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Penal Code



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SUPPLEMENT
TO
THE PENAL CODE

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SUPPLEMENT TO THE PENAL CODE

TITLE 1

GENERAL PROVISIONS RELATING TO THE WHOLE CODE

Chap.

1. The general objects of the Code, principles on which it is founded, and rules for its interpretation.

Chap.

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

Art.

3. All penalties must be affixed by written law.
4. Common law the rule of construction, when.
6. Unintelligible law not operative.
9. General rule of construction.

Art.

10. Words specially defined, how understood.
15. Effect of modification by subsequent law.
17. When new penalty is substituted.

Article 3. [3] All penalties must be affixed by written law.

8. Punishable offenses.—Under arts. 3 and 6, art. 130, punishing the pursuing of taxable occupations without first obtaining a license, when read in connection with Rev. Civ. St. 1911, arts. 7355, 7357, imposing a tax on peddlers of patent medicines, prescribes a penal offense on one peddling patent medicines without first obtaining a license. South v. State, 72 Cr. R. 381, 162 S. W. 510.

Under this article, a violation of art. 4517, Civil Statutes, making it a misdemeanor to fail to make reports to the state superintendent, is not punishable because the penalty provisions are omitted from the civil and criminal statutes. Hall v. State (Cr. App.) 188 S. W. 1002.

Art. 4. [4] Common law rule of construction, when.

Cited, Hipple v. State (Cr. App.) 191 S. W. 1150, L. R. A. 1917D, 1141.

Art. 6. [6] Unintelligible law not operative.

Definiteness.—See South v. State, 72 Cr. R. 381, 162 S. W. 510; note under art. 3. In view of this article, art. 735, providing a penalty for selling mislabeled feeding stuff, is too indefinite and uncertain to describe an offense. Cogdell v. State (Cr. App.) 193 S. W. 675.

Art. 9. [9] General rule of construction.

Cited, Lee v. State (Cr. App.) 193 S. W. 313.

½. Application of rules for construction of civil statutes.—Art. 5502, Civil Statutes, prescribing rules for the construction of civil statutory enactments, applies and is of binding force in criminal prosecutions. Bradfield v. State, 73 Cr. R. 353, 166 S. W. 734.

2. Meaning of language.—Arts. 1532, 1534, 1537, relating to use of free passage on railroad, construed in light of this article, held not to make it an offense to attempt to ride free without attempt to use pass. Carpenter v. Trinity & B. V. Ry. Co. (Sup.) 184 S. W. 186.

11. **Revisions and codes.**—Though a law was not validly adopted, yet when it was included in Penal Code and the Revised Statutes which were adopted by the Legislature, it became a valid law. *Teem v. State* (Cr. App.) 183 S. W. 1144.

Art. 10. [10] Words specially defined, how understood.

Cited, *Bishop v. State* (Cr. App.) 194 S. W. 389 (in dissenting opinion).

Legislative intent.—Under this article, the court in construing a word in a statute must consider the context and subject-matter and, if possible, ascertain the legislative intent which controls. *McLeod v. State* (Cr. App.) 180 S. W. 117.

Sufficiency of information.—An information for slander, stating what the accused said "in substance and effect" and using the third person, held not defective as not setting forth substantially the language used, in view of this article, and Code Cr. Proc. arts. 452, 453, 460, and 25, relating to sufficiency of indictments generally. *Martin v. State* (Cr. App.) 179 S. W. 121.

Competency of witnesses.—This article, art. 91, and Code Cr. Proc. 1911, art. 791, held to make incompetent witnesses for each other, persons prosecuted for the same offense, though by complaint and information, instead of indictment in its technical sense. *Sola v. State* (Cr. App.) 188 S. W. 1005.

Art. 15. [15] Effect of modification by subsequent law.

Murder penalty.—Under this article and art. 17, held, there was no error in charging, as the penalty, for murder in the first degree, the penalty for murder under the new statute, absent request to the contrary. *Gibbs v. State* (Cr. App.) 180 S. W. 612.

Art. 17. [17] When new penalty is substituted.

Murder penalty.—See *Gibbs v. State* (Cr. App.) 180 S. W. 612; note under art. 15.

CHAPTER THREE

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

Art.	Art.
39. Insanity a defense.	46. No mistake of law excuses.
40. Proof of insanity according to common law.	47. Mistake of fact excuses, when.
41. Intoxication as a defense.	48. Act done by mistake a felony, when.
45. Accidents excused, when.	52. Burden of proof on defendant, when.

Article 39. [39] Insanity a defense.

1. **Criminal responsibility in general.**—A person tried for insanity, and found insane by the county court, and who, while out of jail under bond, commits an assault and is arrested and placed in an insane asylum, cannot be indicted and tried for the assault, under this article. *Hazlewood v. State* (Cr. App.) 186 S. W. 201.

An insane person cannot legally be held responsible for his criminal acts. *Kiernan v. State* (Cr. App.) 190 S. W. 165.

An insane person cannot commit felony; insanity at time alleged offense was committed being absolute defense. *New York Life Ins. Co. v. Veith* (Civ. App.) 192 S. W. 605.

2. **Delusion.**—Defendant in homicide is entitled to a submission of the issue of insanity, if his course was caused by an insane delusion as to deceased having applied to him an opprobrious name. *Holland v. State* (Cr. App.) 192 S. W. 1070.

6. **Moral insanity and irresistible impulse.**—The doctrine that one, not otherwise insane, who commits crime from an irresistible impulse, cannot be held accountable therefor is not the rule in Texas. *Mikeska v. State* (Cr. App.) 182 S. W. 1127.

9. **Trial of issue of insanity.**—A mere plea of insanity does not show that accused was mentally unbalanced or unable to produce evidence, which, had he been sane, would have been known to him. *Burgess v. State* (Cr. App.) 181 S. W. 465.

11½. **Imprisonment.**—The fact that the state provides no adequate means to confine an insane person committing a crime in an asylum would not authorize his confinement in the penitentiary as a criminal. *Kiernan v. State* (Cr. App.) 190 S. W. 165.

Art. 40. [40] Proof of insanity according to common law.

1. **Presumptions.**—There is a presumption in favor of sanity. *Burgess v. State* (Cr. App.) 181 S. W. 465.

2. **Burden of proof.**—An accused who relies on insanity has the burden of establishing it by the preponderance of evidence. *Burgess v. State* (Cr. App.) 181 S. W. 465.

4. **Mental condition in general.**—Where accused claimed she was insane when she killed her husband, evidence of her acts and conduct while in jail is admissible. *Wiganowski v. State* (Cr. App.) 180 S. W. 692.

The jailer's testimony of his conversation with defendant in custody tending to show sanity, but having bearing on the question of defendant's guilt or innocence, was inadmissible, but testimony as to defendant's demeanor in custody, relating a conversation with defendant which had no bearing on the issue of guilt or innocence, but merely had a tendency to aid the jury in passing upon the question of insanity, was admissible, and it was proper for the jailer to testify, without giving an opinion as to defendant's sanity, that defendant did not conduct himself in jail like he did on trial, and that he had never noticed anything peculiar about defendant outside of the courtroom. *Mikeska v. State* (Cr. App.) 182 S. W. 1127.

10. **Sufficiency of evidence.**—Evidence held insufficient to show accused's temporary insanity from the excessive use of intoxicants and drugs. *Burgess v. State* (Cr. App.) 181 S. W. 465.

Art. 41. [41] Intoxication as a defense.

2. **Intoxication as defense.**—Under the direct provision of this article, voluntary intoxication is no defense to a prosecution for homicide. *Burgess v. State* (Cr. App.) 181 S. W. 465.

By direct provision of this article, intoxication is not a defense to a charge of crime. *Mikeska v. State* (Cr. App.) 182 S. W. 1127.

3. — **Dellrium tremens or mania a potu.**—By direct provision of this article, temporary insanity, produced by the voluntary use of intoxicants, is eliminated as a defense to a charge of crime. *Mikeska v. State* (Cr. App.) 182 S. W. 1127.

13. **Charge of court.**—Testimony by accused that he was drunk and did not know that he made the alleged sale of whisky is not sufficient to require the giving of a requested charge on insanity from the recent use of intoxicating liquor. *Johnson v. State* (Cr. App.) 193 S. W. 674.

Art. 45. [45] Accidents excused, when.

Intent.—In prosecution for aggravated assault, where defense, as developed by defendant's testimony, raised issue of fact as to whether she struck blow by accident or intentionally, court's failure to submit issue of intent to injure, when properly requested, was erroneous. *Bowman v. State* (Cr. App.) 192 S. W. 769.

Art. 46. [46] No mistake of law excuses.

Cited, *Bradford v. State* (Cr. App.) 180 S. W. 702.

Instructions.—Where court at defendant's request submitted question as to whether alleged stolen cow was taken by mistake, held that the provisions of this article and art. 47 were properly charged, and that use of the word "conjecture" as used in these articles did not render the charge objectionable. *Walker v. State* (Cr. App.) 181 S. W. 191.

Art. 47. [47] Mistake of fact, excuse, when.

Cited, *Bradford v. State* (Cr. App.) 180 S. W. 702.

Instructions.—See *Walker v. State* (Cr. App.) 181 S. W. 191; note under art. 46.

Art. 48. [48] Act done by mistake, a felony, when.

Homicide.—In view of this article, one shooting at another and killing a third person is guilty of murder upon implied malice. *Buckley v. State* (Cr. App.) 181 S. W. 729.

Art. 52. [52] Burden of proof on defendant, when.

Cited, *Walker v. State* (Cr. App.) 181 S. W. 191.

2. **Burden of proof on defendant and charge of court thereon.**—The prosecution need only prove the imprisonment, which is presumed to be unlawful until the contrary is shown, and it is for the defendant to justify it by proving that it was lawful. *Gilbert v. State* (Cr. App.) 181 S. W. 200.

9. — **Carrying arms.**—In prosecution for carrying pistol about the person, evidence held to cast burden of proof on accused to show his exemption by statutory exception. *Wagner v. State* (Cr. App.) 188 S. W. 1001.

TITLE 3

OF PRINCIPALS, ACCOMPLICES AND ACCESSORIES

Chap.

1. Principals.
2. Accomplices.

Chap.

3. Accessories.
4. Trial of accomplices and accessories.

CHAPTER ONE

PRINCIPALS

Art.

74. Who are principals.
75. Same subject.
76. Same subject.

Art.

77. Who are principals.
78. Same subject.

Article 74. [74] Who are principals.

Cited, *Clark v. State* (Cr. App.) 194 S. W. 157.

1. Acting with others and presence at commission of crime in general.—Mere presence, without participation in the commission of an offense, will not constitute one a principal, but presence, with other circumstances, may be sufficient to show that such person was a principal. *Taylor v. State* (Cr. App.) 179 S. W. 113.

To be convicted as a principal where several participate in an offense, the party must either be actually present or at the time of the offense be engaged in some act in furtherance of the common design. *Gilbert v. State* (Cr. App.) 186 S. W. 324.

One who enters into a conspiracy to commit a crime before the ultimate object of it is completed is deemed a party to it from its inception and adopts as his own all the preceding acts of the others. *Sapp v. State* (Cr. App.) 190 S. W. 489.

If two or more conspire to do an offense, and it is committed, all present are guilty as principals, and each is responsible for collateral acts growing out of the common design. *Pizana v. State* (Cr. App.) 193 S. W. 671.

13. Specific crimes—Burglary.—In a prosecution for burglary, evidence held sufficient to authorize a verdict of guilty as principal, but not as accessory. *Hightower v. State* (Cr. App.) 182 S. W. 492.

Defendant, present when a saloon was burglarized, entering from the front at the criminals' invitation, while they entered from the rear, was not guilty as a principal, unless acting in concert with them, and his mere presence did not constitute him a principal in the crime of burglary, unless he aided by his acts, or encouraged by his gestures, those engaged in the offense, but if he stood out in front of a saloon, keeping watch, while others broke and entered it, he was guilty of burglary as a principal. *McPherson v. State* (Cr. App.) 182 S. W. 1114.

15. — Forgery.—As the statute on principals applies to all offenses, so far as forgery is concerned, it is exactly the same as if specifically embraced in and a part of the forgery statute, and where a person commits forgery by an agent, he is guilty as a principal whether or not agent is also guilty. *Ferguson v. State* (Cr. App.) 187 S. W. 476.

17. — Homicide.—Where defendant and others went, armed and disguised, to whip negroes, and one of them shot and killed a negress during the expedition, defendant was guilty as a principal, although the shooting was not planned and he did not shoot. *Davis v. State* (Cr. App.) 180 S. W. 1085.

To make one a principal offender he must be shown to have been guilty of some overt act or conduct prior to or at the time of a homicide. *Villareal v. State* (Cr. App.) 182 S. W. 322.

There can be no conviction of a coprincipal not acting in homicide case, if his coprincipal actually committing the homicide did so in his necessary self-defense. *Pizana v. State* (Cr. App.) 193 S. W. 671.

17½. — Misapplying public money.—Under this article, one not a public officer nor employed in such service may be prosecuted as a principal for misapplication of public money, although he could not commit the crime alone. *Quillin v. State* (Cr. App.) 187 S. W. 199.

18½. — Rape.—Where a mother compelled her daughter, who was under the age of consent, to submit to accused, she is guilty as a principal. *Heitman v. State* (Cr. App.) 180 S. W. 701.

20. — Theft.—A person not connected with the original taking of property is not guilty of theft, even though he received the stolen property knowing it to have been stolen. *Whitfield v. State* (Cr. App.) 179 S. W. 558.

23. Indictment, proof and variance.—An indictment of one not a public officer nor employed in such service, for misapplication of public moneys as a principal under this article, and articles 96, 97, need not allege the facts relied on to show accused to be a principal. *Quillin v. State* (Cr. App.) 187 S. W. 199.

A principal offender may be charged directly in the indictment with the commission of the offense, though it may not have actually been committed by him, and it is never necessary to the validity of an indictment, or the introduction of evidence establishing that the accused is a principal, that the indictment shall allege the acts which make him a principal. *Arensman v. State* (Cr. App.) 187 S. W. 471.

24. Evidence.—In a prosecution for homicide, evidence that accused was a principal held sufficient to go to the jury. *Taylor v. State* (Cr. App.) 179 S. W. 113.

Evidence in a prosecution for murder held to justify submission of the law of principals where defendant stood by and knew the unlawful intent, but failed to prevent the commission of the crime. *Lake v. State* (Cr. App.) 184 S. W. 213.

In prosecution for murder, held, on evidence, that submission to jury of issue of principals was not authorized. *Pizana v. State* (Cr. App.) 193 S. W. 671.

26. Instructions.—Under this article and arts. 75, 78, when the evidence shows any one of the conditions named, the court must charge and apply the law of principals. *Lake v. State* (Cr. App.) 184 S. W. 213.

An instruction in giving general definition of a principal which quoted the statute, to the effect that any person who advises or agrees to the commission of an offense and is present when it is committed, whether or not he aids in the illegal act, is a principal, was not error. *Ferguson v. State* (Cr. App.) 187 S. W. 476.

Art. 75. [75] Same subject.

Cited, *Quillin v. State* (Cr. App.) 187 S. W. 199.

Giving encouragement.—Where there is no conspiracy to commit an offense, yet it is committed by one, and another is present, knowing the other's intention, and by words or acts aiding the person engaged, he is guilty with him to the extent of his knowledge, or for reasonable consequence of acts aided. *Pizana v. State* (Cr. App.) 193 S. W. 671.

Homicide.—Under this article and art. 87, person present when his son committed a homicide and who concealed the fact of his son's guilt, held not guilty as a principal. *Villareal v. State* (Cr. App.) 182 S. W. 322.

Evidence in a prosecution for murder held insufficient to warrant submission of the issues whether defendant kept watch so as to prevent interruption of the one committing the offense or whether he procured arms to assist in the commission of the offense so as to make him a principal under this article and art. 76. *Lake v. State* (Cr. App.) 184 S. W. 213.

To convict one as principal on murder charge, it must be shown that he agreed to the commission of offense by another, or aided or encouraged it by words or gestures within the meaning of the statute. *Rasberry v. State* (Cr. App.) 191 S. W. 356.

Instructions.—See *Lake v. State* (Cr. App.) 184 S. W. 213; note under art. 74.

Art. 76. [76] Same subject.

Cited, *Davis v. State* (Cr. App.) 180 S. W. 1085; *Quillin v. State* (Cr. App.) 187 S. W. 199; *Pizana v. State* (Cr. App.) 193 S. W. 671.

Homicide.—Evidence in a prosecution for murder held insufficient to warrant submission of the issues whether defendant kept watch so as to prevent interruption of the one committing the offense or whether he procured arms to assist in the commission of the offense so as to make him a principal under this article and art. 75. *Lake v. State* (Cr. App.) 184 S. W. 213.

In a trial for murder by handing a pistol to a person as to whose identity the evidence is conflicting and encouraging him to kill, the guilt of accused does not depend on the identity of such person. *Rose v. State* (Cr. App.) 186 S. W. 202.

Misdemeanor.—Defendant was a principal, even if H., and not he, telephoned B. that I. wanted four sacks of sugar, and that a wagon would be sent therefor, whereupon defendant hired an expressman, who got it and took it to H., who paid defendant for aiding in working the scheme. *Jones v. State* (Cr. App.) 182 S. W. 306.

Art. 77. [77] Same subject.

Cited, *Quillin v. State* (Cr. App.) 187 S. W. 199; *Pizana v. State* (Cr. App.) 193 S. W. 671.

Instructions.—An instruction which quoted substantially this article omitting reference to poison or preparing means whereby a person may injure himself, was not error. *Ferguson v. State* (Cr. App.) 187 S. W. 476.

Art. 78. [78] Same subject.

Cited, *Davis v. State* (Cr. App.) 180 S. W. 1085; *Quillin v. State* (Cr. App.) 187 S. W. 199; *Pizana v. State* (Cr. App.) 193 S. W. 671.

Instructions.—See *Lake v. State* (Cr. App.) 184 S. W. 213; note under art. 74.

CHAPTER TWO

ACCOMPLICES

Art.
79. Accomplice, who is.

Art.
81. Punishment.

Article 79. [79] Accomplice, who is.

1. **Accomplice in general.**—To convict one as an accomplice to murder, the evidence must show that the alleged principal was guilty. *Sarli v. State* (Cr. App.) 189 S. W. 149.

9. **Detective or officer.**—The fact that officers went to one charged with practicing medicine unlawfully and procured him to treat them does not make them his accomplices so as to require a charge on accomplices' testimony. *Hyroop v. State* (Cr. App.) 179 S. W. 878.

Sheriff and person employed by him to detect bootleggers, and who, pursuant thereto, purchased whisky from defendant held not accomplices in view of art. 602. *Bagley v. State* (Cr. App.) 179 S. W. 1167.

11½. **Particular crimes—Assault.**—That defendant and other companions of W. followed him and party assaulted by him, and remarked that W. ought to beat such person's head off, held to strongly tend to show that defendant was a principal. *Southall v. State* (Cr. App.) 179 S. W. 872.

14. — **Burglary.**—In a prosecution for burglary, evidence held sufficient to authorize a verdict of guilty as principal, but not as accessory. *Hightower v. State* (Cr. App.) 182 S. W. 492.

20. — **Homicide.**—To convict one as an accomplice to murder, the evidence must show that the alleged principal was guilty, and that the alleged accomplice advised, urged, commanded, or furnished the means to such principal with which to commit the murder. *Sarli v. State* (Cr. App.) 189 S. W. 149.

22. — **Pandering or procuring female for immoral purposes.**—Under Pen. Code 1911, art. 498, a female solicited to illicit sexual intercourse, who consents without persuasion, is not an accomplice of the solicitor making requisite corroboration of her testimony for conviction thereon. *Denman v. State* (Cr. App.) 179 S. W. 120.

33. **Evidence.**—In a prosecution for hog theft, evidence held insufficient to make a state's witness a particeps criminis as principal, or accomplice. *Jemison v. State* (Cr. App.) 184 S. W. 807.

35. **Instructions.**—On a charge of being an accomplice in advising or commanding the killing of deceased, held, that an instruction should have been given that defendant could not be convicted if the alleged principal killed deceased for a different reason. *Sarli v. State* (Cr. App.) 189 S. W. 149.

Art. 81. [81] Punishment.

Misdemeanors.—In misdemeanors all parties connected either as an accomplice or principal may be prosecuted and convicted as principals. *McAlister v. State* (Cr. App.) 183 S. W. 145.

CHAPTER THREE

ACCESSORIES

Art.
86. Who is an accessory.

Art.
87. Who cannot be.

Article 86. [86] Who is an accessory.

In general.—Under this article the accessory becomes criminally connected with the principal, and not with the offense, and concealment of knowledge that a crime is to be committed does not make a party an accessory either before or after the fact, nor does failure to inform on a person known to have committed a crime make one an accessory. *Hightower v. State* (Cr. App.) 182 S. W. 492.

Mere failure to report to an officer, seeing persons in possession of stolen property, will not alone make one an accessory, if he has no other connection with the theft. *Villareal v. State* (Cr. App.) 189 S. W. 156.

Art. 87. [87] Who cannot be.

Relatives.—Under this article and art. 75, person present when his son committed a homicide, and who concealed the fact of his son's guilt, held not guilty as a principal. *Villareal v. State* (Cr. App.) 182 S. W. 322.

CHAPTER FOUR

TRIAL OF ACCOMPLICES AND ACCESSORIES

Art.

89. Accomplice may be tried before principal.

Art.

91. Can not be witnesses for each other, but may sever.

Article 89. [89] Accomplice may be tried before principal.

Evidence.—Evidence in a prosecution for being an accomplice to a murder held sufficient to show that defendant had received a letter written by an attorney for deceased, his son, relating to litigation between the parties, and that he was an accomplice, if the alleged principal was guilty of murder. *Gerard v. State* (Cr. App.) 181 S. W. 737.

Art. 91. [91] Can not be witnesses for each other, but may sever.

Cited, *Clayton v. State* (Cr. App.) 180 S. W. 1089 (in dissenting opinion); *Clark v. State* (Cr. App.) 194 S. W. 157.

Complaint and information.—This article, art. 10, and Code Cr. Proc. art. 791, held to make incompetent witnesses for each other, persons prosecuted for the same offense though by complaint and information, instead of indictment in its technical sense. *Sola v. State* (Cr. App.) 188 S. W. 1005.

TITLE 4

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

Chap.		Chap.
3. Misapplication of public money.		9. Dealing in public lands by officers.
5. Collection of taxes and other public money.		11. The state and the United States flag.

CHAPTER THREE

MISAPPLICATION OF PUBLIC MONEY

Art.		Art.
96. Officer fraudulently taking or misapplying public money.		105a. Misapplication of school funds or property.
97. Using public funds.		107. Officer failing to pay over public money.

Article 96. [96] Officer fraudulently taking or misapplying public money.

Cited, *Ferguson v. State* (Cr. App.) 189 S. W. 271.

Indictments.—An indictment of one not a public officer nor employed in such service, for misapplication of public moneys as a principal under this article and arts. 74, 97, need not allege the facts relied on to show accused to be a principal. *Quillin v. State* (Cr. App.) 187 S. W. 199.

Separate offenses.—The offenses by tax collectors having state money in their custody denounced in this article and arts. 97, 107, 144, are separate and distinct, and neither is in conflict with or repeals the other. *Quillin v. State* (Cr. App.) 187 S. W. 199.

Art. 97. [97] Using public funds.

See *Quillin v. State* (Cr. App.) 187 S. W. 199; notes under art. 96.

Art. 105a. Misapplication of school funds or property.—If any person who is by law a treasurer of any school district in this State, or if any officer, director, stockholder, agent or employé of any corporation that is by law the treasurer or depository of any school district in this State shall fraudulently take, mis-apply or convert to his own use any of the money, property or other thing of value belonging to such district that may have come into his possession by virtue of his being treasurer of such district, or that may have come into his possession by virtue of the corporation of which he is officer, director, stockholder, agent or employé being the treasurer or depository of such district, or shall secrete the same with intent to take, mis-apply 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 of not less than two nor more than ten years. [Act March 29, 1917, ch. 135, § 1.]

Took effect 90 days after March 21, 1917, date of adjournment.

Art. 107. Officer failing to pay over public money.

Separate offenses.—See *Quillin v. State* (Cr. App.) 187 S. W. 199; note under art. 96.

CHAPTER FIVE

COLLECTION OF TAXES AND OTHER PUBLIC MONEY

Art.	Art.
130. Pursuing taxable occupations without license.	144. Collector failing to perform certain duties.
131. Plumber conducting business without license, penalty for.	149b. Sale of ethyl alcohol by wholesale druggists in violation of law.

Article 130. [112] Pursuing taxable occupation without license.

Cited, *State v. Country Club* (Civ. App.) 173 S. W. 570.

1. Constitutionality of provisions.—Rev. Civ. St. 1911, arts. 7355, 7357, imposing an occupation tax on peddlers of patent medicines, and this article held not void because the penalty imposed may in part be fixed by the commissioners' court, levying a tax for the county. *South v. State*, 72 Cr. R. 381, 162 S. W. 510.

4. Municipal powers—Concurrent and conflicting powers of state and municipality.—An ordinance of a city prohibiting license to sell liquors in certain territory held not subject to the criticism that it does not prohibit sale of liquors in view of this article, and Acts 31st Leg. c. 17, § 1. *Le Gois v. State* (Cr. App.) 190 S. W. 724.

6. Occupation.—Under art. 7355, civil statutes, imposing occupation tax on traveling persons selling medicines, etc., and this article, held, on facts shown, that a conviction for selling medicines without a license was authorized. *Collins v. State* (Cr. App.) 182 S. W. 327.

11. Particular occupations—Hawkers and peddlers.—Under arts. 3, 6, providing that all penalties for offenses must be fixed by written law, and this article, when read in connection with Rev. Civ. St. 1911, arts. 7355, 7357, imposing a tax on peddlers of patent medicines, prescribes a penal offense on one peddling patent medicines without first obtaining a license. *South v. State*, 72 Cr. R. 381, 162 S. W. 510.

22. Receipt as license.—One properly charged with pursuing an occupation without license, in violation of Pen. Code 1911, art. 130, and Rev. St. 1911, art. 7355, § 13, may not on habeas corpus show a receipt for the tax. *Ex parte Jennings*, 76 Cr. R. 116, 172 S. W. 1143.

24. Indictment and information.—Under Rev. St. 1911, arts. 7355, 7357, and this article, a complaint and information, alleging that accused, pursuing the occupation of pawnbroker without first obtaining a license, need not allege that the commissioners' court had entered an order fixing the county tax, nor allege the facts as to accused loaning money and receiving deposits as security for the payment of loans. *Schapiro v. State*, 75 Cr. R. 17, 169 S. W. 683.

25. Evidence.—In the prosecution of an alleged optician for practicing without license, witnesses were properly permitted to testify that accused stated to them that the glasses he offered were "medicated" glasses. *Tipton v. State*, 74 Cr. R. 225, 168 S. W. 97.

Art. 131. Plumber conducting business without license; penalty for.

Cited, *Davis v. Holland* (Civ. App.) 168 S. W. 11.

Art. 144. [119a] Tax collector failing to perform certain duties.

Separate offenses.—The offenses by tax collectors having state money in their custody denounced in this article and arts. 96, 97, 107, are separate and distinct, and neither is in conflict with or repeals the other. *Quillin v. State* (Cr. App.) 187 S. W. 199.

Art. 149b. Sale of ethyl alcohol by wholesale druggists in violation of law.—Providing that each owner, proprietor or manager of a drug store desiring to order any ethyl alcohol from any wholesale drug store or company shall file with said drug store or company a list of its employees or agents to whom such alcohol shall be delivered upon order; and provided further that if the owner, proprietor or manager of such wholesale drug store or company shall sell or deliver any ethyl alcohol to any person other than to such owner, proprietor or manager of such retail drug store or to some person whose name shall be on file with such wholesale drug store as the employee or agent of such retail drug store and upon written order from such owner, proprietor or manager of such retail drug store that the bearer is the agent or employee of such retail drug store owner, he shall be deemed guilty of a misde-

meanor and upon conviction shall be fined in any sum not less than One Hundred nor more than One Thousand Dollars, or by imprisonment in the county jail for not less than thirty days nor more than one year; or by both such fine and imprisonment. [Act Oct. 12, 1917, ch. 19, § 1.]

Explanatory.—The above provision constitutes the concluding sentence of section 1 of Act Oct. 12, 1917, amending ch. 6, Title 126, Revised Civ. St., by adding thereto art. 7475a. The other part of the section is set forth ante as art. 7475a, civil statutes.

CHAPTER NINE

DEALING IN PUBLIC LANDS BY OFFICERS

Article 164. [123] Officers not to deal in public lands.

County surveyors.—Notwithstanding this article, a county surveyor could purchase title acquired by a purchaser of school land who had fulfilled the conditions of occupancy and improvement, but who had not yet filed proof thereof, and to whom certificate of occupancy and final patent had not issued. *De Shazo v. Eubank* (Civ. App.) 191 S. W. 369.

CHAPTER ELEVEN

THE STATE AND THE UNITED STATES FLAG

Article 173e. Desecration of United States or state flag.—Any person who in any manner, for exhibition or display, shall after this Act takes effect, place or cause to be placed, any word, figure, mark, picture, design, drawing or any advertisement of any nature upon any flag, standard, color or ensign of the United States of America, or State flag of this State, or ensign, or shall expose or cause to be exposed to public view any such flag, standard, color or ensign, upon which, after this Act takes effect, shall have been printed, painted or otherwise placed, or to which shall be attached, appended, affixed or annexed any word, figure, mark, picture, design or drawing; or any advertisement of any nature, or who shall after this Act takes effect, expose to public view, manufacture, sell, expose for sale, give away, or have in possession for sale, or to give away, or for use for any purpose, any article or substance being an article of merchandise, or receptacle of merchandise or article or thing for carrying or transporting merchandise, upon which after this Act takes effect, shall have been printed, painted, attached or otherwise placed, a representation of any such flag or flags, standard, color or ensign to advertise, call attention to, decorate, mark or distinguish the article or substance on which so placed, or who shall publicly mutilate, deface, defy, or defile, trample upon or cast contempt either by words or act, upon any such flag, standard, color or ensign, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding One Hundred (\$100.00) Dollars or by imprisonment for not more than thirty (30) days, or both in the discretion of the court; and shall also forfeit a penalty of Fifty (\$50.00) Dollars for each such offense, to be recovered with costs in a civil action or suit in any court having jurisdiction and such action or suit may be brought by and in the name of any citizen of the State, and such penalty when collected, less the reasonable cost and expense of action or suit and recovery, to be certified by the county attorney of the county in which the offense is committed, shall be paid into the treasury of this State; and two or more penalties may be sued for and recovered in the same action or suit. The

words flag, standard, color or ensign as used in this Act, shall include any flag, standard, color, ensign or any picture or representation of either thereof, made of any substance or represented on any substance, and of any size evidently purporting to be, either of, said flag, standard, color or ensign of the United States of America, or a picture or representation, of either thereof upon which shall be shown the colors, the stars and the stripes in any number of either thereof, or by which the person seeing the same without deliberation may believe the same to represent the flag, colors, standard or ensign of the United States of America.

The possession after this Act takes effect, by any person, other than a public officer, as such, of any such flag, standard, color or ensign, on which shall be anything made unlawful at any time, by this section, or of any article or substance or thing on which shall be anything made unlawful at any time by this section, shall be presumptive evidence that the same is in violation of this section, and was made, done or created after this Act takes effect, and that such flag, standard, color, ensign or article substance or thing, did not exist when this Act takes effect.

This Act shall not apply to any Act permitted by the Statutes of the United States of America, or by the United States Army and Navy Regulations, nor shall it be construed to apply to a newspaper, periodical, book, pamphlet, circular, certificate, diploma, warrant or commission of appointment to office, ornamental picture, article of jewelry or stationery for use in correspondence, on any of which shall be printed, painted, or placed said flag, disconnected from any advertisement. [Act March 29, 1917, ch. 123, § 1; Act Oct. 16, 1917, ch. 22, § 1.]

Explanatory.—The title of Act March 29, 1917, ch. 123, is as follows: "An act to prevent and punish the desecration, mutilation or improper use of the flag of the United States of America, and declaring an emergency." Sec. 2, the emergency clause, reads: "The fact that there is now in existence no law prohibiting the desecration, mutilation or improper use of the flag of the United States, creates an emergency," etc. It would seem that the former act, in so far as it refers, in its body to the state flag, is invalid, in that the subject of the state flag is not embraced in its title, and hence that the former act on the subject of the state flag (arts. 173b-173d, Vernon's Penal Code, 1916), is not superseded. The act took effect 90 days after March 21, 1917, date of adjournment.

Act Oct. 16, 1917, amends sec. 1 of ch. 123, p. 320, General Laws 35th Legislature, regular session. The title of the amendatory act is as follows: "An act to amend section 1 of chapter 123, p. 320, of the General Laws of the state of Texas, as passed by the Thirty-fifth Legislature, at its regular session, so as to provide that said Act shall not apply to any Act permitted by the Statutes of the United States of America, or by the United States Army and Navy regulations, nor be construed to apply to a newspaper, periodical, book, pamphlet, circular, certificate, diploma, warrant or commission of appointment to office, ornamental picture, article of jewelry, or stationery for use in correspondence, on any of which shall be printed, painted or placed said flag or flags, disconnected from any advertisement, and declaring an emergency."

It would seem that this title is insufficient to correct the defect in the title of the act of March 29, 1917, with respect to the inclusion of the state flag.

TITLE 5**OFFENSES AFFECTING THE EXECUTIVE, LEGISLATIVE,
AND JUDICIAL DEPARTMENTS OF THE
GOVERNMENT****CHAPTER THREE****DRUNKENNESS IN OFFICE AND IN PUBLIC [OR PRIVATE]
PLACF****Article 205. Drinking intoxicating liquors on railway passenger
train.**

Instructions.—In an action for injuries to a passenger, while intoxicated, by falling out of the open vestibule of a railroad coach, an instruction given as to the care required from plaintiff held to sufficiently cover a request to charge that he was negligent if he went on the platform to drink liquor, or drank liquor there, based on a statute prohibiting the drinking of liquor on railroad trains. *St. Louis Southwestern Ry. Co. of Texas v. Christian* (Civ. App.) 169 S. W. 1102.

TITLE 6

OF OFFENSES AFFECTING THE RIGHT OF SUFFRAGE

CHAPTER TWO

OFFENSES BY PERSONS, JUDGES AND OTHER OFFICERS OF ELECTIONS

Art. 221a. Violation of act relating to absentee voting.	Art. 224. Poll tax receipt. 239. Loaning money to pay poll tax.
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Article 221a. Violation of act relating to absentee voting.—If any person wishing to vote as an absentee voter shall violate one of the provisions of this law [Art. 2939, Civil Statutes, ante], or shall vote or offer to vote illegally or in any case or at any place where he is not entitled to vote, or who shall make any false representation in any effort to be allowed to vote, or who shall attempt to vote on any poll tax receipt issued to any person other than himself, shall be deemed guilty of a violation of the law and upon conviction shall be punished by fine not more than One Thousand Dollars or by imprisonment in the county jail not more than two years or by both such fine and imprisonment; provided this Act shall apply to any and all primary elections only. [Act May 26, 1917, 1st C. S., ch. 40, § 1.]

Art. 224. Poll tax receipts.

Issuance of receipt.—Under arts. 2942, 2944, 2949, civil statutes, where a poll tax is tendered in proper time, the collector has no discretion but to receive it and receipt therefor, though he may be in doubt as to the right of the payer to vote, and, if for any reason the receipt is not issued prior to February 1st, it is the collector's duty to issue it thereafter, notwithstanding this article. *Parker v. Busby* (Civ. App.) 170 S. W. 1042.

Art. 239. Loaning money to pay poll tax.

Indictments.—An indictment under this article, for advancing money to another to be used to pay his poll tax must charge defendant advanced it knowing it was to be so used, and the allegation of the year cannot be treated as surplusage. *Nave v. State* (Cr. App.) 193 S. W. 668.

TITLE 7**OF OFFENSES WHICH AFFECT THE FREE EXERCISE OF
RELIGIOUS OPINION****CHAPTER TWO****SUNDAY LAWS**

Art.
299. Working on Sunday.
300. Not applicable, when.

Art.
302. Selling goods on Sunday.

Article 299. [196] Working on Sunday.

Cited in dissenting opinion, *McLeod v. State* (Cr. App.) 180 S. W. 117; *Moore v. State* (Sup.) 181 S. W. 438.

Art. 300. [197] Not applicable, when.

Cited, *McLeod v. State* (Cr. App.) 180 S. W. 117.

Art. 302. [199] Selling goods on Sunday.

15. **Public amusements.**—A proprietor of a moving picture show, who gave an exhibition on Sunday and who placed a jar near ticket stand for donations and who received donations, held to violate the Sunday law. *McLeod v. State* (Cr. App.) 180 S. W. 117.

Defendant, who gave his moving picture show on a Sunday without charging admission, but invited patrons to pay what they wished, and who deducted his day's expenses from the receipts and turned over the balance to charity as advertised, held to violate the Sunday statute. *Spooner v. State* (Cr. App.) 182 S. W. 1121.

TITLE 8

OF OFFENSES AGAINST PUBLIC JUSTICE

Chap.

1. Of perjury.
2. Of false swearing.
4. Offenses relating to the arrest and custody of prisoners [and to the administration of the laws.]

Chap.

5. False certificate and authentication or entry by an officer.
6. Miscellaneous offenses.
 - (3. Peculation.)
 - (6. Barratry.)
 - (7. Compounding crime.)

CHAPTER ONE

OF PERJURY

Art.

304. "Perjury" defined.
306. Oath must be legally administered.

Art.

310. Punishment.

Article 304. [201] "Perjury" defined.

9. Evidence.—In a prosecution for perjury in swearing that no gambling occurred at the time of the offense charged, admission of evidence that one accused of gambling pleaded guilty held error. *Clayton v. State* (Cr. App.) 180 S. W. 1089.

Where defendant, charged with perjury in having falsely sworn that he had had sexual intercourse with a woman, defended on the ground that his statement was true, evidence as to her reputation for chastity and virtue was admissible. *Reed v. State* (Cr. App.) 183 S. W. 1168.

In prosecution for perjury before grand jury in its investigation of charge against another for rape, evidence that if prosecutrix had come to house that evening, defendant would have seen her, and testimony of prosecutrix that she was afraid of such other, and of her father as to what he said to defendant in such other's hearing, were admissible, and complaint charging such other with rape, warrant for his arrest, and his bond for appearance before grand jury were also admissible to identify cause before grand jury and show its jurisdiction, and evidence held sufficient where witness testified positively that such statement was false, and such witness was strongly corroborated. *Cozby v. State* (Cr. App.) 189 S. W. 957.

10. Instructions.—One accused of perjury is not entitled to a charge that he could not be convicted unless he testified voluntarily, where he, without subpoena, came into the county, and his only objection was to ask the court whether he had to answer whether he had had intercourse with the prosecutrix. *Reed v. State* (Cr. App.) 183 S. W. 1168.

In prosecution for perjury, a charge that if jury should find that if drinking of alcohol rendered defendant incapable of remembering real facts and caused him to make a false statement, etc., was properly refused where there was no evidence that he was thereby caused to make false statement. *Cozby v. State* (Cr. App.) 189 S. W. 957.

Art. 306. [203] Oath must be legally administered.

Authority to administer oath.—It is not ground for quashing an indictment for perjury in defendant's suit for divorce that, because of his actual residence in the state for less than the statutory period, the court administering the oath had no jurisdiction. *Laird v. State* (Cr. App.) 184 S. W. 810.

Art. 310. [207] Punishment.

Instruction.—Under this article, an erroneous instruction as to the minimum penalty for perjury, where the jury assessed the minimum as stated, was fundamental error, and could be first complained of on motion for new trial, in spite of Code Cr. Proc. art. 743. *Clayton v. State* (Cr. App.) 180 S. W. 1089.

CHAPTER TWO

OF FALSE SWEARING

Article 317a. False swearing by applicant or witness in pension proceedings.—Any applicant for a pension under the provisions of this Act [Arts. 6267, 6267a, 6268, 6272, 6279, ante, Civil Statutes], or any witness testifying under any of the provisions of this Act in regard to the service upon which such claim for pension is based, or in regard to the property, effects or income of the applicant, who shall willfully make any false statements in regard thereto shall be deemed guilty of false swearing and upon conviction thereof, shall be punished by confinement in the penitentiary for not less than two or more than five years. [Acts 1913, p. 285, ch. 141, § 7; Act April 3, 1917, ch. 188, § 8.]

CHAPTER FOUR

OFFENSES RELATING TO THE ARREST AND CUSTODY OF PRISONERS [AND TO THE ADMINISTRATION OF THE LAWS]

Art.
334a. Persuading inmate from girls' training school.

Art.
343a. Resisting officers of water improvement district.

Article 334a. Persuading inmate from Girls' Training School.—Any person who shall persuade, coerce, employ or induce in any manner, directly or indirectly, any girl who has been committed to the Girls' Training School, to leave such institution without the consent of the superintendent of such institution, or who shall persuade, coerce, employ or induce any girl who has been committed to said Girls' Training School, and has been placed in a home by the authorities of said school, to leave said home so selected for her, without the consent of said superintendent of the Girls' Training School, or any person who shall knowingly in any manner, directly or indirectly, aid, advise, encourage or abet any inmate of said Girls' Training School to escape from such institution, or shall furnish means of escape, or for aiding or facilitating the escape of such inmate, or any person who knowingly hides or conceals any inmate of said Girls' Training School who has escaped or left such institution without the consent of its superintendent, shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than ten (\$10.00) dollars nor more than five hundred (\$500.00) dollars, or by imprisonment in the county jail for not less than thirty nor more than sixty days, or by both such fine and imprisonment. [Acts 1913, p. 291, ch. 144, § 9; Act March 28, 1917, ch. 111, § 1.]

Explanatory.—The act amends sec. 9, ch. 144, Acts 33rd Leg. page 289, approved April 7, 1913. Sec. 2 repeals all laws in conflict. Took effect 90 days after March 21, 1917, date of adjournment.

Art. 343a. Resisting officers of water improvement district.—And any person who shall willfully prevent or prohibit any such officers or employees from entering any lands for such purposes shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding one hundred dollars for each day he shall so prevent or hinder

such officer or employé from entering upon any lands. [Acts 1913, p. 402, ch. 172, § 84; Act March 19, 1917, ch. 87, § 84.]

Explanatory.—This is a part of sec. 84 of Act March 19, 1917, ch. 87. The other part of the section is set forth ante as art. 5107—84 of the civil statutes.

CHAPTER FIVE

FALSE CERTIFICATE, AUTHENTICATION OR ENTRY BY AN OFFICER

Article 361. [255] Requisites of such record.

Cited, *Lyle v. State* (Cr. App.) 193 S. W. 680.

CHAPTER SIX

MISCELLANEOUS OFFENSES UNDER THIS TITLE

Art.	3. PECULATION	Art.	6. BARRATRY
378.	County judge and other officers of improvement district.	421.	Defining same.
379.	Director or officer of water improvement district.	7. COMPOUNDING CRIME	
		422.	Agreeing with offender not to prosecute.

3. PECULATION

Article 378. County judge and other officers of improvement district.

Cited, *Spence v. Fenchler* (Sup.) 180 S. W. 597.

Art. 379. Director or employé of water improvement district.—No director or any such district, engineer or employé thereof shall be directly or indirectly, interested either for themselves or as agents for any one else in any contract for the purchase or construction of any work by said district, and if any such person shall, directly or indirectly, become interested in any such contract he shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine in any sum not to exceed one thousand (\$1,000.00) dollars, or by confinement in the county jail for not less than six months nor more than one year, or by both such fine and imprisonment. [Acts 1905, p. 250, ch. 20; Acts 1913, p. 386, ch. 172, § 22; Act March 19, 1917, ch. 87, § 22.]

Explanatory.—The act to which the above provision has reference is set forth ante as art. 5107—1 et seq. of the civil statutes.

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, for his own profit or 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, for his own profit or with the intent to distress or harass the defendant therein, or shall wilfully instigate, maintain, excite, prosecute or encourage the

bringing or presentation of any claim in which such person has no interest, for his own profit or with the intent to distress or harass the person against whom such claim is brought or prosecuted, or shall seek to obtain employment in any claim, to prosecute, defend, present or collect the same by means of personal solicitation of such employment, or by procuring another to solicit for him employment in such claim, or who shall, by himself or another, seek or obtain such employment by giving, directly or indirectly, 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, whether the same be done directly by him or through another, 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 cases, or who shall, by himself or another, seek or obtain such employment by giving directly or indirectly to the person from whom 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 (\$500.00) dollars, and may in addition thereto be imprisoned in the county jail not exceeding three months; provided, that the penalties hereinbefore prescribed shall apply not only to attorneys at law, but to any other persons who may be guilty of any of the things set forth in the foregoing provisions of this Act. The term attorney shall include counsel at law; and any attorney at law violating any of the provisions of this law shall in addition to the penalty hereinabove 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; Acts 1901, p. 125; Act March 29, 1917, ch. 133, § 1.]

Explanatory.—The act amends art. 421, Penal Code. Took effect 90 days after March 21, 1917, date of adjournment.

Solicitation by one not an attorney.—There is in force in Texas no common law nor statutory law making it unlawful for person not licensed attorney to solicit employment as agent to adjust claims, or to solicit claimants to present claims or to sue upon them; this article, forbidding only attorneys at law to solicit employment in any suit. *McCloskey v. San Antonio Traction Co.* (Civ. App.) 192 S. W. 1116.

7. COMPOUNDING CRIME

Art. 422. [291] Agreeing with offenders not to prosecute.

Cited, *Ex parte Hutsell* (Cr. App.) 182 S. W. 458.

TITLE 9

OF OFFENSES AGAINST THE PUBLIC PEACE

Chap.

1. Unlawful assemblies.
3. Affrays and disturbances of the peace.

Chap.

4. Unlawfully carrying arms.

CHAPTER ONE

UNLAWFUL ASSEMBLIES

Article 435. [299] "Unlawful assembly" defined.

Indictment or information.—The information must allege the persons met "with intent to aid each other by violence," etc., to bring it within the definition in this article, of unlawful assembly. *Cole v. State* (Cr. App.) 194 S. W. 330.

CHAPTER THREE

AFFRAYS AND DISTURBANCES OF THE PEACE

Art.

469. "Affray" defined.

Art.

470. Disturbance of the peace.

Article 469. [333] "Affray" defined.

Evidence.—Evidence that a county commissioner had authorized S. to take sand from the road, of which defendants did not know, should not be admitted on a prosecution for affray, by fighting with S. in a public place, as the trial should be from the standpoint of defendants and on what they knew and acted, nor could county commissioner authorize him to take sand outside the roadbed. *Haverebakken v. State* (Cr. App.) 194 S. W. 1114.

Instructions.—On a prosecution for affray, the jury should be instructed what it takes to constitute a public place, but charge on trial under indictment charging defendants with an affray by fighting with S. in a public place, to convict if defendants, as alleged in indictment, fought in a public place, is erroneous as authorizing conviction if they fought with each other, and charge to acquit if defendants did not use greater force than necessary to prevent the assault is also erroneous, as if they were assaulted they had a right to defend, and were not guilty of an affray though they used greater force than necessary. *Haverebakken v. State* (Cr. App.) 194 S. W. 1114.

Art. 470. [334] Disturbance of the peace.

Sufficiency of evidence.—Evidence in prosecution for disturbing the peace by shooting off a gun near private residence held insufficient to sustain conviction. *Christopherson v. State* (Cr. App.) 181 S. W. 454.

CHAPTER FOUR

UNLAWFULLY CARRYING ARMS

Art.

475. Unlawfully carrying arms.

Art.

476. Not applicable, when, and to whom.

Article 475. [338] Unlawfully carrying arms.

4. Carrying in general.—Under Const. art. 5, § 12, and this article and art. 476, judge of city's corporation court, created by arts. 903-922, Civil Statutes, held a peace officer, authorized to carry pistol when not in actual discharge of duties. *Tippett v. State* (Cr. App.) 189 S. W. 485.

One has no right to carry arms on his person away from his own premises and where he is at work for another person. *Mireles v. State* (Cr. App.) 192 S. W. 241.

5. **Character and condition of arms.**—It is not an offense to carry a pistol either so defectively manufactured or in such bad repair that it cannot be fired at all. *Miles v. State* (Cr. App.) 179 S. W. 567.

Whether a pistol which defendant was accused of carrying could be fired held a question for the jury. *Id.*

In a prosecution for carrying pistol, refusal to charge that accused was entitled to acquittal if the pistol would not shoot or was unloaded at the time named, etc., held not error. *Davis v. State* (Cr. App.) 179 S. W. 702.

9. **Carrying in vehicle.**—A pistol behind the front cushion of a jitney driver's automobile on which he sat to drive his car was carried "about the person" within the statute. *Wagner v. State* (Cr. App.) 188 S. W. 1001.

A pistol carried in the box of a buggy seat is carried "about the person" of the driver. *Emerson v. State* (Cr. App.) 190 S. W. 485.

21. **Indictment.**—The indictment charging carrying a pistol on or about a certain date, and the state not having been requested to elect, evidence sufficient as to an earlier date, if not as to the day named, will support a conviction. *Dolezal v. State* (Cr. App.) 191 S. W. 1158.

22. **Evidence.**—Evidence in a prosecution for unlawfully carrying a pistol held sufficient to sustain a conviction. *Moreno v. State* (Cr. App.) 180 S. W. 124; *Davis v. State* (Cr. App.) 179 S. W. 702; *Moore v. State* (Cr. App.) 180 S. W. 677.

Evidence that defendant had a pistol outside of a saloon within a few moments of time at which he was charged with having it in the saloon, is admissible in a prosecution for carrying a pistol. *Moore v. State* (Cr. App.) 180 S. W. 677.

Evidence of a noise from defendant's direction held insufficient for a conviction of carrying a pistol. *Daugherty v. State* (Cr. App.) 182 S. W. 306.

Evidence, on a prosecution for carrying a pistol, held sufficient to sustain a conviction as of the time of defendant's difficulty with another, and fact that defendant had the pistol out in the road and fired it several times, two or three weeks before the date named in the indictment, is proper evidence to establish the offense charged. *Dolezal v. State* (Cr. App.) 191 S. W. 1158.

In prosecution for carrying pistol, where state's theory was that defendant had pistol when going to call on wife, from whom he was living apart, testimony that defendant was charged with having deserted her, and details as to why he had deserted her, also facts showing he had done so, were improperly admitted. *Waring v. State* (Cr. App.) 192 S. W. 1066.

In prosecution for carrying pistol on person in violation of this article, evidence held insufficient to support verdict of guilty. *Pyka v. State* (Cr. App.) 192 S. W. 1066.

Art. 476. [339] Not applicable, when, and to whom.

1. **Officers in general.**—Under Const. art. 5, § 12, and this article and art. 475, judge of city's corporation court, created by arts. 903-922, Civil Statutes, held a peace officer, authorized to carry pistol when not in actual discharge of duties. *Tippett v. State* (Cr. App.) 189 S. W. 485.

9. **Travelers.**—Though accused came to a city as a traveler, that fact does not warrant him in carrying a pistol about the streets for several days while searching for work, nor will the right of a traveler to carry a pistol defeat a prosecution for unlawfully carrying a weapon, where the journey was temporarily abandoned while accused burglarized a house. *Smith v. State* (Cr. App.) 179 S. W. 711.

Instruction attempting to define "traveler" held incorrect and properly refused. *Taylor v. State* (Cr. App.) 179 S. W. 1161.

In trial for unlawfully carrying a pistol, an instruction that if accused, though a traveler, disturbed the peace or engaged in any other unlawful purpose, he would be guilty, is error. *Johnson v. State* (Cr. App.) 186 S. W. 841.

10. **Premises or place of business.**—It is no offense for a man to carry a bowie knife or a pistol about his person on his own premises, or to a pasture where he keeps his team and has the right to get them, and requested charges on accused's right to carry the knife on premises rented by him, and when forced to go from premises rented by him along the public road held not covered by charge given. *Mireles v. State* (Cr. App.) 192 S. W. 241.

14. **Evidence.**—On trial for unlawfully carrying a pistol, evidence on the whole case and on the issue as to whether defendant was a traveler held sufficient to sustain a conviction. *Taylor v. State* (Cr. App.) 179 S. W. 1161.

The evidence, not showing defendant was off the premises on which he lives, does not authorize a conviction of unlawfully carrying a pistol. *Sparks v. State* (Cr. App.) 183 S. W. 144.

TITLE 10

OFFENSES AGAINST PUBLIC MORALS, DECENCY AND CHASTITY

Chap.

1. Unlawful marriages.
2. Incest.
3. Of adultery and fornication.

Chap.

4. Bawdy and disorderly houses.
- 4a. Pandering.
5. Miscellaneous offenses.

CHAPTER ONE

UNLAWFUL MARRIAGES

Art.

481. "Bigamy" defined.

Art.

483. Inter-marriage of whites and blacks.

Article 481. [344] "Bigamy" defined.

6. **Mistake and duress.**—One who marries another under the honest belief that he has been divorced from his first wife is not guilty of bigamy. *Chapman v. State* (Cr. App.) 179 S. W. 570.

8. **Indictment and proof thereunder.**—In indictment for bigamy, it is essential that name of lawful wife be given. *Gunter v. State* (Cr. App.) 191 S. W. 541.

Art. 483. [346] Inter-marriage of whites and blacks.

Validity of ordinance.—Ordinance of city of Ft. Worth, making it unlawful for white person and negro to have sexual intercourse, each act to constitute a separate offense, held not invalid, because making the offense depend solely on color. *Strauss v. State*, 76 Cr. R. 132, 173 S. W. 663.

CHAPTER TWO

INCEST

Art.

486. Punishment.

Art.

487. Certain marriages prohibited.

Article 486. [349] Punishment.

Cited, *Hollingsworth v. State* (Cr. App.) 182 S. W. 465 (in dissenting opinion).

1. **Nature and elements of offense.**—Incest is not a continuous offense, but each act is a separate offense. *Hollingsworth v. State* (Cr. App.) 189 S. W. 488.

Art. 487. [350] Certain marriages prohibited.

Man and son's wife.—In view of the amendment of August 28, 1858, held that Act Dec. 21, 1836 (Laws of Republic 1836-39, p. 192, § 35); prohibiting marriage between a man and his son's wife, did not prohibit marriage between a man and his son's widow. *Houston Oil Co. of Texas v. Griggs* (Civ. App.) 181 S. W. 833.

CHAPTER THREE

OF ADULTERY AND FORNICATION

Art.	Art.
490. "Adultery" defined.	494. "Fornication" defined.
491. Proof of marriage.	

Article 490. [353] "Adultery" defined.

8. **Indictment and proof thereunder.**—An indictment for adultery need not allege the name of the accused's spouse, and, if alleged, it may be treated as surplusage. *Simmons v. State* (Cr. App.) 184 S. W. 226.

10. **Evidence.**—Evidence held insufficient to sustain a conviction of the offense of adultery. *Anderson v. State* (Cr. App.) 193 S. W. 301.

Art. 491. [354] Proof of marriage.

Presumptions.—The state need not prove that the alleged adulterer's spouse was actually living at the time of the offense charged, but from proof that he was alive within one year prior thereto the rebuttable presumption that he still lived arises. *Simmons v. State* (Cr. App.) 184 S. W. 226.

Art. 494. [357] "Fornication" defined.

Validity of ordinance.—Ordinance of city of Ft. Worth, making it unlawful for white person and negro to have sexual intercourse, each act to constitute a separate offense, held not invalid, because making the offense depend solely on color. *Strauss v. State*, 76 Cr. R. 132, 173 S. W. 663.

CHAPTER FOUR

BAWDY AND DISORDERLY HOUSES

Art.	Art.
496. "Bawdy house" and "disorderly house" defined.	500. Punishment for keeping.
498. Alluring females to visit same.	501. Owner, lessee or agent controlling premises.
499. Includes any room, etc.	503. Keeping same may be enjoined.

Article 496. [359] "Bawdy house" and "disorderly house" defined.

Cited, *State v. Country Club* (Civ. App.) 173 S. W. 570; *Coman v. Baker* (Civ. App.) 179 S. W. 937; *Moore v. State* (Sup.) 181 S. W. 438 (in dissenting opinion).

Constitutionality.—This article, defining as a disorderly house a place in prohibition territory where nonintoxicating malt liquors, requiring a United States retail malt liquor dealer's license, are sold or kept for sale, construed in connection with Rev. St. 1911, arts. 7476, 7477, held not objectionable as delegating to Congress the power to determine whether or not the business of selling nonintoxicants shall be lawful, and conferring on another jurisdiction power to suspend the laws of the state. *Johnson v. Elliott* (Civ. App.) 168 S. W. 968.

Conflict with other statute.—This article held an exception to, and therefore not in conflict with Rev. St. 1911, arts. 7476, 7477. *Johnson v. Elliott* (Civ. App.) 168 S. W. 968.

Art. 498. Alluring females to visit same.

Cited, *Moore v. State* (Sup.) 181 S. W. 438 (in dissenting opinion).

Elements of offense.—Under this article, mere solicitation completes the offense. *Denman v. State* (Cr. App.) 179 S. W. 120.

Information.—Information for alluring, procuring, and soliciting a female to be at certain place to have unlawful intercourse with men held sufficient, where surplusage, if any, might be stricken out, leaving language sufficient to charge the offense. *Johnson v. State* (Cr. App.) 181 S. W. 455.

Evidence.—In a prosecution for soliciting a female to illicit sexual intercourse, an offense denounced by this article, evidence held sufficient to support a conviction. *Denman v. State* (Cr. App.) 179 S. W. 120.

In a prosecution against defendant for unlawfully giving the name of his wife to another for the purpose of enabling the latter to have sexual intercourse with her, evidence held sufficient to sustain a conviction. *Fletcher v. State* (Cr. App.) 179 S. W. 879.

Female as accomplice.—See *Denman v. State* (Cr. App.) 179 S. W. 120; note under art. 79.

Art. 499. [360] Includes any room, etc.

Cited, *Moore v. State* (Sup.) 181 S. W. 438 (in dissenting opinion).

Art. 500. [361] Punishment for keeping, or owner of the house having information that his house is being kept or used, etc.

Cited, *Ex parte Mode* (Cr. App.) 180 S. W. 708; *State v. Clark* (Cr. App.) 187 S. W. 760.

1. **Constitutionality, repeal, and amendment.**—Under Const. art. 1, § 28, declaring that laws shall not be suspended save by the Legislature, and in view of this article, the proviso in arts. 4689, 4690, Civil Statutes, authorizing enjoining the maintenance of bawdyhouses, that the statute should not apply where the municipality, acting under its own charter, has confined them in a designated locality, is void. *Spence v. Fenchler* (Sup.) 180 S. W. 597.

2. **Validity of municipal ordinance.**—An ordinance of a city attempting to except bawdyhouses from the operation of a general statute is void, since the Legislature cannot delegate its power to except a class from the operation of a general statute. *Coman v. Baker* (Civ. App.) 179 S. W. 937.

3. **Nature and elements of offense and persons liable.**—Married woman living with her husband, who herself leased the premises and paid the rent, might be convicted of unlawfully keeping the house for prostitution. *Jackson v. State* (Cr. App.) 179 S. W. 711.

Offense of keeping house where prostitutes are permitted to resort and reside is a misdemeanor. *Guthrie v. State* (Cr. App.) 189 S. W. 256.

5. **Indictment, information and complaint.**—That information for unlawfully keeping a house for prostitution alleged defendant to be a tenant, and not a lessee, was no ground for quashing, since "tenant" was synonymous with "lessee." *Jackson v. State* (Cr. App.) 179 S. W. 711.

In an indictment for keeping, aiding and abetting keeping of a house for prostitutes, two counts on same transaction held proper; it being permissible to charge offense, in different counts, in any of ways denounced by statute, and state was not required to elect. *Wyatt v. State* (Cr. App.) 190 S. W. 153.

8. **Evidence.**—Evidence in a prosecution for unlawfully keeping and being concerned in keeping a bawdyhouse held sufficient to support a conviction. *Thompson v. State* (Cr. App.) 179 S. W. 98.

In a prosecution for aiding in keeping a house of prostitution, evidence held to sustain a conviction. *Davis v. State* (Cr. App.) 184 S. W. 510.

Testimony that the house in question was in the "reservation district" was admissible, but a witness' testimony as to what others told him should have been excluded as hearsay, and it was error to admit in evidence record of a deed, where a certified copy had not been filed and notice given as required by art. 3700, Civil Statutes. *Speers v. State* (Cr. App.) 190 S. W. 164.

In a prosecution for knowingly permitting a house to be used for prostitution, testimony that an inmate pleaded guilty to vagrancy is not admissible, unless it be shown that prostitution was the basis of the vagrancy charge. *Goosby v. State* (Cr. App.) 189 S. W. 143.

In a trial for keeping a house for prostitutes, testimony of a witness held admissible, on question of conveying knowledge to accused of character of women residing at house, and that they were plying their vocation. *Wyatt v. State* (Cr. App.) 190 S. W. 153.

10. **Charge of the court.**—Under information charging that accused, being the owner of a house, knowingly permitted it to be used for prostitution, instruction permitting conviction if accused knowingly permitted the house so to be used, is erroneous for failure to conform to the allegation that he owned the house. *Goosby v. State* (Cr. App.) 189 S. W. 143.

In a prosecution under this article, held, that an instruction was properly refused as on the weight of the testimony. *Speers v. State* (Cr. App.) 190 S. W. 164.

12. **Injunction.**—A rental agent, who knowingly permits premises leased by him for the owner to be used as a disorderly house, being subject to criminal liability under this article, may be enjoined under art. 4689, Civil Statutes. *Moore v. State* (Sup.) 181 S. W. 438.

Art. 501. Owner, lessee or agent controlling premises.

Cited, *Moore v. State* (Sup.) 181 S. W. 438 (in dissenting opinion).

Art. 503. [362a] Keeping same may be enjoined.

Cited, *Moore v. State* (Sup.) 181 S. W. 438 (in dissenting opinion); *State v. Clark* (Cr. App.) 187 S. W. 760.

CHAPTER FOUR A

PANDERING

Article 506a. Pandering.

Nature and elements of offense.—Under this article, it makes no difference whether the female at the time is a virtuous woman or a prostitute. *Humphries v. State* (Cr. App.) 186 S. W. 332.

Evidence.—Evidence in a prosecution for pandering, held sufficient to sustain a conviction. *Humphries v. State* (Cr. App.) 186 S. W. 332.

CHAPTER FIVE

MISCELLANEOUS OFFENSES

Article 507. [364] “Sodomy” defined and punished.

Evidence.—In a prosecution for sodomy, evidence held insufficient to show penetration. *Dewberry v. State* (Cr. App.) 191 S. W. 1164.

TITLE 11

OFFENSES AGAINST PUBLIC POLICY AND ECONOMY

Chap.

1. Illegal banking, passing spurious money, and bank guaranty.
- 1b. Co-operative savings and contract loan companies.
3. Bucket shops—defining and prohibiting same.
4. Gaming.
7. Unlawfully selling intoxicating liquor.

Chap.

8. Violation of the law regulating the sale of intoxicating liquors.
- 8a. Pool halls.
9. Vagrancy.
- 9a. Abandonment of wife or children.
10. Miscellaneous offenses.
11. Insurance companies.
Co-operative life insurance companies.

CHAPTER ONE

ILLEGAL BANKING, PASSING SPURIOUS MONEY, AND BANK GUARANTY

Art.

523. Embezzling or misapplying funds.
529a. Bank officers taking commissions for making loans.

Art.

- 529b. Making loans in excess of limit permitted by law.

Article 523. Embezzling or misapplying funds.

Distinction between offenses.—"Embezzle," "abstract," and willfully "misapply," within this article, distinguished. *Ferguson v. State* (Cr. App.) 189 S. W. 271.

Indictments.—This article prescribes three offenses, and not merely one which can be committed in three ways, as regards necessity for separate counts, and an indictment for aiding and abetting the cashier of a state bank in violation of this article held to be in one count only, and open to motion to quash, on the ground that its language and allegations are confused, indefinite, and unintelligible. *Ferguson v. State* (Cr. App.) 189 S. W. 271.

Article 529a. Bank officers taking commissions for making loans.
—It shall hereafter be unlawful for any officer, director or employé of any state bank or banking corporation organized under the laws of this State to demand or receive, directly or indirectly, any commission or other consideration on account of the making by said banking corporation of any loan or extension of credit to any person, firm or corporation; and the acceptance of such commission, consideration or other compensation of any nature whatsoever in violation of this provision shall be deemed a misdemeanor and punishable upon conviction by a 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 thirty days nor more than ninety days, or by both such fine and imprisonment. [Act April 9, 1917, ch. 205, § 3.]

Took effect 90 days after March 21, 1917, date of adjournment.

Art. 529b. Making loans in excess of limit permitted by law.—The violation of any of the foregoing provisions by any agent or officer or any incorporated banks or trust company of this section of the Act [Art. 539] shall be deemed a misdemeanor, and shall be punishable upon conviction therefor, 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 thirty days nor more than ninety days, or by both such fine and imprisonment. [Id., § 7.]

Note.—The above is a part of sec. 7 of Act April 9, 1917, ch. 205, amending the former law relating to limitation of loans. The rest of the section is set forth ante as art. 539, civil statutes. Took effect 90 days after March 21, 1917, date of adjournment.

CHAPTER ONE B

CO-OPERATIVE SAVINGS AND CONTRACT LOAN
COMPANIES

Article 532e. Engaging in business contrary to law; proviso.—Any person who does so engage in violation of the provisions hereof [Art. 1313½x, Civil Statutes, ante] shall be guilty of a misdemeanor for each and every day such person is so engaged and shall be punished by fine not less than one hundred nor more than five hundred dollars for each offense; provided each day shall be a separate offense. [Act May 27, 1915, 1st C. S., ch. 5, § 27.]

CHAPTER THREE

BUCKET SHOPS—DEFINING AND PROHIBITING SAME

Art. 538. A bucket shop defined.	Art. 545. Proof prima facie.
539. Futures or dealing in futures defined.	546. What constitutes prima facie case.

Article 538. A bucket shop defined.

Attitude of Federal court.—The public policy defined by the provisions of this article and art. 539, will not be violated by the enforcement in a Federal court, sitting in that state, of a contract made and executed in the state of New York, and valid under the laws of that state, between a citizen of New York and a citizen of Texas, for the sale of cotton for future delivery upon the New York Cotton Exchange (with the understanding that actual delivery was contemplated), pursuant to the rules, regulations, customs, and usages of said Exchange, one of which provides that the cotton may be "of any grade from Good Ordinary to Fair inclusive, * * * at the price of — cents per pound for middling, with additions or deductions for other grades according to the rates of the New York Cotton Exchange existing on the day previous to the date of the transferable notice of delivery." *Bond v. Hume*, 243 U. S. 15, 37 Sup. Ct. 366, 61 L. Ed. 565.

Art. 539. Futures or dealing in futures defined.

See note under art. 538.

Art. 545. Proof prima facie.

Construction of petition.—The general provisions of this article and art. 546 afford no ground for holding, in a civil case brought to enforce a contract for the sale of cotton for future delivery, that the averments of the petition must be taken to be untrue in order to defeat the suit. *Bond v. Hume*, 243 U. S. 15, 37 Sup. Ct. 366, 61 L. Ed. 565.

Art. 546. What constitutes prima facie case.

See note under art. 545.

CHAPTER FOUR

GAMING

Art. 548. Playing cards in a public place.	Art. 557. Gaming table, bank, etc., betting at.
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Article 548. [379] Playing cards in a public place.

Cited, *State v. Country Club* (Civ. App.) 173 S. W. 570.

6. **Tavern, inn, or hotel—Private room of inn, etc., within article 549.**—This article, makes it an offense to play cards in the private room of a boarder at a hotel or boarding house, where no family occupied the room. *Fondren v. State* (Cr. App.) 179 S. W. 1170.

10. **Private residence occupied by a family.**—A railroad box car set flat on the ground held not a "private residence" within the statute punishing gaming. *Garcia v. State* (Cr. App.) 179 S. W. 1172.

Art. 557. [388] Gaming table, bank, etc., betting at.

3. **Betting in general.**—Matching money to determine which of persons so matching said money shall pay for thing for which they may match is a bet or wager, provided said thing or things for which matching is done is a thing of value. *Ellis v. State* (Cr. App.) 189 S. W. 1074.

17. **Complaint, indictment or information—Bet in general.**—In an indictment under this article, counts charging that accused “did then and there unlawfully bet and wager at a game of matching coins for other things of value, to wit, cold drinks,” and “did unlawfully bet and wager at a game of matching money and coins for such money and coins and other things of value” held sufficient. *Wilson v. State* (Cr. App.) 189 S. W. 1071.

22. **Evidence.**—In a prosecution for unlawfully betting at a game of matching coins for things of value, evidence held to support a verdict of guilty. *Wilson v. State* (Cr. App.) 189 S. W. 1071; *Ellis v. State* (Cr. App.) 189 S. W. 1074.

CHAPTER SEVEN

UNLAWFULLY SELLING INTOXICATING LIQUOR

Art.	Art.
589. Pursuing occupation in local option districts, punishment for.	606. Shipping intoxicating liquor, words to be placed on package.
591. What constitutes pursuing occupation of.	606a. Delivery of liquor for shipment within state.
593a. Sale or other disposition of liquors in bawdy houses.	606e. Soliciting orders for intoxicating liquors in local option territory.
597. Selling in prohibited districts.	606f. Retail druggists before purchasing alcohol shall execute power of attorney and make affidavit.
598. Not applicable, when.	
602. Repeal of law does not exempt offender, offender not an accomplice.	

Article 589. Pursuing occupation in local option districts, punishment for.

4. **Relation to other statutes and former jeopardy.**—Defendant convicted in the county court for violating the local option law by making a sale of liquor, an offense denounced by art. 597, can be convicted of engaging in the business of selling intoxicating liquor in prohibition territory, an offense denounced by this article. *Barnes v. State* (Cr. App.) 185 S. W. 2.

In prosecution for violation of prohibition liquor law in making a single sale of intoxicating liquor, plea of conviction for unlawfully engaging in business of selling intoxicating liquor in prohibition territory held not good as plea of former jeopardy. *Medlock v. State* (Cr. App.) 186 S. W. 323.

Unlawfully engaging in the business of selling intoxicating liquors is a crime distinct from that of a single unlawful sale, and a conviction for one is no bar to a conviction of the other. *Hill v. State* (Cr. App.) 186 S. W. 769.

6. **Offense.**—That defendant may have been in some other business would not prevent him from pursuing the occupation of selling liquor to all who applied to him. *Bagley v. State* (Cr. App.) 179 S. W. 1167.

The offense of violating the local option law by making sales of liquors, and the offense of pursuing the business of selling intoxicating liquors in prohibition territory, are separate and distinct, as defined by this article and art. 597, and in a prosecution for pursuing the business of selling intoxicating liquor in prohibition territory, proof that defendant made only a single sale to a witness, and sold to no other person or persons, will not support conviction. *Barnes v. State* (Cr. App.) 185 S. W. 2.

A sale of intoxicating liquor occurs at the place of delivery, where the seller actually parts with the property, and where accused procured whisky for the witness, receiving an advanced price over that which he paid, held that he was not the agent of the witness, the sale occurring in the place where the whisky was delivered. *Blackburn v. State* (Cr. App.) 185 S. W. 581.

In prosecution for pursuing occupation of selling intoxicants in dry territory, state must prove defendant made at least two sales to persons named in indictment, in addition to proving he pursued the occupation. *Vance v. State* (Cr. App.) 190 S. W. 176.

8. **Indictment.**—Though the indictment averred two sales to the witness and sales to another, held that, where there was proof of two sales, one to the witness and one to the other, a conviction of pursuing the business of selling intoxicating liquors in prohibition territory could be had. *Blackburn v. State* (Cr. App.) 185 S. W. 581.

An indictment for selling intoxicating liquors in prohibition territory, which recited the holding of an election, the entry and publication of the order of the commissioners' court, and the sale by defendant thereafter, held sufficient; it being unnecessary to set forth the orders for the election. *Matthews v. State* (Cr. App.) 189 S. W. 491.

Indictment for pursuing occupation of selling intoxicants in prohibition territory held not to allege joint sale to persons named, but that sales were made to each, and intro-

duction in evidence of order of commissioners' court ordering election and declaring result, and certificate of county judge showing publication had been made, did not present variance as to necessary allegations in indictment. *Vance v. State* (Cr. App.) 190 S. W. 176.

10. Evidence—Admissibility.—Evidence of drunkenness of those attending defendant's dance hall held admissible on a prosecution for sale in prohibition territory. *Medlock v. State* (Cr. App.) 185 S. W. 566.

In prosecution for pursuing occupation of selling intoxicants in dry territory, state was properly permitted to introduce orders of commissioners' court ordering election and declaring result, and certificate of county judge showing publication had been made, and persons not named in indictment were properly allowed to testify they purchased whisky from defendant. *Vance v. State* (Cr. App.) 190 S. W. 176.

11. — Sufficiency.—Evidence, on a prosecution for pursuing the business of selling intoxicating liquor in prohibition territory, held to support a conviction, especially when aided by plea of guilty. *Luttrell v. State* (Cr. App.) 179 S. W. 566.

Evidence held insufficient to warrant a conviction. *Brice v. State* (Cr. App.) 179 S. W. 1178.

Evidence, in a prosecution for pursuing the business of selling intoxicating liquor in prohibition territory, held to sustain a conviction. *Counts v. State* (Cr. App.) 181 S. W. 723.

In prosecution for violating local option law, where state's witness testified to sale, which was denied by defendant, whose denial was supported by other testimony, conviction will not be reversed for insufficiency of evidence. *Parita v. State* (Cr. App.) 189 S. W. 142.

12. Questions for jury.—In a prosecution for unlawfully selling intoxicating liquor in a prohibition county, the positive testimony of the state's witness that defendant sold him intoxicating liquor as charged, denied by defendant, made the offense a question for the jury. *Grisham v. State* (Cr. App.) 179 S. W. 1186.

Two state witnesses having testified positively, in a prosecution for engaging in the business of selling liquors in prohibition territory, to a sale of whisky to them by defendant, and he having sworn positively that he made neither sale nor delivery to either of them, the court correctly refused to submit the question whether defendant acted as agent in such sales. *Johnson v. State* (Cr. App.) 191 S. W. 1165.

Art. 591. What constitutes pursuing occupation of.

Number of sales.—To warrant a conviction of pursuing the business of selling intoxicating liquor in local option territory, the state must prove at least two sales. *Brice v. State* (Cr. App.) 179 S. W. 1178.

Art. 593a. Sale or other disposition of liquors in bawdy houses.

Indictments and proof.—In prosecution for permitting liquor to be drunk in disorderly house, state held not bound by date alleged, but entitled to prove any date within the period of limitation. *Bennett v. State* (Cr. App.) 181 S. W. 197.

Elements of offense.—To constitute an offense under this and the two following articles, presence of lewd women or women with bad reputation for chastity when liquors are drunk in disorderly house held unnecessary. *Bennett v. State* (Cr. App.) 181 S. W. 197.

Evidence.—On a trial for permitting liquor to be drunk in a disorderly house, evidence held to show that defendant's house was a place where lewd women and women with a bad reputation for chastity were permitted to resort. *Bennett v. State* (Cr. App.) 181 S. W. 197.

Art. 597. [402] Selling in prohibited districts.

1. In general.—Under Acts 31st Leg. c. 35, and this article, sale of liquors in territory where prohibition was adopted prior to the act of 1909 held a misdemeanor, but in territory where prohibition was subsequently adopted a felony. *Green v. State* (Cr. App.) 179 S. W. 1191.

3. Relation to other statutes and former jeopardy.—The offense of violating the local option law by making sales of liquors, and the offense of pursuing the business of selling intoxicating liquors in prohibition territory, are separate and distinct, as defined by this article and art. 589, and defendant convicted in the county court for violating the local option law by making a sale of liquor, an offense denounced by this article, can be convicted of engaging in the business of selling intoxicating liquor in prohibition territory, an offense denounced by article 589. *Barnes v. State* (Cr. App.) 185 S. W. 2.

In prosecution for violation of prohibition liquor law in making a single sale of intoxicating liquor, plea of conviction for unlawfully engaging in business of selling intoxicating liquor in prohibition territory held not good as plea of former jeopardy. *Medlock v. State* (Cr. App.) 186 S. W. 323.

Unlawfully engaging in the business of selling intoxicating liquors is a crime distinct from that of a single unlawful sale, and a conviction for one is no bar to a conviction of the other. *Hill v. State* (Cr. App.) 186 S. W. 769.

6. Offense.—One is not guilty of violating the local option law unless he sells an intoxicant, or a liquor which, when taken in reasonable quantities, will intoxicate. *Salvador v. State* (Cr. App.) 185 S. W. 12.

Conviction of selling intoxicating liquor in local option precinct cannot be sustained unless it is proven that prohibition had been adopted and was in force in such precinct at the time of alleged violation. *Jerma v. State* (Cr. App.) 194 S. W. 167.

7. — **Agents.**—One merely acting as agent of another in buying whisky is not guilty of illegal sale. *Hamilton v. State* (Cr. App.) 191 S. W. 1160.

9. **Indictment, information or complaint.**—Under art. 5728, civil statutes, as to conclusiveness of prohibition election in the absence of contest, held, that indictment for illegal sale of intoxicating liquor need not allege that notice of result of election for prohibition was published. *Cleveland v. State* (Cr. App.) 190 S. W. 177; *Dupree v. State* (Cr. App.) 190 S. W. 181.

An indictment for violation of the local option liquor prohibition law in selling beer need not allege that the beer was an intoxicating liquor. *Galindo v. State* (Cr. App.) 183 S. W. 886.

Indictment for selling intoxicating liquors, merely alleging that local option law was adopted prior to its presentment, giving no date, and alleging a sale subsequent to the enactment of this article, presented on its face a felony charge. *Barnes v. State* (Cr. App.) 184 S. W. 510.

13. **Evidence—Admissibility in general.**—On a trial for selling whisky in prohibition territory, the time and place where the prosecuting witness claimed to have bought the whisky from accused were directly in issue and properly shown, and state was properly permitted to show location of building in which accused had a room, and the furniture in such room when a witness was in it. *Engman v. State* (Cr. App.) 179 S. W. 569.

In a prosecution for violating the local option law by selling cider, testimony of two witnesses, that 40 or 50 years before they had made cider in other states which would intoxicate when it became "hard," held inadmissible. *Salvador v. State* (Cr. App.) 185 S. W. 12.

15. — **Weight and sufficiency.**—In a prosecution for violating the prohibition law, evidence held sufficient to sustain a conviction. *Sloan v. State* (Cr. App.) 179 S. W. 111.

In prosecution for an unlawful sale of intoxicating liquor, evidence held to sustain finding that defendant had not ordered the whisky for and at instance of his uncle. *Martin v. State* (Cr. App.) 189 S. W. 264.

16. **Questions for jury.**—In prosecution for selling intoxicants in prohibition county, whether defendant sold intoxicating liquors to state's witness, and did not deliver liquor to him under agreement that he should order it for him, held for jury. *Waggoner v. State* (Cr. App.) 190 S. W. 493.

Testimony on prosecution for illegal sale of liquor held sufficient to go to the jury on the theory of defendant being the owner of the whisky sold, but insufficient on the theory of defendant as agent selling liquor of another. *Hamilton v. State* (Cr. App.) 191 S. W. 1160.

17. **Instructions.**—Where the evidence in a prosecution for violation of the local option law tended to show alibi, held, that it was error to refuse requested instructions on alibi. *Venn v. State* (Cr. App.) 182 S. W. 315.

In prosecution for violating the local option law, where it was a serious issue whether the cider defendant sold was intoxicating, the court should have charged defendant's request that to convict the jury must find that defendant sold intoxicating liquor, defining it. *Salvador v. State* (Cr. App.) 185 S. W. 12.

In a prosecution for the illegal sale of intoxicating liquors, where the evidence showed a sale of whisky, it was proper for the court to instruct the jury that whisky is an intoxicating liquor, and unnecessary to define intoxicating liquor further. *Johnson v. State* (Cr. App.) 193 S. W. 674.

In prosecution for illegally selling liquor, where it was doubtful whether beverage was intoxicating, court should have instructed, as requested, that, to convict, the jury must believe beverage to be intoxicating as defined by instruction. *Weinberg v. State* (Cr. App.) 194 S. W. 1116.

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 stimulant 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 principle 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, employé, 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 prescription filed, which said prescription 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. Provided further that the preceding article shall not apply to the sale of ethyl alcohol in quantities of one gallon or more by any person, firm or corporation engaged in the wholesale drug business to any owner, proprietor, agent or employé of any retail drug store, whether incorporated or unincorporated, in which drugs are compounded, and employing a registered pharmacist, for the purpose of being used in such retail drug business; provided further, that every such person, firm or corporation shall have first paid the taxes and procured a license as required by Article 7475 of the Revised Civil Statutes of Texas, and have complied with all the provisions of the Law regulating such sales in local option territory. [Act March 30, 1887, pp. 70-71; Act 1903, p. 56; Act Oct. 12, 1917, ch. 17, § 1.]

Explanatory.—The Act amends art. 598 of ch. 7, title XI, Revised Penal Code, and art. 5716, title 88, Revised Civ. St.

Art. 602. [407] Repeal of law does not exempt offender; offender not an accomplice.

Accomplices.—Sheriff and person employed by him to detect bootleggers, and who, pursuant thereto, purchased whisky from defendant, held not accomplices in view of this article. *Bagley v. State* (Cr. App.) 179 S. W. 1167.

Art. 606. Shipping intoxicating liquor; words to be placed on package; book to be kept.

Evidence.—Under this article, entry book duly kept by express company held admissible, in prosecution for pursuing business of selling intoxicating liquor in prohibition territory, to show deliveries to defendant. *Counts v. State* (Cr. App.) 181 S. W. 723.

Art. 606a. Delivery of liquor for shipment within state.

Police power.—The police power of the state includes the right to regulate, control, and prohibit occupations endangering the health, morals, and safety of the general public. *Longmire v. State* (Cr. App.) 171 S. W. 1165.

Art. 606e. Soliciting orders for intoxicating liquors in local option territory; proviso.—It shall be unlawful for any person, firm or corporation in person, by letter circular or other printed or written matter, or in any other manner to solicit or take orders for any intoxicating liquors in any county, justice precinct, town, city or other subdivision of a county where the qualified voters thereof have by a majority vote determined that the sale of intoxicating liquors shall be prohibited therein; provided that nothing in this Act shall make it unlawful for any person, firm or corporation licensed under the laws of the State of Texas to sell ethyl alcohol to the owner, proprietor or some agent of his or its who may be by him or it appointed by power of attorney duly executed by him or it in the manner prescribed by law for the execution of deeds, and filed with the County Clerk of such county to make such purchases, to take orders for ethyl alcohol when such sales are made in compliance with the laws of this State. [Act 1913, 1st C. S., p. 63, ch. 31, § 6; Act Oct. 12, 1917, ch. 18, § 1.]

Explanatory.—The Act amends sections 6 and 7 of ch. 31, Acts 1st Called Session, 33d Legislature.

Art. 606f. Retail druggists before purchasing alcohol shall execute power of attorney and make affidavit.—Before any person, firm or corporation engaged in the Retail Drug Business shall make any purchases of alcohol from any wholesale druggist, said Retail Druggist shall designate by written power of Attorney executed in such manner as prescribed by law for the execution of deeds and filed with the County Clerk of such County some person who is exclusively authorized to make such purchases, and such Druggist shall make no purchases of alcohol except by such designated person and any wholesale druggist who shall make any sale to any other person than such person as may be designated to make purchases for Retail Druggists shall be punished as prescribed by law; provided further that the order for the same shall be accompanied with an affidavit showing that the person ordering or receiving same is entitled to receive the same under the provisions of this Section; in which said affidavit the fact shall be stated as to the status of the person so ordering or receiving the same, and the quantity of alcohol so ordered and an original of such affidavit at the time of the making of such order shall be filed with the clerk of the district court of the county where such intoxicating liquor is to be delivered. [Acts 1913, 1st C. S., p. 63, ch. 31, § 7; Act Oct. 12, 1917, ch. 18, § 1.]

See note under art. 606e.

CHAPTER EIGHT

VIOLATIONS OF THE LAW REGULATING THE SALE OF INTOXICATING LIQUORS

Art. 611. Selling without license.	Art. 615. Time for opening and closing.
614. Business under license limited to one place.	

Article 611. Selling without license.

Offense.—Under this article, the offense denounced is the sale of intoxicants without a license, and not engaging in the business of selling without a license. *Winterman v. State* (Cr. App.) 179 S. W. 704.

Information.—In view of arts. 7435 and 7446, civil statutes, Code Cr. Proc. arts. 453, 460, 464, and art. 614, an information charging sale of intoxicants without a license, following this article, held sufficient, while not averring the particular place in the county or that accused was licensed to sell elsewhere. *Winterman v. State* (Cr. App.) 179 S. W. 704.

Election.—Where complaint and information for selling liquor were in two different counts, each alleging the commission of the offense on the same day, and in the first the unlawful selling was alleged to one party, and in the second count to another party, the state was not bound to elect on which count conviction was sought. *Lieberman v. State* (Cr. App.) 189 S. W. 157.

Evidence.—In a prosecution for selling intoxicating liquor without a license in a county where prohibition was not in force, evidence held to warrant conviction. *Winterman v. State* (Cr. App.) 179 S. W. 704.

Art. 614. Business under license limited to one place.

Information.—See *Winterman v. State* (Cr. App.) 179 S. W. 704; note under art. 611.

Art. 615. Time for opening and closing.

Offense.—Cabaret, operated in connection with saloon, held part thereof, within art. 7451, Civil Statutes, providing a closing hour of 9:30 p. m. for any house or place where the business of selling liquors under a license is conducted, and act of keeping open cabaret, operated with saloon, after 9:30 p. m., allowing customers to drink beer purchased for them by waiters in saloon before such hour, and allowing waiters to deliver liquors so purchased, etc., held a violation of said article. *Walker v. Terrell* (Civ. App.) 189 S. W. 75.

Information and proof.—Information charging keeping saloon open on Sunday held sufficient under this article, and proof of any one violation sustains conviction. *Armen-dariz v. State* (Cr. App.) 194 S. W. 826.

Evidence.—Evidence in prosecution for pursuing the business of unlawfully selling intoxicating liquor as to nature of the liquor held to support a conviction. *Johnson v. State* (Cr. App.) 194 S. W. 143.

Jury question.—In prosecution for pursuing business of unlawfully selling intoxicating liquors, evidence held insufficient to raise question whether accused purchased liquor as agent for others, and so it was proper not to submit that issue to jury. *Johnson v. State* (Cr. App.) 194 S. W. 143.

CHAPTER EIGHT A

POOL HALLS

Article 633a. "Pool hall" defined.

Constitutionality and vested rights.—While a judgment of the Court of Criminal Appeals that a prohibitory pool hall law is valid is of such public interest as to be conclusive upon all persons, yet where an individual acquired pool hall and fixtures and licenses after prohibitory penal statute was adopted and declared valid by the Court of Criminal Appeals, but after Supreme Court declared it invalid, he had no vested property rights to entitle him to enjoin enforcement of the statutes, for where pool halls become inherently vicious and properly subject to police power, the license granted them does not create a vested right, since no one has a vested right to carry on a business hurtful to public welfare. *State v. Clark* (Cr. App.) 187 S. W. 760; *State v. Nabers* (Cr. App.) 187 S. W. 783, 784.

CHAPTER NINE

VAGRANCY

Art.
634. "Vagrancy" defined.

Art.
639. Court having jurisdiction; penalty for.

Article 634. "Vagrancy" defined.

Cited, *State v. Travis County Court*, 76 Cr. R. 147, 174 S. W. 365.

9. Complaint or indictment.—Information under this article, for vagrancy in that defendant unlawfully sold intoxicating liquors held not defective because also alleging his commission of other distinct acts declared by the statute to constitute vagrancy. *Mooneyham v. State* (Cr. App.) 181 S. W. 456.

10. Evidence.—Evidence held to support conviction of vagrancy. *Looper v. State* (Cr. App.) 179 S. W. 110.

In a prosecution for being a vagrant, in that he "did habitually loiter in and around houses of prostitution," evidence held insufficient to sustain a conviction, and admission of evidence that witnesses had never seen defendant do anything or any sort of work was erroneous. *King v. State* (Cr. App.) 181 S. W. 736.

In prosecution for vagrancy in being a common prostitute, testimony that persons asked witness where defendant's family lived or who lived in the house, held admissible, and evidence held to sustain conviction. *O'Toole v. State* (Cr. App.) 183 S. W. 1160.

Art. 639. Court having jurisdiction; penalty for.

Cited, *State v. Travis County Court*, 76 Cr. R. 147, 174 S. W. 365.

CHAPTER NINE A

ABANDONMENT OF WIFE OR CHILDREN

Art.
640a. Desertion and failure to support wife
or children; penalty.

Art.
640b. Order for support pendente lite; con-
tempt.
640d. Venue.

Article 640a. Desertion and failure to support wife or children; penalty.

Offense.—Under this article, it was immaterial that the child charged to have been deserted was born after defendant had deserted his wife. *Spicer v. State* (Cr. App.) 179 S. W. 712.

Defendant held not guilty of wife desertion under this article, where his leaving her was caused only by inability to support, and was not willful or intentional. *Moore v. State* (Cr. App.) 180 S. W. 1100.

A husband cannot be convicted under this article, of willfully deserting or failing to provide for his wife in destitute or necessitous circumstances, where she has means when he leaves her, and he does not know of her afterwards becoming destitute. *Furlow v. State* (Cr. App.) 182 S. W. 308.

Where defendant left his wife and children with some supplies because he did not like his wife's people, he was guilty of willfully deserting them in destitute circumstances, though his mother would have supplied the wife with necessaries. *Pippins v. State* (Cr. App.) 187 S. W. 213.

Under this article, to prove offense of wife desertion, state must show that accused not only willfully and without justification deserted his wife and refused to support her, but also that she was in destitute and necessitous circumstances. *Windham v. State* (Cr. App.) 192 S. W. 248.

Evidence.—In a prosecution for wife desertion, where the defense expected to show that the wife had left the husband, questions to the wife whether she still loved defendant and whether, if defendant had paid a "bill" she presented to him, aggregating over \$2,400, she would have taken the matter to the grand jury, held proper, and her letters in endearing terms to her husband's mother and sister, should have been admitted to rebut the state's testimony that prior to the desertion she was forced to leave her husband for a visit to her relatives by the bad treatment of the mother and sister, but her testimony as to what a minister whom she had consulted had advised her to do was inadmissible. *Redmond v. State* (Cr. App.) 180 S. W. 272.

Evidence that a husband took his wife to his father's home where he had permission to live, but that she left on the same day because of a quarrel with his mother, is not sufficient to sustain a conviction for wife desertion under this article. *Verse v. State* (Cr. App.) 193 S. W. 303.

Instructions.—Where testimony raises the issue that the wife, when making a visit prior to the alleged abandonment of her by the husband, intended to abandon him, the issue should be presented to the jury in the charge. *Redmond v. State* (Cr. App.) 180 S. W. 272.

Art. 640b. Order for support pendente lite; contempt.

Petition.—A petition, alleging that petitioner's husband was guilty of contempt in failing to pay her temporary alimony pendente lite, is defective when not sworn to or accompanied by an affidavit, and a contempt order entered thereon, over proper objections, is void. *Ex parte Sturrock* (Cr. App.) 189 S. W. 487.

Art. 640d. Venue.

Jurisdiction.—Under this article, husband who took his wife to live with his parents, where she stayed a month, leaving to visit relatives in Pennsylvania, he thereafter abandoning her in Maryland, could be convicted of wife desertion in the county of the parents' residence under an indictment charging failure and refusal to support. *Redmond v. State* (Cr. App.) 180 S. W. 272.

Evidence.—Evidence held to show that the wife's residence was in the county where the prosecution took place, so that the venue of the case was properly laid under this article. *Redmond v. State* (Cr. App.) 180 S. W. 272.

CHAPTER TEN

MISCELLANEOUS OFFENSES UNDER THIS TITLE

Art. 641. Pawnbroker failing to comply with the law.	Art. 645. Penalty for acting as agent unlawfully.
644. Who are insurance agents.	

Article 641. [414] Pawnbroker failing to comply with the law.

As fixing liability of pawnbroker.—Rev. St. 1911, art. 6155 et seq., and this article, held not to fix the liability of a pawnbroker for pursuing the occupation without obtaining a license, which is determined by Rev. St. arts. 7355, 7357, and Penal Code, art. 130. *Schapiro v. State* (Civ. App.) 169 S. W. 683.

Art. 644. [417] Who are insurance agents.

Cited, *Drummond v. White-Swearingen Realty Co.* (Civ. App.) 165 S. W. 20.

Art. 645. [418] Penalty for acting as agent unlawfully.

Cited, *Drummond v. White-Swearingen Realty Co.* (Civ. App.) 165 S. W. 20.

CHAPTER ELEVEN

INSURANCE COMPANIES

CO-OPERATIVE LIFE INSURANCE COMPANIES

Article 691. Agent embezzling or misappropriating money, etc.

Scope of article.—Title of Acts 31st Leg. c. 108, § 51 (now this article), held sufficient to include prosecutions of insurance agents for larceny by embezzlement of premiums paid. *Meredith v. State* (Cr. App.) 184 S. W. 204.

Offense.—An insurance agent receives premiums under his employment, and may not appropriate them to his own use, so that failure of the applicant to sign a new application as required would not affect his guilt in appropriating the premiums, and although he could have retained 40 per cent. of the premiums, had the policy been issued, that would not reduce the crime from felony to misdemeanor, where the policy was not in fact issued. *Meredith v. State* (Cr. App.) 184 S. W. 204.

Indictment.—While indictment for larceny by embezzlement from corporation must allege that the defrauded party was a corporation, it is not necessary to allege that other corporations interested were such, nor is it necessary to allege the ownership of the money. *Meredith v. State* (Cr. App.) 184 S. W. 204.

Evidence.—In a prosecution for larceny by embezzling insurance premiums, the contract under which the accused was working for the insurance company was admissible; its terms being binding upon him, and where accused testified that he told the applicant that his application had been canceled and he would have to see the state agent to get the premium, the state agent could testify that the applicant called and did receive the premiums, and upon accused testifying that he had received a premium and had paid it to no one, it was not error to admit testimony of his superior that he had not received it or permitted accused to appropriate it. *Meredith v. State* (Cr. App.) 184 S. W. 204.

Jury question.—Where an agent accused of embezzling insurance premiums withheld them after refusal to issue a policy, although he was entitled to 40 per cent. thereof if the policy were issued, the question of joint ownership of the premium was properly withheld from the jury, and where the accused testified that he had received the premiums and had paid them to no one but had spent the money, an instruction as to good faith in retaining the money was properly refused. *Meredith v. State* (Cr. App.) 184 S. W. 204.

TITLE 12

OF OFFENSES AFFECTING PUBLIC HEALTH

Chap.		Chap.
1. Occupation and acts injurious to health.		4. Feed stuffs.
2. Sale of unwholesome food, drink or medicine, or mill products.		5. Cocaine and morphine.
3a. Cotton pest.		5a. Poisons.
		6. Unlawful practice of medicine.
		11. Texas state board of health.

CHAPTER ONE

OCCUPATION AND ACTS INJURIOUS TO HEALTH

Art.		Art.
694. Offensive trades and nuisances.		696. Leaving dead body of animal in highway or near private residence.
695e. Harboring or concealing leper.		

Article 694. [423] Offensive trades and nuisances.

Evidence.—In prosecution for carrying on business injurious to health of those residing in vicinity, evidence held to support jury finding against defendant, and testimony that there were a quantity of flies swarming around hides and diseased meat, that water standing on premises was covered with green scum, that children played along bayou in neighborhood of defendant's premises, and that water was polluted by defendant's hogpen, was properly admitted. *Moore v. State* (Cr. App.) 194 S. W. 1112.

Art. 695e. Harboring or concealing leper.—Any person within this State who shall knowingly harbor or conceal any leper shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars and not more than five hundred dollars for every day of such concealment. [Act 1909, 1st C. S., p. 336, ch. 26, § 7; Act May 19, 1917, 1st C. S., ch. 24, § 7.]

See arts. 232½–232½f, civil statutes.

Art. 696. Leaving dead body of animal in highway or near private residence.

Cited, *Moore v. State* (Cr. App.) 194 S. W. 1112.

CHAPTER TWO

SALE OF UNWHOLESOME FOOD, DRINK OR MEDICINE, OR MILL PRODUCTS

Art.		Art.
698.		700. Drugs, confectionery, and foods, when deemed adulterated.
699. Manufacture and sale of adulterated and misbranded foods.		

MILL PRODUCTS

714. Penalty for offering, etc.

Article 698.

Cited, *Howard v. State* (Cr. App.) 192 S. W. 770.

Art. 699. Manufacture and sale of adulterated and misbranded foods.

Indictment and information.—Under Const. art. 1, § 10, White's Ann. Code Cr. Proc. art. 436, and Vernon's Ann. Code Cr. Proc. 1916, art. 642, an indictment held not necessary to charge a violation of Pure Food Law, but prosecution by information was sufficient to justify retention of accused, and information held not void because of defects in form so as to authorize its attack by habeas corpus proceedings. *Ex parte Drane* (Cr. App.) 191 S. W. 1156.

Art. 700. Drugs, confectionery, and foods, when deemed adulterated.

Information.—See *Ex parte Drane* (Cr. App.) 191 S. W. 1156; note under art. 699.

MILL PRODUCTS

Art. 714. Penalty for offering, etc.

Cited, *Howard v. State* (Cr. App.) 192 S. W. 770.

CHAPTER THREE A

COTTON PEST

Art. 729½.	Failure to report presence of pink boll worm.	Art. 729½a.	Transportation of cotton products in quarantined district.
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Article 729½. Failure to report presence of pink boll worm.—It shall be the duty of any person or persons upon whose premises any pink boll worm shall appear to report the presence of such cotton pest to the Commissioner of Agriculture of this State, and any failure, knowingly, on the part of any such person or persons to make such report promptly shall, upon conviction, subject such person or persons to a fine of not less than one hundred (\$100.00) dollars and not more than one thousand (\$1,000.00) dollars for each offense. And any person or persons who may know of the presence of the pink boll worm in any locality in this State and who shall fail to report the locality of such pest to the Commissioner of Agriculture shall, upon conviction, be subject to a like fine. [Act Oct. 3, 1917, ch. 11, § 10.]

See arts. 4475a–4475k, ante, civil statutes.

Art. 729½a. Transportation of cotton or cotton products in quarantined district.—Any person or persons who may transport any cotton or cotton products by any means from any territory in this State which has been quarantined and placed under restrictions by proclamation of the Governor of the State in accordance with the authority conferred by the conditions of this act, to any part of the State in violation of this act [Arts. 4475a–4475k, Civil Statutes, ante] or of either of the proclamations, and restrictions authorized by this act, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in any sum not less than five hundred (\$500.00) dollars and not more than five thousand (\$5,000.00) dollars, and each transaction of each product so shipped or transported shall constitute a separate offense. [Id., § 11.]

CHAPTER FOUR

FEED STUFFS

Article 735. Penalty for failure to fix statement, 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 a larger percentage of protein, fat, or nitrogen-free extract, or a smaller

per cent of crude fiber, than is contained therein, shall, on conviction, be fined not less than One Hundred Dollars, nor more than Five Hundred Dollars for the first conviction, and not less than Five Hundred Dollars nor more than One Thousand Dollars for each subsequent conviction. [Act 1905, p. 207, § 6; Act 1907, p. 245; Act March 28, 1917, ch. 106, § 1.]

Explanatory.—The act amends art. 735 of "chapter 4, of title 12 of the Revised Criminal Statutes of 1911." Took effect 90 days after March 21, 1917, date of adjournment.

Validity.—This article is not void because it makes agent of principal guilty of offense instead of making principal so only. *Guild v. State* (Cr. App.) 187 S. W. 215.

In view of art. 6, this article is too indefinite and uncertain to describe an offense. *Cogdell v. State* (Cr. App.) 193 S. W. 675.

Information.—Under this article, an information naming cotton seed cake described therein as "concentrated feeding stuff," omitting the word "commercial," held sufficient. *Guild v. State* (Cr. App.) 187 S. W. 215.

Variance.—That the information alleged defendant was agent of a corporation, and the proofs showed that company was a partnership, does not present reversible error in a prosecution under this article. *Cogdell v. State* (Cr. App.) 193 S. W. 675.

CHAPTER FIVE

COCAINE AND MORPHINE

Article 748. Unlawful for any practitioner of medicine, dentistry or veterinary to prescribe to habitual users.

Offense.—This article does not prohibit the prescribing of such drug when necessary to alleviate pain or cure the drug habit. *Fyke v. State* (Cr. App.) 184 S. W. 197.

Indictments.—Indictment under this article, held sufficient, though it did not negate the proviso permitting its prescription as a cure for the drug habit. *Lowery v. State* (Cr. App.) 185 S. W. 7; *Fyke v. State* (Cr. App.) 184 S. W. 197.

Evidence.—In a prosecution under this article, it is error to exclude defendant's evidence that he gradually reduced the size of the dose and finally ceased it altogether; that being material to show that the drug was prescribed in an effort to cure the habit. *Fyke v. State* (Cr. App.) 184 S. W. 197.

Instructions.—Where there is evidence that a drug was prescribed to relieve pain, it was error, in a prosecution under this article, to refuse requested instructions on the purpose of the prescription and that if the drug was administered in an effort to relieve pain the defendant physician was not guilty, while a given instruction was erroneous under the evidence for excluding consideration of the fact testified to that the drug was prescribed to alleviate pain and suffering. *Fyke v. State* (Cr. App.) 184 S. W. 197.

In prosecution under this article, instruction to disregard physical condition of addict due to other physical ailments except to show that defendant was treating her for morphine habit, held not reversible error. *Lowery v. State* (Cr. App.) 185 S. W. 7.

CHAPTER FIVE A

POISONS

Art.		Art.
749½.	Persons selling poisons shall keep record; marking containers.	749½a. Poisons included. 749½b. Penalty for violation.

Article 749½. Persons selling poisons shall keep record; marking containers.—Every person, firm or corporation in this State who shall sell any of the poisons hereinafter named shall be required; (a) to keep a permanently bound record in which shall be recorded at the time of the sale the name and address of the purchaser, if known to the seller, and if unknown the sale shall not be made until the purchaser shall be identified by some person who is known to the seller, and the name and address of the person so identifying the purchaser shall be recorded with

the name and address of the purchaser, and the name and quantity of the poison purchased and the purpose for which same is to be used, which record shall at all times be open to the inspection of all officers charged with the enforcement of law; (b) each package or container must be marked with a label containing the name and quantity of the poison purchased and the word "poison" printed in red ink in a conspicuous place on the label, which label shall be placed on every package and container of poison sold. [Act Oct. 16, 1917, ch. 25, § 1.]

Art. 749½a. Poisons included.—The following poisons shall be included within the provisions of this Act; arsenic, cyanide of potassium, hydrocyanic acid, cocaine, morphine, strychnia and all other poisonous vegetable alkaloids and their salts, oil of bitter almonds, containing hydrocyanic acid, opium and its preparations, except paregoric and such others as contain less than two grains of opium to the ounce, aconite, belladonna, cantharides, colchicum, conium, cotton root, digitalis, ergot, hellebore, henbane, phytolacca, strophanthus, oil of tansy, veratrum viride and their pharmaceutical preparations, arsenical solutions, carbolic acid, chloral hydrate, chloroform, corrosive sublimate, creosote, croton oil, mineral acids, oxalic acid, Paris green, salts of lead, salts of zinc, white hellebore or any drug, chemical or preparation which, according to standard works on medicine or materia medica, is liable to be destructive to adult human life in quantities of sixty grains or less. [Id., § 2.]

Art. 749½b. Penalty for violation.—Any person who shall for himself or as the agent or employé of another person, firm or corporation in this State, sell, give away or deliver to another without having complied with the provisions of this Act shall be guilty of a misdemeanor and upon conviction shall be fined not less than twenty-five (\$25.00) dollars nor more than one hundred (\$100.00) dollars, and in addition shall be imprisoned in the county jail for not less than twenty (20) days nor more than six (6) months. [Id., § 3.]

CHAPTER SIX

UNLAWFUL PRACTICE OF MEDICINE

Art.	Art.
750. Authority to practice registered in district clerk's office; change of residence recorded, where.	755. Shall be regarded as practicing medicine, when.
752. Practitioners of medicine to receive verification license.	756. Practicing in violation of law, penalty.
	757. Not applicable to what cases.

Article 750. Authority to practice registered in district clerk's office; change of residence recorded, where.

2. **Validity of act.**—The medical practice act is not unconstitutional. *Hyroop v. State* (Cr. App.) 179 S. W. 878.

Under Const. art. 3, §§ 11, 37, and article 4, § 14, the original act of 1907, regulating the practice of medicine, which was returned by the Governor on request of the House and Senate, held never to have become operative, while the second act (this article et seq.), did become a law, and, in any event, where the original act would have covered accused's case, who was charged with practicing medicine without a license, he cannot escape liability because that law which contained similar provisions did not become operative, the original never having been supplanted. *Teem v. State* (Cr. App.) 183 S. W. 1144.

The Legislature had the power and authority to enact Acts 30th Leg. c. 123, regulating the practice of medicine. *Gay v. State* (Cr. App.) 184 S. W. 200.

6. **Compliance with article.**—A chiropractor who held himself out as able to benefit patients by so-called adjustments, and who collected compensation held guilty of practicing medicine without a license, within this article and art. 755. *Teem v. State* (Cr. App.) 183 S. W. 1144.

Under Acts 30th Leg. c. 123, §§ 4, 6, 15, this article and arts. 752, 757, excepted classes of medical practitioners held not relieved of duty of procuring and filing verification license. *Gay v. State* (Cr. App.) 184 S. W. 200.

8. **Indictment and information.**—Under this article, an information alleging that the defendant practiced medicine without having obtained a certificate and without having a diploma, is sufficient, though it did not charge failure to record. *Young v. State* (Cr. App.) 181 S. W. 472.

Requisites of indictment for practicing without license stated. *Rutherford v. State* (Cr. App.) 187 S. W. 481.

16. **Admissibility of evidence.**—Evidence of methods of treatment of disease by one claiming to be a masseur held admissible in a prosecution of such person for unlawfully practicing medicine. *Hyroop v. State* (Cr. App.) 179 S. W. 878.

In a prosecution of a physician for practicing without authority, evidence of a witness that the defendant treated his wife and received his board and lodging as compensation therefor is admissible, and where the statute specifically defines the term "practicing medicine," it is not error to exclude testimony as to the general meaning of those words in a prosecution for practicing medicine without authority. *Young v. State* (Cr. App.) 181 S. W. 472.

Art. 752. Practitioner of medicine to receive verification license.

Verification certificate.—Under Acts 30th Leg. c. 123, §§ 4, 6, 15, this article and arts. 750, 755, excepted classes of medical practitioners held not relieved of duty of procuring and filing verification license, and a license issued in 1892 by member of medical examining board licensing defendant until next regular meeting of the board held not the verification license required to be filed by the present law. *Gay v. State* (Cr. App.) 184 S. W. 200.

Art. 755. Shall be regarded as practicing medicine, when.

Chiropractor.—A chiropractor who held himself out as able to benefit patients by so-called adjustments, and who collected compensation held guilty of practicing medicine without a license, within this article and art. 750. *Teem v. State* (Cr. App.) 183 S. W. 1144.

Masseur.—Under art. 5745, civil statutes, one professing to be a masseur is yet a "physician," where he professes to cure diseases or disorders, and it is not necessary to complete the offense that the defendant shall have held himself out as practicing medicine. *Hyroop v. State* (Cr. App.) 179 S. W. 878.

Art. 756. Practicing in violation of law, penalty.

Verdict.—In a prosecution for unlawfully practicing medicine under this article, a jury finding accused guilty must assess both fine and imprisonment. *Rutherford v. State* (Cr. App.) 187 S. W. 481.

Art. 757. [441] Not applicable, to what cases.

Excepted classes.—Under Acts 30th Leg. c. 123, §§ 4, 6, 15, this article and arts. 750, 752, excepted classes of medical practitioners held not relieved of duty of procuring and filing verification license. *Gay v. State* (Cr. App.) 184 S. W. 200.

CHAPTER ELEVEN

TEXAS STATE BOARD OF HEALTH

<p>Art. 800. Creating same. 801. Sanitary code. 801a. Penalty for violation of provisions of</p>	<p>Art. act, relating to bureau of vital statistics. 801b. Same; false information concerning births and deaths.</p>
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Article 800. Creating same.

See arts. 4524a-4524g, ante, civil statutes.

Art. 801. Sanitary Code.

Rule 36.—See art. 4553a (Rules 36a-36c), civil statutes.

Rule 37.—See art. 4553a (Rule 37a), civil statutes.

Rule 38.—See art. 4553a (Rules 38a, 38b), civil statutes.

Rule 50.—See art. 4553a (Rule 50a), civil statutes.

Art. 801a. Penalty for violation of provisions of act relating to Bureau of Vital Statistics.—That any person, or persons, who shall violate any of the provisions of this Act, shall be deemed guilty of a mis-

demeanor and upon conviction in a court of competent jurisdiction shall be fined not less than ten dollars (\$10.00) nor more than one hundred (\$100.00) dollars. [Act March 29, 1917, ch. 129, § 12.]

Explanatory.—The act referred to is set forth ante as arts. 4524a-4524g, 4553a (Rules 36a-36c, 37a, 38a, 38b, 50a), of the civil statutes.

Art. 801b. Same; false information concerning births and deaths.— That any person who shall falsely or fraudulently furnish any information for the purpose of making an incorrect record of a birth or death, shall be guilty of a felony, and, upon conviction in a court of competent jurisdiction, shall be punished by confinement in the State penitentiary for a term of not less than one year nor more than two years. [Id., § 13.]

TITLE 13

OF OFFENSES AFFECTING PROPERTY HELD IN COMMON
FOR THE USE OF THE PUBLIC

Chap.

1. Obstruction [or improper use] of navigable streams, and roads, streets and bridges.
2. Offenses pertaining to public roads [drainage, levees], and irrigation.

Chap.

5. Public or quasi public buildings—Fire protection.
6. Offenses relating to the protection of fish, birds and game.

CHAPTER ONE

OBSTRUCTION [OR IMPROPER USE] OF NAVIGABLE
STREAMS, AND ROADS, STREETS AND BRIDGES

Art.

§14-§18. [Superseded.]
§19, §20.

- §20a. Operation of motor vehicle without number and seal; false seal or number; venue of prosecution; disposition of fines.
- §20aa. Operation of motor vehicles without number displayed; false or fictitious plate; motorcycles; plates to be kept clean and distinct.
- §20b. Operation of motor vehicle without seal displayed; fictitious seal.
- §20bb. Equipment with signal device; sounding.
- §20c. Lights on motor vehicles, motorcycles, and bicycles.
- §20b. Same; glaring lights prohibited.
- §20e. Brakes.
- §20f. Protuberances on tires prohibited.
- §20g. Unusual noises; escape of gas; muffler cut-out.
- §20h. Intoxicated person not to drive vehicle.
- §20i. Permitting operation by unlicensed chauffeur.
- §20j. Standing in street without setting brakes.
- §20k. Law of the road.
- §20l. Duties as to crossing of railroad tracks.
- §20m. Duty to stop in case of accident; care of person injured; giving information as to name, etc.; penalty for violation.
- §20n. Racing prohibited.

Art.

- §20o. Rate of speed.
- §20p. Arrest of operator of motor vehicle; violation of promise to appear before magistrate.
- §20q. Speed in passing vehicle.
- §20r. Local regulations prohibited; exceptions.
- §20s. Revocation of license; notice; reissue of license; unlawful to operate motor vehicle; suspension of license.
- §20t. Acting as chauffeur without license, etc.
- §20u. Chauffeur permitting use of badge by other person; using badge of another; fictitious badge.
- §20v. Using or permitting use of badge of another or a fictitious badge.
- §20w. Operation of motor vehicle by unlicensed chauffeur prohibited.
- §20ww. Disposition of fines collected.
- §20x. Record of convictions; abstract to be sent to highway department.
- §20xx. Same; form of abstract.
- §20y. Provisions cumulative.
- §20yy. Penalty for violation of certain of foregoing provisions.
- §20z. Arrest without warrant.
- §22a. Sale of vehicles with tires less than specified width prohibited.
- §22b. Same; to whom applicable.
- §22c. Same; penalty for violation.
- §22d. Same; when act takes effect.
- §26a. Depositing glass and other substances in highway.

Article 814.

Superseded by Act April 9, 1917, ch. 207, § 4, post, art. §20aa.

Arts. 815, 816.

Superseded by Act April 9, 1917, ch. 207, §§ 20-22, post, arts. §20a-§20q.

Excessive speed as negligence.—Person driving automobile more than 18 miles an hour in violation of art. 815, though negligent, held not liable for death of mule running loose in violation of law, unless guilty of gross negligence, and fact that mule struck was seen by driver when 30 yards away held not necessarily to show gross negligence. *Dillon v. Stewart* (Civ. App.) 180 S. W. 648.

Art. 817.

Superseded by Act April 9, 1917, ch. 207, § 19, post, art. §20n.

Art. 818.

Superseded by Act April 9, 1917, ch. 207, § 16 (i), post, art. 820k.

Arts. 819, 820.

Act April 9, 1917, ch. 207, § 7, ante, art. 7012½n, civil statutes, deals with the subject embraced in art. 819, but it attaches no penalty for violation. (See arts. 820aa-820yy, post.) As to whether the penal provision of art. 819 is superseded is a matter for judicial construction.

Art. 820a. Operation of motor vehicle without number and seal; false seal or number; venue of prosecution; disposition of fines.—Any person owning and operating a motor vehicle or motorcycle on the public highways of this State after the taking effect of this Act, without the number plates displayed thereon, in accordance with the requirements of this Act, or anyone owning and operating a motor vehicle or motorcycle, without the distinguishing seal provided by the Department for each year, shall be guilty of a misdemeanor and, upon conviction, shall be fined in any sum not less than ten (\$10.00) dollars nor more than twenty-five (\$25.00) dollars for each violation, and each day such motor vehicle or motorcycle is operated upon the highways of the State in violation of the provisions of this Act, shall constitute a separate offense. Any person obtaining a distinguishing seal, as provided for herein, for [from] any source other than the State Highway Department or its authorized agents, or except as hereinbefore provided, or any person not authorized by the State Highway Department, who sells or offers to sell any seal or number in imitation of those furnished by the State Highway Department, shall be guilty of a misdemeanor, and shall, upon conviction, be fined not less than twenty-five (\$25.00) dollars; provided, that all prosecutions under this Act shall be in the county where such person may live or in which such person may operate such un-numbered or unmarked vehicle, or may sell, or offer for sale, such number or seal; and provided further, that all sums arising from the imposition and collection of fines under this Act, shall constitute a special maintenance fund to be expended upon the public roads of the respective counties where collected. [Act April 4, 1917, ch. 190, § 24.]

Explanatory.—The printed session laws contains a notation to the effect that H. B. No. 2, as enrolled, contains a duplicate page covering that portion of section 24 beginning with the words "this act, without the number plates displayed thereon, in accordance," etc., and continuing to the end of the section as set forth above. On the duplicate page, however, the words "from any source" are used instead of the incorrect expression "for any source" in the opening part of the second sentence. See arts. 7012½g and 7012½gg, ante, of the civil statutes, prohibiting acts of the nature set forth in the text above, but containing no penalty for violation. See, also, arts. 7012½a, 7012½aa, ante, of the civil statutes, relating to registration of motor vehicles and the securing of number plates and seals. This provision supersedes art. 814, Revised Pen. Code 1911.

This article is superseded, in part at least, by the later acts of April 9, 1917, and May 19, 1917, set forth post as arts. 820aa, 820yy.

Art. 820aa. Operation of motor vehicles without number displayed; false or fictitious plate; motorcycles; plates to be kept clean and distinct.—No person shall operate or drive a motor vehicle on the public highways of this State unless such vehicle shall have at all times displayed, one on the front and the other on the back thereof, number plates corresponding to the distinctive number assigned to such motor vehicle by the said department and such number plates to be in conformity with other requirements of said department.

No person shall attach to or display on such motor vehicle any number plate assigned to it under any other motor vehicle law other than by the Highway Department of this State, or any registration number other than that assigned for the current year, or a fictitious number plate;

provided, however, that but one number plate shall be required upon motor cycles and that such number plate upon motorcycle shall be attached to the rear thereof.

All letters, numbers and other identification marks shall be kept clear and distinct and free from grease or other blurring matter so that they shall be plainly seen at all times during day light. [Act April 9, 1917, ch. 207, § 4.]

See art. 820a and note thereunder. See, also, arts. 7012½-7012½l, civil statutes, ante.

Art. 820b. Operation of motor vehicle without seal displayed; fictitious seal.—No person shall operate or drive a motor vehicle on the public highways of this State unless such vehicle shall have at all times conspicuously displayed on the front end thereof the seal for the current year assigned to the said motor vehicle by the Highway Department, and no person shall attach to or display on such vehicle any seal assigned to it under any motor vehicle law, or a fictitious seal or a seal not of the current year, provided that the seal assigned a motorcycle shall be attached conspicuously to the rear thereof. [Id., § 5.]

Art. 820bb. Equipment with signal device; sounding.—Every motor vehicle shall be equipped with a bell, gong, horn, whistle or other device in good, working order, capable of emitting an abrupt sound adequate in quality and volume to give warning of the approach of such motor vehicle to pedestrians and to the rider or driver of animals, or of other vehicles and to persons entering or leaving street, interurban or railroad cars. Every person operating a motor vehicle shall sound said bell, gong, horn, whistle or other device whenever necessary as a warning of danger but not at other times or for other purposes. [Id., § 7.]

Explanatory.—Prior to Act Oct. 10, 1917, 3rd C. S., 35th Legislature, no penalty was attached to a violation of the above provision. See art. 820yy, post.

Art. 820c. Lights on motor vehicles, motorcycles, and bicycles.—(a) Every motor vehicle other than a motorcycle while on the public highways of this State, when in operation, during the period of one-half hour after sunset to one-half hour before sunrise, and at all times when fog or other atmospheric conditions render the operation of such vehicles unusually dangerous to traffic and the use of the highways, shall carry at the front at least two lighted lamps showing the white lights visible under normal atmospheric conditions at least five hundred feet in the direction toward which such motor vehicle is facing, and shall also carry at the rear a lighted lamp exhibiting one red light plainly visible for a distance of five hundred feet to the rear.

(b) At the times and under the conditions hereinbefore specified in this section, every motorcycle or bicycle, while on the public highway when in operation, shall carry on its front one lighted lamp showing a white light visible under normal atmospheric conditions at least two hundred feet in the direction toward which such motorcycle or bicycle is facing and shall also carry at the rear of such motorcycle or bicycle one red light plainly visible from the rear. [Id., § 8.]

Explanatory.—Prior to Act Oct. 10, 1917, 3rd C. S., 35th Leg., no penalty was provided for violation of subdivision (a) of this section. See art. 820yy, post.

Art. 820d. Same; glaring lights prohibited.—Provided that no automobile or motorcycle or bicycle shall be used upon the highways of this State which is equipped with a lamp, which when lighted is capable of projecting direct rays at a greater height than a parallel of four feet from the road, provided, however, that any automobile, motorcycle or bicycle may be equipped with a lamp capable of projecting direct rays.

at a greater height than a parallel of four feet from the road, if such lamp, when lighted, is not capable of producing a dazzling light or glare. [Id., § 9.]

Art. 820e. Brakes.—All motor vehicles must be provided at all times when being operated on the public highways with adequate brakes kept in good working order. [Id., § 10.]

Art. 820f. Protuberances on tires prohibited.—Other than on vehicles actually engaged at the time in construction or repair work on roads, no tire on any motor vehicle or any other vehicle shall be permitted to be run or operated on the public highway in this State which has on its periphery, any block, lug, stud, cleat, ridge, bead or any other protuberance of metal that shall project more than one-fourth of an inch beyond the tread or traction surface of the tire, unless the said wheels are protected by bands, wooden blocks, skids, or some other sufficient device to protect the highways against injury by reason thereof; provided, that this section shall not be construed so as to prohibit the use of traction engines with cleats on the driving wheels thereof on dirt or unimproved roads. [Id., § 11.]

Art. 820g. Unusual noises; escape of gas; muffler cut-out.—Every motor vehicle must have devices in good working order which shall be at all times in constant operation to prevent excessive or unusual noises, annoying smoke and the escape of gas, steam or oil as well as the falling out of residue from fuel, and all exhaust pipes carrying exhaust gas from the engine shall be directly parallel to the ground or slightly upward. Devices known as “muffler cut-out” shall not be used within the limits of any incorporated city or town or on any public highway where the territory contiguous thereto is closely built up. [Id., § 12.]

Art. 820h. Intoxicated person not to drive vehicle.—No intoxicated person shall operate or drive a motor or any other vehicle upon any public highway in this State. [Id., § 13.]

Art. 820i. Permitting operation by unlicensed chauffeur.—No person shall employ for hire as a chauffeur of a motor vehicle any person not licensed as in this Act provided.

No person shall allow a motor vehicle owned by him or under his control to be operated by any chauffeur who has no legal right to do so. [Id., § 14.]

Art. 820j. Standing in street without setting brakes.—No person having control or charge of a motor vehicle shall allow such vehicle to stand in any public street or public highway unattended without first effectively setting the brakes thereon and stopping the motor of said vehicle. [Id., § 15.]

Art. 820k. Law of the road.—(a) The driver or operator of any vehicle in or upon any public highway in this State, shall drive or operate such vehicle in a careful manner with due regard for the safety and convenience of pedestrians and all other vehicles or traffic upon such highway, and wherever practicable shall travel upon the right hand side of such highway. Two vehicles which are passing each other in opposite directions, shall have the right of way and no other vehicle to the rear of either of such two vehicles shall pass or attempt to pass such two vehicles. On all occasions the driver or operator of any vehicle on or upon any public highway in this State shall travel upon the right hand side

of such highway unless the road on the left hand side of such highway is clear and unobstructed for a distance of at least fifty yards ahead.

(b) Vehicles proceeding in opposite directions shall pass each other to the right, each giving to the other one-half of the road as nearly as possible.

(c) Vehicles overtaking other vehicles proceeding in the same direction, shall pass to the left thereof and shall not again drive to the right until the road is reasonably clear of such overtaken vehicle.

(d) It shall be the duty of the driver, rider, or operator of a vehicle about to be overtaken and passed, to give way to the right in favor of the overtaking vehicle on suitable and audible signal, given by or on behalf of the operator, driver or other person in charge and control of such overtaking vehicle, if such overtaking vehicle be a motor vehicle.

(e) Excepting where controlled by such traffic ordinances or regulations enacted by local authorities, as are permitted under this Act, the operator of a vehicle approaching an intersection on the public highway shall yield the right-of-way to a vehicle approaching such intersection from the right of such first named vehicle.

(f) It shall be the duty of the person operating or in charge of an overtaking vehicle to sound audible and suitable signal before passing a vehicle proceeding in the same direction.

(g) All vehicles approaching an intersection of the public highway with the intention of turning thereat, shall, in turning to the right, keep to the right of the center of such intersection and in turning to the left, shall run beyond the center of such intersection, passing to the right before turning such vehicle to the left.

(h) In all passing and overtaking, such assistance shall be given by the occupants of each vehicle respectively to the other as the circumstances shall reasonably demand in order to obtain clearance and avoid accident.

(i) Every person having control or charge of any motor vehicle or other vehicle upon any public highway and approaching any vehicle drawn by horse or horses, or any horse upon which any person is riding, shall operate, manage and control such motor vehicle or other vehicle in such manner, as to exercise every reasonable precaution to prevent the frightening of any such horse or horses and to insure the safety of any person riding or driving the same; and if such horse or horses appear frightened, the person in control of such motor vehicle or other vehicle, shall reduce its speed, and if requested by signal of the hand, by the driver or rider of such horse or horses, shall not proceed further toward such animal or animals unless such movement be necessary to avoid injury or accident, until such animal or animals shall be under the control of the rider or driver thereof.

(j) The person in control of any vehicle moving slowly along upon any public highway, shall keep such vehicle as closely as possible to the right hand boundary of the highway, allowing more swiftly moving vehicles reasonably free passage to the left.

(k) The person in charge of any vehicle in or upon any public highway, before turning, stopping or changing the course of such vehicle, shall see first that there is sufficient space for such movement to be made in safety, and if the movement or operation of other vehicles may reasonably be affected by such turning, stopping or changing of course, shall give plainly visible or audible signal to the person operating, driving or in charge of such vehicle of his intentions so to turn, stop or change said course.

(1) In passing any railroad, interurban or street car while passengers are alighting from or boarding the same, vehicles shall be operated with due care and caution so that the safety of such passengers shall be protected and for that purpose said vehicle shall be brought to a full stop, if reasonably necessary to obtain the object of this subdivision.

(m) Every motor vehicle, when moving along such portions of the road where the curvature of the road or highway prevents a clear view for a distance ahead of one hundred yards, shall be held under control, and the operator thereof in approaching curves or sharp turns in the road shall give a warning by his gong or other adequate signaling device.

(n) Police patrols, police ambulances, fire patrols, fire engines and fire apparatus in all cases while being operated as such, shall have the right-of-way with due regard to the safety of the public; provided that this provision shall not protect the driver or operator of any such vehicle or his employer or principal from the consequences of the arbitrary exercises of this right to the injury of another. [Id., § 16.]

Liability on ground of negligence.—One may alight from a wagon in the center of a street, and some distance from a crossing, and go to either side, exercising proper care, and an operator of an automobile owes him the duty of exercising ordinary care to avoid collision. *Bartley v. Marino* (Civ. App.) 158 S. W. 1156.

Owner of automobile held not liable for value of horse, caused to fall by its driver's act under the groundless belief, not caused by any misconduct of the chauffeur, that a collision was imminent. *Carter v. Walker* (Civ. App.) 165 S. W. 483.

Merely because conduct of defendant's horse, which, while being driven by him, backed into plaintiff's automobile, was the result of its inherent nature, defendant was not relieved of liability. *Wells Fargo & Co. Express v. Keeler* (Civ. App.) 173 S. W. 926.

Evidence in action for injuries.—In an action for the value of a horse which fell when plaintiff jerked suddenly on the reins, believing that an automobile was about to collide with him, evidence held insufficient to show any misconduct on the part of the chauffeur justifying his fear of a collision. *Carter v. Walker* (Civ. App.) 165 S. W. 483.

Art. 820l. Duties as to crossing of railroad tracks.—Any person driving a motor vehicle or motorcycle, when approaching the intersection of a public street or highway with the tracks of a steam railroad or interurban railroad, where such street or highway crosses such track or tracks at grade, and where the view of the said crossing is obscured, either wholly or partially, shall before attempting to make the said crossing, and at some point not nearer than thirty feet of the said track, reduce the speed of his motor vehicle or motorcycle to a speed not to exceed six miles per hour before making the said crossing, unless there are flagmen or gates at such crossing and such flagmen or gates show that the way is clear and safe to cross such track or tracks, and provided further that the provision of this section shall not apply to persons crossing interurban or street railway tracks within the limits of incorporated cities or towns within the State. [Id., § 17.]

Art. 820m. Duty to stop in case of accident; care of person injured; giving information as to name, etc.; penalty for violation.—Whenever an automobile, motorcycle or other motor vehicle whatsoever, regardless of the power by which the same may be propelled, or drawn, strikes any person or collides with any vehicle containing a person, the driver of, and all persons in control of such automobile, motorcycle, motor vehicle or other vehicle shall stop and shall render to the person struck or to the occupants of the vehicle collided with all necessary assistance including the carrying of such persons or occupants to a physician or surgeon for medical or surgical treatment, if such treatment be required, or if such carrying is requested by the person struck or any occupant of the vehicle collided with; and such driver and person having or assuming authority of such driver, shall further give to the occupant of such vehicle or person struck, if requested at the time of such striking or collision or im-

mediately thereafter, the number of such automobile, motorcycle or motor vehicle, also the name of the owner thereof and his address, the names of the passenger or passengers not exceeding five in each automobile or other vehicle, together with the address of each one thereof. Any person violating any of the provisions of this section is punishable by imprisonment in the State Penitentiary not to exceed five years or in the county jail not exceeding one year or by fine not exceeding five thousand dollars, or by both such fine and imprisonment. [Id., § 18.]

Art. 820n. Racing prohibited.—No race or contest for speed shall be held upon any public highway in this State. [Id., § 19.]

Art. 820o. Rate of speed.—Every person operating or driving a motor or other vehicle on the public highways of this State, shall operate or drive the same in a careful and prudent manner, and at a rate of speed not greater than is reasonable and proper, having regard to the traffic and use of the highway, and no person shall operate or pass a motor or other vehicle on a public highway at such rate of speed as to endanger the life or limb of any person or the safety of any property; provided, that it shall be unlawful to drive at a rate of speed in excess of twenty-five miles per hour; and provided further, that in any event no person shall operate or drive a motor or other vehicle on any public highway where the territory contiguous thereto is closely built up, at a greater rate of speed than eighteen miles per hour or in the business district of any town or incorporated city at a greater rate of speed than fifteen miles per hour in cities of less than 40000 population, nor at a greater rate of speed than ten miles per hour in the business districts of cities of more than forty thousand population; provided that the regulations with regard to speed as set forth in this section shall not be held to apply to fire patrols or motor vehicles operated by the fire department in responding to fire calls nor to police patrol or Red Cross ambulances, nor to physicians responding to emergency calls. [Id., § 20.]

Acts constituting negligence.—See note under art. 815.

A police officer, engaged in arresting violators of the speed laws, held guilty of negligence per se in driving his motorcycle in excess of the speed limit. *Keevil v. Ponsford* (Civ. App.) 173 S. W. 518.

Negligence of a police officer in driving his motorcycle beyond the speed limit held not to bar recovery for personal injuries, for contributory negligence, unless such negligence was a proximate concurrent cause of his injury. *Id.*

Art. 820p. Arrest of operator of motor vehicle; violation of promise to appear before magistrate.—In the case of any person arrested for violation of the provisions of the last preceding section of this Act, unless such person shall demand that he be taken forthwith before the most accessible magistrate, the arresting officer shall take the name and address of such person and the names of his motor vehicle and notify him in writing to appear before a designated magistrate at a time and place to be specified in such writing at least five days subsequent to the date of such notice, and upon the promise in writing of such person to appear at such time and place such officer shall forthwith release him from custody.

Any person wilfully violating such promise, shall be guilty of a misdemeanor regardless of the disposition of the charge upon which he was originally arrested, and upon conviction thereof shall be fined in any sum not to exceed one hundred (\$100.) dollars. [Id., § 21.]

Art. 820q. Speed in passing vehicle.—Motor vehicles in passing each other on the highways shall slow down their speed to fifteen miles per hour. [Id., § 22.]

Art. 820r. Local regulations prohibited; exceptions.—Limitations as to the rate of speed herein fixed by this Act shall be exclusive of all other limitations fixed by any law of this State or of any political subdivision thereof and local authorities, cities and towns shall have no power to pass, enforce or maintain any ordinances, rules or regulations in any way in conflict with or inconsistent with the provisions of this Act, and no such ordinance, rules or regulations of such local authorities now in force, or hereafter enacted shall have any force excepting, however, that

(1) Such powers as are now or may hereafter be vested in local authorities to enact ordinances or regulations applicable equally or generally to all vehicles and other users of highways, and providing for traffic or crossing officers or semaphores to bring about the orderly passage of vehicles and other users of the public highways or certain portions thereof where the traffic is heavy and continuous, and

(2) The powers now or hereafter vested in local authorities to license and regulate the operation of vehicles offered to the public for hire; and to regulate the use of the highways for processions and assemblages, shall remain in full force and effect and all ordinances, rules and regulations which have been or which may be hereafter enacted in pursuance of such powers, shall remain in full force and effect. [Id., § 23.]

Art. 820s. Revocation of license; notice; re-issue of license; unlawful to operate motor vehicle; suspension of license.—(a) In case of the arrest three times within a period of sixty (60) days of any person for the violation of Section 20 of this Act [Art. 820o] regulating the speed of vehicles upon the highways, followed by the conviction of such person upon each of such charges; or in case of two arrests and convictions of such persons within a period of sixty (60) days for the violation of Section 13 of this Act [Art. 820h], relating to intoxicated persons, the Department shall forthwith revoke the license of such person to operate a motor vehicle on the public highways of this State, in case such violations occur in connection with the operation of a motor vehicle.

Upon so revoking the license the Department shall forthwith send notice of such revocation to the operator and to the local police authorities, and shall make demand upon the operator for the return to the Department of the license certificate theretofore issued to him, and of the badge in case of a chauffeur. It shall be the duty of the operator to return such license certificate, and of a chauffeur to return also his badge in compliance with the demand so made. The Department shall not again issue any such license to such person until the expiration of six months from the date of the last conviction of such person as hereinabove provided for, and it shall be unlawful for such person so convicted to operate or drive any motor vehicle or motorcycle upon the public highway anywhere within this State during a period of six months after the date of the last conviction.

(b) In addition to all of the punishments provided in this Act, the court may for a period not to exceed thirty days, suspend an operator or chauffeur's license upon such conviction of the licensee for violation of any of the provisions of this Act. [Id., § 24.]

Art. 820t. Acting as chauffeur without license, etc.—No person shall operate or drive a motor vehicle as a chauffeur upon any public highway in this State unless such person shall have complied in all respects with the requirements of this Act, and shall at all times have in his pos-

session his certificate or license and wear the badge issued to him by the Department prominently displayed on his clothing, and failure on the part of such chauffeur to perform either or all of the acts hereinbefore prescribed shall constitute a misdemeanor, and upon conviction thereof he shall be punished by fine not to exceed one hundred (\$100) dollars. [Id., § 26.]

Note.—This section also provides for cancellation of a chauffeur's license for the act of the chauffeur in driving a motor vehicle while intoxicated. See arts. 7012½p and 7012½q of the civil statutes, ante. See, also, art. 820w, post.

Art. 820u. Chauffeur permitting use of badge by other person; using badge of another; fictitious badge.—No chauffeur having been licensed as herein provided shall permit any other person to possess or use his license or badge; nor shall any chauffeur while operating or driving a motor vehicle use or possess any license or badge, belonging to another person; or a fictitious license or badge, and any violation of this section of the Act shall constitute a misdemeanor punishable by fine not to exceed one hundred (\$100.00) dollars. [Id., § 27.]

See art. 820v, post.

Art. 820v. Using or permitting use of badge of another or a fictitious badge.—No person shall use a fictitious name in applying for chauffeur's license; nor shall any chauffeur voluntarily allow any other person to possess or use his license certificate or badge; nor shall any chauffeur while operating or driving a motor vehicle use or possess any license certificate or badge belonging to any other person, or a fictitious certificate or badge. [Id., § 29.]

Note.—This is a repetition of a provision in section 27 of the act, set forth above as art. 820u.

Art. 820w. Operation of motor vehicle by unlicensed chauffeur prohibited.—No person shall operate or drive a motor vehicle as a chauffeur upon a public highway in this State after the first day of July, 1917, nor shall any owner of a motor vehicle permit such vehicle to be so operated or driven after such date unless the requirements of this Act, applicable to chauffeurs shall have been in all respects complied with. [Id., § 30.]

See section 26 of this act, set forth ante as art. 820t.

Art. 820ww. Disposition of fines collected.—The fines collected for violations of any of the provisions of this Act shall be used by the municipality or the counties in which same are assessed in the construction and maintenance of roads, bridges and culverts in the city or county where such convictions are had. [Id., § 37.]

Art. 820x. Record of convictions; abstract to be sent to Highway Department.—A full record shall be kept by every justice of the peace, police judge or court in this State of every case in which a person is convicted of the violation of any of the provisions of this Act, and an abstract of such record shall be sent forthwith by the said justice of the peace, police judge or court to the Highway Department. [Id., § 38.]

Art. 820xx. Same; form of abstract.—Said abstract shall be made upon forms prepared by the Department, and shall include all necessary information of parties in the case, the nature of the offense, the judgment of conviction and such other facts as may be called for by the said Department, and such abstracts shall be duly certified. The said Department shall keep such records in its office, and they shall be open to the inspection of any person during reasonable business hours. [Id. § 39.]

Art. 820y. Provisions cumulative.—The provisions of this Act defining certain offenses and prescribing penalties therefor, shall be cumulative of all existing laws now in force relative to the subjects to which they relate. [Id., § 40.]

Art. 820yy. Penalty for violation of certain of foregoing provisions.—The violation of any of the provisions or requirements contained in Sections 4, 5, 7, 8a, 8b, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 22, 29, and 30 [Arts. 820aa–820l, 820n, 820o, 820q, 820v, 820w, ante] of this Act shall constitute a misdemeanor, punishable by fine not to exceed One Hundred (\$100.00) Dollars; and for the second or any subsequent offense, by a fine of not less than Ten (\$10.00) Dollars nor more than Two Hundred (\$200.00) Dollars. [Act May 19, 1917, 1st C. S., ch. 31, § 45; Act Oct. 10, 1917, ch. 13, § 45.]

Explanatory.—Act April 9, 1917, did not contain a penalty for many of the acts denounced, and the object of the above provision was to supply the omission in that respect. Act May 19, 1917, 1st C. S., ch. 31, amends ch. 207, Acts regular session 35th Legislature, by adding after sec. 44 thereof two new sections to be numbered 45 and 46, respectively. Became a law July 1, 1917.

Act Oct. 10, 1917, 3rd C. S. 35th Leg. amends sec. 45 of ch. 31, Acts first called session, 35th Legislature, being an amendment to the law regulating motor vehicles passed at the regular session of the 35th Legislature. The second amendatory act makes penal other acts denounced by the motor vehicle law (arts. 7012½j–7012½t, civil statutes, and arts. 820aa–820y, 826a, 1022a, 1259aa, 1259bb, 1259cc, 1621a, Penal Code).

Art. 820z. Arrest without warrant.—Any peace officer within this State shall be authorized to arrest without warrant any person found committing a violation of any of the penal provisions of this Act within his view or in his presence. [Act May 19, 1917, 1st C. S., ch. 31, § 1.]

Art. 822a. Sale of vehicles with tires less than specified width prohibited.—That it shall be unlawful on and after January 1, 1920, for any person, firm, association or corporation to sell or offer for sale within the State of Texas any wagon or other road vehicle with an intended carrying capacity of more than two thousand pounds which shall have a rim or tire on the wheels of same less than three and fifteen-sixteenths inches in width. [Act March 15, 1917, ch. 74, § 1.]

Art. 822b. Same; to whom applicable.—This Act shall apply to all persons, firms, associations or corporations engaged in the sale of road vehicles, either at wholesale or retail, but shall not apply to individuals selling or offering for sale road vehicles purchased for their individual use. [Id., § 2.]

Art. 822c. Same; penalty for violation.—Any firm, association or corporation violating the terms of this Act, shall be subject to a penalty of not less than one hundred (\$100.00) dollars nor more than one thousand (\$1,000.00) dollars for each offense to be collected for the benefit of the county in which such violation may occur; and any person violating the terms of this Act, shall be subject to a fine of not less than one hundred (\$100.00) dollars nor more than one thousand (\$1,000.00) dollars for each offense, and each sale, or offer of sale, in violation hereof shall constitute a separate offense. [Id., § 3.]

Art. 822d. Same; when act takes effect.—This Act shall take effect and be in full force from and after January 1, 1920. [Id., § 4.]

Art. 826a. Depositing glass and other substances in highway.—Any person who throws or deposits any glass bottles, glass, nails, tacks, hoops, wire, cans or any other substance likely to injure any person, animal, or vehicle upon any public highway shall be guilty of a misdemeanor, and upon conviction thereof shall be punished with fine not

to exceed five hundred (\$500) dollars, or by imprisonment in the county jail not to exceed six months, or by both such imprisonment and fine. [Act 1913, p. 131, ch. 71, § 1; Act April 9, 1917, ch. 207, § 32.]

Explanatory.—This provision supersedes Act 1913, ch. 71, § 1, set forth in Vernon's Pen. Code 1916 as art. 826a.

CHAPTER TWO

OFFENSES PERTAINING TO PUBLIC ROADS, [DRAINAGE, LEVEES], AND IRRIGATION

Art.		Art.	
837a.	Taking water without permit.	837g, 837h.	[Repealed.]
837b.	[Repealed.]	837i.	Diversion of water from watershed.
837c.	Interference with passage of stored water in stream.	837j.	Johnson grass and Russian thistle.
837cc.	Sale of water or water rights without compliance with law.	837k-837m.	[Repealed.]
837d.	Interference with headgates, etc., forbidden.	837n.	Failure to keep record of artesian well bored.
837e.	Penalty for injuring works.	837nn.	Using water in a manner declared a public nuisance.
837f.	Penalty for polluting or obstructing canals, etc.	837nnn.	Waste of water.

Article 837a. Taking water without permit.—Any person, association of persons, corporation, water improvement or irrigation district, or any agent, officer, employé or representative of any person, association of persons, corporation or irrigation district, who shall wilfully take, divert or appropriate any of the water of this State, or the use of such water, for any purpose, without first complying with all the provisions of this Act, shall be deemed guilty of a misdemeanor; and on conviction thereof, shall be fined in a sum not exceeding one hundred dollars, or by imprisonment in the county jail for a term not exceeding six months or by both such fine and imprisonment; and each day that such taking, diversion or appropriation of water shall continue shall constitute a separate offense; and the possession of such water, except when the right to its use is acquired in accordance with the provisions of law, shall be prima facie proof of the guilt of the person, association of persons, corporation, irrigation district, or the agent, officer, employés or representatives of any person, association of persons, corporation or irrigation district. [Act 1895, p. 25; Acts 1913, p. 358, § 39; Act March 19, 1917, ch. 88, § 34.]

See arts. 4991-5011½w, ante, Civil Statutes. A civil penalty recoverable by action is also provided. See art. 5001b, ante, Civil Statutes.

Art. 837b.

Repealed. See art. 5011½w, Civil Statutes, ante. Re-enacted by Act March 19, 1917, ch. 88, § 50, ante, art. 5001n, Civil Statutes.

Art. 837c. Interference with passage of stored water in stream.—Any person, association of persons, corporation, water improvement or irrigation district, or the agent, officer employé or representative of any such person, association of persons, corporation, water improvement or irrigation district who shall wilfully interfere with the passage of, or take, divert or appropriate such conserved or stored water during the passage and delivery thereof, as provided in the last two preceding sections [Arts. 5001m, 5001n, Civil Statutes, ante], shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment, and each and every day that such taking di-

version or appropriation may be made, shall constitute a separate offense. [Acts 1913, p. 358, § 52; Act March 19, 1917, ch. 88, § 51.]

See arts. 5001m, 5001n, Civil Statutes, ante.

Art. 837cc. Sale of water or water rights without compliance with law.—Any person, association of persons, or corporation who sells or offers for sale any permanent water right, without having complied with the provisions of the statute relating to certified filings, or without having obtained a permit from the board of water engineers for the uses and purposes purporting to be conveyed by such permanent water right, 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 one thousand dollars, or be confined in the county jail for any period of time not to exceed one year, or by both such fine and imprisonment. [Act March 19, 1917, ch. 88, § 54.]

See arts. 5002, 5002a, ante, Civil Statutes.

Art. 837d. Interference with headgates, etc., forbidden.—Any person who shall wilfully open, close, change or interfere with any headgate or water box without lawful authority or who shall wilfully use water or conduct water in and through his ditch or upon his land, to which water he is not entitled, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum of not less than ten dollars, and not more than one thousand dollars, or by imprisonment in the county jail for a term not exceeding six months; provided, that the possession or use of water to which the person using or possessing same shall not be lawfully entitled shall be prima facie proof of the guilt of the person so using or in possession of same. [Act 1913, p. 370, ch. 171, § 69; Act March 19, 1917, ch. 88, § 68.]

See arts. 4991-5011½w, Civil Statutes.

Art. 837e. Penalty for injuring works.—Any person or persons who shall knowingly and wilfully cut, dig, break down, destroy, or injure, or open any gate, bank, embankment or side of any ditch, canal, reservoir, flume, tunnel or feeder or pump or machinery, building, structure, or other work, which is the property of another, or in which another owns an interest, or which is in the lawful possession or use of another or others, and which is used for the purpose of irrigation or milling or mining, or manufacturing, or for the development of power, or for domestic purposes, or for stockraising, with intent maliciously to injure any person, association, corporation, water improvement or irrigation district, or for the gain of any person, association, water improvement or corporation, so cutting, digging, breaking, injuring or opening any such work hereinbefore in this Section named, or with the intent of taking or stealing or causing to run out or waste out of any such ditch, canal, or reservoir, feeder or flume, any water for his own profit, benefit or advantage, or to the injury of any person, association or corporation lawfully entitled to the use of such water, or to the use or management of such ditch, canal, tunnel, reservoir, feeder, flume, machine, structure or other irrigation work, 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 thousand dollars, and may be punished by imprisonment in the county jail for any term not exceeding two years, or by both such fine and imprisonment. [Act 1913, p. 370, ch. 171, § 70; Act March 19, 1917, ch. 88, § 69.]

See arts. 4991-5011½w, Civil Statutes

Art. 837f. Penalty for polluting or obstructing canals, etc.—Any person or persons who shall deposit in any canal, lateral, reservoir or lake, used for any of the purposes enumerated in this Act, the carcass of any dead animal, tin cans, discarded buckets or pails, garbage, ashes, baling or barbed wire, earth, offal or refuse of any character, or any other article or articles which might pollute the water or obstruct the flow in any such canal or other similar structure, 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, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment. [Act 1913, p. 370, ch. 171, § 71; Act March 19, 1917, ch. 88, § 70.]

See arts. 4991-5011½w, Civil Statutes.

Arts. 837g, 837h.

Repealed. See art. 5011½w, ante, Civil Statutes. Re-enacted by Act March 19, 1917, ch. 88, §§ 80, 81, set forth ante as arts. 5011b, 5011c, Civil Statutes.

Art. 837i. Diversion of water from watershed.—If any person, association of persons, corporation, water improvement or irrigation district, or the agent, attorney, employee, or representative of any such person, association of persons, corporation or irrigation district, shall take or divert any waters from one natural stream, water course, or watershed into any other watershed, contrary to the provisions of the last two preceding Sections of this Act [Arts. 5011b, 5011c, Civil Statutes], he, it or they shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in a sum not less than one hundred dollars nor more than five hundred dollars or by imprisonment in the county jail, for any term not exceeding six months, and each day that such taking or diversion shall continue shall constitute a separate offense. [Act 1913, p. 370, ch. 171, § 83; Act March 19, 1917, ch. 88, § 82.]

Art. 837j. Johnson Grass and Russian Thistle.—It shall be unlawful for any person, association of persons, corporation, water improvement or irrigation district owning, leasing or operating any ditch or canal or reservoir, or cultivating any lands abutting upon any reservoir, ditch, flume, canal, wasteway or lateral to permit Johnson Grass or Russian Thistle to go to seed upon such reservoir, ditch, flume, canal, waste-way or lateral within ten feet of the high water line of any such reservoir, ditch, flume, canal, waste-way, or lateral, where the same crosses or lies upon land in the ownership or control of any such person, association of persons, corporation, water improvement or irrigation district, and anyone violating the provisions of this Section shall be deemed guilty of a misdemeanor, and upon conviction therefor shall be fined in any sum not less than twenty-five dollars nor more than five hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than six months, or by both such fine and imprisonment; provided, that this Section shall not apply to Tom Green, Sterling, Irion, Schleicher, McCullough, Brewster, Menard, Maverick, Kinney, Val Verde and San Saba counties. [Act 1913, p. 370, ch. 171, § 90; Act March 19, 1917, ch. 88, § 89.]

See arts. 4991-5011½w, Civil Statutes, ante.

Arts. 837k-837m.

Repealed. See art. 5011½w, Civil Statutes. Re-enacted in part by Act March 19, 1917, ch. 88, §§ 90, 92, set forth ante as arts. 5011g, 5011i, Civil Statutes.

Art. 837n. Failure to keep record of artesian well bored.—Any person boring or causing to be bored any artesian well shall keep a complete and accurate record of the depth and thickness and character of the different strata penetrated, and when such well is completed, shall transmit, by registered mail, to the Board of Water Engineers, a copy of such record. Any person violating the provisions of this Section shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in a sum not less than ten dollars nor more than one hundred dollars. [Acts 1913, p. 358, § 95; Act March 19, 1917, ch. 88, § 94.]

See arts. 5011g-5011½, ante, Civil Statutes.

Art. 837nn. Using water in a manner declared a public nuisance.—Any person, or the agent of any person, or the agent of any association or corporation, who shall operate or attempt to operate any works, or shall use any water under contract with any canal or irrigation system, that has been previously declared to be a public nuisance, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum, not more than \$1,000.00 or be confined in the county jail for a period of not to exceed one year, or both such fine and imprisonment. [Act March 19, 1917, ch. 88, § 97.]

See arts. 5011h, 5011i, 5011½a, 5011½b, ante, Civil Statutes.

Art. 837nnn. Waste of water.—Whoever wilfully causes or knowingly permits waste, as defined in this Act, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in any sum not exceeding five hundred dollars, or shall be imprisoned in the county jail not more than ninety days, or by both such fine and imprisonment. [Id., § 101.]

See arts. 5011g-5011½d, ante, Civil Statutes.

CHAPTER FIVE

PUBLIC OR QUASI PUBLIC BUILDINGS—FIRE PROTECTION

Art.
861-867d. [Repealed.]

Art.
867dd. Failure to provide fire escapes.

Articles 861-867d.

Repealed by Act March 30, 1917, ch. 140, set forth ante as arts. 3934½-3934½e, Civil Statutes, and art. 867dd, Penal Code, post.

Art. 867dd. Failure to provide fire escapes.—Any person failing, neglecting or refusing to comply with any of the provisions of this Act [Arts. 3934½-3934½d, Civil Statutes] shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than fifty (\$50.00) dollars, nor more than two hundred (\$200.00) dollars, and each day's failure to comply with any of the provisions of this Act, after the expiration of the time stipulated in the written notice provided for herein, shall constitute a separate offense. And it shall be the duty of the State Fire Marshal, or any person authorized to act in his stead, to file complaints for violations of the provisions of this Act in any court of competent jurisdiction within the county where said violations occur, and it shall be the duty of the county attorney of such county to forthwith prosecute all such complaints so filed. [Act March 30, 1917, ch. 140, § 6.]

CHAPTER SIX

OFFENSES RELATING TO THE PROTECTION OF FISH,
BIRDS AND GAME

Art.	Art.
869. Unlawful to use nets; certain counties exempted.	884b. Closed season for squirrel in certain counties.
870. Taking fish by means of nets, etc., without consent of owner.	884c. Closed season for wild furbearing animals.
872a. Closed season for crappies and bass.	884d. Penalty for violating preceding articles.
872b. Limit as to length of crappies and bass which may be caught.	886. Certain game not to be killed for a period of twenty-five years.
872c. Violation of preceding articles.	887a. Killing or injuring bats.
877a. Fishing in valley of Medina river; bass; perch, crappie and sun-fish.	890. Unlawful to receive for transportation; proviso.
877b. Same; sale or purchase of fish.	923f. What devices may not be used for fishing; counties exempted.
877c. Same; penalty.	923n. Taking of marl, sand, shells, or mudshells from fishing waters; permit; proviso.
877d. Same; cumulative of general law.	
877e. Same; catching for bait.	
882. Selling or purchasing game.	
884a. Closed season for wild turkey in certain counties.	

Article 869. Unlawful to use nets; certain counties exempted.

Indictment.—Indictment under statute prohibiting the catching of fish, except by hook and line, alleging in terms of statute that defendant caught fish in nets prohibited thereby, held sufficient. *Carroll v. State* (Cr. App.) 184 S. W. 508.

Art. 870. Taking fish by means of nets, etc., without consent of owner.

Offense.—One who took fish without the consent of the owner from a hole of water in a creek which sometimes ran in wet seasons and after rains, but which stood in holes and ponds most of the time, is not guilty of unlawfully taking fish from a pool contrary to this article. *Stephens v. State* (Cr. App.) 194 S. W. 400.

Information and complaint.—Under this article, and Code Cr. Proc. art. 457, specifying how ownership shall be alleged, an information and complaint, charging seining without the owner's consent, but not giving his name, is insufficient. *Partridge v. State* (Cr. App.) 193 S. W. 146.

Art. 872a. Closed season for crappies and bass.—It shall be unlawful for any person, firm, or corporation or their agents to take, catch, sein, entrap by any means, or have in their possession any crappie or bass taken from any public fresh waters of this State from the first day of March to the first day of May of any year. [Act Oct. 10, 1917, ch. 12, § 3.]

Art. 872b. Limit as to length of crappies and bass which may be caught.—If any person shall at any time catch or take from any public fresh water river, lake, bayou, lagoon, creek, pond, or other natural public artificial stream or pond of water within this State by use of any means whatsoever any crappie or bass of less than six inches in length, he shall immediately return same back into such public water; and that unnecessary injuring of such fish shall be deemed an offense under the provisions of this Act; provided that each such fish shall constitute a separate offense. [Id., § 4.]

Art. 872c. Violation of preceding articles.—Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in any sum not exceeding One Hundred Dollars. [Id., § 5.]

Art. 877a. Fishing in valley of Medina river; bass; perch, crappie, and sun-fish.—It shall be unlawful for any person who shall fish in any water which is located in the valley of the Medina River, where the

lower or diversion dam above the town of Castroville crosses the Medina River in Medina county, Texas, to a point on the Medina River in Bandera county, Texas, which, by following the meanders of the Medina River upward toward its source, shall constitute a distance of twenty-five miles, or in any water which is impounded in Medina county, Texas, by said lower or diversion dam, or in any water which is impounded in Medina county, Texas, and in Bandera county, Texas, by what is known as the upper or main dam which crosses the Medina River, a distance of about four miles above the said lower or diversion dam, to catch and retain, or have in his possession, any bass or other fish of the bass species, which are less than eleven inches in length, or to catch and retain or have in his possession, in any one day, more than a total aggregate of ten bass or other fish of the bass species; or to catch and retain, or have in his possession in any one day, a total aggregate of more than twenty perch, crappie or sun fish, or other fish of the perch, crappie or sun-fish species, which shall be smaller than two inches long. [Act 1915, p. 135, ch. 84, § 1; Act March 15, 1917, ch. 81, § 2.]

Explanatory.—The Act amends ch. 84, House Bill No. 653, Acts regular session 34th Legislature. Took effect 90 days after March 21, 1917, date of adjournment.

Art. 877b. Same; sale or purchase of fish.—It shall be unlawful for any person to sell, or offer for sale, or to buy any fish caught in any of the waters described in Section 2 [Art. 877a.] hereof. [Act 1915, p. 135, ch. 84, § 2; Act March 15, 1917, ch. 81, § 3.]

Art. 877c. Same; penalty.—Any person violating any provision of this Act shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$5.00 nor more than \$15.00, for each violation of this law, and each fish caught or sold in violation of this Act shall be deemed a separate violation hereof, and a separate offense, and he may be prosecuted either in the county where the fish is caught, or where he is found with them in his possession, or where the fish are sold, or bought or where they are offered for sale. [Act 1915, p. 135, ch. 84, § 3; Act March 15, 1917, ch. 81, § 4.]

Art. 877d. Same; cumulative of general law.—This special law is meant to be cumulative of the general law of the State of Texas, and is not meant to repeal the general law of the State of Texas. [Act 1915, p. 135, ch. 84, § 4; Act March 15, 1917, ch. 81, § 5.]

Art. 877e. Same; catching for bait.—Nothing in this Act shall prohibit the catching of more than twenty perch or sun fish to be used for bait, provided none of the perch or sun fish so caught to be used for bait shall be larger than two inches in length. [Act 1915, p. 135, ch. 84, § 5; Act March 15, 1917, ch. 81, § 6.]

Art. 882. Selling or purchasing game.

Reasonable doubt.—In prosecution under this article, for having in his possession for the purpose of sale and for offering to sell the hide of a wild deer, held, that the court's refusal to instruct an acquittal if there was reasonable doubt as to defendant's possession and offer for sale was reversible error. *Cohen v. State* (Cr. App.) 179 S. W. 1193.

Art. 884a. Closed season for wild turkeys in certain counties.—That from and after the passage of this Act, it shall be unlawful for any person to kill any wild turkey in the counties of Angelina, Cherokee, Hardin, Liberty, Nacogdoches, Dallas, Rockwall, Tyler, Jefferson, Orange, Jasper and Newton, during the months of May, June, July, August, September, October, November, December, January and February of each year. And it shall be unlawful for any person to kill more than

two wild turkeys during the months of March and April of each year in the counties named in this section. [Act Oct. 2, 1917, ch. 8, § 1.]

Art. 884b. Closed season for squirrel in certain counties.—It shall be unlawful for any person to kill any squirrel in the Counties of Angelina, Cherokee, Hardin, Liberty, Nacogdoches, Dallas, Rockwall, Tyler, Jefferson, Orange, Jasper and Newton during the months of January, February, March, April, May, June and July of each year, and it shall be unlawful for any person to kill more than five squirrels in any one day in any of said counties during the months of August, September, October, November and December of each year. [Id., § 2.]

Art. 884c. Closed season for wild furbearing animals.—It shall be unlawful for any person to kill, trap or destroy any wild furbearing animals, except all kinds of rats including muskrats from the first day of March to the first day of November of each year in any of the counties named in this Act. [Id., § 3.]

Art. 884d. Penalty for violating preceding articles.—Any person who shall violate any of the provisions of Sections 1, 2 and 3 of this Act shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding fifty (\$50.00) Dollars. [Id., § 4.]

Art. 886. Certain game not to be killed for a period of twenty-five years.—It shall be unlawful for any person to kill, take or destroy any wild antelope or Rocky Mountain sheep or Rocky Mountain goat for the space of twenty-five years, and any person violating the provisions herein, may be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than five hundred (\$500.00) dollars, nor more than one thousand (\$1,000.00) dollars, and shall be imprisoned in the county jail not less than thirty (30) days nor more than sixty (60) days. [Act 1897, ch. 149, § 5; Act 1903, ch. 137; Act 1907, p. 279, § 8; Act 1911, p. 102, ch. 60, § 1; Act March 10, 1917, ch. 69, § 1.]

Explanatory.—The Act amends art. 886, Title 13, ch. 6, Penal Code 1911. Sec. 2 repeals all laws in conflict. Took effect 90 days after March 21, 1917, date of adjournment.

Art. 887a. Killing or injuring bats.—If any person shall wilfully kill or in any manner injure any winged quadruped known as the common bat, he shall be deemed guilty of a misdemeanor and upon conviction shall be fined a sum of not less than five (\$5.00) dollars nor more than fifteen (\$15.00) dollars. [Act March 9, 1917, ch. 65, § 1.]

Note.—Sec. 2 repeals all laws in conflict. Took effect 90 days after March 21, 1917, date of adjournment.

Art. 890. Unlawful to receive for transportation; proviso.—It shall be unlawful for any express company, railroad company or other common carrier, or the officers, agents, servants or employees 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 of this Act, or the carcass thereof, or the hide thereof. 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. Provided that each shipment shall constitute a separate offense, and that such express company, or other common carrier, or its agents, servants or employees shall have the privilege of examining any suspected package for the purpose of determining whether such package contains any of the articles

mentioned herein. Provided further, that the head and skin of any deer lawfully killed, when severed from the rest of the carcass and mounted or prepared for preservation by a taxidermist, are not subject to the provisions of this Article, (nor to the provisions of Article 891 of this Chapter.) [Act 1897, ch. 149, § 7; Act 1903, ch. 137; Act 1907, p. 280, § 10; Act 1911, p. 103, ch. 60, § 1; Act May 14, 1917, 1st C. S., ch. 7, § 1.]

Explanatory.—The Act amends art. 890, ch. 6, Title 13, Penal Code, Rev. Cr. St. 1911. Became a law May 14, 1917.

Art. 923f. What devices may not be used for fishing; counties exempted.—It shall be unlawful for any person to take or catch any fish, in the public fresh water rivers, creeks, lakes, bayous, pools, lagoons or tanks of this State by any other means than ordinary hook and line or trout line, or by set or drag net or seine the meshes of which are less than three inches square, or trammel net, the meshes of any part of which are less than four inches square or by a minnow seine of no more than twenty feet in length, and it shall be unlawful for any person to place in the public fresh water river, creeks, lakes, bayous, pools, lagoons or tanks of this State any net or other device or trap for taking or catching fish other than a set net or drag net or seine, the meshes of which are less than four inches square. Any person violating any provision of this Section shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined any sum not less than twenty-five nor more than one hundred dollars. All fresh water streams or bayous emptying into the tidal waters of this State are, for the purpose of this Act, hereby declared fresh water streams to their mouths; provided, that the counties of Hood and Somervell shall be exempt from the provisions of this Article, as to the waters of the Brazos River, and as to the waters of Paluxy Creek from the first day of July to the first day of January of each year, and provided that gigging and grabbling is and shall be prohibited in both streams at all times. [Act 1913, p. 274, ch. 135, § 1; Act April 2, 1917, ch. 187, § 1.]

Explanatory.—The Act amends art. 923f, Penal Code, as enacted by ch. 135, Acts 33rd Legislature. Took effect 90 days after March 21, 1917, date of adjournment.

Jurisdiction over boundary streams.—Under the statute prohibiting the catching of fish, except by hook and line, etc., and prohibiting certain nets, and in the absence of any such limitation in the statute or in any act of Congress, the jurisdiction of the state extended to the catching of fish in the Red river, the boundary between Texas and Oklahoma. *Carroll v. State* (Cr. App.) 184 S. W. 508.

Art. 923n. Taking of marl, sand, shells, or mudshells from fishing waters; permit; proviso.

See art. 4021k, Vernon's Sayles' Civ. St. 1914, and art. 4021l of this supplement, making certain exceptions in Galveston, Corpus Christi, and Nueces Bays.

TITLE 14

OF OFFENSES AGAINST TRADE, COMMERCE AND THE
CURRENT COIN

Chap.

1. Of forgery and other offenses affecting written instruments.
2. Forgery of land titles, etc.
5. Public warehousemen and warehouses.
6. Bureau of cotton statistics.

Chap.

7. False weights and measures.
- 7a. Weight of cotton bales.
- 7b. Containers, grades and packs.
- 8d. Loan brokers.
- 8j. Emigrant agents.

CHAPTER ONE

OF FORGERY AND OTHER OFFENSES AFFECTING WRIT-
TEN INSTRUMENTS

Art.

924. "Forgery" defined.
- 924a. Making, altering, etc., of foreign governmental obligations; penalty.
- 924b. Passing forged obligations of foreign government, penalty.
- 924c. Possession of forged obligations of foreign government; penalty.
925. Alteration also forgery.
926. Intent to injure, etc., necessary.
929. "Another" includes what.

Art.

931. "Transferred or in any manner have affected" defined.
932. All participants guilty.
933. Filling up over signature.
934. Person not guilty, when.
- 936a. Forgery of warehouse receipt.
937. Passing forged instruments.
939. Possession of forged instruments with intent to pass.

Article 924. [530] "Forgery" defined.

3. **Nature and elements of offense—Nature and apparent efficacy of instrument.**—To constitute forgery of an order to deliver goods, the party to whom it is directed need not accept or comply with it, or be able to do so. *Townser v. State* (Cr. App.) 182 S. W. 1104.

Under arts. 924–926, 929, 931, 933, the county superintendent who drew a check for school funds, which check was invalid and then wrongfully signed the name of the payee, held guilty of forgery. *Carrell v. State* (Cr. App.) 184 S. W. 217.

13. **Indictment.**—An indictment in words of this article and art. 932, without alleging that the defendant caused to be written the false note, was sufficient to support conviction for forgery in inducing making of a false note. *Ferguson v. State* (Cr. App.) 187 S. W. 476.

Indictment for forgery of an order for goods to be charged to alleged maker held fatally defective. *Smith v. State* (Cr. App.) 194 S. W. 1111.

17. — **Variance between purport and tenor clauses.**—Variance between the purport clause in indictment for forgery and instrument forged held fatal. *Bethany v. State* (Cr. App.) 179 S. W. 1166.

In a prosecution for forgery of an instrument purporting to be the act of "Mariah Thorn," the forged check which had been copied in the indictment and appeared to be signed by "Mariah Thorn" was admissible, there being no fatal variance. *Lofton v. State* (Cr. App.) 182 S. W. 310.

18. — **Facts extrinsic to instrument.**—The indictment for forgery of an order to a salesman in a store to deliver goods need not allege that he himself had goods for sale, or was empowered to furnish them, or that the order, if genuine, could have created any pecuniary obligation. *Townser v. State* (Cr. App.) 182 S. W. 1104.

An indictment charging that the defendant knowingly passed a check against an available school fund with a forged indorsement of the payee's name, which did not show that the check was legally drawn, is insufficient. *Carrell v. State* (Cr. App.) 184 S. W. 190.

19. — **Designation or description of parties.**—An indictment for forgery need not state in the purport clause the names to the instrument forged. *Bethany v. State* (Cr. App.) 179 S. W. 1166.

Indictment charging accused with forging payee's name to road work warrant issued by county treasurer, held not insufficient for failure to allege facts showing drawer's authority to act as treasurer and to issue checks against county funds. *Fry v. State* (Cr. App.) 182 S. W. 331.

The indictment for forgery of an order on a company for goods need not allege whether it was a firm or a corporation, its name not being alleged to have been forged. *Townser v. State* (Cr. App.) 182 S. W. 1104.

An indictment charging accused, as county superintendent of public schools, drew a check and forged the name of the payee is insufficient, in the absence of an innuendo showing that in drawing such check he was acting in his official capacity as county superintendent of public instruction. *Carrell v. State* (Cr. App.) 184 S. W. 217.

24. Evidence—Admissibility.—In prosecution for forgery of check for \$16, purporting to be the act of "Mariah Thorn," evidence that defendant presented to witness at the bank a check on such bank purporting to be signed by Mariah Thorn, and also presented a check for such amount to another witness, held material and admissible. *Lofton v. State* (Cr. App.) 182 S. W. 310.

In a prosecution for forgery in inducing the making of a false note payable to bank of which defendant was vice president, testimony of a witness on examination of the books of bank, that they did not show a credit on another note of the person whose name was forged, and testimony as to notes made by person whose name was forged and payments thereon and that such person delivered cotton as a credit on a note previously made by him was admissible. *Ferguson v. State* (Cr. App.) 187 S. W. 476.

In a prosecution for forgery, passing the forged check is a circumstance admissible against defendant. *Jackson v. State* (Cr. App.) 193 S. W. 301.

27. — Weight and sufficiency.—In a prosecution for forgery in inducing making of a false note, in which defendant attempted to prove an alibi, it appearing that note was signed by a clerk at direction of defendant who was vice president of bank made payee in the forged note, evidence held sufficient to support a verdict of guilty. *Ferguson v. State* (Cr. App.) 187 S. W. 476.

Under the statute, where the execution of an instrument accused was alleged to have passed was denied by him under oath, proof only of comparison of his signature was not sufficient to carry his responsibility therefor to the jury. *Martin v. State* (Cr. App.) 189 S. W. 262.

Passing of a forged check brings defendant in close proximity to the forgery and is direct evidence. *Jackson v. State* (Cr. App.) 193 S. W. 301.

28. Instructions and questions for jury.—In a prosecution for forgery in inducing making of a false note and passing it, an instruction as to passing a forged instrument was not error. *Ferguson v. State* (Cr. App.) 187 S. W. 476.

Art. 924a. Making, altering, etc., of foreign governmental obligations; penalty.—He is guilty of forgery who without lawful authority and with intent to injure or defraud shall falsely make, alter, forge or counterfeit any bond, certificate, obligation, or instrument in writing having a value or purporting to be of value issued by or purporting to be issued by or under the authority or direction of any foreign government or defacto foreign government or any officer or agent of any foreign government or de facto foreign government, or any person or persons claiming to act by or under the authority of any foreign government or defacto foreign government or claiming by right of any office, military or civil, to have a right in any foreign country to issue money, bills of exchange, notes, or any papers circulating as money or mediums of exchange in any foreign country or portion thereof, or purporting to be redeemable in money or other thing of value, and any person violating any of the provisions of this Article shall be punished as provided in Article 936 of this Title and Chapter. [Act Sept. 16, 1914, 2d C. S., ch. 4, § 1.]

Explanatory.—The act amends ch. 1, tit. 14, Revised Penal Code of 1911, by adding thereto articles 924a, 924b, and 924c. Became a law Sept. 16, 1914.

Art. 924b. Passing forged obligations of foreign government; penalty.—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 Article 924A he shall be punished as provided by Article 937 of this Title and Chapter. [Id.]

See note under art. 924a.

Art. 924c. Possession of forged obligations of foreign government; penalty.—If any person shall knowingly have in his possession any instrument of writing, the making of which is by law an offense under the provisions of Article 924A hereof, with intent to use or pass the same as true, he shall be punished as is provided in Article 939 of this Title and Chapter. [Id.]

See note under art. 924a.

Art. 925. [531] Alteration also forgery.

Cited, *First Nat. Bank of Iowa City, Iowa, v. Dorsey* (Civ. App.) 166 S. W. 54.

Offense.—See *Carrell v. State* (Cr. App.) 184 S. W. 217; note under art. 924.

Art. 926. [532] Intent to injure, etc., necessary.

Offense.—See *Carrell v. State* (Cr. App.) 184 S. W. 217; note under art. 924.

Art. 929. [535] “Another” includes, what.

Offense.—See *Carrell v. State* (Cr. App.) 184 S. W. 217; note under art. 924.

Art. 931. [537] “Transferred or in any manner have affected” defined.

Offense.—See *Carrell v. State* (Cr. App.) 184 S. W. 217; note under art. 924.

Art. 932. [538] All participants guilty.

Indictment.—An indictment in words of this article and art. 924, defining forgery, without alleging that the defendant caused to be written the false note, was sufficient to support conviction for forgery in inducing making of a false note. *Ferguson v. State* (Cr. App.) 187 S. W. 476.

Instruction.—An instruction quoting from this article, under which prosecution was had, words “all persons engaged in the illegal act are deemed guilty of forgery,” was not error, being applicable to the testimony. *Ferguson v. State* (Cr. App.) 187 S. W. 476.

Art. 933. [539] Filling up over signature.

Offense.—See *Carrell v. State* (Cr. App.) 184 S. W. 217; note under art. 924.

Art. 934. [540] Person not guilty, when.

Bellef.—Where a person making an instrument in writing acts under an authority which he has good reason to believe, and does believe, to be sufficient, he is not guilty of forgery. *Ferguson v. State* (Cr. App.) 187 S. W. 476.

Art. 936a. Forgery of warehouse receipt.—If any person shall forge any warehouse receipt, or if any person shall knowingly negotiate a forged warehouse receipt issued under and by authority of this Act [Arts. 7827a-7827v, Civil Statutes, ante], he shall be guilty of a felony and on conviction thereof shall be punished by a fine of not less than one hundred (\$100) dollars, nor more than one thousand (\$1000) dollars, or by imprisonment in the penitentiary for not less than two years, nor more than five years, or by both such imprisonment and fine. [Act May 26, 1917, 1st C. S., ch. 41, § 44.]

Art. 937. [542] Passing forged instrument.

Indictment.—Where defendant bargained for watch, and tendered forged check, and only left, taking watch, when storekeeper took check and went to phone to ask if it was genuine, there was attempt to pass check, and it was not necessary to allege check had been indorsed by purported payee, or that defendant represented payee's name was his. *Smiley v. State* (Cr. App.) 189 S. W. 482.

Jury question.—Where evidence showed that accused forged payee's name to a check issued by county treasurer for a road warrant, and in order to cash it at depository bank indorsed his own name thereon under bank's custom requiring persons cashing checks to indorse their names thereon, and accused's name was last indorsement appearing on check, it was not error to submit the count for passing forged check to jury. *Fry v. State* (Cr. App.) 182 S. W. 331.

Art. 939. [544] Possession of forged instrument with intent to pass.

Sufficiency of evidence.—Evidence held sufficient to sustain conviction of knowingly having a forged check in his possession with intent to pass it as true, under this article. *Martin v. State* (Cr. App.) 194 S. W. 1105.

CHAPTER TWO

FORGERY OF LAND TITLES, ETC.

Article 947. [550] "Forgery of patents," etc., defined.

Indictment.—Under this article, it is sufficient for the indictment to allege that the deed forged purported to be the act of another, and it is not necessary to name the pretended grantor, and an indictment held to allege sufficiently the intent to defraud, and was not bad, for alleging unnecessary facts descriptive of the land. *Weber v. State* (Cr. App.) 180 S. W. 1082.

CHAPTER FIVE

PUBLIC WAREHOUSEMEN AND WAREHOUSES

Art.

971a, 971b.

977a.

WAREHOUSES AND MARKETING

977f. Engaging in business of cotton classifier in violation of law.

977g. Cotton ginner violating requirements.

977h. Doing business under warehouse and marketing act without a license.

977i. Doing business under warehouse and marketing act after revocation of license.

Art.

977j. False certificate of sample.

977k. Issuance of receipt by bonded warehouseman for goods not actually received.

977l. Substitution of samples.

977m. False packing or fraudulent certificate of classification.

977n. Violation of any of the provisions of the warehouse and marketing act.

Articles 971a, 971b.

Note.—The duties imposed by these sections on the Commissioner of Insurance and Banking are transferred to the Board of Supervisors of Warehouses by Act Sept. 26, 1914 (Acts 33rd Leg. 2d Called Sess. c. 5, §§ 1, 43), set forth as arts. 7827a and 7827u of the civil statutes.

Art. 977a.

Note.—By act May 26, 1917, ch. 41, ante, arts. 7827a–7827v, civil statutes, the authority conferred on the Board of Supervisors of Warehouses is transferred to the Commissioner of Markets and Warehouses.

WAREHOUSES AND MARKETING

Art. 977f. Engaging in business of cotton classifier in violation of law.—Anyone violating the provisions of this Act [Art. 7827rr, Civil Statutes, ante] shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine in any sum not exceeding one hundred (\$100) dollars. This Act shall not affect the right of anyone to class his own cotton, or of any cotton buyer or other person, to class cotton purchased by him for himself, or purchased for another, but applies only to those who engage in the business of classing cotton generally for the public. [Act May 26, 1917, 1st C. S., ch. 41, § 36.]

Art. 977g. Cotton ginner violating requirements.—Should any person operating a cotton gin in this State either for himself or for another, fail to do anything required of a ginner under the terms and requirements of this Act [Arts. 7827a–7827v, Civil Statutes, ante], or by the rules of the Commissioner, such person shall be guilty of a misdemeanor, and on conviction thereof, shall be fined as provided in this Act. [Id., § 39.]

Art. 977h. Doing business under warehouse and marketing act without a license.—Any person who shall conduct any business for himself or for another, for which a license is required under the terms of this Act [Arts. 7827a–7827v, Civil Statutes, ante], without having first

obtained such license, shall be guilty of a misdemeanor, and on conviction thereof shall be punished as hereinafter provided. [Id., § 40.]

Art. 977i. Doing business under warehouse and marketing act after revocation of license.—If a license is issued to any person or association of persons, or a corporation, under authority of this Act [Arts. 7827a–7827v, Civil Statutes, ante], and if such license is thereafter cancelled or revoked, it shall be unlawful for the licensee therein mentioned to resume or continue to pursue such occupation until a new license is obtained by him, them, or it. The person so offending shall be guilty of a misdemeanor and on conviction shall be punished as herein provided. [Id., § 41.]

Art. 977j. False certificate of sample.—If any person shall issue, or cause to be issued, any certificate of sample, weight, grade or class, of any cotton or other farm products, for commercial purposes, with intent to deceive or defraud, such person shall be guilty of a misdemeanor, and on conviction thereof, shall be fined in any sum not less than twenty-five (\$25.00) dollars, nor more than two hundred (\$200.00) dollars, and each instrument so issued shall constitute a separate offense. [Id., § 43.]

Art. 977k. Issuance of receipt by bonded warehouseman for goods not actually received.—Any officer, agent, or servant of a corporation chartered under this Act [Arts. 7827a–7827v, Civil Statutes, ante], who issues, or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such corporation, or are not under its control at the time of issuing such receipt, shall be guilty of a felony, and upon conviction shall be punished for each offense by imprisonment in the State penitentiary for not exceeding three years, or by a fine not exceeding five thousand (\$5000) dollars, or by both such fine and imprisonment. [Id., § 45.]

Art. 977l. Substitution of samples.—If any person shall substitute any sample of cotton or other farm products for a sample taken under authority of this Act [Arts. 7827a–7827v, Civil Statutes, ante], with intent to defraud, he shall be guilty of a misdemeanor and on conviction thereof shall be fined as provided in the succeeding section. [Id., § 46.]

Art. 977m. False packing or fraudulent certificate of classification.—If any person shall falsely pack any bale of cotton, or other farm products, or give any false or fraudulent certificate of classification of any cotton or other farm produce, with intent to defraud, the person so offending shall be guilty of a misdemeanor and on conviction thereof shall be fined in any sum not less than twenty-five (\$25) dollars, nor more than two hundred (\$200) dollars. [Id., § 47.]

Art. 977n. Violation of any of the provisions of the warehouse and marketing act.—From and after this Act takes effect, it shall be unlawful for any person to do, or cause to be done, any act or anything prohibited by this Act [Arts. 7827a–7827v, Civil Statutes, ante], or to fail to do anything required of him under it. The person so offending shall be guilty of a misdemeanor and on conviction thereof shall be fined in any sum not less than twenty-five (\$25) dollars, nor more than two hundred (\$200) dollars, unless a different offense and a different penalty is provided by this Act. [Id., § 48.]

EMERGENCY SYSTEM OF STATE WAREHOUSES

Act Sept. 14, 1914 (Acts 33rd Leg. 2nd Called Sess. ch. 3), relating to emergency state warehouses, contains a number of penal provisions. They are omitted from this compilation, since the act expressly declares that it shall be operative not later than Aug. 31, 1915. The act also expressly declares that it shall not be construed to repeal Act 1913, 1st Called Sess. ch. 37, relating to public and private warehouses.

CHAPTER SIX

BUREAU OF COTTON STATISTICS

Article 978.

See art. 7827mm, civil statutes, ante.

Arts. 987, 988.

Note.—Act May 26, 1917, ch. 41 (1st C. S. 35th Leg.) § 7, ante, art. 7827d, civil statutes, repeals “all laws and parts of laws heretofore enacted, providing for the marking or branding of cotton in the bale.”

CHAPTER SEVEN

FALSE WEIGHTS AND MEASURES

Article 993. Prevention of flow of water, electric or gas current through meter; misreading meters and overcharge; rule of evidence.—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; Act Oct. 18, 1917, ch. 35, § 1.]

The presence at any time, on or about such meter or meters, wire or wires, pipe or pipes, of any device or pipes or wires resulting in the diversion of electric current, water or gas, as above defined or resulting in the prevention of the proper action or just registration of the meter or meters, as above set forth, shall constitute prima facie evidence of knowledge on the part of the person having custody and control of the room or place where such device or pipe or wires of the existence thereof and the effect thereof and shall further constitute prima facie evidence of intention on the part of such person to defraud and shall bring such

person prima facie within the scope, meaning and penalties of this Act. [Act Oct. 18, 1917, ch. 35, § 2.]

Explanatory.—The act amends ch. 105 of Acts, regular session, 29th Legislature.

CHAPTER SEVEN A

WEIGHT OF COTTON BALES

Articles 993a–993f.

See concluding sentence in Act May 26, 1917, ch. 41, § 7, ante, art. 7827d, civil statutes, repealing “all laws and parts of laws heretofore enacted, providing for the making or branding of cotton in the bale.”

CHAPTER SEVEN B

CONTAINERS, GRADES AND PACKS

Art. 993½.	Manufacture or sale of containers of fruit and vegetables not conforming to standard.	Art. 993½a.	Violation of regulations as to grade and pack of fruits and vegetables.
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Article 993½. **Manufacture or sale of containers of fruit and vegetables not conforming to standard.**—Any person, firm or corporation violating any of the provisions of this Act [Arts. 7846a–7846g, Civil Statutes] in regard to the standard, containers, or who shall make, sell or offer to sell, containers of different size or dimensions from the standards established by this Act, except as provided in Section 3 [Art. 7846c, Civil Statutes] of this Act, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not more than one thousand (\$1,000.00) dollars, and each sale shall constitute a separate offense, and venue shall be had in the courts of competent jurisdiction in the county where the sale is made, as well as in the county where such container or crate was made. [Act April 2, 1917, ch. 181, § 7.]

Art. 993½a. **Violation of regulations as to grade and pack of fruits and vegetables.**—Any grower, shipper, packer or shipper’s agent who shall violate any of the provisions of this Act [Arts. 7846a–7846g, Civil Statutes, ante] relating to standards of grade and pack, or who shall refuse to conform to the standards of grade and pack as hereinabove established, or hereafter to be established, under the provisions of this Act, or who shall refuse to submit to the inspector employed by the association or the shipper’s agent handling the products for the growers, or a representative of the State Department of Agriculture empowered to make such inspection, shall be guilty of misdemeanor and upon conviction shall be fined in any sum not more than One Hundred (\$100.00) Dollars. [Act April 2, 1917, ch. 181, § 8; Act Sept. 20, 1917, ch. 6, § 1.]

See note under art. 7846a, civil statutes, ante.

CHAPTER EIGHT D

LOAN BROKERS

Articles 999j-999mm.

See arts. 6171a-6171l, ante, civil statutes, and notes thereunder.

CHAPTER EIGHT J

EMIGRANT AGENTS

Article 999 $\frac{1}{2}$. Engaging in business of emigrant agent in violation of law.—Any person engaging in the business governed and regulated by this Act [Arts. 5246—101 et seq., Civil Statutes, ante], except in accordance with the provisions hereof and except he be licensed, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than One Hundred Dollars nor more than Three Hundred Dollars for each such offense, or by imprisonment in the county jail for not less than thirty days nor more than ninety days, or by both such fine and imprisonment. Provided nothing in this Act shall be construed to apply to municipal employment bureaus or employment agencies operated purely for charitable purposes. [Act Oct. 18, 1917, ch. 36, § 6.]

TITLE 15

OF OFFENSES AGAINST THE PERSON

Chap.		Chap.	
1.	Assault and assault and battery.	12.	Of justifiable homicide.
2.	Aggravated assault and battery.	3.	By officers in the performance of a duty, and by other persons under certain circumstances.
3.	Of assault with intent to commit some other offense.	4.	Defense of person or property.
5.	False imprisonment.	13.	Of excusable homicide.
6.	Offenses against minors.	14.	Homicide by negligence.
7.	Of kidnaping and abduction.	1.	In the performance of a lawful act.
8.	Rape.	15.	Of manslaughter.
11.	Of homicide.	16.	Of murder.
		18.	General provisions relating to homicide.

CHAPTER ONE

ASSAULT AND ASSAULT AND BATTERY

Art.		Art.	
1008.	"Assault and battery" defined.	1014.	When violence does not amount to.
1009.	Intent presumed, and "injury" defined.	1015.	Degree of force permissible.
1013.	"Coupled with an ability to commit" defined.	1016.	Verbal provocation no justification.
		1018.	Degrees of assault.

Article 1008. [587] "Assault and battery" defined.

Evidence.—Substantial proof only of the means used in an assault is sufficient to support the charge. *Chisom v. State* (Cr. App.) 179 S. W. 103.

Evidence held to warrant a conviction of assault. *Dickie v. State*, 179 S. W. 566; *Davis v. State* (Cr. App.) 180 S. W. 1084.

Evidence, that accused at point of pistol held complaining witness awaiting the arrival of officers, held insufficient to support a charge of assault by striking with the pistol. *Arbetter v. State* (Cr. App.) 186 S. W. 769.

Where the alleged assault arose out of an encounter over a contract for the sale of an automobile and charges by accused, the seller, that the buyer stole parts of the car, evidence that the accused extorted usurious interest from the buyer was inadmissible. *Id.*

Art. 1009. [588] Intent presumed, and "injury" defined.

Cited, *Eitel v. State* (Cr. App.) 182 S. W. 318; *Bowman v. State* (Cr. App.) 192 S. W. 769.

Art. 1013. [592] "Coupled with ability to commit" defined.

Requisites of offense.—Under this article, the thing done must have been unlawful, and done in an angry or threatening manner, and with intent to alarm. *Borders v. State* (Cr. App.) 193 S. W. 148.

Art. 1014. [593] When violence does not amount to.

SUBD. 1

1½. **Guardian and ward.**—A guardian having emancipated his ward cannot justify an assault and battery on her because of the relationship. *Eitel v. State* (Cr. App.) 182 S. W. 318.

4. **Teacher and pupil.**—A teacher is not authorized to use his fists in administering corporal punishment, even though the pupil conducts himself so as to demand discipline. *Wilson v. State* (Cr. App.) 190 S. W. 155.

SUBD. 5

8. **Arrest.**—It was city marshal's duty to arrest prostitute if her conduct on street was contrary to law, but he had no authority to assault her when she remarked that she thought "he had it in for her." *Hudley v. State* (Cr. App.) 194 S. W. 160.

SUBD. 6

9. **Self-defense.**—Evidence in a prosecution for assault with intent to kill where defendant set up self-defense, held to sustain a conviction. *Scott v. State* (Cr. App.) 185 S. W. 994.

One is not justified in resisting officers attempting to arrest him if he knew that they were officers and what their purpose was, even though they did not inform him of those facts. *Kelley v. State* (Cr. App.) 190 S. W. 169.

10. — **Charge.**—In a prosecution for assaulting a policeman with intent to kill, requested instructions that such arrest was illegal, unwarranted, and in effect a species of aggravated assault, constituting great provocation, and was adequate cause, justifying or excusing the assault, were properly refused, where the assault was committed about 25 minutes after defendant's arrest and confinement thereunder had terminated. *Crippen v. State* (Cr. App.) 189 S. W. 496.

In a prosecution for assault to murder an officer, instructions as to appellant's right to defend his person and an intrusion into his room held sufficient. *Kelley v. State* (Cr. App.) 190 S. W. 169.

In prosecution for assault with intent to murder, evidence held insufficient to raise issue of self-defense, so that it was unnecessary for court to charge thereon. *Fleming v. State* (Cr. App.) 194 S. W. 159.

Art. 1015. [594] Degree of force permissible.

Degree of force.—Evidence showing that city marshal ordered prostitute from street, whereupon she cut his face with knife, held insufficient to justify conviction for assault with intent to murder, in view of this article and art. 1016. *Hudley v. State* (Cr. App.) 194 S. W. 160.

Art. 1016. [595] Verbal provocation no justification.

Degree of force.—See *Hudley v. State* (Cr. App.) 194 S. W. 160; note under art. 1015.

Verbal provocation.—By express provision of this article, verbal provocation does not justify assault and battery, but can be considered only in mitigation of punishment. *Eitel v. State* (Cr. App.) 182 S. W. 318.

Art. 1018. [597] Degrees of assault.

Aggravated as including simple assault.—In every indictment or information charging aggravated assault, simple assault is necessarily included. *Bennett v. State* (Cr. App.) 185 S. W. 14.

CHAPTER TWO

AGGRAVATED ASSAULT AND BATTERY

Art.
1022. Definition.

Art.
1022a. Willful driving of motor vehicle
against another.

Article 1022. [601] Definition.

Cited, *Price v. State* (Cr. App.) 194 S. W. 827.

IN GENERAL

6. **Evidence.**—On trial for aggravated assault, evidence as to whether defendant was a principal in the offense or an innocent by-stander held to support a verdict of guilty. *Southall v. State* (Cr. App.) 179 S. W. 872.

Where testimony of defendant tended to show malice of such officer in arresting defendant without warrant, evidence of the rules and custom of the police department in making arrests without warrants of an ordinance, authorizing the marshal to make arrests without warrant, such ordinance applying, not only to the marshal, but to all policemen under him, and of another ordinance making it an offense for any person to appear in certain public places in company with a common prostitute, was admissible to show the assaulted officer's good faith. *Crippen v. State* (Cr. App.) 189 S. W. 496.

Evidence of threats made by defendant prior to the assault is admissible. *Id.*

7. **Charge.**—Evidence that accused, in a drug store holdup, fired two shots from a pistol at close range at the assaulted party, held not to require submitting the issue of aggravated assault. *Kelley v. State* (Cr. App.) 185 S. W. 874.

Where the evidence only raises the issue of assault to murder and self-defense, a special charge on the issue of aggravated assault, requested by the accused, is properly refused. *Turner v. State* (Cr. App.) 186 S. W. 322.

9½. **Verdict.**—On trial for assault, held, that verdict assessing fine of \$25 should have specified whether accused was convicted of simple assault or aggravated assault. *Dieter v. State* (Cr. App.) 179 S. W. 557.

SUBD. 2

13. **Evidence.**—In a prosecution for assault, where self-defense was an issue, proof that injured party had reputation of being a violent and dangerous man when drinking was admissible, but evidence of isolated acts of violence by injured party was inadmissible, where there was no evidence that accused was aware of such acts prior to assault. *Reid v. State* (Cr. App.) 189 S. W. 483.

In trial for aggravated assault on a constable, it was not error to refuse to permit the county attorney to testify at accused's instance that accused had been charged with drunkenness, disturbing the peace, etc.; these matters being irrelevant. *Porter v. State* (Cr. App.) 190 S. W. 159.

SUBD. 5

36. **Charge.**—Under a charge of aggravated assault, by an adult male upon a child, where the evidence failed to show he was an adult, it was not error to submit the issue of simple assault. *Bennett v. State* (Cr. App.) 185 S. W. 14.

SUBD. 8

52. **Deadly weapon.**—A piece of metal used in setting up forms in printing office, about seven inches long and from half to an inch thick, weighing about three pounds, with which was inflicted a wound about an inch long, leaving a small scar, was not a "deadly weapon." *Kinchen v. State* (Cr. App.) 188 S. W. 1004.

57. **Indictment and information—Variance.**—An allegation of the means by which an assault was committed, though unnecessary, must be proved substantially as alleged. *Arbetter v. State* (Cr. App.) 186 S. W. 769.

SUBD. 9

65. **Evidence.**—Evidence held sufficient to show a premeditated plan to waylay an assaulted party, and that he was waylaid and a fight forced at a point selected by defendant and his companions. *Southall v. State* (Cr. App.) 179 S. W. 872.

Art. 1022a. Willful driving of motor vehicle against another.—If any driver or operator of a motor vehicle or motorcycle upon the public highways of this State shall wilfully or with gross negligence, collide with, or cause injury to any other person upon such highway, he shall be held guilty of aggravated assault, and shall be punished accordingly, unless such injuries result in death, in which event said party so offending shall be dealt with under the general law of homicide. [Act April 9, 1917, ch. 207, § 35.]

CHAPTER THREE

OF ASSAULTS WITH INTENT TO COMMIT SOME OTHER OFFENSE

Art. 1026.	With intent to murder.	Art. 1029.	With intent to rape.
1027.	"Bowie knife" and "dagger" defined.		

Article 1026. [605] With intent to murder.

1. **Offense.**—A pocketknife not being per se a deadly weapon, accused, who assaulted his wife with his pocketknife, cannot be convicted of assault to murder without proof of circumstances, etc., and charge authorizing the conviction if accused assaulted his wife with his knife is erroneous. *Fregia v. State* (Cr. App.) 185 S. W. 11.

Where, acting under influence of a sudden passion aroused by adequate cause, accused assaulted his wife with a pocketknife, but death did not result, he cannot be convicted of assault to murder. *Id.*

2. — **Intent.**—Where defendant fired into a small room packed with people in reckless disregard of human life, with intent to kill some one, and did shoot some one, his conviction of assault to murder was proper. *Williams v. State* (Cr. App.) 179 S. W. 710.

The specific intent to kill is an essential element of the crime of assault to murder, unless the attack is made with such a reckless disregard of human life that the law will impute malice. *Hernandez v. State* (Cr. App.) 182 S. W. 494.

Proof that accused used a pocketknife in an assault on his wife does not of itself show intent to kill. *Fregia v. State* (Cr. App.) 185 S. W. 11.

15. **Evidence.**—In prosecution for assault with intent to murder, testimony of witness that defendant was considerably under influence of liquor at time of, or shortly after, offense was admissible. *Fleming v. State* (Cr. App.) 194 S. W. 159.

19. — **Threats against accused, and character of person assaulted.**—In prosecution for assault with intent to murder, prosecutrix having been shot through a window while in bed, where witness testified that accused was talking with her about assaulted person, his statement, "I spends my money on the —, and if she don't treat me right I will kill her," was sufficiently identified as referring to the assaulted party and was admissible. *Sparks v. State* (Cr. App.) 187 S. W. 331.

Evidence that defendant, when purchasing knife with which she assaulted marshal, stated that she wanted "a rib-getter or man-getter" was incompetent; she not having definitely referred to any one. *Hudley v. State* (Cr. App.) 194 S. W. 160.

20. — **Sufficiency.**—Evidence held to sustain a conviction of assault to murder. *Freeman v. State* (Cr. App.) 179 S. W. 1157; *Hill v. State* (Cr. App.) 189 S. W. 257; *Arce v. State* (Cr. App.) 189 S. W. 1076; *Freeman v. State* (Cr. App.) 193 S. W. 147; *Fleming v. State* (Cr. App.) 194 S. W. 159.

Evidence in a prosecution for assault with intent to kill held insufficient to sustain a conviction, in that it did not justify a finding of intent. *Vaughan v. State* (Cr. App.) 180 S. W. 131.

In a prosecution for assault to murder, evidence held insufficient to raise issue of aggravated assault. *Tudyk v. State* (Cr. App.) 185 S. W. 568.

Evidence that one who identified accused as her assailant was knocked unconscious and fell at the second blow, and her wounds show a number of blows must have been struck after she fell, and she was seriously injured, held to support a finding that there was assault with intent to kill. *Epps v. State* (Cr. App.) 185 S. W. 578.

In a prosecution for assault with intent to murder, prosecutrix having been shot through a window while in bed at night, and having testified that accused had been sleeping with her, knew location of the bed, and that she recognized his voice, it was not necessary to a conviction that prosecutrix could and did see and recognize appellant, nor that defendant could see the prosecutrix on the bed. *Sparks v. State* (Cr. App.) 187 S. W. 331.

In prosecution for assault to murder an officer, evidence held sufficient to take to the jury the issue whether defendant knew that the other was an officer. *Kelley v. State* (Cr. App.) 190 S. W. 169.

21. **Charge.**—Under evidence that accused, in a drug store holdup, fired several pistol shots, held not error to refuse instruction that if accused was guilty of rudely displaying a pistol, and thus disturbing the peace, he could not be guilty of assault to murder. *Kelley v. State* (Cr. App.) 185 S. W. 874.

Upon trial for assault to murder, where accused did not know that the alleged assaulted persons were officers or intending to arrest him, it was not error to refuse a special charge as to the illegality of the attempted arrest or warrant. *Turner v. State* (Cr. App.) 186 S. W. 322.

23. — **Grade of assault.**—In prosecution for assault to murder, where defendant claimed the assaulted party made insulting remark Saturday night, but defendant did not commit the assault until Sunday night, charge on aggravated assault was properly refused. *Gray v. State* (Cr. App.) 192 S. W. 1069.

In prosecution for assault with intent to murder, where defendant's own testimony raised issue of aggravated assault, it was reversible error for court not to charge on aggravated assault. *Fleming v. State* (Cr. App.) 194 S. W. 159.

Evidence held to require submission of simple assault in prosecution for assault with intent to murder; so that submission of assault with intent to murder and of aggravated assault alone was error. *Price v. State* (Cr. App.) 194 S. W. 827.

24. — **Definition of terms.**—In a trial for assault to murder, held not error for the trial judge to define murder in the charge. *Epps v. State* (Cr. App.) 185 S. W. 578.

27. **Punishment.**—Under this article, it is within the province of the jury to fix the term at any intermediate length of time, and it may be for a fraction of a year. *Hare v. State* (Cr. App.) 185 S. W. 47.

Art. 1027. [606] "Bowie-knife" and "dagger" defined.

"Bowie knife."—A knife in a scabbard with a blade nine inches long and a handle four or five inches long, described as a butcher knife, was embraced in the term "bowie knife," defined by this article. *Mireles v. State* (Cr. App.) 192 S. W. 241.

Art. 1029. [608] With intent to rape.

2. **Offense—Female under age of consent.**—In a prosecution for assault to rape a female under the age of consent, proof of defendant's intention to use whatever force may be necessary to obtain intercourse is unnecessary; the offense being complete if defendant's handling of the female indicated a present intent to have intercourse with or without her consent. *Webb v. State* (Cr. App.) 187 S. W. 485.

7. **Indictment—Included offenses.**—Under Code Cr. Proc. arts. 771, 772, 837, held, that indictment charging assault with intent to rape includes aggravated assault, and where evidence tended to show such assault, it is properly submitted, though prosecutrix did not in her complaint state that assault caused her a sense of shame and humiliation. *Stockton v. State* (Cr. App.) 192 S. W. 236.

9. **Evidence.**—In a prosecution for assault to rape, evidence of no change in social relationships between family of defendant and family of prosecutrix after the family of the latter had notice of the alleged assaults is admissible. *Webb v. State* (Cr. App.) 187 S. W. 485.

12. — **Character of female.**—Generally, acts of prosecutrix with others than accused are not admissible. *Wood v. State* (Cr. App.) 189 S. W. 474.

In prosecution for an assault with intent to rape, evidence that prosecutrix had theretofore lived with another man at her house, and had had an illegitimate child, and had been compelled to leave her home on account of her immoral relations with men, was admissible. *Jennings v. State* (Cr. App.) 190 S. W. 733.

14. — **Physical condition, complaints and declarations of female.**—In prosecution for assault with intent to rape, statements of party assaulted to certain witnesses, and her complaint of her injury soon after offense, held *res gestæ*, and admissible. *Jennings v. State* (Cr. App.) 190 S. W. 733.

In prosecution for assault with intent to rape, where assault was committed on Saturday and prosecutrix did not return home until Monday, her father may testify that as soon as she returned she made complaint. *Stockton v. State* (Cr. App.) 192 S. W. 236.

16. **Charge.**—In prosecution for an assault with intent to rape, where defendant's testimony made an issue as to self-defense, or of his going to see her at her invitation and having sexual intercourse with her, the failure to submit such defenses was reversible error. *Jennings v. State* (Cr. App.) 190 S. W. 733.

17. — **Grade of assault.**—In a prosecution for assault to rape, an instruction on aggravated assault is proper, where there is evidence tending to show that defendant's acts towards prosecutrix were without intent to rape. *Webb v. State* (Cr. App.) 187 S. W. 485.

In prosecution for assault with intent to rape, where issue of aggravated assault was submitted, requested instructions as elements of crime held properly refused, and directing acquittal if accused's fondling of prosecutrix did not cause a sense of shame, etc., held properly refused, and question of aggravated assault submitted. *Stockton v. State* (Cr. App.) 192 S. W. 236.

CHAPTER FIVE

FALSE IMPRISONMENT

Article 1039. [618] "False imprisonment" defined.

Cited, *Davis v. State* (Cr. App.) 180 S. W. 1085.

Defense.—In view of Code Cr. Proc. art. 259, held, that illegal act, if any, of prosecuting witness in running stock in an inclosure afforded no defense to his arrest by defendant, not an officer and having no process. *Gilbert v. State* (Cr. App.) 181 S. W. 200.

Evidence.—In prosecution for false imprisonment committed on section of land in an inclosure of the land of different owners, held, that it was immaterial to whom that section belonged, as the question of trespassing on the land of another could not arise. *Gilbert v. State* (Cr. App.) 181 S. W. 200.

CHAPTER SIX

OFFENSES AGAINST MINORS

Art.

1050-1050d. [Superseded.]

1050e. Employment of children under 15 in certain occupations prohibited; penalty.

1050f. Employment of children under 17 in certain occupations prohibited; penalty.

1050g. Sending children under 17 as messengers to certain places prohibited; penalty.

Art.

1050h. Hours of labor of children under 15; penalty for violation.

1050i. Permit for employment of children over 12; posting; renewal; employment of school children during certain months.

1050j. Obstruction of officers prohibited; penalty.

1050k. Employment in domestic services not prohibited.

1050l. Partial invalidity.

Articles 1050-1050d.

Superseded by Act March 6, 1917, ch. 59, set forth post as arts. 1050e-1050l, post.

Art. 1050e. Employment of children under 15 in certain occupations prohibited; penalty.—Any person, or any agent or employé of any person, firm or corporation, who shall hereafter employ any child under the age of fifteen (15) years, to labor in or about any factory, mill, workshop, laundry, theatre or other place of amusement or in messenger serv-

ice in towns and cities of more than fifteen thousand population according to the Federal census, except as hereinafter provided, shall be deemed guilty of a misdemeanor, and upon conviction in a court of competent jurisdiction, shall be punished by a fine of not less than twenty-five (\$25.00) dollars, nor more than two hundred dollars, (\$200.00) or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment. Provided that nothing in this act shall be construed as affecting the employment of children on farms. [Act 1903, p. 40, ch. 28; Act 1911, p. 75, ch. 46, § 1; Act March 6, 1917, ch. 59, § 1.]

Explanatory.—Sec. 7 repeals all laws in conflict. Took effect 90 days after March 21, 1917, date of adjournment. Supersedes arts. 1050-1050d, Vernon's Pen. Code 1916.

Liability for injuries to child unlawfully employed.—In an action for injuries to a servant less than 14 years old, whether, considering his immaturity of intelligence, defendant was negligent in employing plaintiff at all to work in a woodworking factory where there were quantities of dangerous machinery, independent of statute, was for the jury. *Stirling v. Bettis Mfg. Co.* (Civ. App.) 159 S. W. 915.

Art. 1050f. Employment of children under 17 in certain occupations prohibited; penalty.—Any person, or agent or employé of any person, firm or corporation who shall hereafter employ any child under the age of seventeen (17) years to labor in or about any distillery, brewery, or other place where intoxicating liquors are kept or manufactured, or in any mine, quarry, or place where explosives are used, or who, having control or employment of such child, shall send or cause to be sent, or who shall permit any person, firm or corporation, their agents or employés, to send any such child under the age of seventeen (17) years to any disorderly house, bawdy house, assignation house or place of amusement conducted for immoral purposes, the character or reputation of which could have been ascertained upon reasonable inquiry on the part of such person, firm or corporation having the control of such child shall be deemed guilty of a misdemeanor, and upon conviction in any court of competent jurisdiction shall be punished by a fine of not less than fifty (\$50.00) dollars nor more than five hundred (\$500.00) dollars, or by imprisonment in the county jail not to exceed sixty (60) days, or by both such fine and imprisonment. [Act March 6, 1917, ch. 59, § 2.]

Art. 1050g. Sending children under 17 as messengers to certain places prohibited; penalty.—It shall be the duty of every person, firm or corporation, their agents or employees, having in their employ or under their control, any child under the age of seventeen (17) years, doing a messenger or delivery business, or whose employees may be required to deliver any message, package, merchandise or other thing, before sending any such child on such errand, to first ascertain if such child is being sent or is to be sent to any place prohibited in Section 2 [Art. 1050f] of this Act. Failure or refusal to comply with this section shall subject any person, firm or corporation, their agents or employees, having the control of such child or children to the penalties provided in Section 2 [Art. 1050f] of this Act. [Id., § 3.]

Art. 1050h. Hours of labor of children under 15; penalty for violation.—Any person, firm or corporation, their agents or employees, having in their employ or under their control any child under the age of fifteen (15) years who shall require or permit any such child to work or be on duty for more than ten (10) hours in any one calendar day, or for more than forty-eight hours in any one week, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than twenty-five (\$25.00) dollars nor more than two hundred (\$200.00) dollars, or by

imprisonment in the county jail not to exceed sixty (60) days, or by both such fine and imprisonment. Provided, that nothing herein or in any other section of this Act shall apply to employment of children for farm labor, or to hours which children may work on farms. [Id., § 4.]

Art. 1050i. Permit for employment of children over 12; posting; renewal; employment of school children during certain months.—Upon application being made to the county judge of any county in which any child over the age of twelve (12) years shall reside, the earnings of which child are necessary for the support of itself, its mother when widowed, or in needy circumstances, or invalid father, or of other children younger than the child for whom the permit is sought, the said county judge may, upon the sworn statement of such child or its parent or guardian, that the child for whom the permit is sought is over twelve (12) years of age, that the said child is able to read and write in the English language, that it is able physically to perform the work or labor for which a permit is sought, and that it shall not be employed in or around any mill, factory, workshop, or other place where dangerous machinery is used, nor in any mine, quarry, or other place where explosives are used, nor in any distillery, brewery or other place where intoxicating liquors are manufactured, sold or kept, or where the moral or physical condition of the child is liable to be injured, and that the earnings of such child are necessary for the support of such child's parent, widowed mother or mother whose husband has deserted her, or of younger children, and that such support can not be obtained in any other manner, and that suitable employment has been obtained for such child, issue a permit for such child to enter such employment. Every person, firm or corporation employing any such child between the ages of twelve (12) years and fifteen (15) years shall post in a conspicuous place where such child is employed, the permit issued by the county judge; provided, that no permit shall be issued for a longer period than six (6) months, but may be renewed from time to time upon satisfactory evidence being produced that the conditions under which the former permit was issued still exists, and that no physical or moral injury has resulted to such child by reason of its employment. In every case where a permit is sought for any child between the ages of twelve (12) years and fifteen (15) years, the parent, guardian or other person in charge or control of such child shall appear before the county judge in person with such child for whom a permit is sought before such permit shall be issued. There shall be nothing in this Act to prevent the working of school children of any age from June 1st to September 1st of each year except that they shall not be permitted to work in factory, mill, work-shop, theatre, moving picture show or other places of amusement, and the places mentioned in Sections 2 [Art. 1050f] and 5 [Art. 1050i] of this Act. [Id., § 5.]

See Vernon's Pen. Code 1916, art. 1513f.

Art. 1050j. Obstruction of officers prohibited; penalty.—The Commissioner Labor Statistics, or any of his deputies or inspectors shall have free access during working hours to all places where children or minors are employed, and any owner, manager, superintendent, foreman or other person in authority, who shall refuse to admit, or in any way hinder or deter the said Commissioner or any of his deputies or inspectors from entering or remaining in such place, or from collecting information with respect to the employment of children as provided in this Act, shall be deemed guilty of a misdemeanor, and upon conviction in any court of competent jurisdiction shall be punished by a fine or not less

than twenty-five (\$25.00) dollars, nor more than one hundred (\$100.00) dollars; provided, that nothing herein shall apply to those engaged in stock raising pursuits. [Id., § 6.]

Art. 1050k. Employment in domestic services not prohibited.—Provided, that nothing in this Act shall be construed as prohibiting the employment by any person of nurses, maids, yard-servants or others for private homes and families, regardless of their ages. [Id., § 6a.]

Art. 1050l. Partial invalidity.—If any of the provisions of this Act shall be declared by proper judicial action to be unconstitutional, that fact shall not operate to invalidate other provisions of the bill. [Id., § 7a.]

CHAPTER SEVEN

OF KIDNAPING AND ABDUCTION

Article 1060 [630] Of female under fourteen.

Cited, *Miller v. State* (Cr. App.) 185 S. W. 29.

CHAPTER EIGHT

RAPE

Art.	Art.
1063. "Rape" defined.	1066. "Fraud" defined.
1064. Definition of "force."	1067. Penetration only need be proved.
1065. What threat sufficient.	

Article 1063. [633] "Rape" defined.

Cited, *Miller v. State* (Cr. App.) 185 S. W. 29.

5. Offense—Female under age of consent.—In a prosecution for rape upon a girl under 15 years of age, the question of consent does not enter into consideration. *Watkins v. State* (Cr. App.) 180 S. W. 116.

Carnal knowledge of female under age of consent by man not her husband held "rape," whether with her consent or by force, threats, or fraud. *Edwards v. State* (Cr. App.) 181 S. W. 195.

8. Indictment.—Indictment for rape, which alleged that prosecutrix was not accused's wife and that he ravished her, held sufficient, without alleging that she was a female. *Carter v. State* (Cr. App.) 181 S. W. 473.

9. — Female under age of consent.—An information, charging carnal knowledge of a female under the age of 15 years, not being the wife of said defendant, was good as an indictment for rape upon a female under the age of consent. *Tennel v. State* (Cr. App.) 181 S. W. 458.

16. Evidence.—On a trial for rape on a girl under the age of consent, the exclusion of evidence that the girl's mother sent her to ask defendant to meet the mother was not error. *Edwards v. State* (Cr. App.) 181 S. W. 195.

Testimony of prosecutrix on rape trial that acts occurred in March, but could not fix exact dates, and that at the time of the rape accused threatened to kill her if she ever told, was admissible. *Carter v. State* (Cr. App.) 181 S. W. 473.

The state could prove that accused was married to another and different woman, since it was necessary to be shown that he was not married to the prosecuting witness, but it was improperly allowed to prove that the wife of the accused had been sent to penitentiary and that he had lived with his wife only three days after she had been released, his treatment of his wife not being an issue. *Smith v. State* (Cr. App.) 183 S. W. 983.

19. — Character of female.—On trial for statutory rape, evidence that merchant drove the girl away from his place, and that she exhibited her person to a witness, held immaterial. *Edwards v. State* (Cr. App.) 181 S. W. 195.

23. — Identity of accused.—Evidence held sufficient to sustain a finding that the defendant was the person that committed the crime. *Jernigan v. State* (Cr. App.) 179 S. W. 1187.

26. — **Female's condition, complaints and declarations.**—In a prosecution for rape, the testimony of the physician who made examination of prosecutrix, that it was for purpose of seeing whether she was pregnant and found that she was, was properly admitted. *Carter v. State* (Cr. App.) 181 S. W. 473.

The mother of prosecutrix could state that prosecutrix had made complaint upon which she had acted by sending for a doctor, and that she had examined the clothes of prosecutrix and found blood on them, but testimony as to a detailed statement made by the prosecutrix to her at a later time held inadmissible. *Smith v. State* (Cr. App.) 188 S. W. 983.

Testimony that prosecutrix, next day after the alleged crime, made complaint to her mother and a neighbor, is admissible, where witnesses testify only to the fact of complaint, and not what was said, and their testimony that she was nervous and crying and had bruises on her arms and back, that she remained in that condition for some time thereafter, and would cry whenever the subject was approached, was admissible, and where the father and mother of prosecutrix testified, and the jury had a view of them, admission of her testimony that they were old and feeble as explaining her failure to complain to them immediately after the alleged crime did not present error. *Wood v. State* (Cr. App.) 189 S. W. 474.

Testimony of a neighboring woman, called in after the commission of the crime, that the victim told her who the party was who caused her injury, but not stating who this was, was proper. *Marion v. State* (Cr. App.) 190 S. W. 499.

32. — **Sufficiency in general.**—Evidence in a prosecution for rape held sufficient to sustain a conviction. *Tennel v. State* (Cr. App.) 181 S. W. 453; *Miller v. State* (Cr. App.) 185 S. W. 29.

On a trial for rape on a girl under the age of consent, evidence held sufficient to support a conviction. *Edwards v. State* (Cr. App.) 181 S. W. 195.

Conviction of statutory rape reversed for weakness of evidence and objections to rulings on same. *Hill v. State* (Cr. App.) 183 S. W. 1162.

Prosecutrix's testimony held sufficient to support conviction of rape by force. *Wood v. State* (Cr. App.) 189 S. W. 474.

Evidence of complaint and condition of victim, a child of eight, held sufficient to sustain conviction of rape. *Marion v. State* (Cr. App.) 190 S. W. 499.

36. **Charge.**—Where both accused and prosecutrix testified to a completed act of intercourse, it was not error to refuse charges on accused's "intent," and where prosecutrix testified to the use of force, and accused testified to specific words and acts of consent, an instruction that "it is not necessary that consent be in words, if she yields her person to the defendant," he would not be guilty, was correct and applicable to the evidence. *Wood v. State* (Cr. App.) 189 S. W. 474.

Art. 1064. [634] Definition of "force."

Force as element of offense.—To constitute rape upon a female under the age of consent, no more force is required than that necessarily involved in act of penetration. *Edwards v. State* (Cr. App.) 181 S. W. 195.

Evidence.—In a prosecution for rape, under this article, evidence that plaintiff was given beer and that defendant threatened to leave her in the road if she did not submit, held admissible on the question of rape by force. *Montoya v. State* (Cr. App.) 185 S. W. 6.

Art. 1055. [635] What "threat" sufficient.

Threat as element of offense.—Under this article, a statement by the defendant to the prosecutrix that if she did not submit he would leave her in the road some four or five miles from their destination, is not such a threat that would give just fear of death or great bodily harm. *Montoya v. State* (Cr. App.) 185 S. W. 6.

Art. 1066. [636] "Fraud" defined.

Instruction.—Under this article, an instruction which ignored that part of the statute requiring the substance to be administered to produce desire or stupor without knowledge or consent was erroneous. *Montoya v. State* (Cr. App.) 185 S. W. 6.

Art. 1067. [637] Penetration only need be proved.

Penetration as element of offense.—It is not necessary that the hymen be ruptured, or even that penetration reach that point, but penetration between the labia of the female private parts is sufficient to constitute the crime of rape, and a complete act is not necessary. *Watkins v. State* (Cr. App.) 180 S. W. 116.

Evidence.—In a prosecution for rape upon a girl under 15 years of age, evidence held sufficient to show penetration. *Watkins v. State* (Cr. App.) 180 S. W. 116.

CHAPTER ELEVEN

OF HOMICIDE

Article 1084. [654] Body of deceased must be found.

Evidence.—While the confession of an accused may be used where the corpus delicti is established, yet it is inadmissible to establish the corpus delicti. *Brice v. State* (Cr. App.) 179 S. W. 1178.

In view of this article, corpus delicti cannot be proven by accused's confession, but may be established by such confession and circumstantial evidence, and teeth, buttons, and metal articles found at the place which accused pointed out as being where she burned her husband's body, are admissible, the evidence being sufficient to establish the corpus delicti, and that accused committed the act, when taken in connection with her confession. *Wilganowski v. State* (Cr. App.) 180 S. W. 692.

In a trial for murder, where the state relied upon the adultery of the wife of the deceased and defendant as a motive, evidence held sufficient to establish the corpus delicti. *Ingram v. State* (Cr. App.) 182 S. W. 290.

Proof that death was caused by a criminal act, necessary in establishing the corpus delicti, held sufficiently made. *Martin v. State* (Cr. App.) 186 S. W. 331.

CHAPTER TWELVE

OF JUSTIFIABLE HOMICIDE

Art.

3. BY OFFICERS IN THE PERFORMANCE OF A DUTY, AND BY OTHER PERSONS UNDER CERTAIN CIRCUMSTANCES

1094. Qualification of the foregoing.
1102. In adultery.

Art.

4. IN DEFENSE OF PERSON OR PROPERTY

1104. In defense of person and property.
1105. In preventing other felonies.
1106. Presumption from use of weapon.
1107. In protecting person or property from other attacks.
1108. Retreat not necessary.
1109. Requisites of the attack.

3. BY OFFICERS IN THE PERFORMANCE OF A DUTY, AND BY OTHER PERSONS UNDER CERTAIN CIRCUMSTANCES

Article 1094. [664] Qualification of the foregoing.

SUBD. 1

1. **Arrest.**—In place of a general charge, a charge, stating under what circumstances, applicable to the facts of the case, defendant, in homicide, as an officer, would have a right to arrest deceased should be given. *Kilpatrick v. State* (Cr. App.) 189 S. W. 267.

Art. 1102. [672] In adultery.

Adultery as justification.—A husband was justified in shooting his wife when she was detected by him in an act of adultery, and where defendant claimed that the shooting of his wife was while she and her paramour were having sexual intercourse, instruction that defendant had a right to kill both should have been given on request. *Cook v. State* (Cr. App.) 180 S. W. 254.

Communication by deceased to defendant of the fact that he had had intercourse with defendant's wife did not justify the killing. *Jordan v. State* (Cr. App.) 182 S. W. 890.

4. DEFENSE OF PERSON OR PROPERTY

Art. 1104. [674] In defense of person and property.

Cited, *Jackson v. State* (Cr. App.) 180 S. W. 259; *Gerard v. State* (Cr. App.) 181 S. W. 737.

Art. 1105. [675] In preventing other felonies.

Cited, *Gerard v. State* (Cr. App.) 181 S. W. 737.

IN GENERAL

2½. **Charge.**—In prosecution for homicide, where evidence has least tendency to show killing in defense of person or property, defenses governed by this article and

art. 1107, court must charge law governing both defenses, stating them distinctly and not blending them. *Smith v. State* (Cr. App.) 185 S. W. 576.

SUBD. 1

5. Reasonableness of apprehension.—Evidence held to require question, whether defendant killed decedent under a reasonable belief, induced by deceased's words and acts, that it was his purpose to commit murder, rape, or robbery upon her, which under this article, would justify the killing, to be submitted to the jury. *Jackson v. State* (Cr. App.) 180 S. W. 259.

Art. 1106. [676] Presumption from the use of weapons.

Presumption as to intent.—Upon trial for murder, where nothing indicated that weapon used was a deadly one, and the wound's fatality could be accounted for without imputing intent to kill, it could not be presumed that appellant had such intent, and it was error not to so instruct the jury. *Carr v. State* (Cr. App.) 190 S. W. 727.

Art. 1107. [677] In protecting person or property from attacks.

½. Validity.—This article is a restriction within legislative power. *Hassell v. State* (Cr. App.) 188 S. W. 991.

1. **Defense of person or property.**—This article, providing that one defending his property must resort to all other means then at command to prevent injury to it, before killing the aggressor, does not refer to a right to sue the aggressor, and where tenant had not previously turned cotton over to deceased, his landlord, fact that deceased had gone on premises and hitched his team to wagon in which defendant had placed it did not oust defendant's possession, and deceased, in taking it therefrom, would be acting unlawfully, but where tenant had voluntarily turned possession of cotton over to deceased, his landlord, when landlord came to take it away, he would only have right to defend his person against attack, or apparent effort to take his life, or inflict serious bodily harm. *Hassell v. State* (Cr. App.) 188 S. W. 991.

That defendant suffered a simple assault is no justification for homicide, although it reduces the offense to manslaughter. *Smith v. State* (Cr. App.) 189 S. W. 484.

2. **Defense of habitation.**—Where a homicide took place in the absence of defendant's wife, who had not lived with him for some time, defendant and decedent not being on defendant's premises, the defense that he acted to protect the sanctity of his home could not avail defendant. *Duhig v. State* (Cr. App.) 180 S. W. 252.

4. **Defense of another.**—Where accused shot the deceased, who was attacking defendant's father, he was guilty of no offense if it reasonably appeared to him at the time he shot that the life of his father was in danger, or that he was in danger of suffering serious bodily injury. *Brod v. State* (Cr. App.) 179 S. W. 1189.

5. **Provoking contest, and impairment of self-defense.**—Where accused provoked the difficulty intentionally, he could not rely on self-defense, though deceased attacked him with a knife, but, if the difficulty was not provoked, he might rely on such defense. *Atkison v. State* (Cr. App.) 182 S. W. 1099.

On a reasonable doubt that defendant intended by his words and acts to provoke a difficulty, or that he employed words or acts towards deceased, reasonably calculated to provoke a difficulty, his right of self-defense would not be abridged, and submission of the issue of provocation of the difficulty held not erroneous. *McDougal v. State* (Cr. App.) 185 S. W. 15.

8. **Manslaughter.**—Defendant, charged with manslaughter, who was shot while down and being beaten by decedent and his friends, had the right of self-defense to shoot to protect himself from the attack of all. *Welborn v. State* (Cr. App.) 179 S. W. 1179.

9. **Evidence on issue of self-defense.**—Evidence held insufficient to raise the issue of provoking the difficulty in a prosecution for murder. *Lake v. State* (Cr. App.) 184 S. W. 213.

In prosecution for murder evidence held to show decedent had made no demonstration to do defendant personal harm. *Smith v. State* (Cr. App.) 185 S. W. 576.

Under a self-defense plea, evidence that when deceased, stabbed by his wife's father, staggered from his store, his wife put up a sign "Closed To-day," is admissible to determine whether a revolver found hidden there was one used by deceased, or whether it had been there always and the store was closed to prepare self-defense evidence. *Baker v. State* (Cr. App.) 187 S. W. 949.

12. **Charge.**—In prosecution for homicide, where evidence has least tendency to show killing in defense of person or property, defenses governed by this article and art. 1105, court must charge law governing both defenses, stating them distinctly and not blending them. *Smith v. State* (Cr. App.) 185 S. W. 576.

Where accused's evidence merely tended to show that he shot deceased in the heat of passion, induced by deceased's gossip regarding accused's cousin, requested charge on self-defense was properly refused. *Short v. State* (Cr. App.) 187 S. W. 955.

Under this article, the court should instruct the jury that the means other than of killing aggressor referred to therein were such as were then at defendant's command, and where defendant claimed to have shot deceased, his landlord, in defense of cotton which he owned, the jury should have been required to find beyond a reasonable doubt whether he had previously turned it over to the deceased, and a given instruction on self-defense held to place improper limitation upon facts in issue. *Hassell v. State* (Cr. App.) 188 S. W. 991.

Where the court properly submitted issue of self-defense upon trial for murder and no issue as to any attack by deceased upon appellant other than to kill him was shown

by the evidence, a refusal to submit question of justifiable homicide upon such an issue as provided for under this article was proper. *Edwards v. State* (Cr. App.) 191 S. W. 542.

In prosecution for murder held that, in view of testimony, defendant had right to charge that, if he had right to fire first shot, right continued until danger to his life had ceased, as viewed from his standpoint. *Waters v. State* (Cr. App.) 192 S. W. 778.

Charge submitting issue of self-defense which omitted accused's testimony of hostile demonstration and limited defense to verbal statements by deceased was error. *Stanley v. State* (Cr. App.) 193 S. W. 151.

In view of the evidence and instructions given, held, that it was error to refuse an instruction clearly presenting the issue of apparent danger. *Bennett v. State* (Cr. App.) 194 S. W. 148.

13. — Provoking contest.—In a trial for murder an instruction, applicable to the evidence giving jury no opportunity to pass on defendant's intention in provoking a difficulty, as bearing upon the abridgment of his right of self-defense, was reversible error. *McDougal v. State* (Cr. App.) 185 S. W. 15.

In a prosecution for homicide, an instruction on the doctrine of provoking the difficulty and the limitation of self-defense or defense of another, held, under the circumstances and evidence, not to present reversible error. *Berry v. State* (Cr. App.) 188 S. W. 997.

Facts of homicide case held not to raise the question of provoking a difficulty so as to authorize a charge thereon for the state. *Kilpatrick v. State* (Cr. App.) 189 S. W. 267.

In prosecution for murder, where defendant relied on self-defense, and court qualified charge on provoking the difficulty, held, that refusal of charge on defendant's right to arm himself and to ascertain whether deceased was about to enter on his land was error. *Stanley v. State* (Cr. App.) 193 S. W. 151.

15. — Threats by deceased.—It is not error to fail or refuse to charge on self-defense, though threats by decedent are in evidence, if there is no evidence that at time of killing decedent was manifesting intention to execute threats. *Smith v. State* (Cr. App.) 185 S. W. 576.

Where accused testified that deceased shot at him, the court is not required to give separate charges on self-defense as justified by threats by deceased. *Rodrigues v. State* (Cr. App.) 186 S. W. 335.

Where defendant claims self-defense based on threats and apparent danger, the court should charge not only on self-defense from the standpoint of threats, but should charge on self-defense viewed in the light of apparent danger, independent of the question of threats. *Bennett v. State* (Cr. App.) 194 S. W. 148.

Art. 1108. [678] Retreat not necessary.

Retreat.—Where one armed with a shotgun is pursued by another who he knows is unarmed, it is his duty to retreat or to use any other means to prevent an injury to himself, rather than to kill the pursuer. *Lake v. State* (Cr. App.) 184 S. W. 213.

Art. 1109. [679] Requisites of the attack.

Attack and danger.—One charged as principal of the party who actually fired the fatal shot held not guilty, where he or the actual perpetrator reasonably believed it was necessary in self-defense. *Taylor v. State* (Cr. App.) 179 S. W. 113.

Defendant had right to shoot decedent attacking him if from his viewpoint he was in danger of death or serious injury, whether other parties, decedent's friends, had anything to do with the trouble, or whenever they came into it. *Welborn v. State* (Cr. App.) 179 S. W. 1179.

It is defendant's viewpoint, and not the jury's, as they subsequently see a homicide, from which the appearance of matters, as giving defendant reasonable cause to believe he was in danger of injury, is to be estimated. *Id.*

Defendant, attacked by one whom he was attempting to eject from his house, had the right of self-defense by the employment of reasonable force, even though the attack upon him did not really or apparently threaten death or serious bodily harm, and was a mere simple assault. *Streich v. State* (Cr. App.) 180 S. W. 266.

Where defendant fired one shot at deceased advancing on him after a difficulty over a crap game, whereupon deceased fled, defendant, in the excitement and passion of the moment, continuing to shoot, killing deceased, was guilty of manslaughter, not murder. *Young v. State* (Cr. App.) 180 S. W. 686.

In considering the plea of self-defense of a defendant charged with manslaughter, the circumstances must be viewed as they appeared to defendant at the time of the killing. *Mansell v. State* (Cr. App.) 182 S. W. 1137.

Charge.—In a trial for murder, instruction that defendant in self-defense might use only such force as reasonably appeared to him at the time and place to be necessary to protect himself against unlawful violence was erroneous. *Vollintine v. State* (Cr. App.) 179 S. W. 108.

CHAPTER THIRTEEN

OF EXCUSABLE HOMICIDE

Article 1111. [681] Definition.

Accident.—If homicide occurs through mistake as to pistol being on safety guard so that it cannot be fired, or through mistake as to its being loaded, it is accidental, not negligent, homicide. *McPeak v. State* (Cr. App.) 187 S. W. 754.

Evidence.—Evidence held to support the giving of an instruction on homicide by mistake or accident. *Davis v. State* (Cr. App.) 180 S. W. 1085.

In prosecution of schoolboy for shooting teacher, where issue of accidental discharge of pistol was not in case, court properly refused special charge presenting it. *Wilson v. State* (Cr. App.) 190 S. W. 155.

Instructions.—It is error to instruct that accused, if homicide was accidental, and if it was not negligent or careless, is not guilty. *McPeak v. State* (Cr. App.) 187 S. W. 754.

CHAPTER FOURTEEN

HOMICIDE BY NEGLIGENCE

Art.	Art.
1113. Of two kinds.	1117. How distinguished from excusable homicide.
1. IN THE PERFORMANCE OF A LAWFUL ACT	1119. Must be no apparent intention to kill.
1114. In the performance of a lawful act.	

Article 1113. [683] Of two kinds.

Instructions.—On evidence in a prosecution for murder, held, that a charge on negligent homicide should have been given. *Boyd v. State* (Cr. App.) 180 S. W. 230.

1. IN THE PERFORMANCE OF A LAWFUL ACT

Art. 1114. [684] In the performance of a lawful act.

Cited, *Bradford v. State* (Cr. App.) 180 S. W. 702.

Art. 1117. [687] How distinguished from excusable homicide.

Cited, *Bradford v. State* (Cr. App.) 180 S. W. 702.

Art. 1119. [689] Must be no apparent intention to kill.

Offense.—For one to be guilty of negligent homicide, there must be apparent danger of killing, but no apparent intent to kill, and if homicide occurs through mistake as to pistol being on safety guard so that it cannot be fired, or through mistake as to its being loaded, it is accidental, not negligent, homicide. *McPeak v. State* (Cr. App.) 187 S. W. 754.

Instructions.—It is error to instruct that accused, if homicide was accidental, and if it was not negligent or careless, is not guilty, and where there was no direct evidence that accused intentionally shot his pistol, an instruction, allowing accused to be found guilty of negligent homicide if he so negligently and carelessly handled his pistol that it might be discharged and thereby killed deceased, was error. *McPeak v. State* (Cr. App.) 187 S. W. 754.

CHAPTER FIFTEEN

OF MANSLAUGHTER

<p>Art. 1128. Definition of. 1131. What are not adequate causes. 1132. What are. 1133. For insult to female, killing must be immediate.</p>	<p>Art. 1137. "Adequate cause" must produce the passion. 1138. Provoking contest with intent to kill, not manslaughter.</p>
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Article 1128. [698] Definition of.

Elements of offense.—Where defendant committed an assault with a specific intent to kill, but, at the time of the killing, was laboring under such a degree of anger, rage, resentment, or terror as to render his mind incapable of cool reflection, he was guilty of manslaughter, and not aggravated assault. *Mansell v. State* (Cr. App.) 182 S. W. 1137.

Under this article and art. 1131, to raise issue of manslaughter in murder trial, there must be shown adequate cause and passion, aroused thereby to an extent rendering slayer incapable of cool reflection; and an assault and battery so slight as to show no intention to inflict pain or injury is not adequate cause. *Rose v. State* (Cr. App.) 186 S. W. 202.

To constitute manslaughter under this article and art. 1137, there must be adequate cause producing such passion as to render mind incapable of cool reflection. *Marshbanks v. State* (Cr. App.) 192 S. W. 246.

Evidence.—In a prosecution for murder against a peace officer, evidence held to sustain conviction of manslaughter. *Moser v. State* (Cr. App.) 179 S. W. 104.

In a prosecution for manslaughter, evidence held sufficient to support verdict of guilty. *Mansell v. State* (Cr. App.) 182 S. W. 1137.

In trial for murder, evidence that accused's friend was ejected from a house, but not showing accused was assaulted or menaced, held not to raise issue of manslaughter. *Rose v. State* (Cr. App.) 186 S. W. 202.

Defendant claiming to have killed, because of deceased's relations with his sister, the first time he met him after learning of them, elicitation from witness that he had discussed matter with defendant three years before, and proof by other witnesses that defendant and deceased had met several times since, held proper, and where defendant showed that deceased might have been cause of his sister's ruin state could show that no improper relations existed between deceased and defendant's sister, as it was rumored they did between her and a brother, and that defendant knew of the latter matter and discussed it with another brother. *De Arman v. State* (Cr. App.) 189 S. W. 145.

Instructions.—On evidence in trial for murder, instruction on manslaughter held properly refused. *Boyd v. State* (Cr. App.) 180 S. W. 230.

Where there was no basis in the testimony for a special charge that if accused was under apprehension of death or great physical danger when he killed the deceased, he should not be found guilty of an offense greater than manslaughter, and no testimony raising the issue of manslaughter, refusal to give the charge held not error. *Williams v. State* (Cr. App.) 185 S. W. 573.

In prosecution for wife murder, failure to submit issue of manslaughter held erroneous under evidence. *Wilson v. State* (Cr. App.) 186 S. W. 838.

Instructions given upon trial for murder held not to restrict the jury to consideration of circumstances arousing appellant's passion at time of homicide, but included those occurring before, and properly presented the law. *Edwards v. State* (Cr. App.) 191 S. W. 542.

Where question raised by evidence is that of either murder or perfect self-defense, it is not error to fail to instruct on subject of manslaughter. *Marshbanks v. State* (Cr. App.) 192 S. W. 246.

Art. 1131. [701] What are not adequate causes.

Cited, *Marshbanks v. State* (Cr. App.) 192 S. W. 246.

Adequate cause.—Under this article and art. 1128, to raise issue of manslaughter in murder trial, there must be shown adequate cause and passion, aroused thereby to an extent rendering slayer incapable of cool reflection; and an assault and battery so slight as to show no intention to inflict pain or injury is not adequate cause. *Rose v. State* (Cr. App.) 186 S. W. 202.

Charge.—Where the court fully presented self-defense and gave defendant's special charge on that issue, an instruction that insulting words or gestures or an assault and battery so slight as to show no intention to inflict pain or injury are not adequate cause to adduce an unlawful killing from degree of murder to manslaughter, being in the words of this article, was proper. *Hall v. State* (Cr. App.) 185 S. W. 574.

Art. 1132. [702] What are.

Subdivision 1—Charge.—Instruction on what would be adequate cause to reduce offense to manslaughter held objectionable, as not including all the facts and circumstances relating to such issue. *Hassell v. State* (Cr. App.) 188 S. W. 991.

On trial of schoolboy for shooting teacher, where there was evidence that teacher had gone forward to punish boy with his fists after having stated he would beat him up, issue of manslaughter should have been submitted. *Wilson v. State* (Cr. App.) 190 S. W. 155.

Subdivision 3—Adultery as adequate cause.—Adultery of the deceased with the wife of appellant was "adequate cause" which might reduce the homicide to manslaughter. *Vollintine v. State* (Cr. App.) 179 S. W. 108.

Adultery of defendant's wife and deceased in which she was equally at fault, if such as to be an outrage against defendant, would afford adequate cause reducing the killing to manslaughter, where defendant had reason to believe that his wife had committed adultery with deceased, and that deceased was then endeavoring to have such relations renewed, and whose mind was rendered incapable of cool reflection, but the killing must take place at the first meeting of the parties after defendant has become aware of the facts. *Mitchell v. State* (Cr. App.) 179 S. W. 116.

— **Charge.**—Instruction that adultery of defendant's wife with deceased would not reduce the killing to manslaughter held erroneous as not fairly presenting the issues made by the evidence, and an instruction that adultery with the wife may be adequate cause which may reduce a homicide to manslaughter should be given if there is evidence to support it. *Mitchell v. State* (Cr. App.) 179 S. W. 116.

Art. 1133. [703] For insult to female, killing must be immediate.

Words constituting insult.—That decedent called accused a bastardy son of a bitch was not an insult to his mother and did not raise the issue of manslaughter. *Ahearn v. State* (Cr. App.) 179 S. W. 1150.

Evidence.—Where accused's evidence merely tended to show that he shot deceased in the heat of passion, induced by deceased's gossip regarding accused's cousin, it was permissible to show accused's own alleged illicit relations with his cousin as tending to disprove his claim of passion, by either circumstantial or positive evidence. *Short v. State* (Cr. App.) 187 S. W. 955.

Art. 1137. [707] "Adequate cause" must produce the passion.

Adequate cause and passion.—To constitute manslaughter under this article and art. 1128, there must be adequate cause producing such passion as to render mind incapable of cool reflection. *Marshbanks v. State* (Cr. App.) 192 S. W. 246.

Art. 1138. [708] Provoking contest with intent to kill, not manslaughter.

Provoking contest.—One provoking a difficulty with no intent to kill or to inflict serious bodily injury, and thereby bringing about the necessity of killing to save his own life or to prevent serious bodily injury, is guilty of manslaughter. *McDougal v. State* (Cr. App.) 185 S. W. 15.

Evidence held to warrant submission to jury of issue whether accused provoked the difficulty. *Bergin v. State* (Cr. App.) 188 S. W. 423.

Under this article, if a person by words or acts, or both, provoke a contest with the apparent intention of killing or doing serious bodily injury to deceased, the offense would be murder and not manslaughter, even though the killing was done in either self-defense or in defense of another, and if accused by words or acts, or both, provoke a difficulty or combat, or produce the occasion for deceased to attack him, for purpose of producing an opportunity of committing a battery upon him, or inflicting violence upon him other than to kill or do him serious bodily injury, and does so, then the accused would be guilty of manslaughter, even though it should then be necessary to kill deceased in self-defense, or in defense of another. *Berry v. State* (Cr. App.) 188 S. W. 997.

Provoking a difficulty is never in the case, except where self-defense is also an issue, being used to eliminate defendant's theory of the difficulty on that issue. *Kilpatrick v. State* (Cr. App.) 189 S. W. 267.

CHAPTER SIXTEEN

OF MURDER

Art.
1140. "Murder" defined.

Art.
1143. Evidence of threats and deceased's character admissible, when.

Article 1140. [710] "Murder" defined.

4. **Offense defined—Malice as element.**—Where defendant's mind was not rendered incapable of cool reflection, he would be guilty of murder if deceased was guilty of no act at the time which led defendant to believe that his life was in danger. *Hassell v. State* (Cr. App.) 188 S. W. 991.

10. **Indictment.**—In an indictment for murder by "cutting" deceased "with a sharp instrument," the grand jury should have charged the character of the instrument used if they could obtain the information. *Carr v. State* (Cr. App.) 190 S. W. 727.

24. **Evidence—Admissibility of evidence as to malice and intent.**—In a trial for murder, contents of letter of deceased in reply to defendant's wife held inadmissible, but that deceased received a letter from her and the registry receipt for it to which his answer was in reply was admissible. *Vollintine v. State* (Cr. App.) 179 S. W. 108.

Statement of accused, in prosecution for murder, that one T. was "worth the whole damn N. family," is admissible to show defendant's attitude toward the family of the person he was charged with having killed. *Taylor v. State* (Cr. App.) 180 S. W. 242.

26. — **Character of accused.**—In a prosecution for uxoricide, defendant's evidence of his kindness to his children held inadmissible, since his kindness to them was not in issue. *Rea v. State* (Cr. App.) 179 S. W. 706.

28. — **Motive.**—Evidence of defendant's difficulty with a person who had won his money and whom he probably intended to kill was admissible to show his motive. *Williams v. State* (Cr. App.) 179 S. W. 710.

Evidence as to defendant's false statements before deceased's death that he was a millionaire, and after his death that he was a pauper, and that she had a large amount of money in a bank, held admissible. *Hand v. State* (Cr. App.) 179 S. W. 1155.

Evidence of another trial and conviction, and the activity of the deceased against defendant's friend therein, held admissible to show motive of the defendant in committing the homicide charged. *Taylor v. State* (Cr. App.) 180 S. W. 242.

In prosecution on charge of being an accomplice to a murder, a letter written by an attorney for the deceased to defendant, his father, in regard to litigation commenced by deceased to obtain a share of the estate of his mother, was admissible if received by defendant. *Gerard v. State* (Cr. App.) 181 S. W. 737.

Where the state relied on adulterous relations of defendant and the wife of deceased as affording motive, testimony that defendant had given money to her in decedent's lifetime, and that defendant frequently used witness' phone to talk with her, and that witness objected to its frequent use, held admissible. *Ingram v. State* (Cr. App.) 182 S. W. 290.

In a prosecution for homicide, claimed to have been the outgrowth of conspiracy to carry on a revolution in Mexico, a so-called "Manifesto," written in Spanish, was admissible in evidence, though defendant testified he knew nothing about it, etc., as a circumstance tending to show defendant's purpose. *Cline v. State* (Cr. App.) 183 S. W. 1152.

In a trial for the murder of her daughter by poisoning, where it appeared that the daughter had repeatedly accused defendant of having poisoned her father, a chemical analysis of organs, etc., to show that the father had been poisoned, and testimony that the child would say to defendant that she knew she had killed her father, and that defendant knew that she knew it, held admissible as tending to show motive. *Orner v. State* (Cr. App.) 183 S. W. 1172.

Where accused was enamored of deceased's wife, a letter by the wife warning him of her husband's jealousy, and stating that she wished her husband was out of the way, is admissible to show motive. *Sanford v. State* (Cr. App.) 185 S. W. 22.

Testimony of a previous quarrel between deceased and defendant was admissible as tending to show motive for the crime. *Thompson v. State* (Cr. App.) 187 S. W. 204.

In prosecution for wife murder, defendant's statement, made on her request to sign a waiver so that she might secure a divorce, that he would not sign any divorce and that she should be careful because she would know what she was going to get, was admissible as bearing upon the defendant's motive. *Resendez v. State* (Cr. App.) 187 S. W. 483.

Testimony of a woman and her daughter as to accused's relation with the woman was admissible to show motive for murder by accused, it appearing that deceased was his rival. *Warbington v. State* (Cr. App.) 189 S. W. 147.

29. — **Threats by defendant.**—In a prosecution for homicide, testimony that accused informed the witness before the killing that he intended to slay deceased is admissible. *Sanford v. State* (Cr. App.) 185 S. W. 22.

In prosecution for wife murder, defendant's statement, made on her request to sign a waiver so that she might secure a divorce, that he would not sign any divorce and that she should be careful because she would know what she was going to get, was ad-

missible as bearing upon the relation of the parties. *Resendez v. State* (Cr. App.) 187 S. W. 483.

Threats by accused broad enough to include one against the life of deceased held admissible. *Spence v. State* (Cr. App.) 189 S. W. 269.

30. — Circumstances preceding act.—Evidence of defendant's difficulty with a person who had won his money and whom he probably intended to kill was admissible to show his state of mind. *Williams v. State* (Cr. App.) 179 S. W. 710.

Where the state introduces evidence that defendant passed deceased's house armed, and returned, before the killing, to show premeditation, it is error to exclude defendant's explanation of such circumstances. *Ward v. State* (Cr. App.) 180 S. W. 239.

It is error to exclude statements of deceased tending to show a state of mind moving him to attack accused, whose defense to a charge of murder is self-defense. *Id.*

Where defendant killed his wife and her paramour upon discovering them together, statements by the paramour that he expected to have sexual intercourse that night held admissible as showing his relations with wife of defendant. *Cook v. State* (Cr. App.) 180 S. W. 254.

In a homicide case, evidence that deceased told a friend, who warned him against marrying accused, that he regretted his venture, is properly refused. *Wilganowski v. State* (Cr. App.) 180 S. W. 692.

In a trial for murder by arsenic poisoning, evidence that defendant who had been suspected of having previously poisoned her husband, though a post mortem examination failed to disclose arsenic poisoning, had said that she knew of a poison which could not be detected by a physician, was admissible. *Orner v. State* (Cr. App.) 183 S. W. 1172.

In murder trial, where killing occurred in dispute between deceased and accused's wife, her acts and conduct in transaction were admissible. *Neyland v. State* (Cr. App.) 187 S. W. 196.

In a prosecution for the murder of his wife, evidence that defendant, about two weeks before, had gone to his own house with a policeman and had taken his clothes away with him was admissible, as bearing upon the relation of the parties. *Resendez v. State* (Cr. App.) 187 S. W. 483.

In trial for murder of a drug store clerk, evidence, that accused before the shooting on same day had gotten a bottle of bitters for a friend from deceased, was irrelevant. *McPeak v. State* (Cr. App.) 187 S. W. 754.

Evidence of acts and conduct of deceased was admissible to aid the jury in determining whether accused was justifiable in knifing him. *Bergin v. State* (Cr. App.) 188 S. W. 423.

Evidence of an assault by deceased on defendant's son before the homicide and of deceased carrying a pistol on occasions of which defendant was not aware and prior to his first difficulty with defendant is not admissible in a prosecution for murder, but testimony by defendant's wife corroborating his testimony that his difficulty with deceased began when he protested against deceased paying attention to his daughter, that when deceased was arrested with a pistol on him prior to the homicide, he was near where defendant's daughter then was, and evidence of instances when deceased was armed, not brought to defendant's attention and occurring more than two months prior to the homicide, are admissible. *Becker v. State* (Cr. App.) 190 S. W. 185.

It was proper to exclude testimony that deceased on the morning of the homicide passed near the witness' house, did not speak to her, and appeared to be in a solemn mood. *Bell v. State* (Cr. App.) 190 S. W. 732.

It was proper to exclude questions whether deceased did not inquire where he could get whisky, and if he did not drink quite a lot on the evening of the murder. *Ray v. State* (Cr. App.) 190 S. W. 1111.

In prosecution for murder admission of irrelevant testimony of deceased's widow relative to difficulty between her husband and defendant's son the night before the homicide, held prejudicial to defendant. *Waters v. State* (Cr. App.) 192 S. W. 778.

31. — Identity of accused.—In a prosecution for murder, testimony of a witness that he saw human tracks inside defendant's field and they compared favorably with defendant's track was admissible, where the witness also testified that he measured the tracks and compared them, and subsequent of another witness, who saw first party measure tracks that the tracks appeared to be the same as he saw in defendant's field, was admissible. *Hampton v. State* (Cr. App.) 183 S. W. 887.

32. — Means or instruments used.—In a prosecution for murder, evidence of a deputy sheriff and another acquainted with firearms that the weapon used took only a certain cartridge was admissible on the question of defendant's intent in firing the weapon. *Crowder v. State* (Cr. App.) 180 S. W. 706.

33. — Subsequent incriminating or exculpatory circumstances.—Where accused, who claimed that her husband had gone to another city, described his dress, evidence that the clothing described was found in a trunk in possession of her son is admissible. *Wilganowski v. State* (Cr. App.) 180 S. W. 692.

Where the defendant claimed the killing was accidental, and showed his expressions of grief as *res gestæ*, it was competent for the state in rebuttal to show expressions to other witnesses to the effect that they might be out after him and break his neck, and he did not "give a _____" if they did, though made some time after the killing. *Crowder v. State* (Cr. App.) 180 S. W. 706.

In a prosecution for manslaughter, testimony of the officer who arrested defendant, that at the latter's instance he searched him and found no knife or weapon of any character, was admissible, but testimony that when the body of deceased was being shipped by railroad defendant was at the depot talking and laughing to his relatives, standing within a few feet of the corpse, was inadmissible. *Mansell v. State* (Cr. App.) 182 S. W. 1137.

Where the evidence showed that at the time of deceased's death she had on her \$4.30 in small change, which was not found upon her body, evidence that quarters, nickels, and dimes were plowed up in the back yard of the place occupied by defendant at the time of the murder was admissible. *Hampton v. State* (Cr. App.) 183 S. W. 887.

36. — **Sufficiency of evidence.**—Evidence held to support a conviction. *Jackson v. State* (Cr. App.) 180 S. W. 260; *Williams v. State* (Cr. App.) 180 S. W. 1083; *Hampton v. State* (Cr. App.) 183 S. W. 887; *Burkhalter v. State* (Cr. App.) 184 S. W. 221; *Wilson v. State* (Cr. App.) 187 S. W. 207; *Norwood v. State* (Cr. App.) 192 S. W. 248; *Marta v. State* (Cr. App.) 193 S. W. 323.

Circumstantial evidence in a prosecution for homicide held to support a verdict of guilty, and proof of motive is not essential to support a conviction. *Rea v. State* (Cr. App.) 179 S. W. 706.

In a prosecution for murder, evidence held to show that decedent, a three year old girl, received fatal injury when flung into an adjoining room by defendant. *Galvan v. State* (Cr. App.) 179 S. W. 875.

Evidence held sufficient to sustain a conviction for homicide upon express malice. *Utley v. State* (Cr. App.) 180 S. W. 613.

On the trial of a negro for killing a boy who was living with him, evidence held sufficient to sustain a conviction. *Jones v. State* (Cr. App.) 180 S. W. 669.

Evidence, in a prosecution for homicide, held to sustain a conviction of murder in the second degree. *Buckley v. State* (Cr. App.) 181 S. W. 729.

Evidence held to show that defendant, when he shot and injured another, had a specific intent to kill. *Schultz v. State* (Cr. App.) 182 S. W. 316.

On trial for murder, evidence held sufficient to support a conviction, though the reputation of the state's principal witness for truth and veracity was severely assailed and he was strongly contradicted. *Villareal v. State* (Cr. App.) 182 S. W. 322.

In prosecution for murder, evidence held to raise issue whether defendant killed decedent in execution of previously formed intent or plan, and not in defense of property. *Smith v. State* (Cr. App.) 185 S. W. 576.

Where a number of witnesses testified as to statements made by deceased immediately after the crime accusing defendant, evidence held sufficient to sustain a verdict of guilty. *Thompson v. State* (Cr. App.) 187 S. W. 204.

Evidence in a prosecution for wife murder held sufficient to sustain a conviction. *Resendez v. State* (Cr. App.) 187 S. W. 483.

Evidence that deceased and accused were rivals for a woman in the neighborhood, that accused had enticed deceased from his home, and had threatened deceased and prepared himself to kill him, held sufficient to sustain conviction. *Warbington v. State* (Cr. App.) 189 S. W. 147.

Evidence held not sufficient to support conviction for murder. *Pizana v. State* (Cr. App.) 193 S. W. 671.

37. **Charge.**—Evidence in a prosecution for wife murder by poison held not to require a charge on the issue of suicide. *Rea v. State* (Cr. App.) 179 S. W. 706.

40. — **Degrees under former law.**—Where a homicide occurred before a statute abolishing the degrees of murder, the court properly charged on murder in both the first and second degrees. *Berry v. State* (Cr. App.) 188 S. W. 997.

Art. 1143. [713] Evidence of threats and deceased's character admissible, when.

Threats by deceased.—Where self-defense was urged, it was proper to allow witness, testifying to threat by deceased against accused, to state that deceased was mad when making the threats. *Mason v. State* (Cr. App.) 183 S. W. 1153.

In prosecution for murder, where evidence was that deceased placed his hand to where he would be expected to have a pistol, fact that defendant knew deceased was in habit of carrying a pistol in his auto was admissible. *Waters v. State* (Cr. App.) 192 S. W. 778.

— **Threats against others.**—In prosecution for murder, testimony of deceased's widow relative to difficulty between her husband and defendant's son the night before the homicide, which had not been communicated to defendant, held irrelevant. *Waters v. State* (Cr. App.) 192 S. W. 778.

Character of deceased or person assaulted.—In prosecution for murder resulting from a difficulty over a crap game, exclusion of evidence, that deceased's reputation for peace and order was bad, that he was a turbulent and violent man, would execute any threat, and generally went armed, held erroneous. *Young v. State* (Cr. App.) 180 S. W. 686.

Under this article, witness may, over objection of opinion, state whether or not deceased was a person who would likely execute a threat made. *Melton v. State* (Cr. App.) 182 S. W. 289.

Testimony in homicide trial that witness considered deceased dangerous and man of high temper held improperly excluded, and where witness was asked whether she knew deceased to be a fighting dangerous man and answered, "Yes, we consider him so," it was competent evidence of reputation. *Mason v. State* (Cr. App.) 183 S. W. 1153.

Where it was disputed as to which party had cursed the other during the altercation, and where defendant attacked deceased's reputation as a peaceable, law-abiding citizen, the state might show by associates of deceased that he was not a man who cursed. *McDougal v. State* (Cr. App.) 185 S. W. 15.

In murder trial, it is not error to exclude evidence by accused of details of specific acts of violence previously committed by deceased on others than accused, where there is no evidence that defendant knew of these matters prior to homicide. *Neyland v. State* (Cr. App.) 187 S. W. 196.

Exclusion of proof by accused that deceased had a bad reputation as a bootlegger, and that he had been convicted of illegal liquor selling, was proper; his reputation for truth not being in issue. *Bush v. State* (Cr. App.) 189 S. W. 158.

Witnesses whose opinion that deceased generally went armed was based solely on facts they personally knew are not qualified to testify to the general reputation of deceased as a man who went armed. *Becker v. State* (Cr. App.) 190 S. W. 185.

Charge.—In a trial for homicide, where there is no evidence of antecedent threats, it is not necessary to charge on threats made at the time of and during the fatal difficulty, and where there was no evidence of communicated threats and evidence of threats related only to those made by deceased during the difficulty, it was not erroneous to instruct thereon. *McDougal v. State* (Cr. App.) 185 S. W. 15.

CHAPTER EIGHTEEN

GENERAL PROVISIONS RELATING TO HOMICIDE

Article 1147. [717] Means or instruments used must be considered.

Cited, *Gillespie v. State* (Cr. App.) 190 S. W. 146.

Deadly weapon.—In prosecution for homicide, that the brickbat fractured deceased's skull did not show it to be necessarily a "deadly weapon," and the fact that he died from the wound did not prove that it was necessarily a "deadly weapon." *Boyd v. State* (Cr. App.) 180 S. W. 230.

A gun used as a firearm within carrying distance, and at such range that it shot off a hand of the prosecuting witness and put out one of his eyes, was a "deadly weapon." *Schultz v. State* (Cr. App.) 182 S. W. 316.

Weapon or means used as evidence of intent.—Proof that accused used a pocketknife in an assault on his wife does not of itself show intent to kill. *Fregia v. State* (Cr. App.) 185 S. W. 11.

Charge.—On the facts in a trial for murder, held, that an instruction under Pen. Code 1911, art. 1147, as to means or instrument used, should have been given. *Boyd v. State* (Cr. App.) 180 S. W. 230.

A pocketknife not being per se a deadly weapon, accused, who assaulted his wife with his pocketknife, cannot be convicted of assault to murder without proof of circumstances, etc., and charge authorizing the conviction if accused assaulted his wife with his knife is erroneous. *Fregia v. State* (Cr. App.) 185 S. W. 11.

TITLE 16**OF OFFENSES AGAINST REPUTATION****CHAPTER TWO****OF SLANDER****Article 1180. [750] Definition and punishment.**

3. **Privileged statement.**—Malice by person publishing slander held to destroy his privilege, and a slanderous statement made and sworn to before a justice at request of brother of the slandered girl held not a privileged communication. *Robison v. State* (Cr. App.) 179 S. W. 1157.

7. **Indictment and information and proof thereunder—Proof and variance.**—The offense of slander alleged to have been committed by communicating certain words to certain persons is not made out by a showing that such words were communicated to one of such persons apart from the others, and an indictment alleging that accused said of a certain girl that he had had sexual intercourse with her will not support a conviction where the only evidence was that of certain witnesses that he told them that he had got a piece from her. *Owens v. State* (Cr. App.) 190 S. W. 487.

8. **Evidence.**—In a prosecution for slander, evidence held to show that the slander was uttered maliciously, and malice may be shown by style and tone of statement, or that it was made without careful and diligent inquiry as to truth. *Robison v. State* (Cr. App.) 179 S. W. 1157.

TITLE 17

OF OFFENSES AGAINST PROPERTY

Chap.	Chap.
1. Of arson.	detection and punishment of thieves.
3. Of malicious mischief, [cruelty to animals, trespass, etc.].	16. Offenses relating to the protection of stock raisers in certain localities.
4. Of infectious diseases among animals and bees.	17. Embezzlement.
6. Of burglary.	18. Of swindling and the fraudulent disposition of mortgaged property.
8. Of robbery.	1. Swindling.
9. Of theft in general.	2. Fraudulent disposition of property mortgaged or subject to lien.
10. Of theft from the person.	19. Of offenses committed in another country or state.
11. Theft of animals.	
12. Miscellaneous provisions relating to the recovery of stolen animals and the	

CHAPTER ONE

OF ARSON

Art.	Art.
1200. Definition of.	1210. Punishment.

Article 1200. [756] Definition of.

3. **Indictment.**—An indictment for arson following art. 1200 et seq., held sufficient. *Tinker v. State* (Cr. App.) 179 S. W. 572.

4. **Evidence.**—The title of burned property is never in issue in a prosecution for arson and may be shown by oral evidence, and it is not error to exclude copies of deeds tending to show title of the burned property in another than the person named in the indictment, where it is not claimed that possession or claim of possession by another can be shown. *Tinker v. State* (Cr. App.) 179 S. W. 572.

Art. 1210. [766] Punishment.—If any person be guilty of arson, he shall be punished by confinement in the penitentiary for not less than two, or more than twenty years. [Rev. Pen. Code, art. 1210; Act March 30, 1917, ch. 145, § 1.]

Explanatory.—Took effect 90 days after March 21, 1917, date of adjournment. The act amends art. 1210, Penal Code.

CHAPTER THREE

MALICIOUS MISCHIEF, [CRUELTY TO ANIMALS, TRESPASS, ETC.]

Art.	Art.
1240. Injuring fence, leaving open gates, etc.	1259bb. Injuring or tampering with motor vehicle.
1245. Notice requiring removal.	1259c. Meddling with or injuring motor vehicle.
1259a.	1259cc. Climbing upon or attempting to manipulate motor vehicle.
1259aa. Operation of motor vehicle of another without his consent.	
1259b.	

Article 1240. [794] Injuring fence, leaving open gates.

Cited, *Irving v. Texas & P. Ry. Co.* (Civ. App.) 164 S. W. 910.

Evidence.—Offer of accused in prosecution for pulling down fence to show prosecuting witness' possession to be that of agent for owner, who authorized accused to destroy fence, held improperly excluded. *Hughitt v. State* (Cr. App.) 179 S. W. 703.

Art. 1245. [798] Notice requiring removal.

Indictment.—An indictment for failure to remove a fence under this article, not averring that the person giving notice to remove the fence was at time of notice the

owner of the fence or land adjoining, or on which was the fence of accused, was fatally defective. *Meissner v. State* (Cr. App.) 188 S. W. 977.

Art. 1259a.

See art. 1259aa and note thereunder.

Offense.—Person who hires automobile, or uses it with permission of a garage proprietor, with whom car is stored by owner, is not criminally liable for using automobile without consent of owner, in violation of statute. *Patterson v. State* (Cr. App.) 189 S. W. 952.

Art. 1259aa. Operation of motor vehicle of another without his consent.—Any person who shall drive or operate or cause to be driven or operated upon any public highway in this State any motor vehicle not his own, without intent to steal the same, in the absence if the owner thereof, and without such owner's consent, shall be guilty of a misdemeanor, and shall be punishable by confinement in the county jail for a period not to exceed twelve months, or by fine not to exceed one thousand (\$1,000) dollars, or by both such imprisonment and fine. [Act April 9, 1917, ch. 207, § 31.]

Note.—This article supersedes art. 1259a of Vernon's Pen. Code 1916, in so far as that article applies to motor vehicles.

Art. 1259b.

Note.—This provision is probably superseded by art. 1259bb, post, in so far as the same relates to motor vehicles. The latter act does not apply to bicycles.

Art. 1259bb. Injuring or tampering with motor vehicle.—Any person who shall individually or in association with one or more others, wilfully break, injure or tamper with any part or parts of any motor vehicle for the purpose of injuring, defacing or destroying such vehicles, or temporarily or permanently preventing its useful operation, or for any other purpose, against the will and without the consent of the owner of such vehicle, or in any other manner wilfully or maliciously interfere with or prevent the running or operation of such vehicle, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by fine not to exceed one thousand (\$1,000) dollars, or by imprisonment in the county jail not to exceed twelve months, or by both such fine and imprisonment, provided that when such offense comes within the definition of theft of the grade of felony, then this section of this Act shall not be applicable. [Id., § 33.]

Note.—This provision probably supersedes Act 1913, ch. 100, § 2, set forth in Vernon's Penal Code 1916 as art. 1259b, in so far as such article relates to motor vehicles.

Art. 1259c. Meddling with or injuring motor vehicle.

Evidence.—Evidence held insufficient to sustain a conviction under this article, for maliciously changing the gears of standing motor vehicle. *Welch v. State* (Cr. App.) 194 S. W. 400.

Art. 1259cc. Climbing upon or attempting to manipulate motor vehicle.—Any person who shall without consent of the owner or person in charge of the motor vehicle, climb upon or in such vehicle, whether the same be in motion or at rest, or should while such vehicle is at rest and unattended, attempt to manipulate any of the levers, starting crank or other device or to set said vehicle in motion, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not to exceed one hundred (\$100.00) dollars, or by imprisonment in the county jail for a period of sixty days, or by both such fine and imprisonment. [Id., § 34.]

CHAPTER FOUR

OF INFECTIOUS DISEASES AMONG ANIMALS AND BEES

<p>Art. 1266. [Repealed.] 1269. [Repealed.] 1271-1278. [Repealed.] 1284a. 1284aa-1284h. [Repealed.] 1284i. Burying or burning carcasses of animals dying of disease. 1284j. Movement of animals in quarantined district without permit.</p>	<p>Art. 1284k. Failure or refusal to dip or treat animals quarantined. 1284l. Removal of animals after notice of quarantine. 1284m. Failure to dip animals in mode required by law. 1284n. Use of hog cholera virus without permit.</p>
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Article 1266.

Repealed by Act March 6, 1917, ch. 60, § 23, ante, art. 7314q, Civil Statutes.

Art. 1269.

Repealed by Act March 6, 1917, ch. 60, § 23, ante, art. 7314q, Civil Statutes.

Arts. 1271-1278.

Repealed by Act March 6, 1917, ch. 60, § 23, ante, art. 7314q, Civil Statutes.

Art. 1284a.

Note.—Act March 6, 1917, ch. 60, § 23 (set forth ante as art. 7314q, Civil Statutes), expressly repeals chapter 169, Acts regular session 33rd Legislature. Though the latter act was, as to the matter embraced in this article, amended by Acts 1913, ch. 176, §§ 1-3, and Acts 1915, ch. 111, § 1, it is no doubt superseded by the said act of 1917.

Arts. 1284aa-1284h.

Repealed by Act March 6, 1917, ch. 60, § 23, set forth ante as art. 7314q, Civil Statutes.

Retroactive operation.—Tick eradication law, enacted March 6, 1917 (post, arts. 1284i-1284m), does not apply to case where cause originated and conviction was had and appeal perfected before such date, but provisions of Acts 33d Leg. c. 169, are applicable. *McGee v. State* (Cr. App.) 194 S. W. 951.

Complaint.—A complaint under Tick Eradication Law, § 7 (art. 1284g, Vernon's Penal Code 1916), held insufficient, although it properly charged defendant conjunctively with violating statute in both ways prescribed. *Munsey v. State* (Cr. App.) 194 S. W. 953.

Evidence.—In prosecution for violation of tick eradication law (Acts 33d Leg. c. 169) §§ 4, 7 (Vernon's Penal Code 1916, arts. 1284d, 1284g), held, that a purported copy of a notice to the sheriff by the sanitary live stock commission, requiring the sheriff to take defendant's cattle in possession and dip them, held immaterial. *McGee v. State* (Cr. App.) 194 S. W. 951.

In such case, a notice from state sanitary live stock commission, not signed or properly authenticated or proven, should have been excluded, but if state undertook to introduce the Governor's proclamation that a county had accepted the act as alleged, held, that a certified copy of such proclamation was sufficient. *Id.*

In a prosecution for violation of Tick Eradication Law, § 7 (Vernon's Penal Code, art. 1284g), in failing and refusing to dip an animal "affected" with contagious disease, evidence held not to sustain a conviction. *Munsey v. State* (Cr. App.) 194 S. W. 953.

Art. 1284i. Burying or burning carcasses of animals dying of disease.—It shall be the duty of any person, firm or corporation of this State to burn to ashes, or bury at a depth of not less than two and one-half feet and cover with quicklime the carcass or carcasses of any domestic animal or animals, dying from any infectious, contagious or communicable disease of a malignant character that may be found upon their premises, within twenty-four hours after the death of such animal or animals. Any person who is the owner or caretaker of any premises, who shall fail or refuse to burn to ashes or bury to the depth herein prescribed and cover with quicklime, the carcass or carcasses of any domestic animal or animals dying from infectious, contagious or communicable diseases of a malignant character found on such premises within twenty-four hours after the notice of the death of such

animal or animals, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than ten nor more than two hundred dollars, and each day such owner or caretaker of such premises shall so fail or refuse to so burn or bury such animal or animals as aforesaid shall be deemed a separate offense. [Act March 6, 1917, ch. 60, § 6.]

See arts. 7314-7314q, Civil Statutes, ante.

Art. 1284j. Movement of animals in quarantined district without permit.—Any person, firm or corporation who is the owner or caretaker of any cattle, horses, mules and asses located in any quarantined territory who shall ship, drive, drift, or permit the same to be shipped, driven or drifted into any county, part of any county or district, which has been quarantined under the provisions of Sections 7 or 9 [Arts. 7314e and 7314g, Civil Statutes, ante] of this Act, without the written permit of an inspector of the Live Stock Sanitary Commission of Texas, or the United States Bureau of Animal Industry, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one dollar (\$1.00) nor more than five dollars (\$5.00) per head for all live stock so shipped, driven or drifted, or permitted to be shipped, driven or drifted. [Act March 6, 1917, ch. 60, § 11; Act May 17, 1917, 1st C. S., ch. 12, § 1.]

See arts. 7314-7314h, Civil Statutes, ante, and note under art. 7314b.

Art. 1284k. Failure or refusal to dip or treat animals quarantined.—Any person, company or corporation owning, controlling or caring for any domestic animal or animals, which are located in any territory quarantined through the provisions of this Act, or by the order of the Live Stock Sanitary Commission of Texas, who shall refuse or fail to dip or otherwise treat such live stock at such time and in such manner as directed in writing by the Live Stock Sanitary Commission, 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 each day of such failure or refusal shall be a separate offense. [Act March 6, 1917, ch. 60, § 15.]

See arts. 7314-7314q, Civil Statutes, ante.

Art. 1284l. Removal of animals after notice of quarantine.—Any person, company or corporation owning, controlling or caring for any domestic animal or animals which have theretofore been quarantined through the provisions of this Act, or by order of the Live Stock Sanitary Commission of Texas, and written notice of such quarantine has been given as directed by this Act, who shall remove said domestic animal or animals from said premises where situated when said written notice is given, without the written permit of an inspector of the Live Stock Sanitary Commission, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum of not less than one dollar (1.00), nor more than five dollars (\$5.00) for each animal so moved. [Id., § 16.]

See arts. 7314-7314q, Civil Statutes, ante.

Art. 1284m. Failure to dip animals in mode required by law.—Any person owning, controlling or in charge of any domestic animal or animals which shall be required to be dipped under any of the provisions of this Act, who shall wilfully fail or refuse to dip in the official dips as above specified, or shall wilfully fail or refuse to maintain said dip at the strength officially specified, shall be deemed guilty of a misdemeanor

and upon conviction thereof shall be fined in any sum not less than ten dollars (\$10.00) nor more than two hundred dollars (\$200.00). [Id., § 22.]

See art. 7314p, Civil Statutes, ante, prescribing mode of dipping.

Art. 1284n. Use of hog cholera virus without permit.—Any person within this State desiring to use or administer any hog cholera virus for the immunization of hogs from hog cholera, shall first secure a permit for the use of same from the Live Stock Sanitary Commission of Texas, and shall make report to the Live Stock Sanitary Commission of every instance wherein the virus is used, as the Commission shall direct.

Any person who shall use or administer any hog cholera virus, on or to any domestic animal within this State without first securing a permit from the Live Stock Sanitary Commission permitting him to use, or administer, such virus, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than fifty (\$50) dollars, nor more than two hundred dollars, and if any person using or administering such virus shall fail to make report of such use within ten (10) days after such use to the Live Stock Sanitary Commission, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than fifty (\$50) dollars nor more than two hundred (\$200) dollars. [Act May 17, 1917, 1st C. S., ch. 12, § 1.]

See note under art. 7314b, Civil Statutes, ante.

CHAPTER SIX

OF BURGLARY

Art.	Art.
1304. "Burglary" defined.	1317. Other offenses committed after entry
1305. "Burglary of private residence" de- fined.	punishable.
1306. "Entry" defined.	1318. Same subject.

Article 1304. [839] "Burglary" defined.

3. **Intent.**—To constitute burglarious entry with intent to commit theft, it must be committed with force or breaking with intent to commit the crime. *Cox v. State* (Cr. App.) 194 S. W. 138.

5. **Breaking and entry.**—Mere passing through an open door at night does not constitute burglary, since force of some sort is necessary. *Cox v. State* (Cr. App.) 194 S. W. 138.

10. **Indictment in general.**—Indictment charging that defendant "did unlawfully by force, threats, and fraud burglariously and fraudulently break and enter a house * * * without the consent," etc., held sufficient to charge either night or day burglary. *Cox v. State* (Cr. App.) 194 S. W. 138.

11. — **Allegations as to ownership and occupancy.**—The indictment may allege breaking and entry with intent to steal property of W., though it is owned jointly or in common by him and another. *Thornton v. State* (Cr. App.) 188 S. W. 749.

13. — **Proof and variance.**—Indictment for burglary, averring that accused broke and entered the house of C. S. with intent to steal, held sufficient, though the evidence showed that the son of C. S., of a similar name, resided with him. *Coleman v. State* (Cr. App.) 187 S. W. 481.

Where indictment for burglary alleges ownership of the property in one of the joint owners, though the state need prove want of consent only of the alleged owner, it is not error to permit it to prove nonconsent of the others. *Thornton v. State* (Cr. App.) 188 S. W. 749.

15. **Admissibility of evidence—In general.**—In a prosecution for burglary of a saloon, where defendant, its former employé, was shown to have opened the saloon in the morning and closed it at night while working there, evidence that he had been in possession of a key, though he no longer worked there, was admissible. *McPherson v. State* (Cr. App.) 182 S. W. 1114.

30. Sufficiency of evidence.—Defendant's explanation of possession of property from burglarized house, which would exonerate him, must be shown false in order to obtain a conviction. *Lanier v. State* (Cr. App.) 182 S. W. 451.

Evidence held sufficient to support conviction. *McPherson v. State* (Cr. App.) 182 S. W. 1114.

31. Questions for jury.—On trial for burglary, conflict as to whether defendant obtained pistol from burglarized house from a witness for the state held a matter for the jury. *Lanier v. State* (Cr. App.) 182 S. W. 451.

Where accused was proven to have been in recent possession of stolen goods, the question whether his explanation was sufficient is for the jury. *Coleman v. State* (Cr. App.) 187 S. W. 481.

32. Instructions in general.—Instruction that "entry" means every kind of entry but one by consent of the occupant, and that it was not necessary that there should be any actual breaking, was erroneous for failure to require and define entry by force under art. 1303, requiring a burglarious entry to be made by force, threats, or fraud. *Miller v. State* (Cr. App.) 189 S. W. 259.

Under indictment charging burglary in the nighttime, failure to require the jury, as a condition to conviction, to find that the entry was in the nighttime, was error. *Id.*

In prosecution for burglary with intent to commit theft, instructions held proper. *Cox v. State* (Cr. App.) 194 S. W. 138.

Art. 1305. [839a] "Burglary of private residence" defined.

Consent to entry.—Where the indictment alleged burglary in the nighttime by force, with intent to steal, and the defendant was identified by one witness, but he denied that he burglarized the house, consent to the entry was not an issue. *Wilson v. State* (Cr. App.) 182 S. W. 891.

Art. 1306. [840] "Entry" defined.

Cited, *Miller v. State* (Cr. App.) 189 S. W. 259.

Art. 1317. [846] Other offenses committed after entry punishable.

Separate offenses and former jeopardy.—Under this article and art. 1318, theft committed in the same transaction as a burglary is separate from the burglary, and accused may be convicted of both. *Park v. State* (Cr. App.) 179 S. W. 1152.

In view of this article and art. 1318, demurrer to plea of former jeopardy by defendant charged with assault with intent to rape, alleging a former indictment for burglary with intent to rape a named woman in the said house at the time and an acquittal, held properly sustained. *Jennings v. State* (Cr. App.) 190 S. W. 733.

Art. 1318. [847] Same subject.

See *Park v. State* (Cr. App.) 179 S. W. 1152; *Jennings v. State* (Cr. App.) 190 S. W. 733; notes under art. 1317.

CHAPTER EIGHT

OF ROBBERY

Article 1327. [856] "Robbery" defined and punished.

10. Admissibility of evidence in general.—Where accused admitted the robbery charged, and offered no evidence, evidence that he was the person who committed the robbery, and the method of accomplishment, was admissible to assist the jury in assessing punishment. *Kelley v. State* (Cr. App.) 185 S. W. 570.

In a prosecution for robbery of whisky, testimony of a witness that on several occasions one of parties robbed had passed through county with a wagonload of whisky and that he was unlawfully introducing it into Oklahoma, was inadmissible. *Pearson v. State* (Cr. App.) 187 S. W. 336.

12. Sufficiency of evidence.—In a prosecution for robbery by putting complaining witness in fear of life and bodily harm, proof that he was terrorized with a razor and despoiled held to warrant conviction, where death penalty was not assessed though the razor be not a deadly weapon. *Acosta v. State* (Cr. App.) 179 S. W. 870.

13. Questions for jury.—In a prosecution for robbery in taking whisky by force under pretense that accused was a deputy sheriff, refusal of requested peremptory instructions, that testimony was insufficient to establish the offense alleged, but, if any, swindling, and to acquit—was not error. *Pearson v. State* (Cr. App.) 187 S. W. 336.

15. Charge of court.—Requested charges, that defendant's resistance to unlawful arrest should not be considered as evidence of his guilt in robbery, held properly refused under the evidence showing the arrest to have been lawful. *Kelley v. State* (Cr. App.) 190 S. W. 173.

CHAPTER NINE
OF THEFT IN GENERAL

<p>Art. 1329. "Theft" defined. 1331. Asportation not necessary. 1332. The "taking" must be wrongful. 1334. Possession, how constituted. 1335. Theft of one's own property, when.</p>	<p>Art. 1336. Part owner cannot commit, unless. 1341. Petty theft, how punished. 1348. Conversion by a bailee is theft. 1349. Receiving stolen property.</p>
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Article 1329. [858] "Theft" defined.

Cited, *Meyer v. Monnig Dry Goods Co.* (Civ. App.) 189 S. W. 80; *Lee v. State* (Cr. App.) 193 S. W. 313.

1. **Nature and elements of offense in general.**—One to be guilty of a larceny must be connected with the original taking. *Looney v. State* (Cr. App.) 189 S. W. 954.

7. **Intent.**—If defendant obtained lawful possession of a lap robe from owner or party having the right to give consent, but subsequently appropriated it, he was not guilty of theft under general statute, which requires intention to appropriate at time of taking. *Black v. State* (Cr. App.) 187 S. W. 332.

In order to constitute theft under the general statute, the fraudulent intent to deprive the owner of his property must exist at the time of the taking. *Miller v. State* (Cr. App.) 191 S. W. 1163.

There could be no theft where defendant's only purpose in taking another's pocket-book was to get money with which to pay the other's room rent. *Bunch v. State* (Cr. App.) 194 S. W. 144.

9. **Compared with and distinguished from other offenses.**—One who receives property knowing it to have been stolen is guilty of receiving stolen property, and not of theft. *Winters v. State* (Cr. App.) 188 S. W. 962.

14. **Indictment, complaint and information—In general.**—On indictment for theft of automobile on Tuesday, he cannot be convicted on proof that he received car on Wednesday from another, pursuant to agreement with some other to steal it and deliver it to him. *Winters v. State* (Cr. App.) 188 S. W. 982.

An indictment alleging that defendant and codefendant did unlawfully take and steal from and out of the possession of, and of the property of, and without the consent of, a person named, property described, with intent to deprive the owner thereof, held sufficient. *Martinez v. State* (Cr. App.) 188 S. W. 1000.

There cannot under an ordinary theft indictment be a conviction of larceny for conversion by one of property coming into his possession honestly. *Looney v. State* (Cr. App.) 189 S. W. 954.

20. — **Ownership and possession and want of consent.**—On prosecution for theft from a car in a railroad yard, ownership of the property held properly alleged to be in the station agent. *Tyler v. State* (Cr. App.) 180 S. W. 687.

In prosecution for larceny of lard from a freight car in local yards, ownership of the lard was properly alleged in the local freight agent having control of the yards, where the foreman of the freight warehouse was under control of the local freight agent. *Pearson v. State* (Cr. App.) 180 S. W. 1080.

An indictment for larceny of property which others had stolen and which had not been returned should allege the ownership in them. *Looney v. State* (Cr. App.) 189 S. W. 954.

24. **Evidence—In general.**—Under a complaint alleging defendant's theft of 500 aspirin tablets, it was not incumbent on the state to prove that the bottle contained 500 tablets and no less. *Rice v. State* (Cr. App.) 179 S. W. 876.

In a prosecution for hog theft, where the indictment laid the ownership of the hog in one Smith, proof that Smith's ranch was in charge of his agent, who looked after his interests, did not constitute a variance in the proof as to possession of the hog. *Jemison v. State* (Cr. App.) 184 S. W. 807.

In prosecution for larceny, the state may show accused's financial condition immediately before and immediately after the alleged theft. *Hutspeth v. State* (Cr. App.) 187 S. W. 340.

In a prosecution for stealing cotton, a witness could testify as to letters on shoulder strap of sack containing the stolen cotton, and that he inquired where the cotton came from, and observed on the ground tracks of two persons around the cotton, and found where an automobile had stopped and leaked oil. *Lunsford v. State* (Cr. App.) 190 S. W. 157.

26. — **Intent.**—As bearing on intent, defendant in larceny may testify a person in the owner's office, where he went to buy the property, told him he could take it and settle with the owner on his return. *Looney v. State* (Cr. App.) 189 S. W. 954.

29. — **Identity of property.**—On a trial for larceny, testimony of a conversation with accused and a third person held properly admitted on issue of identity of property stolen. *Park v. State* (Cr. App.) 179 S. W. 1152.

33. — **Possession of stolen property.**—In prosecution for theft of buggy, hauled some distance by the culprits to a pasture from which a horse was stolen and hitched

to it, witness could testify that he afterwards saw the stolen horse in possession of accused and one indicted jointly with him. *Villareal v. State* (Cr. App.) 189 S. W. 156.

In prosecution for theft, held error to admit evidence that articles similar to those stolen, but not clearly identified as the articles stolen, were found in the possession of another person the day after accused's arrest, with no testimony showing any acting together between this person and accused. *Clark v. State* (Cr. App.) 189 S. W. 737.

35. — **Sufficiency to convict.**—Evidence held to sustain a conviction of theft. *Park v. State* (Cr. App.) 179 S. W. 1152.

Unexplained possession of recently stolen property is sufficient to warrant a conviction of larceny. *Blackburn v. State* (Cr. App.) 180 S. W. 268.

In a prosecution for theft of mules, evidence held to warrant a conviction on the theory that the stolen mules, found in accused's possession, were not the same animals which he claimed to have purchased from a Mexican. *Id.*

In prosecution for theft of seed cotton, evidence held sufficient to support conviction. *Jerrols v. State* (Cr. App.) 194 S. W. 142.

36. — **Insufficiency to convict.**—Evidence held insufficient to show that defendants, who participated in the butchering of the animal and the carrying away of the meat, were guilty of stealing it. *Reyna v. State* (Cr. App.) 179 S. W. 568.

Evidence held insufficient to show that the accused was guilty of larceny of certain coal. *Black v. State* (Cr. App.) 183 S. W. 439.

In a prosecution for hog theft, instruction submitting the necessity that the stolen property had been taken from the alleged owner held sufficient. *Jemison v. State* (Cr. App.) 184 S. W. 807.

In a prosecution for theft, evidence held insufficient to sustain the conviction. *Cain v. State* (Cr. App.) 193 S. W. 665.

38. **Charge of court.**—Instruction pertinently applying the law to the identical explanation of his possession of stolen property given by accused held the safest and best instruction. *Whitfield v. State* (Cr. App.) 179 S. W. 558.

In prosecution for cattle theft, a charge to acquit unless defendant was connected with the original taking held not insufficient for failure to instruct that defendant must be acquitted if he was the receiver of stolen cow, and an instruction to acquit defendant if he received the cow in trade or sale, or upon reasonable doubt thereof, held not objectionable for failure to define completed theft, and to charge that defendant must have participated in acts constituting offense. *McAninch v. State* (Cr. App.) 179 S. W. 719.

In a prosecution for the theft of mules, charge that if accused bought the animals he should be acquitted, held sufficient without any further charge on the law involving recent possession of stolen goods. *Blackburn v. State* (Cr. App.) 180 S. W. 268.

In a prosecution for theft, when facts raise the issues, jury should be instructed as to the difference between general statute requiring intention to appropriate at time of taking to constitute theft and statute making a fraudulent conversion of property legally obtained a violation of law. *Black v. State* (Cr. App.) 187 S. W. 332.

In prosecution for theft of automobile, failure of charge to inform jury that, if defendant bought it, which was his account of his possession, or if they had reasonable doubt of it they should acquit, was not error, where the court in an approved charge submitted his reasonable account and explanation of his possession. *Childs v. State* (Cr. App.) 193 S. W. 664.

Art. 1331. [860] Asportation not necessary.

Taking and asportation.—Under this article, the branding by one of the animals of another for purpose of appropriation, but without removal from the range, held to support a conviction for theft. *Davis v. State* (Cr. App.) 182 S. W. 1126.

Asportation is not necessary to theft, but the fraudulent taking of property is enough, and the segregation of property from a building, by breaking it, it being machinery, and placing it outside the building, is a sufficient appropriation to constitute theft. *Looney v. State* (Cr. App.) 189 S. W. 954.

Art. 1332. [861] The "taking" must be wrongful.

Cited, *Carner Bros. v. Merrett* (Civ. App.) 184 S. W. 741; *Lee v. State* (Cr. App.) 193 S. W. 313.

1. **Offense under this article in general.**—In prosecution for theft, accused held entitled to instruction that, if when he received bag from checkroom he did not know that it was not his own, and did not intend to appropriate it, but subsequently formed that intention, he would not be guilty. *Downs v. State* (Cr. App.) 194 S. W. 138.

To constitute theft there must be a fraudulent intent coincident with the taking; a subsequent fraudulent intent being insufficient. *Bunch v. State* (Cr. App.) 194 S. W. 144.

5. **Theft of lost property.**—A fraudulent intent at the time of finding lost property is necessary to constitute the crime of larceny; but the fact that the property contained no means of identification is no defense. *Hutspeth v. State* (Cr. App.) 187 S. W. 340.

8. **Money paid by mistake.**—Where check by mistake was drawn for more than was due the payee, the payee, who learned of the mistake before cashing the check, held not guilty of theft, since no fraudulent intent existed at the time the payee came into lawful possession of the check. *Mitchell v. State* (Cr. App.) 180 S. W. 115.

Art. 1334. [863] Possession; how constituted.

Wife's separate property.—In a prosecution for theft of a lap robe alleged to have been in possession of a husband, and shown to be separate property of wife, there was

not a variance between proof and allegation, since separate property of wife is under control of husband. *Black v. State* (Cr. App.) 187 S. W. 332.

Art. 1335. [864] Theft of one's own property, when.

Cited, *Carver Bros. v. Merrett* (Civ. App.) 184 S. W. 741.

Offense.—A person cannot steal his own property unless somebody else is lawfully entitled to and in possession of the property as against defendant's right to have it. *Mitchell v. State* (Cr. App.) 180 S. W. 115.

Art. 1336. [865] Part owner can not commit, unless.

Cited, *Carner Bros. v. Merrett* (Civ. App.) 184 S. W. 741.

Taking by part owner.—If the party taking alleged stolen property is a part owner thereof, the taking is not theft unless the person from whom it was taken was wholly entitled to the possession at the time. *Mitchell v. State* (Cr. App.) 180 S. W. 115.

Art. 1341. [870] Petty theft; how punished.

Cited, *Pope v. State* (Cr. App.) 194 S. W. 590.

Information.—Upon an information alleging theft of 25 turkeys of aggregate value of \$35, proof that 5 turkeys were stolen is sufficient to support a verdict of guilty of theft of property under \$50 in value. *Booher v. State* (Cr. App.) 188 S. W. 977.

Art. 1348. [877] Conversion by a bailee is theft.

1. **Nature and elements of offense in general.**—Under this article, accused may be guilty, though the intent to convert be formed after receiving the goods. *Lee v. State* (Cr. App.) 193 S. W. 313.

2. **"Bailment" defined.**—Intrusting goods to an agent for sale or return is a bailment with this article; art. 5654, Civil Statutes, rendering void unrecorded reservations of title in chattels as security for the purchase price, being inapplicable between the original parties. *Lee v. State* (Cr. App.) 193 S. W. 313.

3. **Nature of particular bailment.**—This article applies to a bailment for sale. *Lee v. State* (Cr. App.) 193 S. W. 313.

6. **Indictment and information.**—In prosecution for theft as bailee and embezzlement, court properly overruled defendant's motion to quash indictment for ambiguity, in that first two counts charged theft as bailee and embezzlement of property of one person, and second two counts theft as bailee and embezzlement of the property of another person. *Williams v. State* (Cr. App.) 188 S. W. 430.

8. **Evidence.**—In prosecution for theft as bailee and embezzlement, where theft and embezzlement alleged was of money, and not of any check, though proof showed defendant procured money on a check and converted it after he had procured it, it was unnecessary to produce the check. *Williams v. State* (Cr. App.) 188 S. W. 430.

Uncontradicted evidence that accused, after hiring an automobile and offering to sell it, returned it to owner, and the owner's testimony that he authorized accused to sell it for the sum at which he offered it, does not sustain a conviction for theft by a bailee. *Cox v. State* (Cr. App.) 193 S. W. 1064.

11. **Charge of court.**—In prosecution for theft as bailee and embezzlement, where proof did not tend to show defendant had any interest as bailee in the money he stole, court properly refused his charge that if he had any interest he would not be guilty. *Williams v. State* (Cr. App.) 188 S. W. 430.

In prosecution for theft by bailee, an instruction to acquit if the transaction was a sale instead of bailment, held not "vague, indefinite, and erroneous," and a general charge to acquit if the transaction was a sale, rendered unnecessary the giving of requested special charges on the same issue. *Lee v. State* (Cr. App.) 193 S. W. 313.

Art. 1349. [878] Receiving stolen property.

1. **Nature and elements of offense in general.**—This article forbids either the receiving or concealing of stolen personal property. *Cuilla v. State* (Cr. App.) 187 S. W. 210.

2. **Distinguished from theft or embezzlement.**—One who receives property knowing it to have been stolen is guilty of receiving stolen property, and not of theft. *Winters v. State* (Cr. App.) 188 S. W. 982.

Where property stolen as the result of a conspiracy was delivered to one of the conspirators, that conspirator was guilty of the taking, not of receiving stolen property, though he was not present at the taking. *Bloch v. State* (Cr. App.) 193 S. W. 303.

Theft and the receiving and concealing of stolen property are separate offenses. *Clark v. State* (Cr. App.) 194 S. W. 157.

7. **Indictment.**—Under this article, an indictment charging receiving stolen property is sufficient, though it does not charge that the property was concealed. *Bloch v. State* (Cr. App.) 193 S. W. 303.

9. **Proof and variance.**—An indictment alleging that accused received and concealed certain personal property will warrant a conviction for either receiving or concealing. *Cuilla v. State* (Cr. App.) 187 S. W. 210.

10. **Evidence.**—Evidence held to sustain an attorney's conviction for receiving and concealing a revolver stolen by his client. *Cuilla v. State* (Cr. App.) 187 S. W. 210.

CHAPTER TEN

OF THEFT FROM THE PERSON

Article 1351. [880] Ingredients of the offense.

1. **Nature and elements of offense.**—Evidence held not to show, as is necessary, under this article, that the money was taken without the knowledge of the person. *Bunch v. State* (Cr. App.) 194 S. W. 144.

8. **Evidence.**—Testimony of the victim, who was drunk, and of one who saw defendant putting his hands in the victim's pockets, held to sustain a conviction of larceny from the person. *Bell v. State* (Cr. App.) 190 S. W. 727.

CHAPTER ELEVEN

THEFT OF ANIMALS

Art.
1353. Theft of horse, etc.
1354. Theft of cattle.

Art.
1355. Theft of sheep, goat, etc., how punished.

Article 1353. [881] Theft of horse, etc.

Character of taking.—Where appellant took and advertised horses for sale to secure his pasturage charges, and later removed them from the county, and the matter was in dispute in justice court, the original taking was not fraudulent for the purpose of depriving the owner of his property, and did not constitute theft. *Miller v. State* (Cr. App.) 191 S. W. 1163.

Evidence.—In a prosecution under this article, evidence held insufficient to require submission of the issue whether defendant was guilty of willfully driving stock from its accustomed range under article 1356. *Hudson v. State* (Cr. App.) 183 S. W. 886.

Art. 1354. [882] Theft of cattle.

Elements of offense.—Under indictment for stealing a hog, the state must show the taking of the hog alive and before it became pork. *Noble v. State* (Cr. App.) 192 S. W. 1073.

Evidence.—In a prosecution for hog theft, testimony of the owner held sufficient to show ownership and possession of the hog, with actual control, care, and management of it, when stolen. *Jemison v. State* (Cr. App.) 184 S. W. 807.

Evidence held insufficient to sustain conviction for theft of a hog. *Noble v. State* (Cr. App.) 192 S. W. 1073.

On a trial for theft of a calf, evidence held insufficient to sustain a conviction, though defendant was present when the stolen calf was sold and took some part in the negotiations for the sale. *Aguilar v. State* (Cr. App.) 194 S. W. 1117.

Charge.—Where accused was charged with cattle theft, and with receiving stolen property, it was not error to refuse to require the state to elect on which charge it would prosecute, nor to submit both charges to the jury. *Longoria v. State* (Cr. App.) 188 S. W. 987.

In prosecution for cattle theft, where the evidence raised issue as to the intent with which the cattle were driven away, an instruction permitting acquittal if accused did not intend to deprive the owner of the cattle permanently was properly refused. *Pope v. State* (Cr. App.) 194 S. W. 590.

Conviction of another offense.—In prosecution for cattle theft, the accused could not be convicted of willfully driving cattle from their accustomed range. *Pope v. State* (Cr. App.) 194 S. W. 590.

Art. 1355. [883] Theft of sheep, goat, etc.; how punished.

Evidence.—Evidence on a prosecution for theft of a goat held sufficient to support a conviction. *Ariola v. State* (Cr. App.) 183 S. W. 144.

CHAPTER TWELVE

MISCELLANEOUS PROVISIONS RELATING TO THE RECOVERY OF STOLEN ANIMALS AND THE DETECTION AND PUNISHMENT OF THIEVES

Article 1372. [899] **Counties exempt.**—The provisions of this law shall not apply to either of the following counties: Anderson, Angelina, Austin, Bandera, Bastrop, Bell, Bexar, Blanco, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Chambers, Cherokee, Clay, Collin, Colorado, Comal, Comanche, Dallas, Delta, Denton, De Witt, Ellis, Falls, Fannin, Fayette, Franklin, Freestone, Galveston, Gillespie, Go-liad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Hardin, Harris, Harrison, Hays, Henderson, Hill, Hopkins, Houshou, Hunt, Jasper, Johnson, Karnes, Kaufman, Kendall, Kerr, Kimble, Lamar, Lavaca, Lee, Leon, Liberty, Limestone, Llano, Madison, Marion, Mason, McLennan, Milam, Montgomery, Morris Nacogdoches, Navarro, Newton, Palo Pinto, Panola, Polk, Rains, Robertson, Rusk, Sabine, San Augustine, San Jacinto, Shelby Smith, Sutton, Tarrant, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Walker, Waller, Washington, Williamson, Wood. [Act 1889, p. 84; Act 1893, p. 38; Act 1899, p. 87; Act 1905, p. 104; Act 1909, p. 74; Act 1911, ch. 14; Act 1915, ch. 65; Act 1915, 1st C. S., p. 35, ch. 17, § 1; Act March 30, 1917, ch. 150, § 1.]

Explanatory.—The act amends art. 1372, ch. 12, title 17, Rev. Penal Code, as amended by ch. 17, general laws first called session 34th Leg. Effective 90 days after March 21, 1917, date of adjournment. The title of the act is not restrictive as to the counties to be affected by the amendment, and hence is conclusive as to the counties exempted from the operation of the law, unaffected by the situation presented with respect to arts. 7235 and 7305, Civil Statutes.

CHAPTER SIXTEEN

OFFENSES RELATING TO THE PROTECTION OF STOCK RAISERS IN CERTAIN LOCALITIES

<p>Art. 1408. Failing to take bill of sale in purchasing animals.</p> <p>1412. Clerk improperly recording brand.</p>	<p>Art. 1415b. Violation of hide and animal inspection law in Nueces county.</p> <p>1415c. Violation of hide and animal inspection laws in Nueces county.</p>
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Article 1408. [930] **Failing to take bill of sale in purchasing animals.**

Cited, *Houston Packing Co. v. Dunn* (Civ. App.) 176 S. W. 634.

Art. 1412. [934] **Clerk improperly recording brand.**

As evidence.—See Civil Statutes, art. 7160.

Art. 1415b. **Violation of hide and animal inspection law in Nueces County.**—Any person violating any of the provisions of this Act [Arts. 7305e, 7305f, Civil Statutes, ante] or any of the provisions of said Articles 7256 to 7304, both inclusive, Revised Civil Statutes of 1911, in so far as the same relate to Nueces County, shall be fined in any sum not less than five (\$5.00) dollars nor more than twenty-five (\$25.00) dollars. [Act March 1, 1917, ch. 51, § 1a.]

Art. 1415c. **Violation of hide and animal inspection laws in Nueces County.**—If said inspector [Arts. 7305e, 7305f, Civil Statutes, ante] shall violate any of the provisions of this Act or of said Articles 7256 to

7304, both inclusive, Revised Civil Statutes of 1911, he shall be fined in any sum not less than one (\$1.00) dollar nor more than twenty-five (\$25.00) dollars, and shall be removed from office by said county commissioners' court for any of such violations. [Id., § 1c.]

CHAPTER SEVENTEEN

EMBEZZLEMENT

Article 1416. [938] Defined and punished.

Offense.—In view of the lien imposed by art. 5663, Civil Statutes, and the fact that the keeper would not be responsible had the money in question been left in the boarder's room, a boarding-house keeper, who fraudulently misappropriates money delivered into his custody for safe-keeping, is guilty of embezzlement. *Johnson v. State* (Cr. App.) 159 S. W. 849.

Indictment.—An indictment for embezzlement of money, the property of trustees of a church as special owners, held insufficient in not alleging its receipt from them by defendant in some fiduciary relation, and its subsequent embezzlement by him. *Gilliard v. State* (Cr. App.) 182 S. W. 1136.

While indictment for larceny by embezzlement from corporation must allege that the defrauded party was a corporation, it is not necessary to allege that other corporations interested were such. *Meredith v. State* (Cr. App.) 184 S. W. 204.

Evidence.—In a prosecution for embezzlement, where stock was delivered to defendant, to be sold, evidence held to justify a finding that defendant acted as agent in handling the stock. *McDaniel v. State* (Cr. App.) 186 S. W. 320.

Charge.—In a prosecution for embezzlement, held, that the court properly refused peremptory instructions for defendant. *Messner v. State* (Cr. App.) 182 S. W. 329.

CHAPTER EIGHTEEN

OF SWINDLING AND THE FRAUDULENT DISPOSITION OF MORTGAGED PROPERTY

Art.

1. SWINDLING

1421. "Swindling" defined.
1422. Certain wrongful acts included.

Art.

2. FRAUDULENT DISPOSITION OF PROPERTY MORTGAGED OR SUBJECT TO LIEN

1430a. Disposition of property subject to lien.

1. SWINDLING

Article 1421. [943] "Swindling" defined.

3. False pretense or promise and reliance thereon.—An indictment for swindling held good; an alleged promise to do something in the future being only an incident of a false representation as to ability to do it. *Pickens v. State* (Cr. App.) 180 S. W. 234.

8. Indictment and information.—Indictment in a prosecution for swindling, alleging that false representations were made, by which money was obtained, that representations were false and fraudulently made to obtain the money, and that accused knew representations were false, was sufficient. *Crutcher v. State* (Cr. App.) 186 S. W. 327.

In a prosecution for swindling, perpetrated at least in part by means of an instrument in writing, stating that accused was deaf and dumb, an indictment which failed to set out such instrument in *hac verba*, or at least its substance with sufficient reasons why it was not so set out, held bad. *Wilson v. State* (Cr. App.) 193 S. W. 669.

10. Evidence.—In a prosecution for swindling against the operator of an employment agency, evidence held sufficient to support a conviction. *Arnold v. State* (Cr. App.) 179 S. W. 1183.

In a prosecution for swindling by obtaining money on false representations that accused was deaf and dumb, whether accused was in town of prosecuting witness' residence and obtained money from him as alleged held for jury. *Wilson v. State* (Cr. App.) 193 S. W. 669.

Art. 1422. [944] Certain wrongful acts included.

Subdivision 4—Offense.—Under this subdivision, an indorser of a check drawn upon a bank to be criminally responsible must be shown to have been criminally connected with the proposition to defraud, and a defendant, who placed funds in the drawee bank in time to meet the check on presentation, could not be convicted. *Dawson v. State* (Cr. App.) 185 S. W. 875.

— **Variance.**—Under complaint and information for swindling, drawn under this subdivision, based on the cashing of a check, testimony of the state's witness who had cashed the check held a variance. *Dawson v. State* (Cr. App.) 185 S. W. 875.

— **Charge.**—In prosecution upon complaint and information for swindling drawn under this subdivision, based on the cashing of a check, charge held erroneous as eliminating the theory of defendant's honesty in the transaction. *Dawson v. State* (Cr. App.) 185 S. W. 875.

2. FRAUDULENT DISPOSITION OF PROPERTY MORTGAGED OR SUBJECT TO LIEN

Art. 1430a. Disposition of property subject to lien.—If any person shall remove any property or any part thereof covered by the lien hereby created from the place where it was located when the lien herein provided for shall have been filed of record, without the written consent of the owner and holder of said lien, with intent to defraud the person having such lien, either originally or by transfer, he shall be deemed guilty of a misdemeanor, upon conviction thereof, shall be punished by a fine of not less than five nor more than five hundred dollars. [Act Feb. 13, 1917, ch. 17, § 6.]

Explanatory.—The above provision is a section of the act creating a lien in favor of contractors, laborers, and materialmen contributing to the construction or operation of oil, gas, and water wells, mines, quarries, and pipe lines. The civil provisions are set forth ante as articles 5639a to 5639h inclusive, of the Civil Statutes. Took effect 90 days after March 21, 1917, date of adjournment.

CHAPTER NINETEEN

OF OFFENSES COMMITTED IN ANOTHER COUNTRY OR STATE

Article 1432. [952] Requisites of guilt under preceding article.

Nature and elements of offense.—One who commits robbery or steals in Mexico, and brings the proceeds into Texas, is amenable to the laws of Texas under the statute for bringing the stolen property or property acquired by robbery into the state. *Ex parte Villareal* (Cr. App.) 187 S. W. 214.

TITLE 18

OF MISCELLANEOUS OFFENSES

Chap.		Chap.	
1.	Of conspiracy.	13.	Schools.
2.	Seduction.	14.	Railroad commission.
3a.	Hours of labor on public work or in public service.	15.	Offenses by railway officials or against railways.
3b.	Time of service of firemen.	16.	Railroads, etc.—Prohibiting the issuance of free passes, etc.
6.	Trusts—Conspiracies against trade.	25.	County finances.
8a.	Corporations—Use of assets and funds.	30.	Registration of automobiles repaired.
12.	Prize fighting, roping contests, etc.		

CHAPTER ONE

OF CONSPIRACY

Art.		Art.	
1433.	Definition.	1437.	What crimes the subject of.

Article 1433. [953] Definition.

Cited in dissenting opinion *Hollingsworth v. State* (Cr. App.) 182 S. W. 465.

Art. 1437. [957] What crimes the subject of.

Cited in dissenting opinion *Hollingsworth v. State* (Cr. App.) 182 S. W. 465.

3. **Offense in general—Conspiracy to kill.**—A conspirator to whip one person would not be guilty, where one of the conspirators killed another person upon an independent motive of his own, and although defendant was present when one was killed by his fellow conspirator, yet, if he did not know of the conspirator's intent to commit an unlawful act which might lead to the killing, or, if present, did not aid such conspirator, he would be guilty of no offense, and no subsequent ratification of a murder by a co-conspirator on his own independent motive would make defendant liable as a principal, if not liable as such at the time of its commission. *Buckley v. State* (Cr. App.) 181 S. W. 729.

18. **Questions for jury and charge of court.**—Where it appeared that defendant, with others, had conspired to whip a negro, instruction that if negro's wife was killed by mistake, when it was intention of conspirator to kill the negro, the defendant should be convicted held applicable to the evidence. *Buckley v. State* (Cr. App.) 181 S. W. 729.

19. — **Homicide.**—An instruction in a prosecution for murder, committed during an expedition for the purpose of whipping negroes, held to correctly present the issue of defendant's guilt, if the murder was on individual impulse. *Davis v. State* (Cr. App.) 180 S. W. 1085.

CHAPTER THREE

SEDUCTION

Art.		Art.	
1448.	"Seduction," how used.	1450.	Abandonment after seduction and marriage, offense defined.

Article 1448. [968] "Seduction," how used.

1. **Nature and elements of offense in general.**—To constitute a case of seduction, the prosecutrix must have implicit faith in and rely on the promise of marriage, for it is the yielding relying on the promise and defendant's conduct that authorizes a conviction. *Gleason v. State* (Cr. App.) 183 S. W. 891.

To constitute the offense of seduction, it is not necessary that prosecutrix must have yielded solely in reliance on the promise of marriage, and not partly through love for the accused. *Murrell v. State* (Cr. App.) 184 S. W. 831.

3. **Justification or defense.**—In prosecution for seduction, the defense that the transaction was a bargain and sale would be included in the defense that prosecutrix was not virtuous and chaste, but it is only in cases where no previous relations existed that would suggest love and confidence, if prosecutrix yielded solely in consideration of defendant's promise to marry her, that an issue of bargain and sale in a trial for seduction can arise. *Gleason v. State* (Cr. App.) 183 S. W. 891.

7. **Evidence.**—In prosecution for seduction, wherein defendant severely attacked the chastity and virtue of prosecutrix, evidence that she was a member of the church, attended church, and associated generally with the young people of the community, held admissible. *Gleason v. State* (Cr. App.) 183 S. W. 891.

Evidence of unchaste conduct of prosecutrix's sister in prosecutrix's presence nearly two years after prosecutrix's seduction is inadmissible. *Capshaw v. State* (Cr. App.) 186 S. W. 209.

8. — **Sufficiency.**—In a prosecution for seduction, evidence held sufficient to sustain a conviction, and fact that a child was born in about eight months from the time prosecutrix fixed as the date of intercourse would not render the testimony wholly insufficient to sustain a conviction. *Gleason v. State* (Cr. App.) 183 S. W. 891.

Evidence held to show prosecutrix's good reputation for virtue, and, though conflicting, held to sustain conviction. *Capshaw v. State* (Cr. App.) 186 S. W. 209.

12. **Charge of court.**—In prosecution for seduction, where there was evidence to corroborate prosecutrix both as to the promise of marriage and intercourse, a peremptory instruction for defendant, on the ground that there was no such corroborative evidence, was properly refused. *Gleason v. State* (Cr. App.) 183 S. W. 891.

Instructions defining the crime held correct, and an instruction that an element of the offense was that prosecutrix was then "a virtuous and chaste woman, that is, that she had never before had sexual intercourse," was not erroneous as implying that the fact of sexual intercourse is the sole criterion of virtue, where the testimony was conclusive that prosecutrix was chaste. *Capshaw v. State* (Cr. App.) 186 S. W. 209.

Art. 1450. Abandonment after seduction and marriage, offense defined.

Abandonment and liability therefor.—It is not essential to the right to prosecute for abandonment after seduction and marriage that the marriage shall have taken place after indictment. *Coleman v. State* (Cr. App.) 179 S. W. 1172.

Defendant held not guilty of abandonment after marriage after seduction under this article, where he had, at the time of his marriage, no knowledge of the pendency of a prosecution against him for the seduction. *Moore v. State* (Cr. App.) 180 S. W. 1100.

Commencement of prosecution for seduction.—Filing of complaint for seduction before justice, and issuance of warrant for defendant's arrest thereunder, if defendant was informed thereof prior to marriage to prosecuting witness, constituted commencement of prosecution against him for seduction under this article. *Furr v. State* (Cr. App.) 194 S. W. 395.

Indictment.—Indictment drawn under wife abandonment after seduction and marriage statute (this article) held not defective for failing to follow seduction statute, and it was sufficient to allege the seduction, followed by the allegation that "afterwards" a complaint for the seduction was filed against accused, but the indictment was fatally defective for omitting day on or about which and the county where abandonment occurred, and it was also necessary to allege the particular court wherein a complaint for the seduction was filed; an allegation "In J. P. Court No. in Navarro County," being insufficient. *Kirkendall v. State* (Cr. App.) 180 S. W. 676.

Evidence.—A decree divorcing defendant from prosecutrix, not being binding on the state, was not admissible in evidence, but defendant's evidence that he married prosecutrix under duress, and almost immediately sued to annul the marriage for duress, was admissible to rebut the presumption arising from the marriage that he was guilty of seduction, and it was error to exclude testimony of a witness that he saw a woman, whom he believed to be prosecutrix, and a third person in compromising acts, where there was evidence that her child resembled the third person rather than defendant. *Coleman v. State* (Cr. App.) 179 S. W. 1172.

Exclusion of testimony of father-in-law that he did not expect defendant to care for his wife immediately after marriage held error, in a prosecution for abandonment after seduction; that fact being material to the defense of want of desertion. *Moore v. State* (Cr. App.) 180 S. W. 1100.

Under this article, wife or female being competent to testify against defendant, it is unnecessary to corroborate her at all. *Furr v. State* (Cr. App.) 194 S. W. 395.

Charge.—This article and Acts 33d Leg. c. 101, making wife desertion a misdemeanor, cannot be concurrently applied to the same matter, and failure to so instruct the jury in a prosecution for abandonment under this article is error, and the jury should also be instructed that defendant was not guilty if he went away by agreement between his and his wife's families, to provide support for his wife, she to remain with her father until he could support her. *Moore v. State* (Cr. App.) 180 S. W. 1100.

In prosecution for abandonment after seduction and marriage, court was not in error in failing to charge separately that it was necessary to corroborate prosecutrix as to promise of marriage, and an instruction defining seduction, as used in this article, held correct. *Furr v. State* (Cr. App.) 194 S. W. 395.

CHAPTER THREE A

HOURS OF LABOR ON PUBLIC WORK OR IN PUBLIC SERVICE

Article 1451c. Penalty for violation.

Persons liable.—Under Acts 33d Leg. c. 68, not merely a contractor for public works, but an agent of the contractor, requiring persons to work more than eight hours a day, is guilty of misdemeanor. *Bradford v. State* (Cr. App.) 180 S. W. 702.

To authorize conviction of permitting one to work in violation of the eight hour labor law, it is essential that defendant shall have had some control over the laborer, and evidence held insufficient to show that defendant had any control over the laborer. *Perkins v. State* (Cr. App.) 190 S. W. 168.

CHAPTER THREE B

TIME OF SERVICE OF FIREMEN

Article 1451gg. Violation of requirement as to annual vacation.—Any city official having charge of the fire department of any city coming under this Act [Arts. 978c–978e, Civil Statutes], who shall violate any of the provisions herein, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than ten (\$10.00) dollars nor more than one hundred (\$100.00) dollars. [Act April 2, 1917, ch. 185, § 4; Act May 17, 1917, 1st C. S., ch. 14, § 4.]

CHAPTER SIX

TRUSTS—CONSPIRACIES AGAINST TRADE

Art. 1477. Agricultural products and live stock in hands of producer exempt.	Art. 1479. Preceding article not to apply to combination, etc.
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Article 1477. Agricultural products and live stock in hands of producer exempt.

Contracts.—Contract between railroad company and labor union providing for employment of specific percentage of employes from members of such union, held not against public policy, in view of this article and art. 1479. *Underwood v. Texas & P. Ry. Co.* (Civ. App.) 178 S. W. 38.

Art. 1479. Preceding article not to apply to combination, etc.

Contracts.—See *Underwood v. Texas & P. Ry. Co.* (Civ. App.) 178 S. W. 38; note under art. 1477.

CHAPTER EIGHT A

CORPORATIONS—USE OF ASSETS AND FUNDS

Art.
1487a. [Amended.]

Art.
1487b. Contributions by corporations for political purposes.

Article 1487a.

Note.—This article is amended by Act Feb. 13, 1917, ch. 15, Acts Reg. Sess. 35th Leg. See art. 1164, ante, of Civil Statutes.

Art. 1487b. Contributions by corporations for political purposes.—If any officer, agent or employé of such local district, or statewide commercial or industrial clubs or associations, or other civic enterprises or organizations shall use or permit the use of any stock, money, assets, or other property contributed to such organizations by said corporations, to further the cause of any political party, or to aid in the election or defeat of any candidate for office, or to pay any part of the expenses of any candidate for office, or to pay any part of the expenses of any political campaign, or political headquarters or to aid in the success or defeat of any political question to be voted on by the qualified voters of the State, or any subdivision thereof; such officer, agent or employé shall be deemed guilty of a felony and upon conviction shall be punished by a fine of not less than five thousand dollars nor more than ten thousand dollars, and by imprisonment in the State penitentiary for a term of not less than two nor more than five years. [Rev. Civ. St. 1879, art. 589; Rev. Civ. St. 1895, art. 665; Rev. Civ. St. 1911, art. 1164; Acts 1915, p. 157, ch. 102, § 2; Act Feb. 13, 1917, ch. 15, § 2.]

Explanatory.—The title of the act purports to amend art. 1164, Rev. Civ. St., as amended by chapter 102, Acts Reg. Sess., 34th Leg. The enacting part amends the article of the statutes referred to, but does not describe it as having been amended as stated in the title. The provision above set forth constitutes section 2 of the act. Sec. 1 consists of the amendment of art. 1164 as stated, and is set forth as art. 1164, ante, of the Civil Statutes. Took effect 90 days after March 21, 1917, date of adjournment.

CHAPTER TWELVE

PRIZE FIGHTING, ROPING CONTESTS, ETC.

Article 1509. [1005b] Exhibition of prize fights by means of moving pictures prohibited.

City ordinances.—Though the city council may regulate public amusement only in the absence of legislative regulation, where the Legislature merely provides the penalty for showing improper pictures, without provision as to censors, the city may create a board of censors and require their permit to issue before exhibition, and mere fact that an exhibitor of motion pictures has paid the state occupation tax for such exhibition does not relieve him from compliance with the city ordinance, requiring the securing of a permit as a prerequisite to the showing of pictures. *Xydias Amusement Co. v. City of Houston* (Civ. App.) 185 S. W. 415.

CHAPTER THIRTEEN

SCHOOLS

Art.	Art.
1513a. Interference with operations of state text book commission.	1513g. Duties of parent or guardian.
1513b. Commission or rebate on books prohibited.	1513h. Failure of school officers to make reports.
1513c. Influencing adoption of text books.	1513i. Failure to teach Texas history in schools.
1513d. Exaction from pupils of greater price for text books than fixed by contract.	1514. School trustee or teacher preventing or failing to use books adopted; penalty. Teacher receiving greater price; or person loitering on school grounds.
1513f. Employment of children of school age.	

Article 1513a. Interference with operations of state text book commission.—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 this Act [Arts. 2909a–2909oo, Civil Statutes, ante], or any teacher in any public school in this State who shall wilfully fail or refuse to use the said books shall be guilty of a misdemeanor and upon conviction shall be fined a sum of not less than five dollars and not 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 trustee shall constitute a separate offense. [Act 1903, 1st C. S., p. 23; Act 1905, ch. 124; Act 1907, p. 454; Act 1911, 1st C. S., p. 95, ch. 11, § 23; Act June 5, 1917, 1st C. S., ch. 44, § 24.]

Art. 1513b. Commission or rebate on books prohibited.—No trustee or teacher shall ever receive any commission or rebate on any books used in the schools with which he is concerned as such trustee or teacher, and if any such trustee or teacher shall receive or accept any such commission or rebate he shall be guilty of a misdemeanor and upon conviction he shall be fined not less than fifty dollars and not more than one hundred dollars. [Act 1911, 1st C. S., p. 96, ch. 11, § 24; Act June 5, 1917, 1st C. S., ch. 44, § 25.]

Art. 1513c. Influencing adoption of text books.—Any person not the author or publisher or the bona fide permanent and regular employé of such publisher who shall appear before such textbook commission in behalf of any book submitted to the commission for adoption, or seek to influence the members thereof, or any author, publisher, bona fide permanent and regular employé of such publisher who seeks to influence the said textbook commission in the selection or adoption of any text book by appearing to the members of said commission separately, or at any other time than when the commission is in regular session or in any way violating any provision of this Act [Arts. 2909a–2909oo, Civil Statutes, ante], shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than five dollars nor more than one hundred dollars, and shall be confined in the county jail for not less than thirty days and not more than ninety days. [Act 1911, 1st C. S., p. 96, ch. 11, § 24a; Act June 5, 1917, 1st C. S., ch. 44, § 26.]

Art. 1513d. Exaction from pupils of greater price for text books than fixed by contract.—When the supplementary books other than those selected by the textbook commission are used, they shall be furnished at a price fixed by the trustees of the school in which they are used and approved by the State superintendent of public instruction

"And Texas State Textbook Commission," which price in no case shall be greater than the publishers list price; and if any teacher or trustee shall knowingly and directly or indirectly receive from any pupil a greater price therefor than the price fixed, he shall be guilty of a misdemeanor, and on conviction shall be fined not less than fifty dollars nor more than one hundred dollars. [Act 1911, 1st C. S., p. 96, ch. 11, § 25; Act June 5, 1917, 1st C. S., ch. 44, § 27.]

Art. 1513f. Employment of children of school age.

See art. 1050i, ante.

Information.—Under this article, an information is fatally defective which does not state the child's age, name, when or where accused hired the child, or that child was not lawfully excused from school attendance. *Odam v. State* (Cr. App.) 194 S. W. 829.

Art. 1513g. Duties of parent or guardian.

Information.—Under this article, an information is fatally defective which does not allege the child's age, name, or relationship to accused, except that accused stood in a parental relation. *Odam v. State* (Cr. App.) 194 S. W. 829.

Art. 1513h. Failure of school officers to make reports.—The State Superintendent of Public Instruction shall require of county judges acting as ex-officio county superintendents of public schools, county, city and town superintendents, county and city treasurers and depositories, and treasurers and depositories of school boards, and other school officers and teachers, such school reports relating to the school fund and other school affairs as he may deem proper for collecting information and advancing the interests of the public schools, and shall furnish the county, city and town superintendents, treasurers and depositories and other school officers and teachers for the use of such teachers and officers the necessary blanks and forms for making such reports and carrying out such instructions as may be required by them and any county judge acting as ex-officio county superintendents, or county, city or town superintendents, assessor, county treasurer, county depository or treasurer or depository of any school district or teacher who shall wilfully fail to make such report within twenty days after the same shall have been required by the State Superintendent to be filed shall be deemed guilty of a misdemeanor and shall on conviction be fined in any sum not less than \$50.00 nor more than \$500.00 dollars, or by confinement in the county jail for not less than thirty, nor more than sixty days, or by both such fine and imprisonment, and the State Superintendent of Public Instruction shall withhold warrants for further payment of State appropriation until the aforesaid officials have made satisfactory reports as herein directed. [Act March 28, 1917, ch. 104, § 1.]

Explanatory.—Took effect 90 days after March 21, 1917, date of adjournment. Sec. 2, the emergency clause, recites that the Court of Criminal Appeals, in *Hall v. State*, 188 S. W. 1002, has held that there is now no law prescribing a penalty for failure to make the reports required by the above article. See notes under art. 1580, post.

Art. 1513i. Failure to teach Texas History in schools.—Any city or county school superintendent in this State, who shall fail or refuse to follow out the provisions of this Act [Arts. 2903a, 2903b, Civil Statutes], shall be held guilty of a misdemeanor and shall be punished by a fine of not less than twenty-five (\$25) dollars, nor more than two hundred (\$200) dollars. [Act March 28, 1917, ch. 112, § 3.]

Art. 1514. School trustee or teacher preventing or failing to use books adopted, penalty. Teacher receiving greater price; or person loitering on school grounds.

Note.—This article of the Revised Penal Code bore, in the revision, the same number as the first article under the following chapter. To avoid confusion the above article number was not employed in Vernon's Penal Code 1916. The subject-matter of the article appears in Vernon's compilation as articles 1513a, 1513d, 1513e.

CHAPTER FOURTEEN

RAILROAD COMMISSION

Article 1522p. Discrimination by operators of pipe lines.—* * *
 For the wilful violations of the provisions herein forbidding discrimination on the part of common carriers, it is hereby provided that the owners, officers, agents or employés of such carriers who may be guilty thereof shall be deemed guilty of a misdemeanor, each violation of such provisions shall be deemed a separate offense and upon conviction thereof the party violating same shall be fined in a sum of not less than fifty dollars nor more than one thousand dollars, and may be further punished by confinement in the county jail for not less than ten days nor more than six months. [Act Feb. 20, 1917, ch. 30, § 9.]

Explanatory.—The above provision is a part of section 9 of the act declaring pipe lines to be common carriers. The other provisions of the act are set forth ante as arts. 732½–732¾m of the Civil Statutes.

CHAPTER FIFTEEN

OFFENSES BY RAILWAY OFFICIALS OR AGAINST
RAILWAYS

Art. 1523–1. Separate coaches for whites and negroes.	Art. 1528. Demand to be made in ten days.
1527. Redemption and sale of unused tickets.	1529. Refusal to redeem; penalty.

Article 1523. [1010] 1. Railroad to provide separate coaches for white and negro passengers.

Cited in dissenting opinion *Texas & P. Ry. Co. v. Baker* (Civ. App.) 184 S. W. 664.

Art. 1527. [1010f] Railway companies to redeem unused tickets.

Necessity of immediate redemption on presentation.—Under this article and arts. 1528, 1529, company held entitled to provide a channel or employ processes of disbursement most orderly to it, and not liable for penalty for agent's refusal to pay redeemable value immediately upon presentation without forwarding it to the auditor pursuant to a rule of the company. *Texas & P. Ry. Co. v. Beard* (Civ. App.) 169 S. W. 1050.

Art. 1528. Demand must be made within ten days.

See *Texas & P. Ry. Co. v. Beard* (Civ. App.) 169 S. W. 1050; note under art. 1527.

Art. 1529. Refusal to redeem; penalty.

See *Texas & P. Ry. Co. v. Beard* (Civ. App.) 169 S. W. 1050; note under art. 1527.

CHAPTER SIXTEEN

RAILROADS, ETC.—PROHIBITING ISSUANCE OF FREE
PASSES, ETC.

Art.	Art.
1532. Free pass, frank, privilege or free haul or carrying of person or property free of charge, penalty for.	1534. Person offering to use permit, pass, frank, etc.
1533. Provisions of preceding article not to be held to prohibit what.	1537. Person other than those exempt using free pass, free ticket, etc., penalty.

Article 1532. Free pass, frank, privilege or free haul or carrying of persons or property free of charge, penalty for.

Attempt to ride free.—This article and arts. 1534, 1537, construed in light of art. 9, held not to make it an offense to attempt to ride free without attempt to use pass. *Carpenter v. Trinity & B. V. Ry. Co.* (Sup.) 184 S. W. 186.

Art. 1533. Provisions of preceding article not to prohibit what.

Cited, *Beard v. International & G. N. Ry. Co.* (Civ. App.) 171 S. W. 553.

Live stock caretakers.—This article, exempting from the anti-pass law, in case of a live stock shipment, the necessary caretakers, contemplates that they accompany the shipment, and not go on another train. *Gulf, C. & S. F. Ry. Co. v. Winn Bros.* (Civ. App.) 178 S. W. 697.

Art. 1534. Persons offering to use permit, pass, franks, etc.

See *Carpenter v. Trinity & B. V. Ry. Co.* (Sup.) 184 S. W. 186; note under art. 1532.

Art. 1537. Persons other than those exempt using free pass, free ticket, etc., penalty.

Acts 30th Leg. c. 42, §§ 1, 3, 6, relating to use of free passage on railroad, construed in light of Pen Code 1911, art. 9 (Vernon's Ann. Pen. Code 1916, art. 9), on offenses punishable, held not to make it an offense to attempt to ride free without attempt to use pass. See *Carpenter v. Trinity & B. V. Ry. Co.* (Sup.) 184 S. W. 186; note under art. 1532.

CHAPTER TWENTY-FIVE

COUNTY FINANCES

Art.	Art.
1578. State or county officer refusing information.	1581. Selecting depository of funds of county.
1579. Clerk failing to keep finance ledger.	1582. Members of commissioners' court failing or refusing to vote; penalty.
1580. Treasurer failing to make report.	

Article 1578. [1013] State or county officer refusing information.

Cited, *Palacios v. Corbett* (Civ. App.) 172 S. W. 777.

Art. 1579. [1013a] Clerk failing to keep finance ledger.

Cited, *Palacios v. Corbett* (Civ. App.) 172 S. W. 777.

Art. 1580. [1013b] Treasurer failing to make report.

Note.—Following the decision in *Hall v. State*, 188 S. W. 1002, noted below, the Legislature passed Act March 28, 1917, ch. 104, set forth ante as art. 1513h.

Cited, *Palacios v. Corbett* (Civ. App.) 172 S. W. 777.

Independent school district.—This article does not embrace the treasurer of an independent school district authorized by art. 2851, Civil Statutes, and his failure to report as required by art. 4517, Civil Statutes, is not punishable thereunder. *Hall v. State* (Cr. App.) 188 S. W. 1002.

Art. 1581. Selecting depository of funds for county.

Cited, *Palacios v. Corbett* (Civ. App.) 172 S. W. 777.

Art. 1582. Member of commissioners' court failing or refusing to vote; penalty.

Cited, *Palacios v. Corbett* (Civ. App.) 172 S. W. 777.

CHAPTER THIRTY

REGISTRATION OF AUTOMOBILES REPAIRED

Art. 1617½. Duty to register automobiles re- paired.	Art. 1617½a. Form and contents of register. 1617½b. Public inspection of register. 1617½c. Penalty for violation.
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Article 1617½. Duty to register automobiles repaired.—Every repair shop of whatsoever kind, or garage, within this State, engaged in the repairing, rebuilding or repainting of automobiles of every description; or any repair shop, within this State, engaged in electrical work in connection with automobiles of every description, shall keep a well bound book in which they shall register, in an intelligent manner, each and every material repair or change in or on any automobile or automobiles of every description. [Act March 30, 1917, ch. 159, § 1.]

Took effect 90 days after March 21, 1917, date of adjournment.

Art. 1617½a. Form and contents of register.—Said register shall contain a complete and accurate description of each and every car upon which there is performed any work of any character, or there is installed any new parts or accessories of any character. Said register shall particularly show the make of the automobile, number of cylinders, model, passenger capacity and motor number. Also the name of the owner of the automobile, his county and state register number, and his place of residence. [Id., § 2.]

Art. 1617½b. Public inspection of register.—Said register shall be kept in a secure place and shall be open at all times to the inspection of any person or persons desiring to examine the same. [Id., § 3.]

Art. 1617½c. Penalty for violation.—The failure of any garage, repair shop or electrical shop engaged in electrical work in connection with automobiles of every description, to keep a proper and intelligent register, as required in this Act, or the failure to allow an inspection of said register by any person or persons desiring to do so, shall be guilty of a misdemeanor when a complaint has been duly made before the proper officer authorized under the law to receive complaints for misdemeanors, and for said first offense the punishment shall be by a fine of not less than twenty-five (\$25.00) dollars, nor more than one hundred (\$100.00) dollars; and for every succeeding offense thereafter, if committed by the same party, the punishment shall be by a fine of not less than fifty (\$50.00) dollars, nor more than two hundred (\$200.00) dollars, or by confinement in the county jail for a period of not more than six months, or by both such fine and imprisonment. [Id., § 4.]

TITLE 19 .

REPETITION OF OFFENSES

Article 1621a. Violation of penal provisions of motor vehicle act.— Any person who shall be convicted of the violation of any of the penal provisions of this Act may upon any subsequent conviction for a violation of the same provision, within the discretion of the jury, be given double the amount of punishment provided for a first violation of such penal provision of this Act. [Act April 9, 1917, ch. 207, § 36.]

Explanatory.—The penal provisions referred to are set forth ante as arts. 820aa–820z, 826a, 1022a, 1259aa, 1259bb, 1259cc.

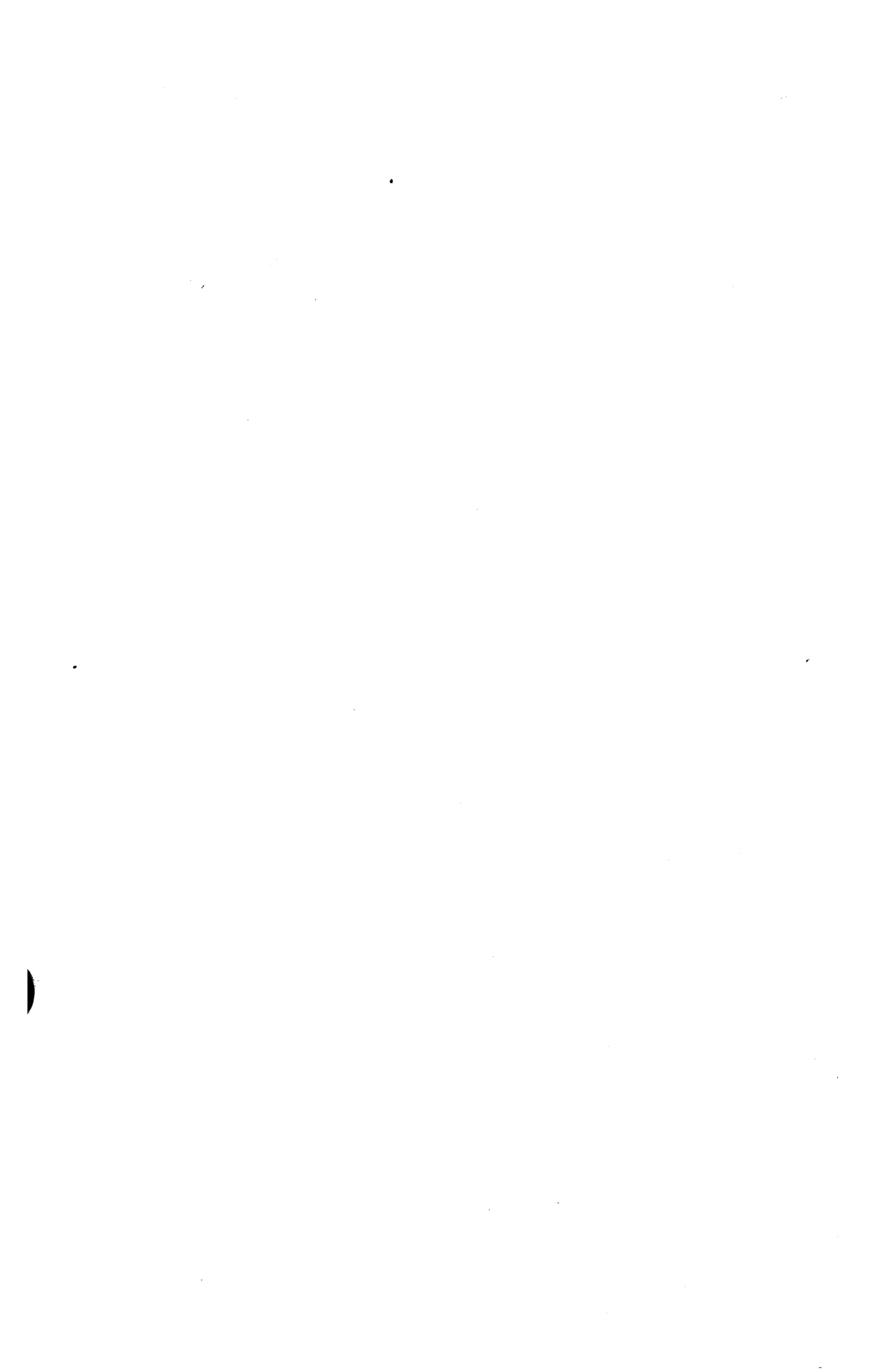


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