of this state, if it had been formed within this state, shall be punished by confinement in the penitentiary for a period of not less than two years nor more than ten years. [Id., p. 457.]

Art. 1473. **Persons, etc., who have formed trusts, etc., penalty for.**—If any person or employe or employes, or agent or agents, stockholder or stockholders, officer or officers of any person, firm, association of persons, or corporation, now doing business in this state, who have formed a trust, as defined in this chapter, or formed a monopoly, as defined in this chapter, or has formed a conspiracy in restraint of trade, as defined in this chapter, or shall do or perform any act of any character to carry out such trust, monopoly or conspiracy in restraint of trade, such person, employe or employes, agent or agents, stockholder or stockholders, officer or officers, shall be punished by confinement in the penitentiary for not less than two years nor more than ten years. [Id., p. 458.]

Art. 1474. **Venue for criminal prosecutions under this law.**—Criminal prosecutions under this chapter may be conducted in Travis county, Texas, or in any county in this state wherein a trust, monopoly, or conspiracy in restraint of trade is being carried on; a recovery or prosecution against any person for any violation of this act shall not bar a prosecution of or recovery against any other person or persons for the same offense. [Id., p. 458.]

Art. 1475. **District or county attorney may commence prosecution, shall notify attorney general.**—Prosecutions under this chapter may be instituted

and prosecuted by any county or district attorney of this state; and, when any such prosecutions have been instituted by any county or district attorney, such officer shall forthwith notify the attorney general of such fact; and it is hereby made the duty of the attorney general, when he shall receive such notice, to join such officer in such prosecution and do all in his power to secure the enforcement of this chapter. [Id., p. 458.]

Art. 1476. **Fee of district and county attorney.**—For every conviction obtained under the provisions of this chapter, the state shall pay to the county or district attorney in such prosecution the sum of two hundred and fifty dollars; and, if both the county and district attorney shall serve together in such prosecution, such fee shall be divided between them as follows: One hundred dollars to the county attorney and one hundred and fifty dollars to the district attorney. [Id., p. 458.]

Art. 1477. **Agricultural products and live stock in hands of producer exempt.**—The provisions of this law shall not apply to agricultural products or live stock while in the hands of the producer or raiser; and it shall be lawful for any and all persons engaged in any kind of work or labor, manual or mental, or both, to associate themselves together and form trades unions and other organizations for the purpose of protecting themselves in their personal work, personal labor, and personal service, in their respective pursuits and employments. [Act 1899, p. 262.]

Art. 1478. **Trade unions, etc., exempt when.**—And it shall not be held unlawful for any member or members of such trades union or other organization or association, or any other person, to induce or attempt to induce, by peaceable and lawful means, any person to accept any particular employment, or quit or relinquish any particular employment in which such person may then be engaged, or to enter any pursuit, or refuse to enter any pursuit, or quit or relinquish any pursuit, in which such person may then be engaged; provided, that such member or members shall not have the right to invade or trespass upon the premises of another without the consent of the owner thereof. [Id., p. 262.]

Art. 1479. **Preceding article not to apply to combination, etc.**—The foregoing article shall not be held to apply to any combination or combinations, association or associations of capital, or capital and persons, natural or artificial, formed for the purpose of limiting the production or consumption of labor's products, or for any other purpose in restraint of trade; provided, that nothing herein contained shall be held to interfere with the terms and conditions of private contract with regard to the time of service, or other stipulations between employers and employes; provided, further, that nothing herein contained shall be construed to repeal, affect or diminish the force and effect of any statute now existing on the subject of trusts, conspiracies against trade, pools and monopolies. [Id., p. 262.]

CHAPTER SEVEN.

THEATERS, ETC.—PROHIBITING DISCRIMINATION BETWEEN PERSONS DESIRING TO LEASE SAME.

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Article 1480. **"Public house of amusement" defined and subject to regulations.**—All buildings constructed, fitted and equipped for the purpose of theaters, commonly called theaters, opera houses, play-houses, or by whatever name designated, which are and shall hereafter be used for public performances, the production and exhibition of plays, dramas, operas and other shows of whatever nature, to which admission fees are charged, be, and the same are hereby declared to be "public houses of amusement," and the same shall be subject to regulation by the public will as expressed by ordinance, statute, or other law; provided, that owners and lessees shall have the right to assign seats to patrons thereof, and to refuse admission to objectionable characters. [Act 1907, p. 21.]

Art. 1481. **Owner, lessee, manager of, discriminating against reputable theaters, operas, etc., penalty for.**—Hereafter it shall be unlawful for any owner, or lessee, or any manager, agent, employe or representative of the owner or lessee, who may be in charge and having the care and management of such house or houses of public amusement, to discriminate against reputable theaters, operas, shows or other productions by whatever name known. And any owner or lessee, or any manager, agent, employe, or representative of the owner or lessee, in charge of such house or houses, who shall fail and refuse to rent, lease and let such house or houses of public amusement, for one or more performances, and upon such terms and conditions as shall not be deemed unreasonable, extortionate or prohibitive, to the agent, manager, proprietor or representative, who may in good faith make application therefor, of any reputable theater, opera or show, by whatever name known, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of competent jurisdiction of this state, be fined in any sum not less than one hundred dollars nor more than five hundred dollars, one-half of which fine shall be paid to the complainant, the balance to go to the jury fund of the county in which such prosecution is had; and, in addition, such person or persons so convicted may be committed to the county jail for a period of not more than ten days. Each violation of any of the provisions of this chapter shall be a separate offense. Provided, however, that if, at the time of the application to lease or rent such house or houses of public amusement for said purposes, it shall be shown by the owner, lessee or other person in charge thereof that said house or houses of public amusement has or have been already leased, let or rented to other persons or parties, and that other bookings have in good faith been made for the date or dates so applied for, and that such leasing, renting, and bookings were made in good faith, and not with the intention of evading the provisions of this chapter, then, and in that instance, the penalties provided by this article shall not be imposed. [Id., p. 22.]

Art. 1482. **Shall keep a list of all bookings of shows for inspection of whom.**—Owners, lessees, managers or other persons in charge of such house or houses of public amusement shall make and keep, in convenient form, a list of all bookings of shows for such house or houses, with the dates as to time specifically set out therein; and said list of bookings shall be exhibited, upon

request, to all persons applying therefor, who, in good faith, desire to lease or rent such house or houses for the purposes indicated in article 1480; and the failure or refusal of such owner, lessee, or other person or persons in charge of such house or houses, to keep and exhibit such list of bookings as aforesaid, shall, upon conviction thereof, be fined in any sum not less than ten nor more than twenty dollars; and each failure or refusal to so exhibit such list of bookings shall be a separate and distinct offense. [Id., p. 22.]

Art. 1483. **Leases of houses of public amusement shall contain what, penalty for violation.**—All leases and renewals of leases, hereafter taken and made, for a term, upon such houses of public amusement, as defined in article 1480, shall contain a provision therein to the effect that the lessees and his assigns shall, in good faith, comply with the provisions of this law; and the failure or refusal of any such lessee or his assigns to comply with the provisions of this law shall at once terminate such lease, and, upon conviction of the violation of any provision of this law, such lessee or his assigns, in addition to the penalties provided in articles 1481 and 1482, shall forfeit his lease and all rights and privileges under the same. [Id., p. 22.]

CHAPTER EIGHT.

CORPORATIONS—PERMITTING THE ATTORNEY GENERAL AND HIS REPRESENTATIVES TO EXAMINE BOOKS.

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Article 1484. **Corporation doing business in this state, books, accounts, etc., subject to examination by attorney general, etc.**—Every corporation doing business in this state, by virtue of a permit or charter, granted under the laws of this state, shall permit the attorney general, or any of his assistants or representatives when authorized in writing by the attorney general, to make examination of all the books, accounts, records, minutes, letters, memoranda, documents, checks, vouchers, telegrams, constitution and by-laws and other records of said corporation, as often as he may deem it necessary. The attorney general, or his assistant or assistants, or representative or representatives shall present a request in writing to the president, vice-president, treasurer, secretary, manager, agent or other officer of said corporation, at the time the attorney general or his assistant or assistants, or representative or representatives, desire to examine said books, accounts, records, minutes, letters, memoranda, documents, checks, vouchers, telegrams, constitution and by-laws and other records belonging to said corporation; and it shall be the duty of the officer or agent of any corporation to whom said request is presented to immediately permit the attorney general, or his authorized assistant or assistants, or representative or representatives to inspect and examine all the books, records and other documents of said corporation as hereinabove set forth. [Act 1907, p. 34.]

Art. 1485. **Where and for what purpose such examination may be made, information used, when.**—The attorney general, or any of his assistants, or

representatives when authorized in writing by the attorney general, shall have the power and authority to make diligent investigation into the organization, conduct and management of any corporation authorized to do business within this state, and shall have power to inspect and examine all or any books, accounts, records, minutes, letters, memoranda, documents, checks, vouchers, telegrams, constitution and by-laws and other records of such corporation, and take copies of any or all of such records or documents, herein set forth, as in his judgment may show or tend to show that said corporation has been or is engaged in acts or conduct in violation of its charter rights and privileges, or in violation of any law of this state; provided, that the attorney general, or his assistant or assistants, or representative or representatives, shall not make public or use said copies or any information derived in the course of said examination of said records or documents, as hereinabove set forth, except in the course of some judicial proceedings of which the state is a party, or in a suit by the state to cancel the permit or forfeit the charter of such corporation, or to collect penalties for a violation of the law of this state, or for the information of any of the officers of this state charged with the enforcement of its laws. [Id., p. 35.]

Art. 1486. **President or officer of corporation failing or refusing to permit examination, penalty.**—If any president, vice president, treasurer, secretary, manager, agent or other officer of any corporation, doing business under permit or charter from this state, shall fail or refuse to permit the attorney general, or any of his assistants or representatives who may be authorized in writing by the attorney general to make such examination, to examine any or all of the books, accounts, records, minutes, letters, memoranda, documents, checks, vouchers, telegrams, constitution and by-laws and other records of said corporation, or shall fail or refuse to permit said attorney general, or his authorized assistant or assistants, or representative or representatives, to take copies of same, he shall be guilty of a misdemeanor, and, upon conviction therefor, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, and by imprisonment in the county jail for not less than thirty nor more than one hundred days; and each day of such failure or refusal to comply with the provisions of this chapter shall constitute a separate offense. [Id., p. 35.]

Art. 1487. **When charter or permit of corporation forfeited, members or officers of such corporation prohibited from using old corporate name.**—When any charter or permit, heretofore or hereafter granted under the laws of the state of Texas to any corporation to do business in said state, shall have been forfeited, it shall be unlawful for any persons who were members or officers of said defunct corporation at the time of such forfeiture, to do business in Texas under the old corporate name of such corporation, or to use the same or like signs or advertisements which were used by such corporation before such forfeiture; and any such person, so violating this law, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in any sum not more than one thousand dollars, nor less than two hundred and fifty dollars; provided, this shall not apply where the charter of a corporation has been revived in the manner provided by law, and is at the time in good standing. [Act 1905, p. 335.]

CHAPTER NINE.

STATE REVENUE AGENT.

Article
Appointment of state revenue agent; his duties 1488
Books and records of officers to be submitted to state revenue agent on demand; penalty for failure to comply with this law 1489
Article
Salary of revenue agent; traveling expenses; penalty for making false report 1490

Article 1488. [989] **His duties.**—The governor is hereby authorized to appoint a suitable person as revenue agent for the state, for the purpose of securing a better enforcement of the revenue laws of the state. The agent provided for herein shall be known as the state revenue agent. Said revenue agent shall be subject to the direction of the governor, who may, whenever in his judgment the public service demands it, direct the said revenue agent to investigate books and accounts of the assessing and collecting officers of this state, and all officers and persons disbursing, receiving or having in their possession public funds, and to make such other investigations and perform such other duties in the interest of the public revenue as the governor may direct. Whenever any such investigation is ordered by the governor, the revenue agent shall report to him in writing the results of such investigations, and to point out the particulars, if any, wherein the revenue laws have been violated or their enforcement neglected, together with the names of the parties delinquent therein; whereupon the governor shall institute civil and criminal proceedings through the attorney general in the name of the state against such delinquent parties, who are reported by such agent to be delinquent; and it is further provided, that said revenue agent shall have power at any time to examine and check up all and any disbursements or expenditures of money appropriated for any of the state institutions or for any other purpose, or for improvements made by the state on state property, or money received and disbursed by any board authorized by law to receive and disburse any state money. [Act April 13, 1891, § 1, 22d Leg., p. 87.]

Art. 1489. [990] **Books and records of officers to be submitted; penalty.**—When said revenue agent, acting under the direction of the governor, calls on any person connected with the public service to inspect his accounts, records or books, said officers or official so called upon shall submit to said agent all books, records and accounts so called for without delay. Any failure or refusal on the part of any officer or official to comply with the provisions of this article shall be an offense, for which, on conviction thereof, he shall be fined not less than one hundred nor more than one thousand dollars, and may be imprisoned in the county jail not more than one year. [Id., § 2.]

Art. 1490. [991] **Penalty for making false report.**—Said revenue agent shall receive as compensation for his services not exceeding two thousand dollars per annum, together with his actual traveling expenses, which shall be paid on the approval of the same by the governor; provided, that said revenue agent shall not be allowed traveling expenses for any service connected with the examination and investigation of the accounts of any institution in Travis county. If the revenue agent herein provided for shall wilfully make a false or fraudulent report of the financial condition of the books of any officer or official, department or institution, handling, receiving or disbursing any state funds, appropriated or unappropriated, he shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than five hundred nor more than one thousand dollars, and imprisoned in the county jail for any period not to exceed twelve months. [Id., § 3.]

CHAPTER TEN.

GUARANTY AND FIDELITY COMPANIES—REGULATION OF.

	Article
Certified copy of articles of incorporation to be filed with commissioner of insurance, etc	1491
Copy of by-laws, and names and residences of directors, and statement of assets and liabilities, and amount of capital stock to be filed	1492
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Amount of deposit of money or securities with state treasurer required; proof of value of real estate	1494
Deposit or real estate subject to judgment against the corporation; not permitted to withdraw denosit, or sell the real estate pending suit, or while any judgment is unsatisfied	1495
Service of process, on whom made	1496
Commissioner of insurance, etc., shall issue certificate to corporation to transact business	1497
Who are agents under this law	1498
Penalty for acting as agent before certificate is issued to the corporation	1499
Penalty against corporation for acting without certificate of authority	1500
Statement required when corporation refuses to further guarantee fidelity of any person; penalty	1501
If corporation fails to comply with preceding article, certificate to be revoked	1502
Corporation created for purposes mentioned in article 1491 declared charged with a public use	1503

Article 1491. [992] **Certified copy of articles, etc., to be filed.**—Hereafter, any corporation organized or created under the laws of this state, or of any other state or territory, or of any municipality of such state or territory, or of any foreign government, sovereignty or municipality, for the purpose of issuing surety, guaranty or indemnity bonds, guaranteeing the fidelity of persons in private offices, employments or positions of trusts and contracts, or for acting as security on any such bonds, shall file with the commissioner of insurance and banking a certified copy of its articles of incorporation and all amendments thereto. [Act 22d Leg., p. 176, § 1.]

Art. 1492. [993] **Copy of by-laws, names of directors and statement of assets, etc., to be filed.**—Such corporation shall file with the certified copy of articles of incorporation and amendments thereto a copy of its by-laws, together with the names and places of residence of its officers and directors, and a statement of its assets and liabilities, showing its net capital stock, and of what it consists, certified to by the president or secretary thereof. [Id., § 2.]

Art. 1493. [994] **Capital stock required.**—No such corporation shall transact any business in this state, unless it is possessed of at least one hundred thousand dollars actual capital stock; and, if the capital stock of such corporation consists, either in whole or in part, of bonds, mortgages, securities, or other property than money, the commissioner of insurance and banking shall require satisfactory evidence that the market value thereof is at least one hundred thousand dollars. [Id., § 3.]

Art. 1494. [995] **Amount deposited with state treasurer required.**—Such corporation shall, before the certificate of authority hereafter provided for is issued, deposit with the treasurer of this state money or bonds or other securities, to be approved by the commissioner of insurance and banking, to the amount of twenty-five thousand dollars, or shall produce satisfactory proof that such corporation owns real estate in this state, the value of which shall not be less than twenty-five thousand dollars. [Id., § 4.]

Art. 1495. [996] **Deposit or real estate subject to judgment.**—The deposit or real estate required by the preceding article shall be held liable to pay any judgments that may be rendered against such corporation, and may be so decreed by the court rendering judgment against it. Nor shall such company be permitted to withdraw its deposit from the state treasury, or to sell its real estate while any suit is pending, or any judgment against it in this state remains unsatisfied. [Id., § 5.]

Art. 1496. [997] **Service of process, etc.**—Such corporation shall file with the certified copy of its articles of incorporation a power of attorney, under

its corporate seal, authorizing the commissioner of insurance and banking, or some designated agent, to accept service of any civil process for and on behalf of such corporation, and consenting that the service of any civil process upon the commissioner of insurance and banking, or designated agent, as the case may be, in any suit or proceeding in which the corporation is a party, shall be taken and held to be valid. Said power of attorney shall be embodied in a resolution duly adopted by such corporation, and shall be signed by the president, manager or secretary thereof officially. If any agent, other than the commissioner of agriculture, insurance, statistics and history, be designated by said power of attorney, he shall be a citizen of this state; and his full name and place of residence shall be stated in the power of attorney. [Id., § 6.]

Art. 1497. [998] **Commissioner of Insurance and Banking shall issue certificate.**—When any such corporation has complied with the provisions of this act, the commissioner of agriculture, insurance, statistics and history shall issue his certificate of authority, authorizing said corporation to transact business in this state. [Id., § 7.]

Art. 1498. [999] **Who are agents.**—Any person who solicits business for, or on behalf of, such corporation, or makes or transmits for any person other than himself any application for guaranty or security, or who advertises or otherwise gives notice that he will receive or transmit the same, or who will receive or deliver a contract of guaranty or security, or who shall examine or investigate the character of any applicant for guaranty or security than himself, or who shall refer any applicant for guaranty or security to such corporation, whether any of said acts shall be done at the instance and request, or by the employment, of such corporation, or other corporation or person, or any person who shall issue indemnifying bonds or contracts, whose solvency and compliance with his said bonds or obligations is guaranteed, directly or indirectly, by any corporation, shall be held to be the agents of the corporation so far as relates to all the liabilities and penalties prescribed by this chapter. [Id., § 8.]

Art. 1499. [1000] **Penalty for acting as agent before certificate.**—Any person who shall perform any of the acts or things mentioned in the preceding article for any such corporation without such corporation having first complied with the provisions of this chapter, and having received the certificate of authority from the commissioner of agriculture, insurance, statistics and history, as provided in article 1497 of this chapter, shall be deemed guilty of a misdemeanor, and, upon conviction for the first offense, shall be fined in any sum not less than five hundred dollars and not more than one thousand dollars, and imprisoned in the county jail for a period of three months; and for each subsequent offense, such person shall be fined in any sum not less than one thousand dollars and not more than two thousand dollars, and confined in the county jail for a period of six months. [Id., § 9.]

Art. 1500. [1001] **Penalty against corporations, etc.**—Any persons, association of persons or corporation who shall accept any corporation created for the purposes, or either of them, mentioned in article 1491 of this chapter, without such corporation having previously complied with the provisions and requirements of this chapter and having received from the commissioner of agriculture, insurance, statistics and history the certificate of authority, provided for in article 1497 of this chapter, shall forfeit as a penalty the sum of five hundred dollars, to be recovered by suit in the name of the state in any court of competent jurisdiction. [Id., § 10.]

Art. 1501. [1002] **Statement required, etc.**—When any such corporation shall cancel a bond of guaranty or indemnity, or shall notify the employer of the person whose fidelity is guaranteed that said corporation will no longer guarantee or be security for the fidelity of said person, or when said corporation has once guaranteed the fidelity of any person or acted as security therefor, and, on application, refuses to do so again, it shall furnish to such person

a full statement in writing of the facts on which the action of the corporation is based; and, if such action be based, in whole or in part, on information, all such information, together with the name or names of the informants, with their place of residence; and any such corporation failing or refusing to furnish such written statement within thirty days after a request therefor, shall be liable to the person injured in the sum of five hundred dollars, in addition to all other damages caused thereby, which may be sued for and recovered in any court of competent jurisdiction. [Id., § 11.]

Art. 1502. [1003] **If corporation fails to comply, etc.**—If any such corporation shall fail or refuse to comply with the provisions of article 1501 of this chapter, the commissioner of agriculture, insurance, statistics and history shall revoke the certificate of authority issued to said corporation. [Id., § 12.]

Art. 1503. [1004] **Corporations charged with a public use.**—Corporations created for the purposes mentioned in article 1491 of this chapter, are hereby declared to be charged with a public use. [Id., § 13.]

CHAPTER ELEVEN.

BOND INVESTMENT COMPANIES.

	Article		Article
Doing business in this state, required to do what	1504	Officer, agent, etc., of any such company transacting business in violation of this law, penalty	1506
Failure to comply with this law, charter forfeited	1505		

Article 1504. **Doing business in this state, required to do what.**—Every corporation, company or individual, doing business in this state as a bond investment company, or company to place or sell bonds, certificates or debentures, on the partial payment or installment plan, shall, and the same is hereby required to, deposit with the state treasurer, in cash or securities approved by the state treasurer, the sum of five thousand dollars; and, in addition thereto, they shall be required to deposit semi-annually with the state treasurer in cash or securities to be approved by said officer, ten per cent of all the net premium received, until the sum deposited shall amount to the sum of one hundred thousand dollars. [Act 1897, p. 118.]

Art. 1505. **Failure to comply with this law, charter forfeited.**—If any such company, being a domestic corporation, shall fail, for sixty days after the organization of such company, to make with the state treasurer the deposit required by this chapter, it shall be considered to have forfeited its charter; and the attorney general shall, immediately upon receiving information thereof, bring suit in the name of the state, in the district court of Travis county, to have such charter or certificate of incorporation declared forfeited and of no effect; and said court shall declare such charter forfeited, and appoint a receiver for such company, whose duty it shall be, under the order of the court, to distribute to the shareholders the assets of the company. The court shall, out of the assets of the company, make such allowance for compensation for the receiver as shall be equitable and just. [Id., p. 118.]

Art. 1506. **Officer, agent, etc., of any such company transacting business in violation of this law, penalty.**—If any officer, agent, or representative of any such company or companies, whether they be foreign or domestic corporations, shall attempt to place or sell shares, or to transact any business whatsoever

in the name or on behalf of such company or companies, while they fail or refuse to comply with the provisions of this chapter, said officer, agent or representative shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars for each offense, or be imprisoned in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment. [Id., p. 118.]

CHAPTER TWELVE.

PRIZE FIGHTING, ROPING CONTESTS, ETC.

Article
Pugilistic encounters prohibited; penalty.1507
"Pugilistic encounter" defined.....1508
Exhibition of prize fights by means of moving pictures prohibited.....1509
Article
Matching any cock fight, etc., penalty..1510
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Article 1507. [1005] **Pugilistic encounters prohibited; penalty.**—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 anything 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. [Act of Oct. 3, 1895, S. S.]

Art. 1508. [1005a] **"Pugilistic encounter" defined.**—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. [Id.]

Art. 1509. [1005b] **Exhibition of prize fights by means of moving pictures prohibited.**—It shall be unlawful for any person, association, corporation, or any agent or employe of any person, association, corporation or receiver, partnership or firm, to give or present to the public an exhibition of prize fights or glove contests, or of any obscene, indecent or immoral picture of any character whatsoever, by means of moving picture films, bioscopes, vitiscopes, magic lanterns, or other device or devices in moving picture shows, theaters, or any other place whatsoever.

Any person or persons, association, or any agent or employe of any person, association, corporation or receiver violating any of the provisions of this act shall, upon conviction thereof, be fined in any sum not less than one hundred dollars and not more than one thousand dollars, or be imprisoned in the county jail for not less than ten nor more than sixty days, or both, in the discretion of the court or jury, and each day's violation of any of the provisions of this article shall constitute and be punishable as a separate offense. [Act S. S. 1910, p. 21.]

Art. 1510. **Matching any cock fight, etc., penalty.**—Any person who shall match, or be concerned in matching, any cock fight, or who shall match, or be concerned in matching or causing, a fight between any animals or fowls, or who shall keep, or be concerned in keeping, any cock pit or other place for the purpose of matching fights between cocks, or any other animals or fowls, shall

be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than ten nor more than one hundred dollars. Each day such cock pit or other place, as aforesaid, shall be kept shall constitute a separate offense. [Act 1907, p. 156.]

Art. 1511. **Engaging in roping contest, penalty.**—Any person who shall engage in a roping contest, with other persons or alone, in which cattle or other animals are roped as a test or trial of the skill of the person or persons engaged in such roping contest, for money or prize of any character, or for any championship, for anything of value, or upon the result of which any money or anything of value is bet or wagered, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars; and each animal roped, or attempted to be roped, shall constitute a separate offense. [Act 1905, p. 69.]

CHAPTER THIRTEEN.

TEACHER'S CERTIFICATE.

Article
Teacher contracting with trustees shall exhibit certificate; penalty for approving, etc.....1512
Persons selling, giving away, etc., prior to examination, questions propounded by superintendent of public instruction, penalty 1513
Article
School trustee or teacher preventing or failing to use books adopted, penalty...1514

Article 1512. [1006] **Teacher contracting with trustees shall exhibit certificate; penalty for approving, etc.**—Any county or city superintendent or board of trustees who shall approve any teacher's certificate or voucher, until the person has presented a valid certificate, shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than twenty-five nor more than one hundred dollars. [Act April 28, 1891, § 9.]

Art. 1513. **Persons selling, giving away, etc., prior to examination, questions propounded by superintendent of public instruction.**—Any person or persons who shall sell, barter or give away, prior to any forthcoming examination, to applicants for teachers' certificates, or to any other person, the questions prepared by the state superintendent of public instruction, to be used by the county boards of examiners, or summer normal boards of examiners, in the examination of teachers at said forthcoming examination, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not less than twenty-five nor more than two hundred dollars. [Act 1901, p. 272.]

Art. 1514. **School trustee or teacher preventing or failing to use books adopted, penalty. Teacher receiving greater price; or person loitering on school grounds.**—Any school trustee who shall prevent, or aid in preventing, the use, in any public school in this state, of the books, or any of them, as adopted under the provisions of law, or any teacher in this state who shall wilfully fail or refuse to use the books, adopted under the provisions of law, shall be guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than five dollars nor more than fifty dollars for each offense; and each day of such wilful failure or refusal by said teacher, or wilful prevention of the use of the books by said school trustee, shall constitute a separate offense;

and, if any teacher or trustee shall knowingly, and, directly or indirectly, receive from any pupil a greater price therefor, he shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than fifty dollars nor more than one hundred dollars. It shall be unlawful for any person or persons to loiter or loaf upon any public school grounds in this state, during the session of such school, after being warned by the person in charge of such school to leave such grounds; and such person or persons so found shall be guilty of a misdemeanor, and, upon conviction therefor, shall be fined in any sum not less than five and not to exceed twenty-five dollars. [Act 1907, p. 402; Acts 29th Leg., chap. 124.]

CHAPTER FOURTEEN.

RAILROAD COMMISSION.

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Railroad commission may require construction of union passenger depots	1522

Article 1514. [1007] **Right to inspect books and papers.**—The commissioners, or either of them, or such persons as they employ therefor, shall have the right, at such times as they may deem necessary, to inspect the books and papers of any railroad company, and to examine, under oath, any officer, agent or employe of such railroad, in relation to the business and affairs of the same. If any railroad shall refuse to permit the commissioners, or either of them, or any person authorized thereto, to examine its books and papers, such railroad company shall, for each offense, pay to the state of Texas not less than one hundred and twenty-five dollars nor more than five hundred dollars for each day it shall so fail or refuse; provided, that any person other than one of said commissioners who shall make any such demands shall produce his authority, under the hand and seal of said commission, to make such inspection. [Act 22d Leg., ch. 51, § 55; April 3, 1891, R. R. Com., § 10.]

Penalty for refusal to exhibit books or papers.—Any officer, agent or employe of any railroad company who shall, upon proper demand, fail or refuse to exhibit to the commissioners, or either of them, or any person authorized to investigate the same, any book or paper of such railroad company, which is in the possession or under the control of such officer, agent or employe, shall be deemed guilty of a misdemeanor, and, upon conviction in any court having jurisdiction thereof, shall be fined for each offense a sum not less than one hundred and twenty-five dollars and not to exceed five hundred dollars. [Id.]

Art. 1515. [1008] **Commissioners may propound questions to be answered.**—1. The said commission shall cause to be prepared suitable blanks with questions calculated to elicit all information concerning railroads, and as often as it may be necessary, furnish said blanks to each railroad company. Any railroad company receiving from the commission any such blanks shall

cause said blanks to be properly filled out so as to answer fully and correctly each question therein propounded; and, in case they are unable to answer any question, they shall give a satisfactory reason for their failure; and the said answers, duly sworn to by the proper officer of said company, shall be returned to said commission at its office in the city of Austin within thirty days from the receipt thereof. [Id., § 12.]

Penalty for refusal to answer and fill out blanks.—2. If any officer or employe of a railroad company shall fail or refuse to fill out and return any blanks, as above required, or fail or refuse to answer any question therein propounded, or give a false answer to any such question, where the fact inquired of is within his knowledge, or shall evade the answer to any such question, such person shall be guilty of a misdemeanor, and shall, on conviction thereof, be fined for each day he shall fail to perform such duty, after the expiration of the time aforesaid, a penalty of five hundred dollars; and the commission shall cause a prosecution therefor in the proper court; and a penalty of like amount shall be recovered from the company when it appears that such person acted in obedience to its direction, permission or request in his failure, evasion or refusal. Said commission shall have the power to prescribe a system of bookkeeping, to be observed by all the railroads subject hereto, under the penalties prescribed in this article. [Id., § 12.]

Art. 1516. [1009] **Punishment for false billing, classification, weight, etc.**—Any officer or agent of any railroad subject to this law who, by means of false billing, false classification, false weight, or by any other device, shall suffer or permit any person or persons to obtain transportation for property, at less than the regular rates then in force on such railroad, or who, by means of false billing, false classification, false weighing, or by any device whatever, shall charge any person, firm or corporation more for the transportation of property than the regular rates, shall be guilty of a misdemeanor, and, on conviction thereof, fined in a sum of not less than one hundred dollars nor more than one thousand dollars. [Id., § 16.]

Art. 1517. **"Unjust discrimination" defined, penalty for.**—If any officer, agent, clerk, servant or employe, or any receiver, or his servant, agent or employe of any railroad company in this state shall, directly or indirectly, or by any special rate, rebate, drawback, or other device, for, and on behalf of, such railroad company, knowingly charge, demand, contract for, collect or receive from any person, firm or corporation a greater or less compensation for any service rendered, or to be rendered, by any such railroad company in this state than such railroad company, or its said officers, agents, clerks, servants or employes, or receiver thereof, charges, demands, contracts for, collects or receives from any other person, firm or corporation for doing a like and contemporaneous service, or if any officer, agent, clerk, servant or employe, or receiver, or his agents, servants or employes, of any railroad company in this state, who shall, for, and on behalf of, such railroad company, make or give any undue or unreasonable preference or any advantage to any particular person, company, firm, corporation or locality, as to any service rendered, or to be rendered or performed, by such railroad company, or to subject any particular description of traffic on such railroad company to any undue or unreasonable prejudice, delay or disadvantage in any respect whatever, such officer, clerk, servant or employe, or receiver, his agents, servants or employes of such railroad company, shall be deemed guilty of unjust discrimination within the meaning of this chapter, and, on conviction thereof, shall be punished by confinement in the state penitentiary for not less than two nor more than five years. [Act 1899, p. 203.]

Art. 1518. **Not applicable, when.**—Nothing herein shall prevent the carriage, storage or handling, by railroad companies in this state, or by their agents, officers, clerks, servants and employes, of freight free or at reduced

rates, or to prevent railroads, their agents and employes and officers, from giving free transportation or freight rates to any railroad officers, agents, employes, attorneys, stockholders or directors, or to any other officer or person, when permitted by chapter 16 of this title, article 1533.

Art. 1519. **Persons subpoenaed and compelled to testify as to violations of this law exempt from prosecution; evidence on which conviction may be had.**—Any court, officer or tribunal, having jurisdiction of the offense mentioned in this chapter, or any district or county attorney, may subpoena persons and compel their attendance as witnesses to testify as to the violations of this chapter; and any person so summoned and examined shall not be liable to prosecution for any violation of this law about which he may testify; and for any offense by reason of violations of this chapter, a conviction may be had upon the unsupported evidence of an accomplice or participant. [Id., p. 203.]

Art. 1520. **District judge to specially charge grand jury.**—It shall be the duty of every district judge in this state, in whose court a grand jury shall be impaneled, to charge said grand jury, whenever organized, to thoroughly investigate with reference to violations of this chapter. [Id., p. 203.]

Art. 1521. [1009a] **Railroad official making false statement to secure registration of bond.**—Each and every railroad director, president, secretary or other official who shall knowingly make any false statement upon which to secure the registration of any bond or other evidence of debt, as required by the law regulating the issuance of stocks and bonds, or who shall, by false statement knowingly made, procure of the railroad commission direction to the secretary of state to register the same, and which shall be, by the secretary of state, registered, or shall, with knowledge of such fraud, negotiate or cause to be negotiated, any such bond or other security issued in violation of said chapter, shall be guilty of a felony, and, upon conviction thereof in any court of competent jurisdiction, shall be punished by confinement at hard labor in the state penitentiary for a term of years not less than two nor more than fifteen, and shall likewise be liable to any creditor of such company for the full amount of damages sustained by such wrongful conduct. Venue in such cases shall be in either of the district courts held in Travis county, or in the county where the principal office of the railway company whose property is sought to be so incumbered or affected is located. [Act 1893, p. 59.]

Art. 1522. **Railroad commission may require construction of union passenger depots.**—Where two or more railroad companies reach the same city or town in this state, it shall be the duty of the railroad commission of Texas to ascertain whether it is practicable and feasible for such railroad companies to use a joint or union passenger depot; and, if the railroad commission finds, upon investigation, that it is practicable for such railroad companies to join in the construction and use of a passenger depot, then it shall give notice to said railroad companies, and, after investigation and public hearing, may require the construction and maintenance of such union passenger depot by the railroad companies entering any such city or town, provided, that it shall appear to the railroad commission that the construction and maintenance of such joint or union passenger depot are just and reasonable to the railroad companies involved, and demanded by the public interest. The railroad commission may specify the requirements of such union depot as to kind and character; and said railroad commission may apportion the cost of constructing and maintaining the same to each railroad company, in cases where the interested railroad companies can not themselves agree.

Failure upon the part of any railroad company to observe and obey the orders of the railroad commission, issued in compliance with this article, shall

subject such railroad company to the fines and penalties prescribed by law for failure to obey the lawful requirements, orders, judgments and decrees made by the railroad commission of Texas. [Act 1909, p. 399.]

CHAPTER FIFTEEN.

OFFENSES BY RAILWAY OFFICIALS OR AGAINST RAILWAYS.

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Article 1523. [1010] 1. **Railroad to provide separate coaches for white and negro passengers.**—Every railway company, street car company and interurban railway company, lessee, manager, or receiver thereof, doing business in this state, as a common carrier of passengers for hire, shall provide separate coaches or compartments, as hereinafter provided, for the accommodation of white and negro passengers, which separate coaches or compartments shall be equal in all points of comfort and convenience. [Act 22d Leg., ch. 41, § 1, pp. 44 and 165; amended Act 1907, p. 58.]

2. **"Negro" defined.**—The term "negro" used herein includes every person of African descent as defined by the statutes of this state. [Id., § 2; amended Act 1907, p. 58.]

3. **"Compartment" defined, etc.; lettering on coach.**—Each compartment of a railroad coach, divided by good and substantial wooden partitions, with a door therein, shall be deemed a separate coach within the meaning of this law, and each separate coach shall bear in some conspicuous place appropriate words in plain letters indicating the race for which it is set apart; and each compartment of the street car or interurban car divided by board or marker placed in a conspicuous place, bearing appropriate words in plain letters, indicating the race for which it is set apart, shall be sufficient as a seprate compartment within the meaning of this law. [Id., § 3; amended, Act 1907, p. 58.]

4. **Penalty for failure to provide, etc.**—Any railway company, street car company or interurban railroad company, lessee, manager or receiver thereof, which shall fail to provide its cars bearing passengers with separate coaches or compartments, as above provided for, shall be liable for each and every failure to a penalty not less than one hundred nor more than one thousand dollars, to be recovered by suit in the name of the state in any court of competent jurisdiction; and each trip run with such train or street car or interurban car without such separate coach or compartment shall be deemed a separate offense. [Id., § 4; amended Act 1907, p. 59.]

5. **Passenger riding in coach not for his race; penalty.**—If any passenger upon a train or street car or interurban car, provided with separate coaches or compartments, as above provided, shall ride in any coach or compartment,

not designated for his race, after having been forbidden to do so by the conductor in charge of the train, he shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than five nor more than twenty-five dollars. [Id., § 5; amended Act 1907, p. 59.]

6. **Does not apply, wherein.**—The provisions of this law shall not be so construed as to prohibit nurses from traveling in any coach or compartment with their employer, or employes, upon the train of cars in the discharge of their duty, nor shall it be construed to apply to such freight trains as carry passengers in cabooses; provided, that nothing herein contained shall be construed to prevent railroad companies in this state from hauling sleeping cars, dining or cafe cars or chair cars attached to their trains, to be used exclusively by either white or negro passengers, separately, but not jointly. [Amended by Act 22d Leg., ch. 103, § 4; amended, Act 1907, p. 59.]

7. **Law to be posted, where.**—Every railroad company carrying passengers in this state shall keep this law posted in a conspicuous place in each passenger depot and in each passenger coach provided in this law. [Act 22d Leg., ch. 41, § 7; amended Act 1907, p. 59.]

8. **Does not apply to excursion trains.**—The provisions of this law shall not apply to any excursion train, or street car, or interurban car, as such, for the benefit of either race. [Id., § 8; amended Act 1907, p. 59.]

9. **Duty of conductors.**—Conductors of passenger trains, street cars or interurban lines, provided with separate coaches, shall have the authority to refuse any passenger admittance to any coach or compartment, in which they are not entitled to ride under the provisions of this law; and the conductor in charge of the train or street car or interurban car shall have authority, and it shall be his duty, to remove from a coach or street car, or interurban car any passenger not entitled to ride therein, under the provisions of this law, and, upon his refusal to do so knowingly, shall be guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than five or more than twenty-five dollars. [Id., § 9; amended Act 1907, p. 59.]

10. **Fines collected to go to school fund.**—All fines collected under the provisions of this law shall go to the available common school fund of the county in which conviction is had. Prosecutions under the provisions of this law may be instituted in any court of competent jurisdiction in any county through, or into which, said railroad may be run or have an office. [Id., § 10; amended Act 1907, p. 59.]

Art. 1524. [1010a] **Locomotive engineer failing to sound bell and whistle; penalty.**—A bell of at least thirty pounds weight and a steam whistle shall be placed on each locomotive engine, and the whistle shall be blown and the bell rung at the distance of at least eighty rods from the place where the railroad shall cross any public road or street; and such bell shall be kept ringing until it shall have crossed such public road, or stopped; and each locomotive engine approaching a place where two lines of railway cross each other, shall, before reaching such railway crossing, be brought to a full stop; and any engineer having charge of such engine, and neglecting to comply with any of the provisions of this article, shall be fined in any sum not less than five nor more than one hundred dollars for such neglect; and the corporation operating such railway shall be liable for all damages which shall be sustained by any person by reason of any such neglect; provided, however, that the full stop at such crossings may be discontinued when the railroads crossing each other shall put into full operation at such crossing an interlocking switch and signal apparatus, and shall keep a flagman in attendance at such crossing. [Act 1893, p. 87.]

Art. 1525. [1010b] **Ticket agents to be provided with certificate of authority.**—It shall be the duty of all railroad companies doing business in this state, or the receiver of any such railroad company, through their duly authorized officers, to provide each agent who may be authorized to sell tickets

or other evidences entitling the holder to travel upon any such railroad, with a certificate, setting forth the authority of such agent to make such sale. Such certificate shall be duly attested by the corporate seal of such railroad company, or the signature of the receiver, if any there be, of such railroad company, or by the signature of the officer whose name is signed upon the tickets or coupons which such agent may be authorized to sell. [Act of 1893, p. 97.]

Art. 1526. [1010e] **Agents must exhibit authority on demand.**—It shall be the duty of every agent who shall be authorized to sell tickets, or parts of tickets, or other evidences of the holder's right to travel over any railroad within this state, upon demand, to exhibit to any person desiring to purchase a ticket, or to any officer of the law who may request it, the certificate of his authority to sell, and to keep said certificate posted in a conspicuous place in his office for the information of travelers. [Id.]

Art. 1527. [1010f] **Railway companies to redeem unused tickets.**—It shall be the duty of all railroad companies in this state, or the receiver or trustee of any such railroad company, to provide for the redemption, from the holder thereof, of the whole, or any parts or coupons of any ticket or tickets which they, or any of their duly authorized agents, may have sold, if for any reason the holder has not used, and does not desire to use the same, upon the following terms: If neither the ticket, nor any part thereof, has been used by the holder, he shall be entitled to receive the full amount he paid therefor; and, where the ticket has been used in part, the holder thereof shall be entitled to receive the remainder of the price paid for the whole ticket, after deducting therefrom the tariff rate between the points for which the portion of said ticket was actually used. [Id.]

Art. 1528. **Demand must be made within ten days.**—Provided, however, such tickets, or parts thereof, shall be presented for redemption to the railroad company from which it has been purchased, or the receiver of such railroad company, or to any of the duly authorized ticket agents of such railroad company, or receiver thereof, or in case of a through ticket, to any of the authorized agents of any connecting line, within a time not exceeding ten days after the right to use said ticket has expired by limitation of time as stipulated therein. [Id.]

Art. 1529. **Refusal to redeem; penalty.**—Any railroad company, or receiver, or trustee of such railroad company, over or on which said ticket may be used, which shall refuse or fail to redeem the whole, or any part or coupon of any ticket or tickets, when presented, shall forfeit to the holder thereof a sum not less than one hundred dollars nor more than five hundred dollars, recoverable in any court of competent jurisdiction. [Id.]

Art. 1530. [1010g] **Law to be printed on tickets.**—It shall be the duty of the railway company to print conspicuously across the face of every ticket, sold by its duly authorized agents in this state, a notice to the holder thereof that this ticket, or any unused part thereof, is redeemable by the company or its receiver at any ticket office of the company, when presented for redemption. [Id., p. 98.]

Art. 1531. [1010h] **Unlawful boarding of train.**—Any person who shall board any passenger, freight or other railway train, whether moving or standing, for any purpose, and without, in good faith, intending to become a passenger thereon, and with no lawful business thereon, and with intent to obtain a free ride on such train, however short the distance, without the consent of the person or persons in charge thereof, shall be guilty of a misdemeanor, and shall be punished by fine of not less than five dollars nor more than one hundred dollars. [Act 1895, p. 178.]

CHAPTER SIXTEEN.

RAILROADS, ETC.—PROHIBITING ISSUANCE OF FREE PASSES, ETC.

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Free pass, frank, privilege or free haul or carrying of person or property free of charge, penalty for	1532
Provisions of preceding article not to be held to prohibit what	1533
Person offering to use, permit, pass, frank, etc., issued to any other person or applying for same, knowing he is not entitled thereto, penalty	1534
Discrimination by any means or device, penalty	1535
Companies, their lessees and receivers shall report annually the name and residence of each person to whom free transportation was given	1536
Person other than those exempt using free pass, free ticket, etc., penalty	1537
Director, officer, agent, receiver, etc., wilfully violating this law or permitting its violation, penalty	1538
Person may be compelled to testify, exempt from prosecution	1539

Article 1532. **Free pass, frank, privilege or free haul or carrying of persons or property free of charge, penalty for.**—If any steam or electric railway company, street railway company, interurban railway company, or other chartered transportation company, express company, sleeping car company, telegraph or telephone company, or person or association of persons operating the same, or the receivers or lessees thereof, or any officer, agent or employe of any such company in this state, shall knowingly haul or carry any person or property free of charge, or give or grant to any person, firm, association of persons, or corporation, a free pass, frank, a privilege or a substitute for pay, or a subterfuge which is used, or which is given to be used instead of the regular fare or rate for transportation, or any authority or permit whatsoever, to travel or to pass or convey or transport any person or property free, or sell any transportation for anything except money, or for any greater or less rate than is charged to all persons under the same conditions, over any railway or other transportation line, or part of line, in this state, or shall knowingly permit any person to transmit any message free in this state, or shall give any frank or right or privilege to transmit messages free in this state, or property free of charge or for greater or less fare or rate than is charged other persons in this state, for similar service, except such persons as are hereinafter exempted under the provisions of this chapter, shall be guilty of a misdemeanor, and, upon conviction in any action brought on this account, and for that purpose, shall pay to the state of Texas the sum of five thousand dollars for each and every act which violates the provisions of this article; and any person, president, director, officer, employe or agent of any such corporation or association of persons, who shall sell any transportation for anything except money, or knowingly give, grant, issue, or cause to be issued, a free pass, a frank, a privilege or any substitute for, or in lieu thereof, for the transportation of any person, article or thing, or the sending or transmitting any messages over wire or other means of transmitting messages in this state, except to such persons as are hereinafter exempted from the provisions of this chapter, shall be deemed guilty of a felony under the laws of this state, and, upon conviction for such act, shall be punished by a fine of not less than five hundred dollars nor more than two thousand dollars, and may, in addition thereto, in the discretion of the jury, be imprisoned in the penitentiary for a term of not less than six months nor more than two years. [Act 1907, p. 93.]

Art. 1533. **Provisions of preceding article not to be held to prohibit what.**—The provisions of article 1532 shall not be held to prohibit any steam or electric or interurban railway company, or chartered transportation company, or sleeping car company, or the receivers or lessees thereof, or persons operating the same, or the officers, agents or employes thereof, from granting free or exchanging free passes, franks, privileges, substitute for pay or other

thing herein prohibited, to the following persons: The actual bona fide employes of any such companies and the dependent members of their immediate families. The term employe shall be construed to embrace the following persons only: All persons actually employed and engaged in the service of any of such companies, including its officers, bona fide ticket, passenger and freight agents, physicians, surgeons and general attorneys and attorneys who appear in courts of record to try cases and who receive a reasonable annual salary, and also ex-employers within four months after leaving the service of any of such companies and while seeking employment. Also persons actually employed on sleeping cars, express cars, linemen of telegraph and telephone companies, newsboys employed on trains, railway mail service employes, postoffice inspectors, chairman and bona fide members of grievance committees of employes, bona fide custom and immigration inspectors employed by the government, the state health officer and one assistant, and federal health officers; also when livestock, poultry, fruit, melons, or other perishable produce is shipped, the necessary care-takers while en route and return; also trip passes to the indigent poor, when application therefor is made by any religious or charitable organization, sisters of charity; also persons injured in wrecks upon the road of any such company, immediately after such injury, and the physicians and nurses attending such persons at the time thereof; also persons and property carried in cases of general epidemic, pestilence or other calamitous visitations at the time thereof, or immediately thereafter; also the state rangers, sheriffs or other bona fide elective peace officers, whose duties are to execute criminal processes; provided, that if any such railroad or transportation company shall grant to any sheriff, a free pass over its lines of railroad, then it shall issue like free transportation to each and every sheriff in this state who may make to it written application therefor; and provided, further, that said sheriffs and other peace officers above mentioned, using such free passes or transportation, shall deduct the money value of the same, at the legal rate per mile, from any mileage accounts against the state and litigants earned by them in executing process when such pass was used or could have been used; also members of the livestock sanitary commission of Texas, not exceeding twelve in number for any one year; provided, that nothing in this act shall prevent any such companies, the receivers or lessees thereof, or the officers, agents or employes, from granting to ministers of religion reduced rates of one-half the regular fare, nor shall anything in this act prevent any such companies, their receivers or lessees from transporting free of charge any article being sent to any orphan home or other charitable institution; provided, further, that nothing in this law shall be construed to prohibit any such companies, their receivers or lessees or officers, agents or servants from making special rates for special occasions or under special conditions; but no such rate shall ever be made without first obtainng authority from the railroad commission of Texas; and provided, further, that no persons who hold any public office in this state shall, at any time during their term of office, be entitled to any such free pass or transportation, privilege or franks or substitute for fare or charges over any railway or other company, mentioned in article 1532, except employes operating trains when in the actual discharge of their duties as such, and the officers hereinbefore exempted; provided further, that nothing in this chapter shall prohibit any street railway company from transporting free of charge police officers and firemen in any city where said company is authorized so to do by any ordinance or authrity from the city council of any such city; provided, however, that no person or persons, beneficiaries of free transportation herein permitted, shall ride on a free pass or enjoy free transportation to or from any political convention, or on any political errand. Nothing in this chapter shall prohibit any

express company from hauling or carrying free of charge the packages and property of its actual and bona fide officers, attorneys, agents and employes, who are actually in the employment of any such company, its receivers or lessees, at the time when such free transportation or the right thereto is given. And provided, further, that nothing in this chapter shall be construed to prohibit any telegraph or telephone company from carrying and transmitting, free of charge, the messages of its bona fide officers, attorneys, agents and employes who are actually in the employment of such company, its receivers or lessees, at the time when such free transmission, or the right thereto, was given. [Id., p. 94.]

Art. 1534. **Persons offering to use permit, pass, franks, etc., issued to any other person, or applying for same, knowing he is not entitled thereto, penalty.**—If any persons shall present, or offer to use, in his own behalf, any permit or frank whatsoever, to travel, pass or to convey any person or property or message which has been issued to any other person, or shall, knowing that he is not entitled under the provisions of this chapter, apply to any railway, express, telegraph or telephone company, officer, agent, lessee or receiver thereof, for any free pass, frank, privilege or a substitute for pay given or to be used instead of the regular fare or rate for transportation, or for any other consideration, except money, he shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by confinement in the county jail for not less than thirty days and not more than twelve months, and by a fine of not less than one hundred dollars and not more than one thousand dollars. [Id., p. 95.]

Art. 1535. **Discrimination by any means or device, penalty.**—No company, subject to the provisions of this chapter, shall, directly or indirectly, by any special rate, rebate, draw-back, or other device or exchange, demand, charge or collect or receive from any person, firm, association of persons or corporation a greater or less or different compensation for any service rendered, or to be rendered, in the transportation of passengers, property or messages, than it charges, demands, collects or receives from any other person, firm, association of persons or corporation for doing for him, them or it, a like service, if the transportation or transmission is a like kind of traffic or service under substantially similar circumstances and conditions; and any such company violating these provisions shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the state of Texas a penalty of five thousand dollars. [Id., p. 96.]

Art. 1536. **Companies, their lessees and receivers shall report annually the name and residence of each person to whom free transportation was given.**—Each and all companies subject to the provisions of this chapter, their receivers and lessees, shall report annually on such dates as may be fixed by the railroad commission of this state, the name and residence of each and every person to whom free transportation, or right thereto, was given to travel, or to have his property or messages transported or transmitted over its transportation, express, sleeping car or railway or telegraph or telephone line; and any company violating this provision shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the state of Texas a penalty of one thousand dollars. [Id., p. 96.]

Art. 1537. **Persons other than those exempt using free pass, free ticket, etc., penalty.**—Any person, other than the persons excepted in this chapter, who uses any such free ticket, free pass or free transportation, frank or privilege over any railway or other transportation line or sleeping or express car, telegraph or telephone line, mentioned in this chapter, for any distance under the control and operation of either of said companies, subject to the provisions of this chapter, or under their authority, or shall know-

ingly and wilfully, by any means or device whatsoever, obtain, use or enjoy from any such company, a less fare or rate than is charged, demanded, collected or received by any such company from any other person, firm, association of persons or corporations for doing for him, them or it, a like service, if the transportation or service is of a like kind of traffic or service under substantially similar circumstances and conditions, such person or such officer or agent who acts for such corporation or company thus favored, shall be guilty of a misdemeanor, and, on conviction, for each offense, shall be fined not less than one hundred dollars and not more than one thousand dollars. [Id., p. 96.]

Art. 1538. **Director, officer, agent, receiver, etc., wilfully violating this law or permitting its violation, penalty.**—Any director, officer, agent or any receiver, trustee, leessee or person acting for, or employed by, any company subject to the provisions of this chapter, who alone, or with any other corporation, company, persons or party, shall wilfully do, or cause to be done, or shall wilfully suffer, or permit to be done, any act, matter or thing in this chapter prohibited or declared to be unlawful, or who shall aid or abet therein, or shall wilfully omit or fail to do any act, matter or thing in this act required to be done, or shall cause or wilfully suffer or permit any act, matter or thing so directed, required by this chapter to be done, not to be done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this chapter, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction, be subject to a fine of not less than one hundred dollars nor more than one thousand dollars; and, if the offense for which any person shall be convicted under this section shall be unlawful discrimination in rates, fares or charges for the transportation of passengers or property, or the transmission of messages, such person may, in addition to the fines hereinbefore provided for, at the discretion of the jury, be imprisoned in the penitentiary for a term not less than six months nor more than two years. [Id., p. 96.]

Art. 1539. **Person may be compelled to testify, exempt from prosecution.**—In any investigation, suit or prosecution which may be had, or instituted, under the provisions of this chapter, the court or tribunal in which the investigation, suit or prosecution is pending may compel all persons to attend and give testimony, and to produce such papers, books and documents as may be desired by the state; and no person shall be exempt from giving testimony therein; provided, however, that no criminal action or proceeding shall be brought or prosecuted against such witness on account of any testimony so given or furnished by him. [Id., p. 97.]

CHAPTER SEVENTEEN.

RAILROADS AND OTHER COMMON CARRIERS.—BILLS OF LADING, PRESCRIBING CERTAIN REQUIREMENTS FOR ISSUANCE.

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Penalty for duplication, etc., of order bill of lading	1548
Penalty for transfer of bill of lading issued in violation of this law	1549
Penalty for fraudulently procuring issuance of false bill of lading	1550

Article 1540. **All common carriers to issue bills of lading.**—It shall be the duty of all railroad companies, steamship companies and other common carriers, or receivers thereof, except express companies and pipe line companies, upon the receipt of freight for transportation, to issue bills of lading therefor, and to authenticate, validate or certify such bills of lading, when the same shall be demanded by the shipper, in accordance with the provisions of this chapter. [Act 1910, S. S., p. 138.]

Art. 1541. **What intrastate bills of lading shall, and interstate bills of lading may, contain.**—Each bill of lading issued by a common carrier, to which the provisions of this chapter apply, for an intrastate shipment, shall contain, and each bill of lading issued by such carrier for interstate or foreign shipment may contain, within the written or printed terms, in addition to the other requirements of this chapter, the following:

(a) The date of its issuance;

(b) The name of the person from whom the goods have been received;

(c) The place where the goods have been received;

(d) The place to which the goods are to be transported;

(e) A statement of whether the goods will be deliverd to a specific person or to the order of a specific person;

(f) A description of the goods, or the packages containing them, which may, however, be in terms such as may be approved by the railroad commission;

(g) The signature of the carrier, or the duly authorized agent of the carrier; said bill of lading shall be so signed with pen and ink, and the person signing the same shall attach his signature below all written, printed or stamped matter contained in said bill of lading, except the words, "Authorized agent of....." (stating the name of his principal), which shall appear below his signature;

(h) The carrier may insert in a bill of lading issued by him any other terms and conditions; provided, such terms and conditions shall not be contrary to law or public policy or the orders promulgated by the railroad commission; and provided, further, that no language shall be inserted in any bill of lading having the effect of limiting or avoiding any of the provisions of this chapter;

(i) Provided, that when any form of bill of lading has been approved by the interstate commerce commission, and has been adopted by any carrier and made a part of its tariff, then such bill of lading, as to interstate and foreign shipments, shall be a sufficient compliance with the provisions of this article. [Id., p. 139.]

Art. 1542. **"Straight" and "order" bills of lading defined; latter not issuable in duplicate, etc.**—A bill of lading in which it is stated that the goods

are consigned or destined to a specific person is a "straight" bill of lading; and a bill of lading in which it is stated that the goods are consigned to the order of any person named in such bill of lading is an "order" bill of lading. Order bills of lading shall not be issued in sets or in duplicate, but copies thereof may be issued; provided, such copy has written or printed across the face thereof: "Copy—not negotiable." [Id.]

Art. 1543. **Railroad commission shall prescribe forms, etc., of bills of lading, and regulate issuance thereof.**—It shall be the duty of the railroad commission of Texas to adopt and prescribe forms, terms and conditions for the authentication, certification and validation of all bills of lading issued by common carriers referred to in article ...., and to regulate the method and manner of their issuance, and to take all such steps as it may deem necessary to carry into effect the provisions of this chapter. [Id.]

Art. 1544. **Authority of agents of common carriers under this law to be posted.**—It shall be the duty of the carriers affected by this chapter to keep posted for public inspection in some conspicuous place in the station or place where freight is received an instrument of writing, authorizing the agent of such carrier, or person authorized to act for such carrier, selected for such purpose, to execute, sign and issue bills of lading; and the agent, or person so authorized to act for said carrier, so selected, shall attach his signature to such instrument in the same manner that he signs bills of lading. [Id.]

Art. 1545. **Penalty for failure or refusal of officer or agent to issue bill of lading.**—Any officer, agent or servant of any carrier, railroad or transportation company, or receiver thereof, affected by this chapter, who shall fail or refuse to issue a bill of lading in accordance with this chapter and the regulations and orders of the railroad commission, when the same is rightfully demanded, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding two hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment. [Id., p. 141.]

Art. 1546. **Penalty for issuing wrongful, fraudulent or unauthorized bill of lading.**—Any officer, agent or servant of a carrier, railroad or other transportation company, or receiver thereof, affected by this chapter, who shall wrongfully issue a bill of lading, with the intent to defraud any person, or who shall, with intent to defraud, knowingly misdescribe any goods, articles or other property, or the quantity or amount thereof, described in any bill of lading, or who shall knowingly issue a bill of lading without authority so to do, with the intent to defraud any person, shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by confinement in the state penitentiary for a term of not less than two years and not exceeding ten years. [Id.]

Art. 1547. **Penalty for forgery of name of agent, etc., to bill of lading, or uttering such forgery.**—Any person who shall forge the name of any agent of a railroad company, or other common carrier, to a bill of lading, with the intent to defraud, or who shall forge the name of any person to any certificate attached to a bill of lading issued by such carrier, with the intent to defraud, or who shall knowingly utter, or attempt to utter, any such forged instrument, with intent to defraud, shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by confinement in the state penitentiary for a term of not less than five years and not exceeding fifteen years. [Id.]

Art. 1548. **Penalty for duplication, etc., of order bill of lading.**—Any officer, agent or servant of a common carrier, who knowingly issues, or aids in issuing, or knowingly permits to be issued in parts or sets, or in duplicate, an order bill of lading, shall be guilty of a felony, and, upon conviction, shall be punished for such offense by a fine not exceeding five thou-

sand dollars, and by confinement in the state penitentiary for a term not exceeding five years. [Id.]

Art. 1549. **Penalty for transfer of bill of lading issued in violation of this law.**—Any person who knowingly, and with the intent to defraud, negotiates or transfers a bill of lading, issued in violation of the provisions of this chapter, or who knowingly, and with the intent to defraud, negotiates or transfers a bill of lading which contains any statement of fact that is untrue, and which statement relates to a material matter, shall be deemed guilty of a felony, and, upon conviction of such offense, shall be punished by a fine not exceeding five thousand dollars, and by imprisonment in the state penitentiary for a term not exceeding ten years. [Id.]

Art. 1550. **Penalty for fraudulently procuring issuance of bill of lading.**—Any person who shall knowingly and fraudulently procure, and cause the agent of any common carrier to make and set forth in any bill of lading issued by him on behalf of such carrier, any statements or representations which are false and which materially misrepresent the number, amount or quantity of the goods, chattels or other articles therein described, or who shall procure, or cause any agent of a common carrier to issue to him, a bill of lading, with the intent to defraud, shall be deemed guilty of a felony, and shall be punished by confinement in the penitentiary not less than two years nor more than five years. [Id.]

CHAPTER EIGHTEEN.

RAILROAD EMPLOYES—LIMITING THE WORK HOURS OF SAME.

	Article
On duty more than fourteen consecutive hours, prohibited; exceptions when	1551
Same subject	1552
Penalty for corporation or receiver violating this act	1553
Officer, agent or representative of corporation or receiver violating this act, penalty	1554
Railroad telegraph or telephone operator not to work more than eight hours in twenty-four consecutive hours, penalty	1555

Art. 1551. **On duty more than fourteen consecutive hours prohibited, exceptions when.**—It shall hereafter be unlawful for any corporation or receiver, operating any line of railroad, in whole or in part, in this state, or any officer, agent or representative of such corporation or receiver, to require, or knowingly permit, any conductor, engineer, fireman, brakeman, train dispatcher or telegraph operator, who has been on duty for fourteen consecutive hours, to perform any work, until he has had at least eight hours off duty, except in cases where such fourteen hours expires while a train is between stations or at a station where there are no facilities for sidetracking such train, in either of which events, the conductor, engineer, fireman, or brakeman, or all of them, may be permitted to proceed with such train to the first station where such facilities can be had, but no further; provided, however, that in case said fourteen hours shall expire when a train is within twenty miles of a terminal toward which it is going, or within twenty miles of its destination, the aforementioned employes, operating such train, may be permitted to proceed to such terminal or destination, but in such case shall not be required or permitted to do any switching or other work which would, in any manner, retard them in speedily reaching such terminal or destination; provided, further, that this

law shall not apply in case of casualty upon such railroad, directly affecting such employe, nor shall it apply to sleeping car companies. [Act 1907, p. 113.]

Art. 1552. **Same subject.**—It shall hereafter be unlawful for any corporation or receiver operating any line of railroad, in whole or in part, in this state, or any officer, agent or representative of such corporation or receiver to require, or knowingly permit, any conductor, engineer, fireman, brakeman, train dispatcher or telegraph operator, who has been on duty for fourteen consecutive hours, and who has gone off duty, to again go on duty or perform any work for such corporation or receiver, until he has had at least eight hours off duty. [Id., p. 114.]

Art. 1553. **Penalty for corporation or receiver violating this law.**—Any corporation or receiver, operating a line of raidroad, in whole or in part within this state, who shall violate any of the provisions of this law shall be liable to the state of Texas in a penalty of not less than two hundred dollars nor more than one thousand dollars for each offense; and such penalties shall be recovered, and suit therefor shall be brought, in the name of the state of Texas, in any court having jurisdiction of the amount in Travis county, Texas, or in any county into or through which said railroad may pass. Such suit or suits may be brought either by the attorney general or under his direction, or by the county attorney or district attorney of any county or judicial district into or through which said railroad may pass; and such attorney, bringing any action under this chapter shall be entitled to a compensation of one-third of the total amount of penalties recovered. [Id., p. 114.]

Art. 1554. **Officer, agent or representative of corporation or receiver violating this law, penalty.**—Any officer, agent or representative of any corporation or receiver, operating any line of railroad, in whole or in part, within this state, who shall violate any of the provisions of this chapter, shall be deemed guilty of a misdemeanor, and, upon conviction therefor, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars for each offense, or by confinement in the county jail for not less than ten nor more than sixty days, or by both such fine and imprisonment; and such person so offending may be prosecuted under this article, either in the county where such person may be at the time of the commission of the offense, or in any county where such employe has been permitted or required to work in violation of this chapter. [Id., p. 114.]

Art. 1555. **Railroad telegraph or telephone operator not to work more than eight hours in twenty-four consecutive hours, penalty.**—It shall be unlawful for any railroad telegraph or telephone operator to work more than eight hours in twenty-four consecutive hours at such occupation; and any such operator, violating this article, shall pay a fine in any sum not less than twenty-five dollars nor more than one hundred dollars; provided, that, in case of an emergency, any operator may remain on duty for an additional two hours. [Id., p. 223.]

CHAPTER NINETEEN.

RAILROAD COMPANIES.—REQUIRING ENGINEERS OR CONDUCTORS TO SERVE FIRST AS FIREMEN OR BRAKEMEN.

	Article
Person running a locomotive engine upon any railroad, qualification of	1556
Person engaged as conductor on railroad, qualification of	1557
Penalty for violating two preceding articles	1558
Shall not apply, when	1559
Not to apply to railroads less than twenty-five miles in length, or lessee or receiver thereof	1560

Article 1556. **Person running a locomotive engine upon any railroad, qualification of.**—If any person shall run or operate any locomotive engine upon any railroad in the state of Texas, without having served three years prior thereto as a fireman or engineer on a locomotive engine, he shall be deemed guilty of a misdemeanor, and he shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars; and each day he so engages shall constitute a separate offense. [Act 1909, p. 92.]

Art. 1557. **Person engaged as conductor on railroad, qualification of.**—If any person shall act, or engage to act, as a conductor on a railroad train in this state, without having for two years prior thereto served or worked in the capacity of a brakeman or conductor on a freight train on a line of railroad, he shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars; and each day he so engages shall constitute a separate offense. [Id., p. 92.]

Art. 1558. **Penalty for violating two preceding articles.**—If any person shall knowingly engage, promote, require, persuade, prevail upon or cause any person to do any act in violation of the provisions of the two preceding articles, he shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars; and each day he so engages shall constitute a separate offense. [Id., p. 92.]

Art. 1559. **Shall not apply, when.**—Nothing in this law shall be construed as applying to the running or operating of engines, in taking said engines to or from trains at division terminals by engine hostlers, or of the shifting of cars or making up trains, or doing any work appurtenant thereto at engine houses, tram or freight yards by switchman or yardman, or in the case of the disability of an engineer or a conductor while out on the road between division terminals. In case of emergency, where such companies can not obtain the employes, mentioned in this law, who have the qualifications prescribed by the provisions thereof, then such companies may employ temporary firemen, engineers and conductors who have not the qualifications prescribed by this law; but no such employment shall continue longer than such companies can supply their respective places with men who have the qualifications prescribed by this law; and provided, further, that nothing herein contained shall relieve any of such companies from the negligence of any of its employes. [Id., p. 92.]

Art. 1560. **Not to apply to railroads less than twenty-five miles in length, or lessee or receiver thereof.**—The provisions of this law shall not apply to any railroad company within this state or the receiver, lessee thereof, whose line of railway is less than twenty-five miles in length. [Id., p. 93.]

CHAPTER TWENTY.

RAILROAD COMPANIES REQUIRED TO DO REPAIR WORK IN TEXAS, AND FURNISH SUFFICIENT MOTIVE POWER.

Article		Article
Having shops in this state, required to repair, renovate or rebuild in Texas	1561	Penalty for violating this law	1564
Prohibited from sending cars, coaches, etc., out of Texas to be repaired	1562	Should equip and furnish sufficient motive power, etc., to handle passenger and freight traffic	1565
Not to apply to strikes, etc	1563	Penalty for violating preceding article	1566

Article 1561. **Having shops in this state, required to repair, renovate or rebuild in Texas.**—All railroad corporations operating in the state of Texas, and having their repair shops within the state, shall, and are hereby required to repair, renovate or rebuild, in the state of Texas, any and all defective or broken cars, coaches, locomotives or other equipment, owned or leased by said corporations in the state of Texas, when such rolling stock is within the state of Texas; provided, that such railway shall have, or be under obligation to have, proper facilities in the state, to do such work; and provided, this chapter shall not be so construed as to require any railway corporation to violate the safety appliance law of the congress of the United States; and provided, further, that no railway shall be required to haul such disabled equipment a greater distance for repairs at a point within the state of Texas than would be necessary to reach their repair shops in another state; and provided, further, that no such railway company shall haul, or be permitted to haul, for purposes of repair, any disabled equipment by or past any shop owned or operated by any such company, where said disabled equipment can be repaired, in order to reach some other repair shop at a greater distance, for purposes of repairing said disabled equipment; provided, that the provisions of this chapter shall not apply to companies having less than sixty continuous miles of railroad in operation in this state. [Act 1909, p. 73.]

Art. 1562. **Prohibited from sending cars, coaches, etc., out of Texas to be repaired.**—All railroad corporations operating in the state of Texas, and having their repair shops within the state, shall be prohibited from sending or removing any of their cars, coaches, locomotives or other equipment out of the state of Texas to be repaired, renovated or rebuilt, when the same is in a defective or broken condition, and within the state. [Id., p. 73.]

Art. 1563. **Not to apply to strikes, etc.**—The provisions of this chapter shall not apply in cases of strikes, fires, or other unforeseen casualties and emergencies. [Id., p. 73.]

Art. 1564. **Penalty for violating this law.**—Any railway corporation, lessee, receiver, superintendent, or agent, who shall violate any of the provisions of this chapter, shall, after conviction by any court of competent jurisdiction, be liable to a fine of not less than one hundred dollars nor more than five hundred dollars. [Id., p. 73.]

Art. 1565. **Shall equip and furnish sufficient motive power, etc., to handle passenger and freight traffic.**—It is hereby declared to be the duty of every railroad company, incorporated under the laws of the state of Texas and doing business in this state, under limitations and regulations prescribed by the railroad commission of Texas, to equip and provide sufficient motive power and rolling stock to handle all passenger and freight traffic expeditiously and without delay. [Act. 1907, p. 298.]

Art. 1566. **Penalty for violating preceding article.**—Any railroad company or common carrier failing to comply with the provisions of this chapter or to obey the orders of the railroad commission, made in pursuance of the provisions hereof, shall be deemed guilty of an abuse of their rights and privileges,

and, upon conviction, shall be subject to a fine of one hundred dollars for a violation or failure to comply with any order that may be issued by the railroad commission as is provided said commission may do by article 1553; and each day that such railroad company or common carrier neglects, fails or refuses to comply with such orders shall constitute a separate offense. [Id., p. 298.]

CHAPTER TWENTY-ONE.

RAILROAD COMPANIES PROHIBITED ESTABLISHING NAME FOR A STATION OTHER THAN NAME OF POSTOFFICE.

Station or depot in city or town to bear name of postoffice.....Article 1567
Not to apply, when.....Article 1568
Penalty for violation.....Article 1569

Article 1567. **Station or depot in city or town to bear name of postoffice.**—It shall hereafter be unlawful for any corporation or receiver, operating any line of railroad, in whole or part, in this state, or any officer, agent or representative of such corporation or receiver, to retain, maintain or establish a name for any railway station or depot, in any incorporated or unincorporated town or city within this state, other than the name of the town or city, which have, and bears, the name of its postoffice so given by the United States government. [Act 1909, p. 89.]

Art. 1568. **Not to apply, when.**—The provisions of article 1552 shall not apply to two or more incorporated or unincorporated towns or cities in this state which now are situated within five miles of each other, and which each have therein established postoffice named and designated by the United States government. Provided, that this chapter shall not apply to those cases where the postoffice name of the city, town, village or settlement is so similar in sound or otherwise to that of some other station upon such railroad, as that confusion in train orders and directions may arise therefrom; and provided, further, that where the name of such place is changed by the postal department of the federal government, such railway shall not be required to again change the name of its station; and provided, further, that all railways having stations affected hereby shall have ninety days from and after this chapter becomes effective to comply therewith. [Id., p. 89.]

Art. 1569. **Penalty for violation.**—Any officer, agent, or representative of any corporation, or receiver operating any line of railroad, in whole or in part, within this state, who shall violate the provisions of this chapter, shall be deemed guilty of a misdemeanor, and, upon a conviction therefor, shall be punished by a fine of not less than two hundred dollars nor more than five hundred dollars for such offense, or by confinement in the county jail for not less than thirty nor more than ninety days, or by both such fine and imprisonment. Provided, that the venue of all suits originating under the provisions of this chapter shall be in the county where the station, about which the suit occurs, is located. [Id., p. 89.]

CHAPTER TWENTY-TWO.

STREET RAILWAY.—REGULATING FARES IN CERTAIN CITIES AND TOWNS.

Article
Required to carry children of the age of twelve years or less for one-half fare; not to apply when.....1570
Provide for sale of children in lots of twenty, etc.....1571
Children under the age of five years transported free, when.....1572
Providing for transfers.....1573
Officer of any corporation violating this law, penalty.....1574
Person misrepresenting age or grade to secure reduced fare, penalty.....1575

Article 1570. **Required to carry children of the age of twelve years or less for half fare; not apply when.**—All persons or corporations, owning or operating street railways in or upon the public streets of any town or city in this state of not less than forty thousand inhabitants are required to carry children of the age of twelve years or less at, and for one-half, the charge or fare regularly collected by such person or corporation for the transportation of adult persons; provided, that this chapter shall not apply to street cars carrying children or students to and from schools, colleges, or other institutions of learning, situated at a distance of one mile or more beyond the limits of the incorporated city or town from which said cars run. [Act 1903, p. 182.]

Art. 1571. **Provide for sale of tickets in lots of twenty, etc.**—All such persons or corporations, owning or operating street railways, shall sell or provide for the sale of tickets in lots of twenty, each good for one trip over the lines or lines owned or operated by such person or corporation, at, and for, one-half the regular fare or charge collected for the transportation of adult persons, to students not more than seventeen years of age in actual attendance upon any academic, public or private school, of grades not higher than the grades of the public high schools of this state, situated within, or adjacent to, the town or city in which such street railway is located. Such tickets are required to be sold only upon the presentation by the student desiring to purchase the same of the written certificate of the principal of the school upon which he is in attendance, showing that he is not more than seventeen years of age, is in regular attendance upon such school, and is within the grades hereinbefore provided. Such tickets are not required to be sold to such students, and shall not be used except during the months of the year when such schools are in actual session; and such students shall be transported at half fare only upon the presentation of such tickets. [Id., p. 182.]

Art. 1572. **Children under the age of five years transported free, when.**—All such persons or corporations are required to transport children of the age of five years or less, when attended by a passenger of above said age, free of charge. [Id., p. 182.]

Art. 1573. **Providing for transfers.**—All such persons or corporations are required to accord to all passengers referred to in articles 1561, 1562 and 1563 the same rights as to the use of transfers issued by their own or other lines as are, or may be, accorded to passengers paying full fare. [Id., p. 182.]

Art. 1574. **Officer of any corporation violating this law, penalty.**—Any officer of any corporation or other person who shall knowingly violate any of the provisions of this chapter shall, upon conviction, be adjudged guilty of a misdemeanor, and fined not less than twenty-five nor more than one hundred dollars. [Id., p. 182.]

Art. 1575. **Person misrepresenting age or grade to secure reduced fare, penalty.**—Any person who shall misrepresent the age or the grade of any

person for the purpose of securing the reduced fare herein provided for shall, upon conviction, be adjudged guilty of a misdemeanor, and be fined not less than twenty-five nor more than one hundred dollars. [Id., p. 182.]

CHAPTER TWENTY-THREE.

ASSIGNOR.

Article
Secreting or concealing property from assignee.....1576

Article 1576. [1011] **Secreting or concealing property from assignee.**—If any assignor shall secrete or conceal from his asignee any portion of the property belonging to his estate, other than that which is exempt from execution, or shall, previous to, and in contemplation of, the assignment, transfer any property, with the intent or design to defraud his creditors, such assignor shall be adjudged guilty of a felony, and, upon conviction thereof, shall be punished by imprisonment and labor in the penitentiary for not less than two nor more than five years. [Act March 24, 1879, § 11.]

CHAPTER TWENTY-FOUR.

DUPLICATION OF PROCESS FOR WITNESSES.

Article
Duplication of process for witnesses; penalty.....1577

Article 1577. [1012] **Duplication of process for witnesses; penalty.**—It shall be unlawful for the clerk of any district court, after a witness in a felony case has been served with a subpoena or an attachment, to issue any other or further process for said witness, except upon the order of the presiding judge, made upon application to him for that purpose. When a witness has been served with process by one party, it shall inure to the benefit of the opposite party, in case he should need said witness; and, as far as practicable, the clerk shall include in one process the names of all witnesses for the state and defendant; and such process shall show that the witnesses are summoned for the state and defendant. Any district clerk who shall violate the provisions of this law shall be deemed guilty of a misdemeanor, and punished by a fine of not less than ten nor more than one hundred dollars. [Act 21st Leg., March 30, 1889, ch. 121, p. 145.]

Construed. This article, inhibiting clerks from issuing further process where the witness has been served with process by one party, except upon order of the judge, etc., applies only in felony cases, and has no application to misdemeanors. Searcy v. State, 40 T. Cr. R., 460, 53 S. W. R., 344.

CHAPTER TWENTY-FIVE.

COUNTY FINANCES.

	Article		Article
State or county officer refusing information	1578	Members of commissioners' court failing or refusing to vote; penalty	1582
Clerk failing to keep finance ledger	1579	Selecting depository of funds of city	1583
Treasurer failing to make report	1580	Check and warrants on city depository, how drawn; penalty for violation	1584
Selecting depository of funds of county	1581		

Article 1578. [1013] **State or county officer refusing information.**—If any state or county officer shall fail or refuse to give any data, statistics and information required of him by law, such state or county officer shall be guilty of a misdemeanor, and, upon conviction, be fined in a sum not less than twenty-five nor more than one hundred dollars. [Act 21st Leg., April 2, 1889, p. 23.]

Art. 1579. [1013a] **Clerk failing to keep finance ledger.**—If the clerk of the county court of any county in this state, or county auditor in counties having an auditor, shall wilfully fail, neglect, or refuse to keep, or cause to be kept, the finance ledger, provided for by law, or shall wilfully fail, neglect, or refuse to make, or cause to be made, the quarterly statement as provided for by law, the clerk or auditor so failing, neglecting or refusing shall be fined in any sum not less than fifty nor more than two hundred dollars; provided, that such failure, neglect, or refusal, for each quarter, shall constitute a separate offense. [Act 1893, p. 161.]

Art. 1580. [1013b] **Treasurer failing to make report.**—Any county or city treasurer, or treasurer of the school board of each city or town having exclusive control of its schools, failing to make and transmit the report required by law, and certified copy, or either, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than fifty dollars nor more than five hundred dollars. [Act 1893, p. 188.]

Art. 1581. **Selecting depository of funds for county.**—The commissioners' court of each county in this state are authorized, at the February term thereof every two years, to receive proposals from any banking incorporation, association or individual banker in such county, as may desire to be selected as the depository of the funds of such county. Notice that such bids will be received shall be published by, and over the name of the county judge, once each week for at least twenty days before commencement of such term, in some newspaper published in said county; and, if no newspaper be published therein, then, in any newspaper published in the nearest county; and, in addition thereto, notice shall be published by posting same at the courthouse door of said county. [Act 1907, p. 208.]

Art. 1582. **Member of commissioners' court failing or refusing to vote; penalty.**—Any member of the commissioners' court of any county who shall fail or refuse to vote for a compliance with the requirements of this section shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by a fine of not less than one hundred nor more than five hundred dollars, or by imprisonment in the county jail for less than one nor more than six months, or by both such fine and imprisonment; and such failure or refusal shall be deemed ground for removal from office. [Id., p. 208.]

Art. 1583. **Selecting depository of funds of city.**—The city council of every city in the state of Texas, incorporated under the general laws thereof, or incorporated under special charter, at its regular meeting in July of each year, is authorized to receive sealed proposals, for the custody of the city funds, from any banking corporation, association or individual banker, doing business within the city, that may desire to be selected as the depository of the funds of the city. The school funds, from whatsoever source derived, of incor-

porated cities, is part of the city funds, and is subject to the provisions of this chapter. Notice that such bids will be received shall be published by the city secretary, not less than one nor more than four weeks before such meeting, in some newspaper published in the city. Any banking corporation, association or individual banker, doing business in the city, desiring to bid, shall deliver to the city secretary on or before the day of such meeting designated by said published notice, a sealed proposal, stating the rate per cent upon daily balances that said banking corporation, association or individual banker offers to pay to the city for the privilege of being made the depository of the funds of the city for the year next following the date of such meeting; or, in the event that said election shall be made for a less term than one year, as hereinafter provided, then, for the time between the date of bid and the next regular time for the selection of a depository as aforesaid. All such proposals shall be securely kept by the secretary, and shall not be opened until the meeting of the council for the purpose of passing upon same; nor shall any other proposals be received after they shall have been opened. It shall be a misdemeanor for the city secretary or other person to open any of said proposals, or to disclose, directly or indirectly, the amount of any such bid to any person or persons before the selection of such depository, and, upon conviction, he shall be fined in a sum of not less than ten nor more than one hundred dollars. [Id., p. 132.]

Art. 1584. **Check and warrants on city depository, how drawn, penalty for violation.**—No check shall be drawn upon the city depository by the treasurer, except upon a warrant signed by the mayor and attested by the secretary. No warrant shall be drawn by the mayor and secretary upon any of the special funds, created for the purpose of paying the bonded indebtedness of said city in the hands of the city treasurer, or in the depository, for any purpose whatsoever, other than to pay the principal or interest of said special fund, or for the purpose of investing said special fund according to law. No city treasurer shall pay off, or issue a check, to pay any money out of any special fund created for the purpose of paying any bonded indebtedness of said city other than for the purpose to pay interest due on said bonds, the principal of said bonds, or for the purpose of making an investment of said fund according to law. Any mayor who shall draw a warrant against a special fund, as above defined, for any other purpose than above specified, or any city treasurer who shall pay, or issue a check to pay, a warrant drawn on the special fund of any city, other than for the legal purpose of paying interest due on said bonds, the principal of said bonds, of for investing said sinking fund according to law, shall be guilty of a felony, and, upon conviction, shall be confined in the penitentiary for any term not less than one year nor more than five years. [Act 1905, p. 397.]

CHAPTER TWENTY-SIX.

BUREAU OF LABOR STATISTICS.

	Article
Commissioner of labor statistics, duty of	1585
Power to issue subpoena, etc., penalty for person failing to attend or testify	1586
Owner, manager, etc., of factory, mill, etc., duty of	1587
Name of, shall not be disclosed by commissioner	1588
Commissioner may enter factory, mill, store, etc., when	1589
Shall give written notice to district or county attorney, when	1590
Owner, manager or person in control of factory, mill, etc., refusing to allow officer of bureau of labor statistics to enter; penalty	1591

Article 1585. **Commissioner of labor statistics, duty of.**—The commissioner of labor statistics shall collect, assort, systematize and present in biennial reports to the governor, statistical details relating to all departments of labor in Texas, and especially as affecting or bearing upon the commercial, social, educational and sanitary conditions of the employes and their families, the means of escape from dangers incident to their employment, the protection of life and health in factories and other places of employment, the labor of children and of women and the number of hours of labor exacted of them, and, in general, all matters and things which affect or tend to affect the prosperity of the mechanical, manufacturing and productive industries of this state, and of the persons employed therein. Said commissioner shall also, as fully as may be done, collect reliable reports and information from each county, showing the amount and condition of the mechanical, mining and manufacturing interests therein, and all sites offering natural or acquired advantages for the location and operation of any of the different branches of industry; and he shall, by correspondence with interested parties in other parts of the United States, or in foreign countries, impart to them such information as may tend to induce the location of manufacturing and producing plants within the state, together with such information as may tend to increase the employment of labor and the products of such employment in Texas. [Act 1909, p. 59.]

Art. 1586. **Power to issue subpoena, etc., penalty for person failing to attend or testify.**—The commissioner of the bureau of labor statistics shall have power to issue subpoenas, administer oaths and take testimony in all matters related to the duties herein required of the said bureau, but such testimony must be taken in the vicinity of the residence or office of the person testifying. Any person duly subpoenaed under the provisions of this chapter who shall wilfully neglect or fail to attend or testify, at the time and place mentioned in the subpoena, shall be deemed guilty of a misdemeanor, and, upon conviction thereof before any court of competent jurisdiction, shall be punished by a fine of not to exceed fifty dollars, or by imprisonment in the county jail for not to exceed thirty days. Provided, however, that no witness shall be compelled to go outside of the county in which he resides in order to testify. [Id., p. 60.]

Art. 1587. **Owner, manager, etc., of factory, mill, etc., duty of.**—It shall be the duty of every owner, manager and superintendent of every factory, mill, workshop, mine, store, business house, public or private work, or any other establishment or place, where five or more persons are employed at work, to make to the bureau of labor statistics, upon blanks to be furnished by such bureau, such reports and returns as said bureau may require for the purpose of securing such labor statistics as are contemplated by this chapter; and such reports and returns shall be made within not to exceed sixty days from the receipt of the blanks furnished by the commissioner or by the bureau; and the same shall be verified under oath. Any owner, manager, superintendent or

other person in charge or control of any factory, mill, workshop, mine, store, business house, public or private work, or other establishment or place, where five or more persons are employed at work, who shall neglect or refuse to make such reports and returns as are required by the provisions of this chapter, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not to exceed one hundred dollars, or by imprisonment in the county jail for not to exceed thirty days. [Id., p. 60.]

Art. 1588. **Name of same shall not be disclosed by commissioner.**—In the reports made by the commissioner of labor statistics to the governor, the names of individuals, firms or corporations, supplying information under the provisions of this chapter, shall not be disclosed; nor shall the name of any such individual, firm or corporation be communicated to any person or persons, except such as are employed in the bureau of labor statistics; and any officer or employe of such bureau violating any of the provisions of this article shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not to exceed five hundred dollars, or by imprisonment in the county jail for not more than ninety days. [Id., p. 60.]

Art. 1589. **Commissioner may enter mill, factory, store, etc., when.**—Upon the written complaint of two or more persons, or upon his failure otherwise to obtain information, in accordance with the provisions of this chapter, the commissioner of labor statistics shall have the power to enter any factory, mill, workshop, mine, store, business house, public or private work, or other establishment, or place where five or more persons are employed at work, when the same is open and in operation, for the purpose of gathering facts and statistics, such as are contemplated by this chapter, and for the purpose of examining into the methods of protecting employes from danger, and the sanitary conditions in and around such building or place, of all of which, the said commissioner shall make and return into the bureau of labor statistics a true and detailed record in writing. [Id., p. 61.]

Art. 1590. **Shall give written notice to district or county attorney, when.**—If the commissioner of labor statistics shall learn of any violation of the law with respect to the employment of children, or fire escapes, or the safety of employes, or the preservation of health, or in any other way affecting the employes, he shall at once give written notice of the facts to the county or district attorney of the county in which the law has been violated, or of some other county, if any there be, having jurisdiction of the offense; and the county or district attorney to whom such notice has been given shall immediately institute the proper proceedings against the guilty person. [Id., p 61.]

Art. 1591. **Owner, manager or person in control of factory, mill, etc., refusing to allow officer of bureau of labor statistics to enter; penalty.**—Any owner, manager, superintendent or other person in charge or control of any factory, mill, workshop, mine, store, business house, public or private work, or other establishment or place, where five or more persons are employed at work, who shall refuse to allow any officer or employe of the said bureau of labor statistics to enter the same, or to remain therein for such time as is reasonably necessary, or who shall hinder any such officer or employe, or in any way prevent or deter him from collecting information, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not to exceed one hundred dollars, or imprisonment in the county jail for not to exceed sixty days. [Id., p. 61.]

CHAPTER TWENTY-SEVEN.

MINES AND MINING.

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Article 1592. **Owner, lessee, agent, etc., operating mine, duty of.**—It shall be unlawful for the owner, agent, lessee, receiver or operator of any mine in this state to employ any person or persons in said mine for the purpose of working therein, unless there are in connection with every seam or stratum of coal or ore worked in such mine not less than two openings or outlets, separated by a stratum of not less than one hundred and fifty feet at surface and not less than thirty feet at any place, at which openings or outlets, safe and distinct means of ingress and egress, shall, at all times, be available for the persons employed in such mine. The escapement shafts or slopes shall be fitted with safe and available appliances, by which the employes of the mine may readily escape in case of accident. In slopes used as haulage roads, where the dip or incline is ten degrees or more, there must be provided a separate traveling way, which shall be maintained in a safe condition for travel, and kept free from dangerous gases. [Act 1903, p. 103.]

Art. 1593. **Time for completing escapement shaft.**—The time which shall be allowed for completing such escapement shaft or opening as is required by the terms of this chapter, shall be: For mines already opened, one year for sinking any shaft or slope two hundred feet or less in depth, and one additional year, or pro rata portion thereof, for every additional two hundred feet or fraction thereof; but, for mines which shall be opened after the taking effect of this chapter, the time allowed shall be two years for all shafts or slopes more than two hundred feet in depth, and one year for all shafts two hundred feet in depth or less; and the time shall be reckoned in all cases from the date on which coal or ore is first hoisted from the original shaft or slope, for sale or use. [Id., p. 103.]

Art. 1594. **Shafts, cages and passways, constructed, how.**—Any shaft in process of sinking, and any opening projected for the purpose of mining coal of all kinds, shall be subjected to the provisions of this chapter.

At the bottom of every shaft and every caging place therein, a safe, commodious passageway must be cut around said landing place, to serve as a traveling way by which employes shall pass from one side of the shaft to the other, without passing under or near the cage.

The upper and lower landings at the top of each shaft, and the openings of each intermediate seam from or to the shaft, shall be clear and free from loose materials, and shall be securely fenced with automatic or other gates or bars, so as to prevent either men or materials from falling into the shaft.

Every hoisting shaft must be equipped with substantial cages fitted to guide rails running from the top to the bottom. Said cages must be safely constructed, they must be furnished with suitable boiler iron covers to protect persons riding thereon from falling objects, and they must be equipped with safety catches. Every cage on which people are carried must be fitted with iron bars, rings, or chains in proper place and in sufficient number to

furnish a secure handhold for every person permitted to ride thereon. At the top landing, cage supports, where necessary, must be carefully set and adjusted so as to work properly, and securely hold the cages when at rest.

In all cases where the human voice cannot be distinctly heard, there shall be provided a metal tube or telephone from the top to the bottom of the shaft or slope through which conversation may be held between persons at the bottom and top of such shaft or slope, and that there shall also be maintained an efficient system of signaling to and from the top of the shaft or slope and each seam or opening.

Every underground place on which persons travel, worked by self-acting engines, windlasses or machinery of any description, shall be provided with practical means of signaling between the stopping places and the ends of the plane, and shall further be provided, at intervals of not more than sixty feet, with sufficient manholes for places of refuge.

Every mine shall be supplied with props and timbers of suitable length and size; and, if from any cause the timbers are not supplied when required, the miners shall vacate any and all such working places until supplied with timber needed.

All openings, worked out or abandoned portions of every operated mine likely to accumulate explosive gases or dangerous conditions shall be securely gobbed and blocked off from the operated portions thereof, so as to protect every person working in such mines from all danger that may be caused or produced by such worked out portions of such mines. [Act 1907, p. 331]

Art. 1595. **Current of fresh air shall be maintained throughout mine.**—(a) Throughout every mine there shall be maintained currents of fresh air sufficient for the health and safety of all men and animals employed therein; and such ventilation shall be produced by a fan or some other artificial means; provided, a furnace shall not be used for ventilating any mine in which explosive gases are generated.

(b) The quantity of air required to be kept in circulation and passing a given point shall be not less than one hundred cubic feet per minute for each person, and not less than three hundred cubic feet per minute for each animal in the mine, measured at the foot of the downcast; and this quantity may be increased at the discretion of the inspector, whenever, in his judgment, unusual conditions make a stronger current necessary. Said current shall be forced into every working place throughout the mine, so that all parts of the same shall be reasonably free from standing powder smoke and deleterious air of any kind.

(c) The measurement of the current of air shall be taken with an anemometer at the foot of the downcast, at the foot of the upcast, and at the working face of each division or split of the air current.

(d) The main current of air shall be split or subdivided as to provide a separate current of reasonably pure air to every one hundred men at work; and the inspector shall have authority to order separate currents for smaller groups of men, if in his judgment special conditions make it necessary.

(e) The air current for ventilating the stable shall not pass into the intake air current for ventilating the working parts of the mine.

(f) Whenever the inspector shall find men working without sufficient air, he shall at once give the mine manager or operator notice and a reasonable time in which to restore the current, and, upon his or their refusal or neglect to act promptly, the inspector may order the endangered men out of the mine. [Id., p. 332.]

Art. 1596. **Appearance of fire damp, notice to be given.**—Immediate notice must be conveyed by the miner or mine owner to the inspector, upon the appearance of any large body of fire damp in any mine, whether accompanied by

any explosion or not, and upon the concurrence of any serious fire within the mine or on the surface. [Id., p. 333.]

Art. 1597. **Cages on which men are riding, how constructed, speed of.**—Cages on which men are riding shall not be lifted or lowered at a rate greater than six hundred feet per minute, except with the written consent of the inspector. No person shall carry any tools or material with him on a cage in motion, except for use in making repairs; and no one shall ride on a cage while the other cage contains a loaded car. No cage, having an unstable or self-dumping platform, shall be used for the carriage of men or materials, unless the same is provided with some convenient device, by which said platform can be securely locked, and unless it is so locked whenever men or material are being conveyed thereon. [Id., p. 333.]

Art. 1598. **Powder in mine, how carried.**—No miner or other person shall carry powder into the mine, except in the original keg or in a regulation powder can, securely fastened, and the can in otherwise air tight condition. [Id., p. 333.]

"Same offense," as used in this article, means another offense of like character, and is not meant to be applied to the same identical offense. Muckenfuss v. State, 55 T. Cr. R., 216, 117 S. W. R., 853.

Art. 1599. **Cut-throughs, how made.**—It shall be the duty of the mine foreman to see that proper cut-throughs are made in all the pillars at such distances as in the judgment of the mine inspector may be deemed requisite, not more than twenty yards nor less than ten yards apart, for the purpose of ventilation; and the ventilation shall be conducted through said cut-throughs into the rooms and entries by means of check doors made of canvas or other material, placed on the entries or in other suitable places; and he shall not permit any room to be opened in advance of the ventilating current. Should the mine inspector discover any room, entry, airway or other working place being driven in advance of the air current contrary to the requirements of this article, he shall order the workmen in such places to cease work at once until the law is complied with. [Id., p. 333.]

Art 1600. **Safety lamps to be kept when necessary.**—At any mine where the inspector shall find fire damp is being generated so as to require the use of a safety lamp in any part thereof, the operator of such mine, upon receiving notice from the inspector that one or more such lamps are necessary for the safety of the men in the mines, shall at once procure and keep for use such number of safety lamps as may be necessary. [Id., p. 334.]

Art. 1601. **Shaft, safety lamp, etc., shall not be injured.**—It shall be unlawful for any miner, workman or other person, knowingly or carelessly, to injure any shaft, safety lamp, instrument, air-course or brattice, or to obstruct or throw open an air-way, or to carry any open lamp or lighted pipe or fire in any form into a place worked by the light of safety lamps, or within three feet of any open powder, or to handle or disturb any part of the hoisting machinery, or to enter any part of the mine against caution, or to do any wilful act whereby the lives or health of persons working in mines, or the security of the mine machinery thereof, is endangered. [Id., p. 334.]

Art. 1602. **Rules printed in English shall be posted.**—It shall be the duty of every operator to post on the engine house and at the pit top of his mine, in such manner that the employes of the mine can read them, rules not inconsistent with this chapter, plainly printed in the English language, which shall govern all persons working in the mine. And the posting of such notice, as provided, shall charge all employes of such mine with legal notice of the contents thereof. [Id., p. 334.]

Art. 1603. **Adequate and accurate scales shall be provided.**—The owner or operator of every mine shall provide adequate and accurate scales for weigh-

ing coal; and it shall be the duty of the mine inspector to examine such scales, and, if same are not found to be accurate, he shall notify the owner to repair same; and, if such owner fails or refuses to repair same within a reasonable time, said inspector shall institute proceedings under the law against the proper parties. [Id., p. 334.]

Art. 1604. **Employes shall have right to employ check weighman.**—The employes in any mine in this state shall have the right to employ a check weighman at their own option and their own expense. [Id., p. 334.]

Art. 1605. **Kind of oil to be used in mine.**—No miner or other person employed in a mine shall use any kind of oil other than a good quality of lard oil for lighting purposes, except when repairing downcast or upcast shafts. [Id., p. 334.]

Art. 1606. **Any person violating any of the provisions hereof, penalty.**—Any person who shall wilfully violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not exceeding five hundred dollars, or imprisonment in the county jail for a period not exceeding six months. [Id., p. 334.]

CHAPTER TWENTY-EIGHT.

PENITENTIARIES.—CONTROL AND TREATMENT OF PRISONERS.

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Article 1607. **Prison commission created.**—The management and control of the prison system of the state of Texas shall be vested in a board, to be known as the board of prison commissioners, and, for the purposes of this chapter, shall be referred to as the prison commission. Said board of prison commisioners shall be composed of three men, to be appointed by the governor, with the advice and consent of the senate, whose term of office shall be two years from date of appointment, except those first appointed under this chapter, who shall hold their offices, respectively, for eight, sixteen and twenty-four months from the date of their appointment and qualification. [Act 1910, S. S., p. 143.]

Art. 1608. **Commission charged with direction of state prison system and care, etc., of prisoners.**—The prison commission shall be vested with the exclusive management and control of the prison system of this state, and shall be held responsible for the proper care, treatment, feeding, clothing and management of the prisoners confined therein, and at all times for the faithful enforcement of the spirit, intent and purpose of the laws and rules governing said system; provided, that the prison commission shall be held responsible for maltreatment of prisoners, and, if permitted, it shall be grounds for removal from office. [Id., p. 145.]

Art. 1609. **Commission to classify prisoners into three classes and each class into three grades.**—The prison commission shall provide for the classi-

fication of all prisoners, separating them into the following classes: In the first class shall be included young men, first offenders, those appearing to be corrigible, or less vicious than others, and likely to observe the laws, and to maintain themselves by honest industry after their discharge. In the second class shall be included those appearing to be less corrigible, or more vicious, but content to work and reasonably obedient to prison discipline as not to seriously interfere with the productiveness of their labor, or with the labor or conduct of those with whom they may be employed. In the third class shall be included those appearing to be incorrigible or so insubordinate or so vicious in their nature as to seriously interfere with the labor and moral development of those with whom they must come in contact.

The prison commission shall make rules and regulations for the promotion and reduction of the prisoners from one class to another, and shall transfer them from one class to another from time to time, as they may seem to merit promotion or reduction.

The prisoners in each of the classes hereinbefore named, shall be kept in, or upon different or separate prisons or farms. Any prisoner, upon entering the prison system, shall be assigned to one of its institutions according to his class, as hereinbefore provided, and shall be entered in said institution in a neutral grade, which shall be known as grade No. 2, and in which he shall be furnished with a suitable uniform designated for that grade. The prison commission shall adopt rules for a higher grade which shall be known as grade No. 1, as a reward for obedience to prison discipline and good conduct, and shall provide a suitable uniform for this grade; and they shall provide for a lower grade as a punishment for misconduct and violation of prison discipline, which grade shall be known as No. 3, and in which the prisoner shall be clothed in stripes. The uniforms for grades Nos. 1 and 2 shall not be stripes. The prison commission shall provide rules for promotion of prisoners from any grade to another for good conduct and obedience to prison discipline. and for demotion of prisoners for misconduct and violation of prison discipline. The prison commission shall provide specifically for the extension or denial of privileges for the various grades herein provided. [Id., p. 151.]

Art. 1610. **Penalty for excessive whipping of refractory prisoners.**—The prison commission may adopt such modes of punishment as may be necessary, such punisment being always humane, and placing prisoners in stocks, shall be prohibited. Whipping with not exceeding twenty lashes on the bare rump and thighs may be resorted to with prisoners of the third class, who can not be made to observe the rules by milder methods of punishment. The strap to be used must be of leather, not over two and one-half inches wide, and twenty-four inches long, attached to a wooden handle; no convict shall be whipped until same has been authorized by at least two members of the prison commission upon their written order; and such order so issued shall be executed only in the presence of a prison physician; and a sworn report shall be made by the officer executing such order to the penitentiary commission, who shall keep a record of all such reports in a well bound book to be kept for that purpose, which shall be at all times open to public inspection; and such report, so to be made by such officer executing the order of the prison commission, shall state the name of the convict whipped, the number of strokes administered, the size of the strap used, the time and place thereof, in whose presence same was done, and the cause thereof. It shall further be the duty of the prison commission to make a semi-annual report of the whipping of convicts to the district judge of the county where such whipping occurred, who shall report same to the grand jury, which is hereby authorized to make investigation thereof, if they deem same advisable. The utmost care must be used by the officer executing the order of the commission not to break the skin of the prisoner whipped; and any person guilty of whipping a prisoner more

lashes, or other than as provided herein, or striking a prisoner, except in self-defense, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than two hundred and fifty dollars, and imprisoned in the county jail not less than thirty days nor more than six months. White and negro prisoners shall not be worked together when it can be avoided, and shall be kept separate when not at work. [Id., p. 152.]

Art. 1611. **Penalty for misapplication of money of prisoners by officers, etc., of prison.**—Prisoners, when received into the penitentiary, shall be carefully searched. If money be found on the person of the prisoner, or received by him at any time, it shall be taken in charge by the prison commission and placed to the prisoner's credit, and expended for the prisoner's benefit on his written order, and under such restrictions as may be prescribed by law or the rules. Any officer or employe, having charge of a prisoner's money, who misappropriates the same or any part thereof, shall be deemed guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary for a term of not more than five years. [Id., p. 156.]

Art. 1612. **Duties of officers, etc., on decease of prisoner, and penalty for failure to perform.**—If any prisoner shall die while in prison, the officer in charge of the prisoner at the time of his death shall immediately report the same to the prison commission, and, if he knows the address or place of residence of any relative within the third degree, either by consanguinity or affinity, shall also notify by wire said relative of the death of such prisoner, and, if the relative of such prisoner claim the body or will take charge of same, then the body of such prisoner shall be turned over to such relative; and the expense of shipping the body to where it is to be buried, provided it is within this state, shall be paid by the prison commission out of any available penitentiary funds on hand, upon the request of such relative. If the residence and address of the relative of such prisoner is unknown, such prisoner shall be decently buried in citizen's clothes, and the grave marked by a stone with the name of said prisoner, date of death and age, if known, inscribed thereon. If the body of such prisoner is not claimed by the relatives, the prison commission shall at once notify the county judge of the county from which the prisoner was sentenced, of his death, the date and cause of death and place of burial. The prison commission shall cause to be made and kept a record of the deaths of prisoners, and certified copies of same, made by the custodian thereof, shall be admissible in evidence under the rules of law applying to official records. Any officer or employe of the prison system of whom any duties are required by this article, who shall fail to discharge such duties, shall be guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding five hundred dollars. [Id.]

Art. 1613. **Same.**—The prison commission, or other person in charge of prisoners, upon the death of any prisoner under their care and control, shall at once notify the nearest justice of the peace of the county in which said prisoner died, of the death of said prisoner; and it shall be the duty of such justice of the peace, when so notified of the death of such priosner, to go in person and make a personal examination of the body of such prisoner, and inquire into the cause of the death of such prisoner; and said justice of the peace shall reduce to writing the evidence taken during such inquest, and shall furnish a copy of the same to the prison commission, and a copy of the same to the district judge of the county in which said prisoner died; and the copy so furnished to said district judge shall be turned over by the district judge to the succeeding grand jury; and the said judge shall charge the grand jury, if there should be any suspicion of wrong-doing shown by the inquest papers, to thoroughly investigate the cause of such death.

Any officer or employe of the prison system, having charge of any prisoner at the time of the death of such prisoner, who shall fail to immediately notify a justice of the peace of the death of such prisoner, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, and by confinement in the county jail not less than sixty days nor more than one year; provided, that the justice of the peace making such examination shall be paid a fee as is now provided by law for holding inquests, said fee to be on sworn account therefor, approved by the prison commission. [Id.]

Art. 1614. **Prison physician failing to make report, or making false report.**—The prison commission shall provide for competent medical attention for all prisoners, and shall establish rules whereby all physicians shall be required to keep a record of all cases of sickness, accident or injury which they treat. The physicians so employed shall be reputable practicing physicians of not less than two years of experience in practice. Each physician employed in the prison system shall, at the end of each month, file with the prison commission a report in writing, subscribed and sworn to by him, which report shall state the names, race and sex of each prisoner treated or examined by him during said month, the malady or disease with which each was afflicted, and, if any shall be suffering with wounds or injuries inflicted by accident or some individual, he shall state the nature and extent of said injuries, by whom and by what means inflicted, or how the same occurred, and all such other information concerning said matters, and the condition of each prisoner treated or examined by him during said months, as he may possess; provided, further, that for a failure to make such a report or any false statement knowingly made by any such physician in any such reports, he shall be prosecuted for the offense of perjury or false swearing, as provided by law. [Id., p. 157.]

Art. 1615. **Conversion of prison property declared to be theft and punishable as such.**—Any officer or employe of the prison system, who shall fraudulently convert to his own use and benefit any food, clothing, or other property, belonging to or under control of the prison system, shall be guilty of theft, and, upon conviction, be punished as prescribed by law. [Id., p. 158.]

Art. 1616. **Felony for officer, etc., to acquire financial interest in contracts on behalf of prison, or to peculate in any prison transaction; penalty.**—Any officer, agent or employe, in any capacity connected with the prison system of this state, who shall be financially interested, either directly or indirectly, in any contract for the furnishing of supplies or property to the prison system, of the purchase of supplies or property for the prison system, or who shall be financially interested in any contract to which said prison system is a party, or who shall knowingly and fraudulently sell or dispose of any property belonging to said prison system below its reasonable market value, or who shall be financially interested in any other transaction connected with the prison system, shall be guilty of a felony, and, upon conviction thereof, shall be punished by confinement in the state penitentiary for a term of not less than two years nor more than five years; and each transaction shall constitute a separate offense. [Id.]

Art. 1617. **Officer, etc., inflicting unauthorized punishment on any prisoner; penalty.**—Any sergeant, guard or other officer or employe of the prison system of this state who shall inflict any punishment upon a prisoner, not authorized by the rules of the prison system, shall be guilty of an assault, and, upon conviction thereof, shall be punished as prescribed by law; and it shall be the duty of the prison commission to make complaint before the proper officer of any county in which such assault was committed upon such prisoner. Provided, that in all cases where any person is charged by complaint or indictment with an offense against a prisoner, prisoners and ex-prisoners shall be permitted to testify. [Id.]

TITLE 19.

REPETITION OF OFFENSES.

Second and subsequent convictions for misdemeanor ..... Article 1618
Subsequent conviction for felony..... Article 1619
Third conviction for felony, how punished ..... Article 1620
Second conviction for capital offense, how punished ..... Article 1621

Article 1618. [1014] **Second and subsequent convictions for misdemeanor.**—If it be shown on the trial of a misdemeanor that the defendant has been once before convicted of the same offense, he shall, on a second conviction, receive double the punishment prescribed for such offense in ordinary cases; and upon a third, or any subsequent conviction for the same offense, the punishment shall be increased, so as not to exceed four times the penalty in ordinary cases. [P. C. 818.]

Art. 1619. [1015] **Subsequent conviction for felony.**—If it be shown, on the trial of a felony less than capital, that the defendant has been before convicted of the same offense, or one of the same nature, the punishment on such second or other subsequent conviction shall be the highest which is affixed to the commission of such offenses in ordinary cases. [P. C. 819.]

Art 1620. [1016] **Third conviction for felony; how punished.**—Any person who shall have been three times convicted of a felony less than capital, shall, on such third conviction, be imprisoned to hard labor for life in the penitentiary. [P. C. 820.]

Art. 1621. [1017] **Second conviction for capital offense; how punished.**—A person convicted a second time of any offense to which the penalty of death is affixed as an alternate punishment, shall not receive, on such second conviction, a less punishment than imprisonment for life in the penitentiary. [P. C. 821.]

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