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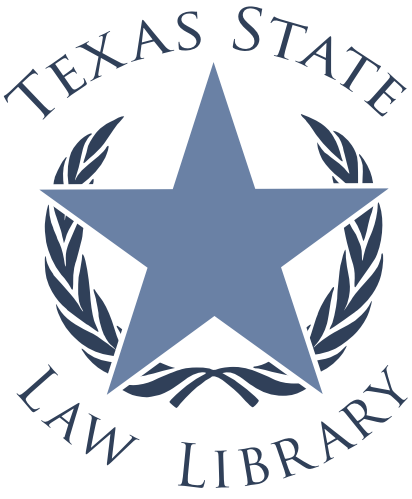

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TABLE OF TITLES AND CHAPTERS

OF

PENAL CODE

THE PENAL CODE

TITLE 1

GENERAL PROVISIONS RELATING TO THE WHOLE CODE

CHAPTER ONE

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

Art. 1. (1) Design of the Code.—The design of enacting this Code is to define in plain language every offense against the laws of this state and affix to each offense its proper punishment. (O. C. 1.)

Art. 2. (2) Object of punishment.—The object of punishment is to suppress crime and reform the offender. (O. C. 2.)

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

See post, art. 53; Myers v. S., 103 S. W. 859; Ex parte Lingenfelter, 142 S. W. 555; Ex parte Wolters, 144 S. W. 531; South v. S., 162 S. W. 510; Houseman v. S., 173 S. W. 1036; Ex parte Bartee, 174 S. W. 1051; Hall v. S., 188 S. W. 1002.

Art. 4. (4) Common law rule of construction, when.—The principles of the common law shall be the rule of construction, when not in conflict with the Penal Code or Code of Criminal Procedure, or with some other written statute of the state. (Acts 1858, p. 156; O. C. 4.)

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

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

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

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

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

See ante, Civ. St., art. 5502; Williams v. S., 107 S. W. 1121; Oliver v. S., 144 S. W. 604; Gentry v. S., 152 S. W. 635; Barnes v. S., 152 S. W. 1043; Bradfield v. S., 166 S. W. 734, Ann. Cas. 1917C, 696; State v. Country Club, 173 S. W. 570; Fowler v. S., 196 S. W. 951.

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

Oliver v. S., 144 S. W. 604; Blackburn v. S., 160 S. W. 687; Currington v. S., 161 S. W. 478; Hahn v. S., 165 S. W. 218; Bradfield v. S., 166 S. W. 734, Ann. Cas. 1917C, 696; Sparks v. S., 174 S. W. 351; Martin v. S., 179 S. W. 121; McLeod v. S., 180 S. W. 117, L. R. A. 1916B, 1124; Sola v. S., 188 S. W. 1005; Fowler v. S., 196 S. W. 951.

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

See post, art. 51; C. C. P. art. 785.

Art. 12. (12) No offense against a law not in force.—No act or omission can be punished as an offense unless the law making it penal was in force at the time when

such act or omission took place. (O. C. 12; Bill of Rights, secs. 16–19.)

Art. 13. (13) When laws take effect.—No law of the legislature defining an offense, or affixing a penalty thereto, shall take effect until after the expiration of ninety days from the day of the adjournment of the session at which such penal law was enacted, unless the legislature shall otherwise determine. (O. C. 13; Const. art. 3, sec. 39.)

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

See post, art. 46; Hughes v. S., 149 S. W. 173.

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

See post, art. 19; Sandoloski v. S., 143 S. W. 151; Hill v. S., 161 S. W. 118; Ybarra v. S., 164 S. W. 10; Robbins v. S., 166 S. W. 528; Herrera v. S., 170 S. W. 719; Gibbs v. S., 180 S. W. 612.

Art. 16. (16) Repeal, effect of.—The repeal of a law, where the repealing statute substitutes no other penalty, will exempt from punishment all persons who may have offended against the provisions of such repealing law, unless it be otherwise declared in the repealing statute. (O. C. 15.)

Hall v. S., 106 S. W. 149; Cook v. S., 160 S. W. 465; Robbins v. S., 166 S. W. 528; Ex parte Wright, 199 S. W. 486.

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

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

Art. 19. (19) Previous offenses not affected by this Code.—No offense committed, and no fine, forfeiture or penalty incurred under existing laws, previous to the time when this Code takes effect, shall be affected by the repeal herein of any such existing laws, but the punishment of such offenses, and the recovery of such fines and forfeitures, shall take place as if the law repealed had still remained in force, except that when any penalty, forfeiture or punishment shall have been mitigated by the provisions of this Code, such provision shall apply to and control any judgment to be pronounced after this Code shall take effect, for any offense committed before that time, unless the defendant elect to be punished under the provisions of the repealed law. (O. C. 18.)

See ante, art. 15.

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

CHAPTER TWO

DEFINITIONS

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

Cromeans v. S., 129 S. W. 1129; Rogers v. S., 143 S. W. 631.

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

See ante, Civ. St., art. 5502.

Art. 23. (23) Singular includes plural, and masculine feminine.—The use of the singular number includes the plural, and the plural the singular; and words used in the masculine gender include the feminine also, unless, by reasonable construction, it appears that such was not the intention of the language. (O. C. 21.)

See ante, Civ. St., art. 5502.

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

See ante, Civ. St., art. 5504.

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

Brown v. S., 118 S. W. 139.

Art. 26. (26) "Criminal action" defined.—A "criminal action," as used in this Code, means the whole, or any part, of the

procedure which the law provides for bringing offenders to justice; and the terms "prosecution," "criminal prosecution," "accusation," and "criminal accusation," are used in the same sense. (O. C. 25.)

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

See Stanley v. S., 46 S. W. 645; Bowles v. S., 150 S. W. 626.

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

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

See ante, Civ. St., art. 5504.

Art. 30. (30) "Writing" and "oath."—The word "writing" includes printing; the word "oath" includes affirmation. (O. C. 30.)

See ante, Civ. St., art. 5504.

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

See ante, Civ. St., art. 5504.

CHAPTER THREE

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

Art. 32. (32) The persons punishable under this Code.—All persons, whether inhabitants of this state or of the United States, or aliens, are amenable to punishment for offenses which are defined and made punishable under the provisions of this Code. The exceptions to the general rule here laid down are given in the subsequent articles of this title. (O. C. 32; Acts 1866, p. 70.)

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

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

See Allen v. S., 37 S. W. 757; Frasier v. S., 84 S. W. 360; Simmons v. S., 97 S. W. 1052; Price v. S., 94 S. W. 901; Scott v. S., 158 S. W. 814; Smith v. S., 164 S. W. 838; Miller v. S., 200 S. W. 389.

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

See post, art. 83; Wilson v. S., 149 S. W. 117; Smith v. S., 164 S. W. 838.

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

See post, art. 84.

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

See post, art. 84.

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

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

See Chase v. S., 55 S. W. 833; Lermo v. S., 68 S. W. 684; Wilson v. S., 149 S. W. 117; Witty v. S., 171 S. W. 229; Hazelwood v. S., 186 S. W. 201.

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

Art. 41. (41) Intoxication as a defense.—Neither intoxication nor temporary insanity of mind, produced by the voluntary recent use of ardent spirits, shall constitute any excuse in this state for the commission of crime, nor shall intoxication mitigate either the degree or the penalty of crime, but evidence of temporary insanity produced by such use of ardent spirits may be introduced by the defendant in any criminal prosecution

in mitigation of the penalty attached to the offense for which he is being tried, and, in cases of murder, for the purpose of determining the degree of murder of which the defendant may be found guilty. It shall be the duty of the several district and county judges of this state, in any criminal prosecution pending before them, where temporary insanity is relied upon as a defense and the evidence tends to show that such insanity was brought about by the immoderate use of intoxicating liquors, to charge the jury in accordance with the provisions of this article. (Acts 17th Leg. p. 9.)

See Navarro v. S., 43 S. W. 105; Edwards v. S., 54 S. W. 589; Little v. S., 61 S. W. 483; Hierholzer v. S., 83 S. W. 836; Miller v. S., 105 S. W. 502; Young v. S., 110 S. W. 445, 126 Am. St. Rep. 792; Moss v. S., 124 S. W. 647, 136 Am. St. Rep. 1001; Stoudenmire v. S., 125 S. W. 399; Lawrence v. S., 143 S. W. 636; Perkins v. S., 144 S. W. 241; Baldwin v. S., 148 S. W. 312; Stevens v. S., 150 S. W. 944; Lucas v. S., 155 S. W. 527; Drysdale v. S., 156 S. W. 685; Lawrence v. S., 157 S. W. 480; Brice v. S., 162 S. W. 874; Truett v. S., 168 S. W. 523; Burgess v. S., 181 S. W. 465; Mikeska v. S., 182 S. W. 1127; Morris v. S., 198 S. W. 141.

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

See post, arts. 1092-1094.

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

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

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

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

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

Miller v. S., 105 S. W. 502; Thomas v. S., 112 S. W. 1049; McCray v. S., 140 S. W. 442; Perkins v. S., 144 S. W. 241; Mollenkopf v. S., 151 S. W. 799.

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

See ante, art. 14; Patrick v. S., 78 S. W. 947; Giddings v. S., 83 S. W. 694; Thomas v. S., 112 S. W. 1049; McCray v. S., 140 S. W. 442; Hickman v. S., 141 S. W. 973; Morris v. S., 142 S. W. 876; Mealer v. S., 145 S. W. 353; Walker v. S., 181 S. W. 191.

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

See Smith v. S., 95 S. W. 1057; Hickman v. S., 141 S. W. 973; Mealer v. S., 145 S. W. 353; Mollenkopf v. S., 151 S. W. 799; Martin v. S., 165 S. W. 579; Walker v. S., 181 S. W. 191.

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

See post, art. 82; McCullough v. S., 136 S. W. 1055; Cooper v. S., 154 S. W. 989; Buckley v. S., 181 S. W. 729.

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

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

See post, art. 82.

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

See ante, art. 11; post, 1106, 1147; Smith v. S., 135 S. W. 533; Perkins v. S., 144 S. W. 241; Simms v. S., 148 S. W. 786; Crutchfield v. S., 152 S. W. 1053; Gray v. S., 178 S. W. 337.

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

Perkins v. S., 144 S. W. 241; Hunter v. S., 166 S. W. 164; Coy v. S., 171 S. W. 221; Gray v. S., 178 S. W. 337.

TITLE 2

OF OFFENSES AND PUNISHMENTS

CHAPTER ONE

DEFINITION AND DIVISION OF OFFENSES

Art. 53. (53) "Offense" defined.—An offense is an act or omission forbidden by positive law, and to which is annexed, on conviction, any punishment prescribed in this Code. (O. C. 54.)

Art. 54. (54) How divided.—Offenses are divided into felonies and misdemeanors. (O. C. 55.)

Art. 55. (55) Felonies and misdemeanors defined.—Every offense which is punishable by death or by imprisonment in the penitentiary, either absolutely or as an alter-

native, is a felony; every other offense is a misdemeanor. (O. C. 56.)

Ex parte Biela, 81 S. W. 739; Cooper Grocery Co. v. Neblett, 203 S. W. 365.

Art. 56. (56) Felonies subdivided.—Felonies are either capital or not capital. An offense for which the highest penalty is death is a capital felony. (O. C. 57.)

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

Art. 58. (58) Subdivision and classification of offenses.—Offenses are again subdivided and classed as follows; they are—

1. Offenses against the state, its territory, property and revenue.
2. Offenses affecting the executive, legislative and judicial departments of the government.
3. Offenses affecting the right of suffrage.
4. Offenses which affect the free exercise of religious opinion.
5. Offenses against public justice.
6. Offenses against the public peace.
7. Offenses against public morals, decency and chastity.
8. Offenses against public policy and economy.
9. Offenses against public health.
10. Offenses affecting property held in common for the use of the public.
11. Offenses against trade and commerce, and the current coin.
12. Offenses against the persons of individuals.
13. Offenses against reputation.
14. Offenses against property.
15. Miscellaneous offenses. (O. C. 59.)

CHAPTER TWO

OF PUNISHMENTS IN GENERAL

Art. 59. (59) Punishments.—The punishments incurred for offenses under this Code are—

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

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

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

3. Imprisonment in the county jail.
4. Forfeiture of civil or political rights.
5. Pecuniary fines. (O. C. 60.)

See Ex parte Banks, 53 S. W. 689.

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

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

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

Art. 63. (63) Political rights, what are.—When the penalty affixed to the commission of an offense is deprivation of political rights, such rights are intended to include the rights of holding office, of serving on juries, and of suffrage. (Acts 1858, p. 156; O. C. 64.)

Art. 64. (64) Double punishment, how fixed.—Whenever a minimum or maximum punishment is fixed by law, and by reason of any aggravation of the offense, or the existence of any circumstance on account of which the law directs that the punishment be doubled, this shall be construed to mean that the jury shall not inflict less than double the smallest punishment incurred by the law, nor more than double the greatest punishment so incurred. (O. C. 65.)

See post, arts. 82, 84.

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

See post, arts. 83, 84.

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

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

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

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

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

Art. 71. (71) Death, how inflicted.—The punishment of death is inflicted by hanging, as prescribed in the Code of Criminal Procedure. (O. C. 72.)

See C. C. P., art. 883 et seq.

Art. 72. (72) Hard labor intended.—Whenever the penalty prescribed for an offense is imprisonment for a term of years in the penitentiary, imprisonment at hard labor is intended. (O. C. 73.)

Art. 73. (73) Officer to be removed, when.—Whenever an offense is committed by an officer, and the same appears to the jury to be a willful violation of duty, they shall so find, and such officer shall be removed from office. (O. C. 75.)

TITLE 3

OF PRINCIPALS, ACCOMPLICES AND ACCESSORIES

CHAPTER ONE

PRINCIPALS

Art. 74. (74) Who are principals.—All persons are principals who are guilty of acting together in the commission of an offense. (O. C. 214.)

Schwartz v. S., 40 S. W. 976; Dawson v. S., 41 S. W. 599; Starks v. S., 42 S. W. 379; Bell v. S., 47 S. W. 1011; Goode v. S., 123 S. W. 597; Oliver v. S., 144 S. W. 604; Gould v. S., 146 S. W. 172; Drysdale v. S., 156 S. W. 685; Lake v. S., 184 S. W. 213; Quillin v. S., 187 S. W. 199; Simpson v. S., 196 S. W. 835; Dodd v. S., 201 S. W. 1014.

Generally under this title see, Clark v. S., 194 S. W. 157.

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

Kaufman v. S., 38 S. W. 771; Red v. S., 47 S. W. 1003; Bell v. S., 47 S. W. 1011; Goode v. S., 123 S. W. 597; Davis v. S, 136 S. W. 45; Campbell v. S., 141 S. W. 232; Oliver v. S., 144 S. W. 604; Gould v. S., 146 S. W. 172; Villareal v. S., 182 S. W. 322; Lake v. S., 184 S. W. 213; Dodd v. S., 201 S. W. 1014.

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

See Bell v. S., 47 S. W. 1011; Goode v. S., 123 S. W. 597; Davis v. S., 136 S. W. 45; Gould v. S., 146 S. W. 172; Lake v. S., 184 S. W. 213.

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

See Bell v. S., 47 S. W. 1011; Grace v. S., 69 S. W. 529; Sanders v. S., 112 S. W. 68, 22 L. R. A. (N. S.) 243; Farris v. S., 117 S. W. 798, 131 Am. St. Rep. 824; Davis v. S., 136 S. W. 45; Gould v. S., 146 S. W. 172; Bunker v. S., 177 S. W. 108; Ferguson v. S., 187 S. W. 476.

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

Leslie v. S., 57 S. W. 660; Bell v. S., 47 S. W. 1011; Grimsinger v. S., 69 S. W. 583; Nowlin v. S., 132 S. W. 800; Burnam v. S., 135 S. W. 1175; Davis v. S., 136 S. W. 45; Gould v. S., 146 S. W. 172; Lake v. S., 184 S. W. 213.

CHAPTER TWO

ACCOMPLICES

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

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

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

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

See C. C. P., art. 801; Clark v. S., 51 S. W. 1120; Criner v. S., 53 S. W. 874; Dawson v. S., 41 S. W. 599; Erwin v. S., 60 S. W. 961; Powell v. S., 57 S. W. 95; Wilkinson v. S., 57 S. W. 962; Grimsinger v. S., 69 S. W. 583; Johnson v. S., 125 S. W. 16; Warren v. S., 132 S. W. 136; Oliver v. S., 144 S. W. 604; Fondren v. S., 169 S. W. 411; Cooper v. S., 177 S. W. 975; Simpson v. S., 196 S. W. 835.

Art. 80. (80) Precise offense need not be committed.—To render a person guilty as an accomplice, it is not necessary that the precise offense which he may have advised, or to the execution of which he may have given encouragement or promised assistance, should be committed; it is sufficient that the offense be of the same nature, though different in degree, as that which he so advised or encouraged. (O. C. 220.)

Art. 81. (81) Punishment.—Accomplices shall, in all cases not otherwise expressly

provided for, be punished in the same manner as the principal offender. (O. C. 220a.)

See Thomas v. S., 62 S. W. 920.

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

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

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

Art. 85. (85) No accomplice in manslaughter or negligent homicide.—There may be accomplices to all offenses except manslaughter and negligent homicide. (O. C. 224.)

CHAPTER THREE

ACCESSORIES

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

See Street v. S., 45 S. W. 577; Dent v. S., 65 S. W. 630; Robertson v. S., 80 S. W. 1000; Chenault v. S., 81 S. W. 971; Harrison v. S., 153 S. W. 139; Hightower v. S., 182 S. W. 492.

Art. 87. (87) Who can not be.—The following persons can not be accessories:

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

See Moore v. S., 51 S. W. 1108; Adcock v. S., 53 S. W. 845; Arnold v. S., 168 S. W. 122; Fondren v. S., 169 S. W. 411; Villareal v. S., 182 S. W. 322.

Art. 88. (88) How punished.—Accessories to offenses shall be punished by the infliction of the lowest penalty to which the principal in the offense would be liable. (O. C. 227.)

See Gann v. S., 57 S. W. 838; Schackey v. S., 53 S. W. 879.

CHAPTER FOUR

TRIAL OF ACCOMPLICES AND ACCESSORIES

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

Gibson v. S., 110 S. W. 41; Richards v. S., 110 S. W. 432; Aven v. S., 177 S. W. 82.

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

Kingsbury v. S., 39 S. W. 365; Moore v. S., 51 S. W. 1108; Ray v. S., 64 S. W. 1057; Dent v. S., 65 S. W. 629; Zweig v. S., 171 S. W. 747.

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

See C. C. P. arts. 791, 801; Duffy v. S., 55 S. W. 176; Robertson v. S., 140 S. W. 105; Oliver v. S., 144 S. W. 604; Sola v. S., 188 S. W. 1005; Terrell v. S., 197 S. W. 1107; Ligon v. S., 198 S. W. 787.

TITLE 4

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

CHAPTER ONE

TREASON

Art. 92. (92) "Treason" defined.—Treason against the state shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort. (Const. art. 1, sec. 22; O. C. 231.)

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

CHAPTER TWO

MISPRISION OF TREASON

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

Art. 95. (95) Punishment.—The punishment for misprision of treason is confinement in the penitentiary for a term of not less than two nor more than seven years. (Acts 1858, pp. 157–8; O. C. 234.)

CHAPTER THREE

MISAPPLICATION OF PUBLIC MONEY

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

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

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

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

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

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

5. Retaining funds after notice from comptroller.—The retention in his hands, by any collector of taxes, of any funds belonging to the state, for thirty days after receiving notice from the comptroller of public accounts to pay the same over to the treasurer.

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

7. Other cases.—The special enumeration of cases of misapplication above set forth shall not be understood to exclude any case which, by fair construction of language, comes within the meaning of the preceding language; provided, that this article shall not be construed to prevent collectors of taxes from paying warrants drawn by the comptroller in favor of officers living in their district or county, as may be provided by law. (Acts 1879, p. 165.)

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

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

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

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

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

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

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

The words "two preceding articles" have reference to the situation of the articles as they appeared in the Revised Statutes of 1895. Articles 98 and 99 were inserted in the revision of 1911 following art. 97 without changing the references in the surrounding text.

Art. 101. (99) Receiving or concealing misapplied public money.—If any person shall knowingly and with fraudulent intention receive or conceal any public money which has been taken, converted or misap-

plied by any officer or employé as set forth in the two preceding articles [arts. 97, 100], he shall be punished by confinement in the penitentiary for a term not less than two nor more than five years. (O. C. 236, amended 1875, p. 12.)

See ante, note to art. 100.

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

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

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

Art. 104a. City and county treasurers custodian of funds, exclusive use of.—All funds, revenues and moneys derived from the sale of the bonds herein authorized, [Civ. St. arts. 5585-5594] and from the sale or rent of reclaimed or other lands acquired under this act, and from additional uses of said works as herein authorized, shall be deposited with the county or city treasurer, as the case may be, and shall be held in trust exclusively for the construction and maintenance of seawalls and breakwaters, including the purchase of the right of way therefor, and all moneys derived from the assessment and levy of taxes as aforesaid are declared to be a trust fund for the payment of interest and principal of bonds to be issued under this act; and the use or diversion of such moneys for any other purposes whatsoever is hereby prohibited, and a violation of this section shall constitute a misapplication of public money, and the person or persons so offending shall be punished as provided in article 96, of the Penal Code of the State of Texas. (Acts 1901, 1st S. S., p. 25, ch. 12, sec. 9.)

The above act was omitted from the Revised Penal Code; but is inserted here in view of the decision in Berry v. S., 156 S. W. 626.

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

See Warswick v. S., 35 S. W. 386; Poole v. Burnet Co., 76 S. W. 425; Hartnett v. S., 119 S. W. 855, 23 L. R. A. (N. S.) 761, 133 Am. St. Rep. 971.

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. (Acts 1917, ch. 135, sec. 1.)

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

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

Art. 108. Venue.—Prosecutions for failing to account for, and pay over money belonging to the state, under the provisions of the preceding article, shall be conducted in Travis county; and prosecutions for failing to account for, and pay over, moneys belonging to the counties, cities and towns, shall be

conducted in the county to which such money may belong, or in the county where such city or town is situated. (Acts 1879, ch. 8, secs. 4–7.)

Art. 108a. Payment of moneys.—All tax collectors and other officers or appointees authorized to receive public moneys shall account for all moneys in their hands belonging to the state, and pay the same over to the state treasurer whenever and as often as they may be directed so to do by the comptroller of public accounts; provided, that tax collectors shall have thirty days from the date of such direction within which to comply with the same. (Acts 1879, S. S., p. 5.)

This article and art. 108b constitute arts. 7658, 7659 of the Civil Statutes, and were a part of the act from which art. 107, Penal Code was taken. They are here inserted for convenience, and to supplement art. 107.

Art. 108b. Same.—All tax collectors and other officers or appointees authorized to receive public moneys shall account for all moneys in their hands belonging to their respective counties, cities or towns, and pay the same over to the respective county treasurers or city treasurers, whenever and as often as they may be directed so to do by the respective county judges, or county commissioners' courts, or mayor or board of aldermen; provided, that tax collectors shall have ten days from the date of such direction within which to comply with the same. (Acts 1879, S. S., p. 6, sec. 2.)

See ante, note to art. 808a.

Art. 109. (105) Collector failing to pay.—The collectors of taxes shall, at the close of each month, pay over to the state treasurer all moneys collected by them during the month for the state, excepting such amounts as they are allowed by law to pay in the counties, reserving only their commissions on the same; and to enable them to do so, they may, at their own risk, secure and send the same to the treasurer by express, or in postoffice orders, at not more than the usual rate of exchange, to be paid by the state; that the collectors of taxes shall pay over to the state treasurer all balances in their hands belonging to the state, and finally adjust and settle their accounts with the comptroller on or before the first day of May of each year; that the treasurer, whenever he may receive from the collectors of taxes postoffice orders, shall collect the same and pay the money so collected into the treasury on the deposit warrant of the comptroller, and the money when so deposited shall be a credit to the tax collector. It shall be the duty of the comptroller to enforce a strict observance of the provisions of this article, but no public moneys shall be paid to the comptroller except such as are made payable directly to him as collector of the same under existing statutes, and expressly provided by law to be paid to him as receiver of taxes; and, in addition to the reports required by law to be made by tax collectors, they shall make a monthly statement under oath, on forms to be provided by the comptroller, showing the amounts collected each month and the funds to which they belong. Any collector of taxes failing to comply with the provisions of this article shall be fined in a sum not less than five hundred and not more than one thousand dollars, and each failure to make the required report shall constitute a separate offense; and it shall be the duty of the comptroller to notify the county attorney, or district attorney, of the county in which the collector resides, and the sureties on the bond of said collector, of any failure to comply with the provisions of this law. (Acts March 30, 1887, p. 67.)

The above article, at the time it was incorporated into the revised Penal Code, had been superseded by Laws 1893, p. 90 (Civ. St., arts. 7618-7620). The superseding act, however, was carried into the Penal Code as arts. 144-146, post.

Art. 110. Maximum amount of fees allowed.—Hereafter the maximum amount of fees of all kinds that may be retained by any officer mentioned in this section (article) as compensation for services shall be as follows: County judge, an amount not exceeding two thousand two hundred and fifty dollars per annum; sheriff, an amount not exceeding two thousand seven hundred and fifty dollars per annum; clerk of the county court, an amount not exceeding two thousand two hundred and fifty dollars per annum; county attorney, an amount not exceeding two thousand two hundred and fifty dollars per annum; clerk of the district court, an amount not exceeding two thousand two hundred and fifty dollars per annum; collector of taxes, an amount not exceeding two thousand two hundred and fifty dollars per annum; assessor of taxes, an amount not exceeding two thousand two hundred and fifty dollars per annum; justices of the peace, an amount not exceeding two thousand dollars per annum; constables, an amount not exceeding two thousand dollars per annum; provided, that this Act shall not apply to justices of the peace or constables except those holding offices in cities of more than twenty thousand inhabitants, to be determined by the last United States census.

Maximum fees in certain counties.—In any county shown by the last United States census to contain as many as twenty-five thousand inhabitants the following amounts shall be allowed, viz: county judge, an amount not exceeding twenty-five hundred dollars per annum; sheriff, an amount not exceeding three thousand dollars per annum; clerk of the county court, an amount not exceeding twenty-four hundred dollars per annum; county attorney, an amount not exceeding twenty-four hundred dollars per annum; district attorney, an amount not exceeding twenty-five hundred dollars per annum, inclusive of the five hundred dollars allowed by the constitution and paid by the state; clerk of the district court, an amount not exceeding twenty-four hundred dollars per annum; collector of taxes, an amount not exceeding twenty-four hundred dollars per annum; assessor of taxes, an amount not exceeding twenty-four hundred dollars per annum.

Maximum fees in counties containing city of 25,000 inhabitants, etc.—In counties containing a city of over twenty-five thousand inhabitants, or, in such counties as shown by the last United States census, shall contain as many as thirty-eight thousand inhabitants, the following amount of fees shall be allowed, viz: county judge, an amount not exceeding thirty-five hundred dollars per annum; sheriff, an amount not exceeding thirty-five hundred dollars per annum; clerk of the county court, an amount not exceeding twenty-seven hundred and fif-

ty dollars per annum; county attorney, an amount not exceeding thirty-five hundred dollars per annum; district attorney, an amount not exceeding twenty-five hundred dollars, inclusive of the five hundred dollars allowed by the constitution and paid by the state; clerk of the district court, an amount not exceeding twenty-seven hundred and fifty dollars per annum; collector of taxes, an amount not exceeding twenty-seven hundred and fifty dollars per annum; assessor of taxes, an amount not exceeding twenty-seven hundred and fifty dollars per annum; provided, the compensation fixed herein for sheriffs and their deputies shall be exclusive of any rewards received for the apprehension of criminals or fugitives from justice.

Last United States census to govern in all cases.—The last United States census shall govern as to population in all cases. (Acts 1897, S. S. p. 9; Acts 1897, S. S. p. 43; Acts 1913, p. 246, amending arts. 3881–3883, 3887, Rev. Civ. St. 1911.)

See arts. 1106-1192, C. C. P.

Art. 110, Pen. Code 1911, was derived from the same act which made up arts. 3381-3383, 3387, of the Revised Statutes. The named articles of the Revised Statutes were amended by Acts 1913, p. 246, as given above, and hence art. 110, Pen. Code, was thereby superseded.

See arts. 1117a-1117c, 1117f, 1117h, 1118, 1131, C. C. P.

Art. 110a. County attorney, compensation in certain counties.—The county attorney in those counties having no district attorney, where he performs the duties of district attorney, may receive the same compensation as provided for the district attorney. (Acts 1897, S. S. p. 44, sec. 10; Rev. Civ. St. 1911, art. 3884.)

Certain provisions of Act 1897, S. S. p. 5, constituting a qualification or amplification of the offenses denounced in art. 113 post, were omitted from the Revised Penal Code. They are inserted here as arts. 110a-110g, 113a-113d, 115a-115c, in view of the decision in Berry v. S., 156 S. W. 626.

Art. 110b. District attorney, compensation of.—The maximum fixed for the compensation of the district attorney shall be construed to be the amount which that officer is authorized to retain of fees allowed such officer in his district, whether composed of one or more counties. (Acts 1897, S. S. p. 44, sec. 10; Rev. Civ. St. 1911, art. 3885.)

See note under art. 110a, ante.

Art. 110c. County judge, compensation as superintendent of public instruction.—In counties where a county judge acts as superintendent of public instruction, he shall receive such other salary as may be provided by the commissioners' court, not to exceed the sum of six hundred dollars per annum. (Id. sec. 10, Rev. Civ. St. 1911, art. 3886.)

See note under art. 110a, ante.

Art. 110d. Officer not collecting maximum fees, etc., may retain out of delinquent fees collected, remainder paid to treasurer.—Any officer mentioned in section 10 of this act [art. 110, ante], who does not collect the maximum amount of his fees for any fiscal year and who reports delinquent fees for that year, shall be entitled to retain, when collected, such part of such delinquent fees as is sufficient to complete the maximum compensation for the year in which delinquent fees were charged, and also to retain the one-fourth of the excess belonging to him, and the remainder of the delinquent fees for that fiscal year shall be paid as herein provided for when collected. (Acts 1897, S. S. p. 9, sec. 11; Acts 1907, p. 50; Rev. Civ. St. 1911, art. 3890.)

See note under art. 110a, ante.

Art. 110e. Delinquent fees, collection of, commissions on, remainder paid to treasurer.—All fees dues and not collected as shown in the report required by section 11 of this act [art. 110f, post] shall be collected by the officer to whose office the fees accrued; and, out of such part of delinquent fees as may be due the county, the officer making such collection shall be entitled to ten per cent of the amount collected by him, and the remainder shall be paid into the county treasury, as provided in section 11 of this act [art. 115a, post]. It shall not be legal for any officer to remit any fee that may be due under the law fixing fees. (Acts 1897, S. S. p. 10, sec. 13; Rev. Civ. St. 1911, art. 3892.)

See note under art. 110a, ante.

Art. 110f. Officers to make sworn statement, etc., to show what.—Each officer mentioned in the preceding section [art. 110, ante], and also the sheriff, shall, at the close of each fiscal year, make to the district court of the county in which he resides a sworn statement showing the amount of fees collected by him during the fiscal year, and the amount of fees charged and not collected, and by whom due, and the number of deputies and assistants employed by him during the year, and the amount paid, or to be paid each. (Acts 1897, S. S. p. 10, sec. 11; Acts 1907, p. 50; Rev. Civ. St. 1911, art. 3895.)

See note under art. 110a, ante.

Art. 110g. Officer may appoint deputies, how; county judge not to influence appointment, etc.; compensation, how paid.—Whenever any officer named in articles 3881 to 3886 [Rev. Civ. St. 1911; art. 110 of this compilation] shall require the service of deputies or assistants in the performance of his duties, he shall apply to the county judge of his county for authority to appoint same; and the county judge shall issue an order authorizing the appointment of such a number of deputies or assistants as in his opinion may be necessary for the efficient performance of the duties of said office. The officer applying for appointment of a deputy or assistant, or deputies or assistants, shall make affidavit that they are necessary for the efficiency of the public service, and the county judge may require, in addition, a statement showing the need of such deputies or assistants; and in no case shall the county judge attempt to influence the appointment of any person as deputy or assistant in any office. Provided, that in all counties having a population in excess of 100,000 inhabitants, the district attorney of any district, or the county attorney of any county where there is no district attorney, is authorized, with the consent of the county judge of the county for which such appointment is intended, to appoint not to exceed two (2) assistants in addition to his regular deputies or assistants, the number of said deputies not to exceed two for the entire district, regardless of the number of counties it may contain, which two assistants shall not be required to possess the qualifications prescribed by law for district or county attorneys, and who shall perform such duties as may be assigned to them by the county attorney of such county, or the

district attorney of such district, and who shall receive as their compensation $100.00 per month, to be paid in monthly installments out of the county funds, of the county for which such appointment is made, by warrants drawn on such county funds; and provided, further, that in counties having a population in excess of one hundred thousand inhabitants, the district attorney in the county of his residence or the county attorney where there is not a district attorney, shall be allowed by order of the commissioners court of the county where such official resides, as in the judgment of the commissioners court may be necessary, to the proper administration of the duties of such office, not to exceed, however, the sum of $50.00 per month. Such amount as may be thus necessarily incurred shall be paid by the commissioners court upon affidavit made by the district attorney or the county attorney, showing the necessity of such expense and for what same was incurred. The commissioners court may also require any other evidence as in their opinion may be necessary to show the necessity of such expenditure but they shall be the sole judge as to the necessity for such expenditure and their judgment allowing same shall be final. The maximum amount allowed for deputies or assistants for their services shall be follows, towit:

First assistant or chief deputy, a sum not to exceed a rate of twelve hundred dollars per annum; others not to exceed a rate of nine hundred dollars per annum.

Provided, however, that in counties having a population of 37,500 or over, the maximum salaries allowed for deputies or assistants for their services shall be as follows:

First assistant or chief deputy, a sum not to exceed a rate of eighteen hundred dollars per annum; heads of each department not to exceed the sum of fifteen hundred dollars per annum; others, not to exceed a rate of twelve hundred dollars per annum.

The county judge in issuing his order granting authority to appoint deputies or assistants, shall state in such order the number of deputies or assistants authorized and the amount to be paid each; and the amount of compensation allowed shall be paid out of the fees of office to which said deputies or assistants may be appointed, and shall not be included in estimating the maximum salaries of officers named in articles 3881 to 3886. (Acts 1897, S. S. p. 10, sec. 12; Acts 1913, p. 286, sec. 1, amending art. 3903, Rev. Civ. St. 1911.)

See note under art. 110a, ante.

Art. 3903, Rev. Civ. St. 1911, was amended by Acts 1913, p. 246, approved April 3, 1913, the amendment to take effect December 1, 1914. Such article was again amended at the same session of the legislature (Acts 1913, p. 286) so as to read as above, but the act was made to take effect from and after its passage.

Art. 111. Fees of district clerk.—The clerks of the district court shall hereafter receive the following fees for the following services: For recording return of any writs when any such return is required by law to be recorded, the amount of fifty cents; when the return exceeds three hundred words, for each one hundred words in excess of three hundred words, ten cents. (Acts 1897, S. S. p. 44.)

The above article, prior to its insertion in the Revised Penal Code, had been superseded by Laws 1901, ch. 21, sec. 1. The superseding act was carried into the Revised Civil Statutes of 1911 as arts. 3855, 3856 (same arts. in this compilation), which read as follows:—

Fees of clerks of the district courts.—The clerks of the district courts shall receive for the following services in civil cases the following fees, to-wit:

For copy of petition, including certificate and seal, each one hundred words	$ 20
Each writ of citation	75
Each copy of citation	50
Docketing each cause, to be charged but once	20
Every other order, judgment or decree, not otherwise provided for	75
Docketing each rule or motion, including rule for cost	15
Filing each paper	15
Entering appearance of each party to a suit, to be charged but once	15
Each continuance	20
Swearing each witness	10
Administering an oath, affirmation, or taking affidavit, certificate and seal; provided, that he shall only be allowed pay for one certificate to each witness claim for attendance in behalf of plaintiff, and one each in behalf of defendant, at any one term of the court	50
Each subpœna issued	25
Each additional name inserted in subpœna	15
Approving bond (except for cost)	1 50
Swearing and impaneling a jury	35
Receiving and recording a verdict of a jury	35
Assessing damages in each case not tried by a jury	50
Each commission to take depositions	75
Taking depositions, each one hundred words	15
Issuing copies of interrogatories with certificate and seal, per one hundred words	15
Each final judgment	1 00
Where judgment exceeds three hundred words, the additional fee for each one hundred words in excess of three hundred words shall be	15
For each order of sale	1 00
For each execution	75
For each writ of possession or restitution	75
For each injunction writ	75
Each copy of injunction writ	75
For every other writ not otherwise provided for	75
For each copy of writ not otherwise provided for	50
Recording returns of any writ, where such return is required by law to be recorded, including the return on all writs, except subpœnas	50
Each certificate to any facts contained in his office	75
Making out and transmitting the records and proceedings in a cause to any inferior court, for each one hundred words	10
Making out and transmitting mandate or judgment of the district court upon appeal from the county court	1 00
Filing a record in a cause appealed to the district court	50

Transcribing, comparing and verifying record books of his office, payable out of the county treasury, upon warrants issued upon the order of commissioners' court, each one hundred words	15
Making transcript of records and papers in any cause upon appeal, or writ of error, with certificate and seal, each one hundred words	15
Making copy of all records of judgments or papers on file in his office, for any party applying for same, with certificate and seal, each one hundred words	15
Taxing the bill of costs in any case with copy of same	25
Filing and recording the declaration of intention to be a citizen of the United States	2 00
Issuing certificate of naturalization	2 50

(Acts 1901, p. 24.)

Clerk shall compare and certify copies, etc.; fees.—Whenever, in any suit, a certified copy of any petition or any other instrument is necessary in the district court, it shall be lawful for the plaintiff or defendant to prepare such true and correct copy thereof, and submit the same to the clerk of the district court, whose duty it shall be to compare the same with the original instrument, and, if found to be correct, he shall attach his certificate of true copy. For such services he shall receive fifty cents for each certificate and seal, and, in addition thereto, the sum of ten cents per page, three hundred words to the page, for each page of each copy. But nothing in this or the preceding article shall be construed as repealing the maximum fixed by existing law upon the total compensation allowed to district clerks. (Acts 1901, p. 24; Acts 1897, S. S. p. 44; Acts 1897, S. S. p. 12; Acts 1895, p. 170.)

Art. 112. Fees of county clerk.—The clerks of the county court shall hereafter receive for the following services the following fees: For recording return of any writ, when any such return is required by law to be recorded, fifty cents; where the return exceeds three hundred words, for each one hundred words in excess of three hundred words, ten cents. (Acts 1897, 1st S. S. p. 43.)

Art. 113. Penalty for failing to charge up fees, to make report, or to receive back any part allowed deputy.—Any officer named in the three preceding articles, and also the sheriff, who shall fail to charge up the fees or costs that may be due under existing laws, or who shall remit any fee that may be due under the laws, or who shall fail to make the report required by this law, or who shall pay his deputy or assistant a less sum than the amount specified in his sworn statement, or receive back any part of such compensation allowed such deputy or assistant, as a rebate, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not less than twenty-five dollars nor more than five hundred dollars. Each act forbidden in this article shall constitute a separate offense. (Acts 1897, 1st S. S. p. 5, sec. 14.)

Art. 113a. Compensation for ex-officio services, when may be allowed by commissioners' court; proviso.—The commissioners' court is hereby debarred from allowing compensation for ex-officio services to county officials when the compensation and excess fees which they are allowed to retain shall reach the maximum provided for in this chapter. In cases where the compensation and excess fees which the officers are allowed to retain shall not reach the maximum provided for in this chapter, the commissioners' court shall allow compensation for ex-officio services when, in their judgment, such compensation is necessary; provided, such compensation for ex-officio services allowed shall not increase the compensation of the official beyond the maximum amount of compensation and excess fees allowed to be retained by him under this chapter. (Acts 1897, S. S. p. 10, sec. 15; Acts 1913, p. 246, sec. 1, amending art. 3893, Rev. Civ. St. 1911.)

See note under art. 110a, ante.

Art. 113b. Officials named in article 110 to keep accounts; duty of grand jury and district judge as to.—It shall be the duty of those officials named in articles 3881 to 3886 [Rev. Civ. St. 1911; art. 110 of the Penal Code], and also the sheriffs, to keep a correct statement of the sums coming into their hands as fees and commissions, in a book to be provided by them for that purpose, in which the officer at the time when any fees or moneys shall come into his hands shall enter the same; and it shall be the duty of the grand jury (and the district judge shall so charge the grand jury) to examine these accounts at the session of the district court next succeeding the first day of December of each year, and make a report on same to the district court at the conclusion of the session of the grand jury. (Acts 1897, S. S. sec. 16; Rev. Civ. St. 1911, art. 3894.)

See note under art. 110a, ante.

Art. 113c. Monthly report; statement of expenses; audit, etc.—At the close of each month of his tenure of such office each officer whose fees are affected by the provisions of this Act shall make as a part of the report now required by law, an itemized and sworn statement of all the actual and necessary expenses incurred by him in the conduct of his said office, such as stationery, stamps, telephone, traveling expenses and other necessary expense. If such expense be incurred in connection with any particular case, such statement shall name such case. Such expense account shall be subject to the audit of the county auditor, and if it appear that any item of such expense was not incurred by such officer, or that such item was not necessary thereto, such item may be by such auditor or court rejected. In which case the correctness of such item may be adjudicated in any court of competent jurisdiction. The amount of such expense, referred to in this paragraph, shall not be taken to include the salaries of assistants or deputies which are elsewhere herein provided for. The amount of such expense shall be deducted by the officer in making each such report, from the amount, if any, due by him to the county under the provisions of this Act. (Acts 1897, S. S. p. 11, sec. 20; Acts 1913, p. 246, sec. 1, amending art. 3897, Rev. Civ. St. 1911.)

See note under art. 110a, ante.

Art. 113d. Collector and assessor to file with comptroller copies of sworn statements.—The tax collector and tax assessor, at the time of their settlement of accounts with the comptroller, shall file with him a copy of the sworn statement required under section 11 [art. 110f, ante] of this act. (Acts 1897, S. S. p. 11, sec. 18.)

See note under art. 110a, ante.

Art. 114. Clerk issuing attachment or subpœna without authority.—Any district clerk who shall issue any attachment or subpœna for any witness, except upon an order of court or upon the written application, signed and sworn to by the defendant or state's counsel, stating that such witness is believed to be a material witness, shall be deemed guilty of a misdemeanor, and, upon conviction, fined in any sum not less than twenty-five dollars and not more than five hundred dollars. (Acts 1897, 1st S. S. p. 5.)

Art. 115. Amounts allowed officers may be retained; state or county not responsilbe for fees or compensation, when; officers to make sworn statements of fees collected, inform party for whom collected and pay over same.—The amounts allowed to each officer mentioned in articles 110, 111 and 112 may be retained out of the fees collected by him under existing laws; but in no case shall the state or the county be responsible for the payment of any sum when the fees collected by any officer are less than the maximum compensation allowed by this law, or be responsible for the pay of any deputy or assistant. Each officer mentioned in article 110, and also the sheriff, shall, at the close of each fiscal year, make to the district court of the county in which he resides a sworn statement, showing the amount of fees collected by him during the fiscal year and the amount of fees charged and not collected, and by whom due, and the number of deputies and assistants employed by him during the year, and the amount paid or to be paid each; [and all fees collected by officers named in article 110 during the fiscal year in excess of the maximum amount allowed and of the one-fourth of the excess of the maximum amount allowed for their services, and for the services of their deputies or assistants hereinafter provided for, shall be paid to the county treasurer of the county where the excess accrued]; provided, that any officer in article 110 who does not collect the maximum amount of his fees for any fiscal year and who reports delinquent fees for that year, shall be entitled to retain, when collected, such part of such delinquent fees as is sufficient to complete the maximum compensation for the year in which delinquent fees were charged, and also to retain the one-fourth of the excess belonging to him, and the remainder of the delinquent fees for that fiscal year shall be paid as hereinbefore provided for when collected; provided, that in all counties in this state having more than one judicial district, the district clerks thereof shall in no case be allowed fees in excess of the maximum fees allowed clerks in counties having only one district court. (Acts 1907, p. 50.)

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

The words in brackets were carried into Rev. Civ. St. 1911, as art. 3889, which article was amended by Acts 1913, p. 246, so as to read as set forth post, in art. 115a.

Art. 115a. Fees how disposed of; excess fees, etc.—Each officer named in this chapter [Art. 110, ante] shall first, out of the fees of his office, pay or be paid, the amount allowed him, under the provisions of this chapter, together with the salaries of his assistants or deputies. If the fees of such office collected in any year be more than the amount needed to pay the amount allowed such officer and his assistants and deputies, same shall be deemed excess fees, and of such excess fees such officer shall retain one-fourth; and in counties having between 25,000 and 38,000 inhabitants until such one-fourth amounts to the sum of twelve hundred and fifty dollars; and counties containing a city of more than 25,000 population, or in which county the population exceeds 38,000, until such one-fourth amounts to the sum of fifteen hundred dollars, such population to be based on the United States census last preceding any given year. All amounts received by such officer as fees of his office beside those which he is allowed to retain by the provisions of this chapter, shall be paid into the county treasury of such county. (Acts 1897, S. S. p. 9, sec. 11; Acts 1907, p. 50; Acts 1913, p. 246, sec. 1, amending art. 3889, Rev. Civ. St. 1911.)

The subject-matter of art. 3889, Rev. St. 1911, of which the above provision is an amendment, was carried into the revised Penal Code as a part of art. 115, ante. This part is enclosed in brackets. It is necessarily superseded by this article.

Art. 115b. Certain officers not required to report fees or keep statement; proviso as to district attorney.—The officers named in articles 3881 to 3886 [Rev. Civ. St. 1911] in those counties having a population of twenty-five thousand inhabitants or less shall not be required to make a report of fees as provided in article 3895, or to keep the statement provided for in article 3894; the population of the county to be determined by the last United States census; provided, that all district attorneys shall be required to make the reports and keep the statements required in this chapter. (Acts 1913, p. 246, sec. 1, amending art. 3898, Rev. Civ. St. 1911.)

Laws 1913, ch. 121, p. 246, amends art. 3898, Rev. St. 1911, which was made up of section 17 of Acts 1897, S. S. p. 11. This provision of the act of 1897 was not carried into the revised Penal Code, and it is now, in its amended form, inserted in this compilation as set forth above. The provisions of arts. 3881-3883, 3887, Civ. St., are included in this compilation as art. 110, ante.

Art. 115c. Fiscal year defined, and regulation of reports.—A fiscal year, within the meaning of this act, shall begin on December 1 of each year; and each officer named in section 10 of this act [art. 110, ante], and also the sheriff, shall file the reports and make the settlement required in this act on December 1 of each year. Whenever such officer serves for a fractional part of a fiscal year, he shall nevertheless file his report and make a settlement for such part of a year

as he serves, and shall be entitled to such proportional part of the maximum allowed as the time of his services bears to the entire year. However, an incoming officer elected at the general election, who qualifies prior to December 1 next following, shall not be required to file any report or make any settlement before December 1 of the following year; but his report and settlement shall embrace the entire period dated from his qualification. This act shall take effect and be in force from and after December 1, 1897. (Acts 1897, S. S. p. 11, sec. 19.)

See note under art. 110a, ante.

Art. 115d. County and precinct officers to inform persons for whom money is collected; payment of same.—It shall be the duty of every county and precinct officer in the state of Texas who shall, in his official capacity, collect or receive any money or fees belonging to any witness, officer or other person, to inform such person of the collection of such money or fees, and to promptly pay the same over on demand to the person entitled thereto, taking receipt therefor, which shall be entered or noted in the fee book of such officer. (Acts 1907, p. 120.)

Art. 116. Officers to make quarterly statements of moneys in their hands uncalled for.—On or before the second Mondays in February, May, August and November of each year, said officers shall make report in writing and under oath to the commissioners' court of their respective counties of all such moneys and fees so collected by them during the quarter last preceding and remaining in their hands uncalled for, giving the number and the style of each cause in which said moneys or fees accrued and the name of the person entitled thereto, which report shall be filed with the county clerk of said county, and the same shall be by him kept and preserved for future reference and examination. (Acts 1907, p. 120.)

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

Art. 118. Penalty for violating three preceding articles.—Any person violating any of the provisions of the three preceding articles shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars. (Id. p. 120, sec. 4.)

CHAPTER FOUR

OF ILLEGAL CONTRACTS AFFECTING THE STATE

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

Art. 119a. Regents, etc., of eleemosynary institutions not to make purchases unless expressly authorized by legislature.—That it shall hereafter be unlawful for any regent, or regents, director or directors, officer or officers, member or members, of any educational or eleemosynary institution of the State of Texas, to contract or provide for the erection or repair of any building, or other improvement or the purchase of equipment or supplies of any kind whatsoever for any such institution, not authorized by specific legislative enactment, or by written direction of the Governor of this State acting under and consistent with the authority of existing laws, or to contract or create any indebtedness or deficiency in the name of or against this State, not specifically authorized by legislative enactment, or to divert any part of any fund provided by law to any other fund or purpose than that specifically named and designated in the legislative enactment creating such fund, or provided for in any appropriation bill. (Acts 1913, 1st C. S. ch. 22, sec. 1.)

Art. 119b. Same; penalty.—That any regent, director, officer or member of any governing board of any educational or eleemosynary institution, who shall violate this act shall be at once thereafter removed from his position with such institution, and shall not thereafter be eligible to hold said position, and in addition thereto shall be guilty of a misdemeanor, and shall be punished by imprisonment in the county jail for a period of not less than ten days, nor more than six months, the venue of such case to be in the county in which may be located the institution affected by such acts of such offender. (Id. sec. 3.)

Art. 120. State purchasing agent shall not be interested in any contract with state, or accept or receive from any person to whom contract has been awarded, rebate, gift, money, etc.; penalty for.—The state purchasing *agent shall not be interested in, or in any manner connected with, any contract or bid for furnishing supplies or articles of any kind to any of said institutions or to any other department or institution of the State, or with any person, firm or corporation who is interested in or in any manner connected with any kind*

of contract with the state or any of its institutions and departments, nor shall he collect or be paid his salary, or any part thereof, while he is in any manner or degree indebted to the state or in arrears in his accounts and reports as such agent. Neither shall said agent accept or receive from any person, firm or corporation to whom any contract may be awarded, directly or indirectly, by rebate, gift or otherwise, any money or other thing of value whatever, nor shall he receive any promise, obligation or contract for future reward or compensation from any such party; provided, that should said purchasing agent violate any of the provisions of this law, or should he receive any rebate, drawback, profit or benefit from any contract, he shall be deemed guilty of a felony, and, upon conviction, shall be punished by confinement in the penitentiary not less than two nor more than five years. (Acts 1899, p. 138; Acts 1915, ch. 126, sec. 1.)

A part of section 1 of Acts 1899, p. 138, was carried into the Revised Civil Statutes of 1911, as art. 7325. That article was amended by Acts 1915, ch. 126, so as to read as indicated above in italics. This amendment therefore, impliedly repealed the corresponding part of the above article of the Penal Code.

Art. 121. Storekeepers and accountants, appointment of; interest in contracts for supplies; reports; excess of supplies; providing penalty.—*There shall be appointed by the superintendents, with the advice and consent of the board of managers of said institution, storekeepers and accountants, one for each of said institutions, who shall hold their office for two years from date of qualification, or until their successors shall have qualified, unless sooner removed by the board of managers, at the suggestion of the superintendent or upon complaint of the Purchasing Agent, for inefficiency, incompetency, neglect of duty or other adequate cause affecting their faithful and satisfactory performance of duty; provided, that where the magnitude of an institution is not sufficient to employ a storekeeper and accountant, that the superintendent shall perform that service. Said storekeeper or accountant shall receive a compensation of not to exceed the sum of nine hundred ($900.00) dollars per annum, to be charged and paid as a part of the current expenses of said institution; and they shall not be entitled to charge, collect or receive any other compensation or commutation or commission, unless it be their own individual board and lodging, when they are required to reside within the institutions to which they are attached. Each of said storekeepers or accountants shall, before entering upon the performance of his duties, make and file with the Comptroller of Public Accounts a bond in the sum of ten thousand ($10,000.00) dollars, payable to the State of Texas, to be approved by the Governor and filed with the Comptroller, which bond shall be conditioned for the full, faithful, accurate and honest performance of his duties; and it shall not be lawful for said storekeepers or accountants to sell or to in any way be concerned in the sale of any merchandise, supplies or other articles to any of the institutions herein named, or to have any interest in any bid or contract therewith, or with any other institution or department of the state government. The office or position of steward, quartermaster or other similar position heretofore existing in any and all eleemosynary institutions are abolished, and said storekeepers or accountants shall hereafter perform all of the duties, except as may be inconsistent with the provisions of this chapter heretofore imposed upon such abolished officers or employés, as well as such other duties as may be required of them by the management of said institutions. They shall also keep the Purchasing Agent constantly advised as to the amount and character of supplies on hand and the amount and character required in order to keep the institutions constantly provided for, and they shall make report on or before the tenth day of each month to the State Purchasing Agent, showing the total amount of appropriation, the total amount expended and the balance unexpended on the first of each month. They shall also furnish any other information respecting such matters as may be desired by the said Purchasing Agent. If at any time any institution accumulates an amount of supplies on hand in excess of its needs, and another institution is in need of any such supplies, the Purchasing Agent shall present such facts to a board composed of the Governor, Comptroller and Purchasing Agent, with the recommendation that such institution in need of such supplies shall be furnished from such excess of supplies, and if approved by the board, shall forthwith transfer any of such from the institution having such excess to such institution in need of such supplies, and the debit and credit shall be made on the basis that such supplies could be purchased in the open market at the time of the transfer, if such is less than the cost under the general contract for such supplies for the fiscal year, otherwise the debit and credit shall be made on the basis of the general contract price for that year, and all controversies as to such shall be determined by a board composed of the Governor, Comptroller and Purchasing Agent; provided, that any educational institution may dispense with the position of storekeeper, provided for in this Act, and select or appoint some person at such institution whose duty it shall be to receive such supplies purchased, and such person shall make the reports to the Purchasing Agent, as is required of the storekeeper in this article.* Any person violating any of the provisions of this article shall be deemed guilty of a felony, and, upon conviction thereof, be punished by confinement in the state penitentiary not less than two nor more than five years. (Acts 1899, p. 138, sec. 3; Acts 1915, ch. 126, sec. 1.)

A part of section 3 of Acts 1899, p. 138, was carried into the Revised Civil Statutes of 1911 as art. 7327. That article was amended by Acts 1915, ch. 126, so as to read as indicated above in italics. This amendment, therefore, impliedly repealed the corresponding part of the above article of the Penal Code.

Art. 122. Such officers and employés shall not use or receive provisions, clothing, merchandise or other articles furnished by state; penalty for so doing.—No officer or employé created by this law shall ever use or receive for their own use any provisions, clothing, merchandise, or other articles furnished by the state, but that the

salaries fixed by law shall be their only compensation; and any person who violates this provision shall, upon conviction, be punished by confinement in the penitentiary for a term not less than two nor more than ten years. (Acts 1899, p. 138.)

Art. 122a. Institutions included; proviso.—The institutions herein contemplated are those for the care of the insane, deaf and dumb, the blind, the orphans, the Confederate Home and all other State institutions, educational or eleemosynary, now established or that may hereafter be established anywhere in Texas, excepting the penitentiary system and its management, and also excepting the Senate and House of Representatives and all departments in the State Capitol, including General Land Office, and as to such Senate, House of Representatives, departments and General Land Office the present law or custom now in force shall continue; provided, that all contracts designated in Article 16, Section 21, of the Constitution of the State shall be approved by a board consisting of the Governor, Secretary of State and Comptroller. (Acts 1915, ch. 126, sec. 1.)

The above article was created by way of amendment of art. 7337, Rev. Civ. St. 1911. It has application to the subject-matter of this chapter of the Penal Code, and it is inserted in this compilation for convenience and to properly supplement the penal provisions.

Art. 122b. Supervisor, etc., of conservation districts interested in contracts; punishment.—No supervisor, engineer or any employee of any district created under this Act shall be interested directly or indirectly, either for themselves or as agents for anyone else, in any contract for the purchase of any material required, or for the construction of any work by said district, and if any such person shall directly or indirectly become interested in any such purchase or 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 ($1000.00) 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, and shall be removed from office, and disqualified for further service. (Acts 1919, 2d C. S., ch. 48, sec. 85.)

For the remainder of this act, see ante, Civ. St. arts. 5107—180 to 5107—266.

CHAPTER FIVE

COLLECTION OF TAXES AND OTHER PUBLIC MONEY

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

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

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

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

Taylor v. S., 50 S. W. 343.

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

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

Art. 129. (111) Obstruction of tax collections.—If any person shall, by force or threats of force, prevent, or attempt to prevent, the collection of taxes or other money due the state by an officer authorized to enforce such collection, he shall be punished by a fine not less than one hundred nor more than five hundred dollars, and by imprisonment in the county jail not less than three months nor more than one year. When the

means used to prevent the collection are such as to amount to a riot, or unlawful assembly, the punishment shall be that which is prescribed in article 452 of this Code. (O. C. 241.)

Art. 130. (112) Pursuing taxable occupation without license.—Any person who shall pursue or follow any occupation, calling or profession, or do any act taxed by law, without first obtaining a license therefor, shall be fined in any sum not less than the amount of the taxes due, and not more than double that sum. (Acts 1875, p. 94.)

See Barry v. S., 45 S. W. 571; Ex parte Overstreet, 46 S. W. 1134; Saulsbury v. S., 63 S. W. 568; Kennedy v. S., 127 S. W. 204; South v. S., 162 S. W. 510; Schapiro v. S., 169 S. W. 683; Ex parte Jennings, 172 S. W. 1143; Collins v. S., 182 S. W. 327; Le Gois v. S., 190 S. W. 724.

Art. 131. Plumber conducting business without license; penalty for.—Any person, whether as master plumber, employing, or journeyman plumber, engaged in, working at, or conducting the business of plumbing without license, as provided by law, shall be guilty of a misdemeanor, and, on conviction thereof, shall pay a fine of not less than twenty nor more than two hundred and fifty dollars. (Acts 1897, p. 236.)

Art. 132. (113) Penalty not exclusive.—The preceding articles shall not be construed so as to affect any civil remedy to enforce the collection of taxes. (O. C. 111, amended 1881, p. 34.)

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

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

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

1. A list of the names of all the shareholders of the stock of such national bank.

2. The number and amount of the shares owned and held by each shareholder of stock in such national bank.

3. The place of residence of each stockholder in such bank, if known. (If not known, that fact shall be so stated.)

4. The amount or amounts of notes issued by such national bank and circulating as money, or that is intended to circulate as money (stating such amounts in dollars).

5. The amount of money on hand or in transit, or in the hands of other banks, bankers, brokers or others, subject to draft, whether the same be in or out of the state.

6. The amount of indebtedness of such bank and how such indebtedness is evidenced.

7. The amount of paper evidencing indebtedness owned by such bank, which was acquired by such bank, either at par or at a discount.

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

Art. 136. Money and notes defined.—By the term money and notes, mentioned in the preceding article, is meant all money owned and on hand by such bank, whether on deposit or otherwise. (Id. p. 157, sec. 2.)

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

Art. 138. Penalty for such pretended sale.—The president, cashier or secretary of any banking or other corporation, or any person that may be a party or privy to such fraudulent sale, exchange or transfer, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than ten dollars nor more than one hundred dollars, and in addition thereto shall be confined in the county jail not less than ten days nor more than thirty days. (Acts 1891, p. 39.)

Art. 139. False affidavit.—All assessors of taxes in this state shall require all taxpayers, when assessed by them, to make oath as to any such sale, exchange or transfer made by them, on the first day of January, or within sixty days before said first day of January of any year for which any such assessment is made, as to the good faith and bona fide business transaction of any such sale, exchange or transfer, as above set forth, if any such should have been made by them; and if it should be disclosed that any such pretended sale, exchange or transfer has been made for the purpose of evading taxation,

then, and in that event, the assessor shall list and render against such person the coin, bank notes or other notes or bonds subject to taxation under the laws of this state; provided, that if any person shall make a false affidavit as to any of the foregoing facts, he shall be deemed guilty of perjury and be punished as is now provided by law. (Acts 1891, p. 40.)

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

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

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

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

Art. 142. Penalty.—Any person violating the provisions of this article may be arrested without warrant by any peace officer and carried before the nearest justice of the peace for trial; and any peace officer who shall fail or refuse to arrest such person on his own knowledge, or upon information from some credible person, shall be punished by fine not exceeding five hundred dollars. (Acts 1887, p. 132.)

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

Art. 144. (119a) Tax collector failing to perform certain duties.—If at the end of any month the collector of taxes shall fail to make to the comptroller of public accounts his itemized monthly report of taxes collected, or if he shall fail at the end of any month to make to the commissioners' court his itemized monthly report of all tax collections for the county, or if he shall fail at the end of any month, or within three days thereof, to promptly remit to the state treasurer the amount due by him to the state, or pay over to the county treasurer the amount due by him to the county, or if he shall fail to make out and post, between April 1 and 15 of each year, a list of delinquent or insolvent taxpayers, he shall be deemed guilty of a misdemeanor, and, upon conviction, fined in a sum not less than three hundred nor more than one thousand dollars, and each failure shall constitute a separate offense. (Acts 1893, p. 91, sec. 6.)

Art. 145. (119b) Tax collector issuing unauthorized tax receipt.—Any collector of taxes in this state, who shall issue an occupation tax receipt upon any blank paper, or blank of any kind whatever other than the blank occupation tax receipt furnished to him as required by law, shall be deemed guilty of a misdemeanor, and each receipt so unlawfully issued shall constitute a separate offense, and, upon conviction in any court of competent jurisdiction, shall be punished by fine of not less than one hundred dollars nor more than five hundred dollars. (Id. sec. 7.)

Art. 146. (119c) Clerk failing to make certain certificates.—If the county clerk shall fail to examine the monthly reports of the collector of taxes, and within two days after the presentation to him of said reports by the collector, to certify to their correctness as regards names, dates and amounts, or shall fail to file the report intended for the commissioners' court, together with the tax receipt stubs in his office for the next regular meeting of the commissioners' court, he shall be deemed guilty of a misdemeanor, and, upon conviction, fined in a sum not less than fifty nor more than two hundred dollars, and each failure shall constitute a separate offense. (Id. p. 92, sec. 7.)

Art. 147. Corporations liable for occupation tax failing to make report.—If the comptroller has reason to believe, or does believe, that any individual, company, corporation, association, receiver or receivers, subject to the provisions of the law providing

for the levy of occupation taxes, has made a false return, or has failed or omitted to make a full return of gross receipts, or other statement of business done, required by any of the provisions of said law, he shall report the same in writing to the governor, and it shall be the duty of the governor to immediately require the revenue agent of the state of Texas to examine any books, papers, documents, or other records or evidence showing or tending to show such unlawful act or omission. Said revenue agent shall check the report made with such books, papers, documents or other records or evidence, and make his report to the comptroller; and, if it appears from said report that any false or incorrect return has been made, or that any individual, or the president, treasurer or superintendent of any company, corporation or association, or any member of any firm required by this act to make reports, has failed or omitted to make a full return, as required by law, then the comptroller shall notify such individual, or the president, treasurer or superintendent of any company, corporation or association, or receiver or receivers of any company, corporation or association, or any member of any firm, to make forthwith an additional or supplemental report; and if any such individual or the president, treasurer or superintendent of any company, corporation or association, or any member of a firm, or any receiver or receivers of any company, corporation or association making said original report, shall fail or refuse to make said additional or supplemental report, he shall be guilty of a misdemeanor, and, on conviction, shall be fined in any sum not less than two hundred nor more than five hundred dollars; and venue of such prosecution is hereby fixed in Travis county, Texas. (Acts 1907, p. 500.)

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

Art. 148a. Persons or corporations liable to gross receipts tax engaging in business without obtaining permit.—Any person, company, firm, partnership, corporation, unincorporated company or association, transacting business in this State upon which a gross receipts tax is required by law to be paid, without having first obtained a permit to do so, or transacting such business after its permit so to do has been suspended, as provided in this Act, shall be liable to a penalty of not less than $50.00 nor more than $500.00 daily for each day's business which is transacted in violation of this Act. And in addition, every person, whether as an individual or the member of a company, firm partnership, or unincorporated company or association, or as an officer, agent, director or employé of a corporation, who wilfully and knowingly violates or aids another, whether such other person be a corporation or a natural person, in the violation of any of the terms of this Act shall be guilty of a misdemeanor, and upon conviction shall be punished by fine of not less than $50.00 nor more than $250.00 for each day or part of a day that such person is engaged in violating this Act; and each day shall be a separate offense. It shall be the duty of the Attorney General to bring suits for all penalties authorized by this Act, and he may bring such suits in any court having venue and jurisdiction of the subject matter and of the person of the offender; and the courts of Travis County shall have concurrent jurisdiction over all violations of this Act, and for such purpose jurisdiction and venue is conferred upon all the courts of Travis County having jurisdiction under the Constitution over the subject matter of this Act. (Acts 1918, 4th C. S., ch. 84, sec. 4.)

For remainder of this act see ante, Civ. St. arts. 7392a-7392d.

Art. 149. Charter or right to do business of corporations forfeited, right of officers to do business in corporate name ceases.—In any and all cases in which the charter or right to do business of any private domestic corporation, heretofore or hereafter chartered under the laws of this state, or the permit of any foreign corporation or its right to do business within this state, shall have been, or shall hereafter be, forfeited, it shall be unlawful for any person or persons who were or shall be stockholders, or officers of such corporation at the time of such forfeiture to do business within this state in or under the corporate name of such corporation or to use signs or advertisements of such corporation or similar to the signs or advertisements which were used by such corporation before such forfeiture; and each and every person who may violate any of the provisions of this article shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than one hundred dollars and not more than one thousand dollars; provided, the inhibition and penalties prescribed by this article shall not apply where the right of such corporation to do business within this state has been revived in the manner provided by law and is at the time in good standing. (Acts 1907, p. 488.)

Art. 149a. [Omitted.]

This article, Acts 1913, c. 19, sec. 1, imposing a tax on wholesale dealers in or distributors of liquors, is omitted from this compilation as having been rendered inoperative by the amendment of art. 16, § 20, of the State Constitution, and by Acts 1919, 2d C. S., ch. 28, post, arts. 588¼-588¼tt.

Art. 149b. [Omitted.]

This article, imposing a tax on the sale of ethyl alcohol by wholesale druggists, is omitted from this compilation, as having been rendered inoperative by the amendment of art. 16, § 20, of the State Constitution, and by Acts 1919, 2d C. S., ch. 78, post, arts. 588¼-588¼tt.

CHAPTER SIX

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

Arts. 150-156. [Omitted.]

These articles, imposing an occupation tax on the solicitation of orders in local option districts, and on cold storage and C. O. D. shipment offices, are omitted from this compilation, as having been rendered inoperative by the amendment of art. 16, § 20, of the State Constitution, and by Acts 1919, 2d C. S., ch. 78, post, arts. 588¼-588¼tt.

CHAPTER SEVEN

OCCUPATION TAX ON DEALERS IN NON-INTOXICATING MALT LIQUORS

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

This article held repealed by art. 496, post. See Claunch v. S., 203 S. W. 891.

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

This article held repealed by art. 496, post. See Claunch v. S., 203 S. W. 891.

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

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

This article held repealed by art. 496, post. See Claunch v. S., 203 S. W. 891.

CHAPTER EIGHT

DEALING IN FRAUDULENT LAND CERTIFICATES

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

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

Art. 163. (122) Handling land office files without authority.—If any person shall handle or examine any of the papers, files or records in the general land office, without the consent of the commissioner or chief clerk, or without the presence and superintendence of a clerk in said office, he shall be

fined not less than one dollar nor more than five hundred dollars. (Acts 1873, p. 180; O. C. 244.)

CHAPTER NINE

DEALING IN PUBLIC LANDS BY OFFICERS

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

Keen v. Featherston, 69 S. W. 983; De Shazo v. Eubank, 191 S. W. 369.

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

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

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

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

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

Acts 1901, p. 32, at the time it was carried into the revised Penal Code as above, had been superseded by Acts 1903, ch. 144. The superseding act is as follows:

1. The board of regents of the University of Texas are authorized and directed as soon as practicable to have made a mineral survey of all the lands belonging to the public schools, university, asylums or to the State and other mineral lands within the State.

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

3. Said board shall publish at least once annually for free distribution among the people of the State all practical information collected in the prosecution of said survey as the same progresses; but the information obtained by a survey of the public school, university, asylum or State lands shall not be communicated by said board or by the person or persons making said survey, to any person whomsoever until said information is published for the benefit of the general public; and anyone violating this provision shall upon conviction, be fined in any sum not exceeding one thousand dollars, or by imprisonment not to exceed two years in jail. But it is expressly provided, that said information shall be communicated to the Commissioner of the General Land office for his guidance in the disposition of mineral bearing lands. (Acts 1903, p. 234, ch. 144, secs. 1–3.)

CHAPTER TEN

PERSONAL PROPERTY OF THE STATE

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

or under his control, he shall state the selling price thereof, and the disposition of the proceeds. (Acts 1899, p. 307.)

Art. 169. Sworn copy of such inventory to be forwarded to the secretary of state, duplicate of same forwarded to comptroller.—A copy of said list and inventory, duly sworn to, shall be, by such person charged with keeping said property, or who has the same under his control, management, or who is responsible for the same, transmitted by him by registered letter to the secretary of state at Austin, Texas, whose duty it shall be to enter such list and inventory on a book to be kept by him for the purpose under its appropriate heading; and said secretary of state is hereby authorized to purchase such book or books as shall be necessary to record all such lists and inventories so made to him, and he shall be responsible for the correct entry of all said articles in such book or books, and shall be responsible for the safe keeping of the original sworn report from each of the persons named in this act, including the governor of this state, comptroller of public accounts, treasurer, attorney general, adjutant general, commissioner of insurance, statistics and history, superintendent of public buildings and grounds, the commissioner of the general land office, chief justice of the supreme court, court of criminal appeals, and the several courts of civil appeals, and the clerks thereof, the managers of each and every asylum in the state of Texas, superintendents and assistant superintendents of the penitentiaries and reformatories, superintendents and managers of all state farms, superintendents and managers of the university and the several branches thereof, normal schools, all the officers and employés of either branch of the legislature, having personal property belonging to the state in their possession, and each and every other person holding any personal property in trust for the state of Texas, or having the same under his control, or in his possession, or for which he is in any wise responsible, all of whom are included in this act and subject to its provisions. A duplicate of said list and inventory, so sent to the secretary of state, shall be forwarded to the comptroller of public accounts, who shall carefully preserve the same in his office; and it is made the duty of the person, so making out the list, to retain in his possession, for his successor in office, a true copy thereof, and whose duty it shall be to deliver same to such successor within three days after his qualification and assuming charge of such position, office or agency. (Acts 1899, p. 307.)

Art. 170. Report shall be made at beginning of term of office.—Upon qualification at the beginning of the terms of office of any of the persons named herein, after each succeeding general election, and within thirty days after taking charge of any personal property as herein named, it shall likewise be his duty to make said report as herein required, and to forward same to the officers herein named, who shall receive them, and who shall continue to keep the registration of said reports, lists and inventories, as herein required of the secretary of state under the foregoing section hereof, and who shall, when said lists are received, make comparisons with former reports and note all articles of property not included in former lists, or which were included in former lists, but are not in the list last filed, and shall designate all such articles which are either dropped from or added to those of former lists and inventories. (Acts 1899, p. 307.)

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

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

Art. 173. Failure to make such inventory or perform duties required, penalty therefor.—Should any of the officers, persons or employés named herein fail to make out said list and inventory, or fail to perform any of the duties herein required of him, he shall become immediately responsible to the state of Texas for the value of any and all articles of furniture, implements, goods, wares, merchandise, live stock and all other personal property which have come into his hands, or for which he may be responsible, and be subject to suit in the name of the state of Texas for the value of the same; and should he fail to do or perform any of the acts and things required of him by this law, he shall be deemed guilty of

a misdemeanor, and, upon conviction, shall be fined in a sum not less than one hundred nor more than five hundred dollars; and for each thirty days that he fails to comply with the provisions of this law in any respect shall be considered a separate offense. The jurisdiction for all suits or prosecutions under this act shall be either in the county court of Travis county, or in the county where such officer shall reside at the time of the institution of said suit or prosecution, or where such property may be situated. (Id., p. 307.)

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

CHAPTER ELEVEN

THE STATE AND THE UNITED STATES FLAG

Art. 173b. Use of state flag for advertising purposes.—On and after July 1st, 1914, it shall be unlawful for any person to use any imitation, label, trade-mark, design, device, imprint or form of the flag of the State of Texas for the purpose of advertising or giving publicity to any goods, wares or merchandise, or any commercial undertaking, or for any trade or commercial purpose; and any person whether in his individual capacity or as any officer, agent or receiver of any corporation, who shall violate this section of this act, shall upon conviction, be punished by a fine of not less than fifty dollars and not more than one hundred dollars, and each day this section is violated shall be a separate offense. (Acts 1913, 1st C. S., ch. 19, sec. 1.)

Art. 173c. Same; proviso.—Provided that none of the provisions of this Act, shall apply to any fraternal or patriotic organizations using the Texas flag for an emblem. (Id. sec. 1a.)

Art. 173d. Same; goods bearing imprint of flag.—On and after July 1st, 1914, it shall be unlawful for any person to offer or expose for sale any article or commodity of commerce bearing the imitation, design, imprint or form of the flag of the State of Texas, and any person whether in his individual capacity or as an officer, agent or receiver of any corporation who shall violate this section of this Act, shall upon conviction, be punished by a fine of not less than twenty-five dollars nor more than fifty dollars, and each day this section is violated shall be a separate offense. (Id. sec. 2.)

Art. 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. (Acts 1917, ch. 123, sec. 1; Acts 1917, 3d C. S., ch. 22, sec. 1.)

TITLE 4A

OF OFFENSES AGAINST THE UNITED STATES

Art. 173½. Disloyal or abusive language.—If any person shall, at any time or place within this State, during the time the United States of America is at war with any other nation, use any language in the presence and hearing of another person, of and concerning the United States of America, the entry, or the continuance, of the United States of America in the war or of and concerning the army, navy, or marine corps of the United States of America, or of and concerning any flag, standard, color, or ensign of the United States of America, or any imitation thereof, or the uniform of any officer of the army of the United States of America, which language is disloyal to the United States of America, or abusive in character, and calculated to bring into disrepute the United States of America, the entry, or continuance, of the United States of America in the war, the army, navy, marine corps of the United States of America, or any flag, standard, color, or ensign of the United States of America, or any imitation thereof, or the flag, color, standard, or ensign, or the uniform of any officer of the army of the United States of America, or is of such nature as to be reasonably calculated to provoke a breach of the peace, if said in the presence and hearing of a citizen of the United States of America, shall be deemed guilty of a felony, and shall be punished by confinement in the State penitentiary for any period of time not less than two years, nor more than twenty-five years. (Acts 1918, 4th C. S., ch. 8, sec. 1.)

Art. 173½a. Same subject.—Any person who shall, at any time and place within this State, during the time the United States is at war with any other nation, or nations, commit to writing or printing, or both writing and printing, by letters, words, signs, figures, or any other manner, and in any language, anything of and concerning the United States, the entry or continuance of the United States in the war, or of and concerning the army, navy, or marine corps of the United States, any flag, standard, color, or ensign of the United States, or any imitation thereof, or uniform of any of its officers, which is abusive in character, or disloyal to the United States, and reasonably calculated to bring into disrepute the United States, the entry, or continuance of the United States in the war, the army, navy, or marine corps of the United States, any flag, standard, color, or ensign of the United States, or that of any of its officers, and reasonably calculated to provoke a breach of peace if written to or in the presence of a citizen of the United States, or if said in the presence and hearing of any citizen of the United States shall be deemed guilty of a felony, and shall be punished by confinement in the State penitentiary for any period of time not less than two years, nor more than twenty-five years. (Id. sec. 2.)

Art. 173½b. Mutilation, defacing, etc., flag of United States.—Any person who shall, within this State, publicly or privately, mutilate, deface, defile, defy, tramp upon, or cast contempt upon, either by words or acts, any flag, standard, color, or ensign of the United States, or that of any of its officers, or on any imitation of either of them, shall be deemed guilty of a felony, and shall be punished by confinement in the State penitentiary for any period of time not less than two years, nor more than twenty-five years. (Id. sec. 3.)

Art. 173½c. Display of enemy flag, etc.—Any person who, during the existence of the war between the United States and any other nation, or nations, shall knowingly, within this State, display, or have in his possession for any purpose whatsoever, any flag, standard, color, or ensign, or coat of arms of any nation with which the United States is at war, or any imitation thereof, or that of any State, subdivision, city, or municipality of any such nation, shall be deemed guilty of a felony, and shall be punished by confinement in the State penitentiary for any period of time not less than two years, nor more than twenty-five years. (Id. sec. 4.)

Art. 173½d. Arrests.—Any officer may, without warrant, arrest anyone violating any section of this Act, when the offense is committed in his presence, or within his view, or within the view of a magistrate. Any officer about to make such arrest shall be authorized to require any person violating any provisions of this Act to at once desist from such violation. (Id. sec. 5.)

Art. 173½e. Venue of offenses.—Indictments and prosecutions for violations of the provisions of this Act may be had in any county where the offense is committed, or in Travis County, the State of Texas; and for such purpose venues and jurisdiction is conferred upon the district courts of the counties of the State where such offenses are committed, and on the District Court of Travis County; provided, that the Suspended Sentence Laws of this State shall not apply in convictions had under this Act. (Id. sec. 6.)

Art. 173½f. Reports of violations of act.—It shall be the duty of any person who shall hear, see, or know of any person violating any of the provisions of this Act, to immediately report the same to some officer au-

thorized to make arrests in such cases; and it shall be the duty of said officer to forthwith cause the arrest of such person, or persons, against whom such charge has been filed, and to immediately carry him before some officer whose duty it shall be to thoroughly investigate the charges, and to make such orders, and to enter such judgments, as to such person, as the law may direct. (Id. sec. 7.)

Art. 173½g. Soliciting sexual intercourse with members of military or naval forces of United States, etc.—It shall be unlawful for any person to make an appointment for, or solicit any person engaged in the service of the United States military or naval forces, or any of the military or naval forces of the Allies of the United State in the present war with Germany, to meet or come in contact with any woman, for the purpose of having unlawful sexual intercourse. (Acts 1918, 4th C. S., ch. 16, sec. 1.)

Art. 173½h. Sexual intercourse by women with venereal diseases with members of military or naval forces of United States.—It shall be unlawful for any woman knowing herself to be afflicted with a communicable venereal disease to have unlawful sexual intercourse with any person engaged in the service of the military or naval forces of the United States or any of the military or naval forces of the Allies of the United States in the present war with Germany. (Id. sec. 1a.)

Art. 173½i. Transportation of members of military or naval forces of United States, etc., for purposes of unlawful sexual intercourse.—It shall further be unlawful for any person operating any vehicle for hire to knowingly transport any person engaged in the service of the military or naval forces of the United States or any of the military or naval forces of the Allies of the United States in the present war with Germany to any place for the purpose or unlawful sexual intercourse. (Id. sec. 2.)

Art. 173½j. Transportation of women for unlawful sexual intercourse with members of military or naval forces of United States, etc.—It shall be unlawful for any person operating any vehicle for hire to knowingly transport any woman to meet any person in the service of the United States military or naval forces or any of the military or naval forces of the Allies of the United States in the present war with Germany for the purpose of unlawful sexual intercourse. (Id. sec. 3.)

Art. 173½k. Transportation of women accompanied by members of military or naval forces of United States for purpose of unlawful sexual intercourse.—It shall be unlawful for any person operating any vehicle for hire to knowingly transport any woman accompanied by any person in the military or naval forces of the United States or any of the military or naval forces of the Allies of the United States in the present war with Germany to any place for the purpose of unlawful sexual intercourse. (Id. sec. 4.)

Art. 173½l. Owner, etc., of house permitting unlawful sexual intercourse with members of military or naval forces of United States.—It shall be unlawful for the owner or keeper of any house to knowingly permit any person engaged in the service of the military or naval service of the United States, or any of the military or naval forces of the Allies of the United States in the present war with Germany, to meet or be with, in such house, any woman for the purpose of unlawful sexual intercourse. (Id. sec. 4a.)

Art. 173½m. Transportation of members of military or naval forces of United States, etc., to houses of prostitution, etc.—It shall be unlawful for any person operating any vehicle for hire or accommodation to knowingly transport any person engaged in the service of the military or naval forces of the United States, or any of the military or naval forces of the Allies of the United States in the present war with Germany, to any place where lewd women live, reside or assemble for the purpose of carrying on their avocation. (Id. sec. 4b.)

Art. 173½n. Punishment.—Any person violating any of the provisions of this Act shall be deemed guilty of a felony and be punished therefor by confinement in the State penitentiary for a term of years not more than five. In prosecution for violations of this Act the accused shall not be permitted to make application for the suspended sentence and no one shall upon conviction for violation of this Act be entitled to any of the benefits of the suspended sentence Act. (Id sec. 5.)

Art. 173½o. Definitions.—By the term "any person engaged in the service of the United States military or naval forces, or any of the military or naval forces of the Allies of the United States in the present war with Germany" is meant any person who is actually enlisted in either branch of said service, and which fact is known to the person who is charged with the violation of this Act, or any person who wears a uniform or insignia, which is required of him by the Government. (Id. sec. 6.)

TITLE 5

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

CHAPTER ONE

BRIBERY

Art. 174. (125) Bribery of certain officers.—If any person shall bribe or offer to bribe any executive, legislative or judicial officer after his election or appointment and either before or after he shall have been qualified or entered upon the duties of his office, with intent to influence his act, vote, opinion, decision or judgment on any matter, question, cause or proceeding which may be then pending or may thereafter by law be brought before such officer in his official capacity, or do any other act or omit to do any other act in violation of his duty as an officer, he shall be punished by confinement in the penitentiary for a term not less than two nor more than five years. (O. C. 250, as amended Acts 1858, p. 159.)

Art. 175. (126) Officers accepting bribe.—Any legislative, executive or judicial officer who shall accept a bribe or consent to accept a bribe under an agreement or with an

understanding that his act, vote, opinion or judgment shall be done or given in any particular manner or upon a particular side of any question, cause or proceeding which is or may thereafter by law be brought before him, or that he shall make any particular nomination, appointment, or do any other act or omit to do any act in violation of his duty as an officer, shall be punished by confinement in the penitentiary not less than two nor more than ten years. (Act Feb. 12, 1858, p. 159; O. C. 251, amended on Revision.)

Art. 176. (127) Officers specified.—Under the name of executive, legislative and judicial officers are included the governor, lieutenant-governor, comptroller, secretary of state, state treasurer, commissioner of the general land office, commissioner of agriculture, insurance, statistics and history, superintendent of public instruction, members of the legislature, aldermen of all incorporated cities and towns in this state, judges of the supreme, district and county courts and of the courts of appeals, attorney general, district and county attorneys, justices of the peace, mayors and judges of such city courts as may be organized by law, county commissioners, school trustees, and all other city, county and state officials. (O. C. 152; Acts 1899, p. 320; Acts 1885, p. 69.)

See Messer v. S., 40 S. W. 488; Minter v. S., 159 S. W. 286.

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

Art. 178. (129) Accepting bribe by same.—If any officer named in the preceding article shall accept a bribe so offered, or consent to accept the same, he shall be punished by confinement in the penitentiary not less than two nor more than five years. (O. C. 254, amended 1858, p. 159.)

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

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

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

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

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

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

Art. 185. (136) Acceptance of bribe by same.—If any clerk, or deputy clerk, of any court of record in this state shall accept, or agree to accept, a bribe offered for the purposes enumerated in the preceding article, he shall be punished by imprisonment in the penitentiary for a term not less than two nor more than five years. (Acts 1858, p. 161; O. C. 305.)

Art. 186. (137) Bribery of same to do any official act.—If any person shall bribe, or offer to bribe, any officer named in article 184 to do any other act not enumerated in said article, in violation of the duties of his office, or to omit to do any other act incumbent on him as an officer, he shall be punished by imprisonment in the penitentiary

not less than two nor more than five years. (Acts 1858, p. 161; O. C. 306.)

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

Messer v. S., 40 S. W. 488; Moore v. S., 69 S. W. 521.

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

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

See Garner v. S., 97 S. W. 98; Minter v. S., 159 S. W. 286.

Art. 190. (141) (136) Acceptance of bribe by sheriffs, etc.—If any sheriff or other executive or peace officer shall accept, or agree to accept, a bribe offered, as mentioned in articles 187, 188 and 189, he shall receive the same punishment as is affixed to the offense of giving or offering a bribe in the particular case specified. (O. C. 310a.)

Art. 191. (142) Bribery of witness.—If any person shall bribe, or offer to bribe, any witness in any case, either civil or criminal, to disobey a subpœna or other legal process, or to avoid the service of the same by secreting himself, or by any other means, he shall be punished by confinement in the penitentiary not less than two nor more than five years. (Acts 1860, p. 95; O. C. 310b.)

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

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

See Moore v. S., 69 S. W. 521; Lee v. S., 85 S. W. 804; Minter v. S., 159 S. W. 286.

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

See ante, art. 174.

CHAPTER TWO

LOBBYING

Art. 195. Defining lobbying.—If any person having any direct interest, or the president or any other officer of any corporation having any direct interest, in any measure pending before, or thereafter to be introduced in, either branch of the legislature of this state, shall, at any place in this state, in any manner, privately attempt to influence the action of any member of the legislature of this state during his term of office concerning such measure, except by appealing to his reason, he shall be deemed guilty of lobbying. (Acts 1907, p. 162, sec. 1.)

Art. 196. Persons privately soliciting vote of member of legislature guilty of.—That if any paid or employed agent, representative or attorney of any person, association or corporation, shall, at any place in this state, after the election and during the term of office of any member of the legislature of this state, privately solicit the vote, or privately endeavor to exercise any influence, or offer anything of value or any other inducements whatever, to any such member of the legislature, to influence his action concerning any measure then pending, or thereafter to be introduced, in either branch of the legislature of this state, he shall be deemed guilty of lobbying. (Id. p. 162, sec. 2.)

Art. 197. Provisions shall not apply, when.—The provisions of this law shall not be held to apply to the governor or a member of the legislature of this state, nor to prohibit any person either in person, or by his agent or attorney, or any corporation by representatives, agents or attorneys, from exercising the right of petition to the legislature, or from collecting facts, preparing petitions, procuring evidence and submitting the same, together with arguments, to either branch of the legislature, when in session, or to any committee thereof, in the interest of any measure in which he or it may be interested; but in such case the agency and the interest in the measure, or the person so appearing, shall be fully disclosed. (Id. p. 162, sec. 3.)

Art. 198. Providing penalty.—That lobbying, as hereinbefore defined, shall be unlawful, and the same is hereby prohibited: and any person who shall be convicted of lobbying, shall, upon such conviction, be punished by fine of not less than two hundred dollars nor more than two thousand dollars, and in addition may, at the discretion of the jury, be imprisoned in the penitentiary for a term not less than six months nor more than two years; and any violation of this law may be prosecuted in the county where the offense is committed, or in Travis county. (Id. p. 162, sec. 4.)

Art. 199. Persons prohibited from going on floor of either house of the legislature.—To prevent lobbying and to promote the orderly dispatch of business, it is hereby made unlawful for any person employed in any manner to represent the interest in leg-

islation of any person, association or corporation to go upon the floor of either house of the legislature, reserved for members thereof, while in session, except upon invitation of such house; and any person violating the provisions of this article shall be punished by a fine not to exceed one hundred dollars. (Id. p. 162, sec. 5.)

CHAPTER THREE

DRUNKENNESS IN OFFICE AND IN PUBLIC [OR PRIVATE] PLACE

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

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

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

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

Art. 204. (150) (144a) Drunkenness in public or private place; how punished.—Any person who shall get drunk, or be found in a state of intoxication, in any public place, or at any private house, except his own, shall be deemed guilty of a misdemeanor, and upon conviction before a court of competent jurisdiction, shall be fined in any sum not more than one hundred dollars for each and every such offense. (Acts Feb. 21, 1879; Acts 1913, ch. 93, sec. 1.)

January v. S., 146 S. W. 555; Harper v. S., 198 S. W. 786.

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

Any person violating this article shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than ten dollars nor more than one hundred dollars. (Acts 1907, p. 51, secs. 1, 2.)

TITLE 6

OF OFFENSES AFFECTING THE RIGHT OF SUFFRAGE

CHAPTER ONE

BRIBERY AND UNDUE INFLUENCE

As to offenses relating to suffrage omitted from Penal Code, see note under art. 220, post.

Art. 206. (152) Bribery of any person to influence voter.—Any person who lends or contributes, or offers or promises to lend or contribute or pay any money or other valuable thing to any voter, to influence the vote of any other person, whether under the guise of a wager or otherwise, or to induce any voter to vote or refrain from voting at an election for or against any person or persons, or for or against any particular proposition submitted at an election, or to induce such voter to go to the polls or to remain away from the polls at an election, or to induce such voter or other person to place or cause to be placed his name unlawfully on the certified list of qualified voters that is required to be furnished by the county tax collector, is guilty of a felony, and, on conviction, shall be punished by confinement in the penitentiary not less than one year nor more than five years, and in addition shall forfeit any office to which he may have been elected at the election with reference to which such offense may have been committed, and is rendered incapable of holding any office under the state of Texas. (Acts 1903, ch. 101; Acts 1905, p. 559.)

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

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

Art. 209. (155) Bribery of elector.—Any person who gives, or offers to give, any office, employment or thing of value, or promises to secure any office, thing of value or employment to or for any voter or to or for any other person, to vote or refrain from voting at an election for or against any person, or for or against any proposition submitted at an election, or to obtain his certificate of exemption, is guilty of a felony, and, upon conviction, shall be punished by confinement in the penitentiary not less than three nor more than five years, and in addi-

tion shall forfeit any office to which he may have been elected, and becomes ineligible to any office to which he may have been elected, and becomes ineligible to any other public office. (P. C. 260; Amend. Acts 1905, p. 559.)

Art. 210. Elector accepting bribe.—The penalty prescribed in the last preceding article against those who violate any of its provisions shall be imposed on any one who receives or agrees to receive any money, gift, loan or other thing of value, for himself or any other person, for voting or agreeing to vote, for going or agreeing to go to the polls on election day, or for remaining away or agreeing to remain away from the polls on election day, or for refraining or agreeing to refrain from obtaining his poll tax receipt or certificate of exemption, or for obtaining or agreeing to obtain the same, or for voting or agreeing to vote for or against any particular person or proposition submitted to a vote of the people. (Acts 1905, p. 560.)

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

CHAPTER TWO

OFFENSES BY PERSONS, JUDGES AND OTHER OFFICERS OF ELECTIONS

As to offenses omitted from Penal Code, see note under art. 220, post.

Art. 212. (157) Sundry offenses by election officers.—If any manager, judge or clerk of an election shall knowingly make or consent to any false entry on the list of voters, or put into the ballot box, or permit to be put in, any ballot not given by a voter, or take out of such box, or permit to be taken out, any ballot deposited therein, except in the manner prescribed by law, or change any ballot given by an elector, or make any false return as to the number of votes given for or against any particular candidate, the person so offending shall be punished by fine not less than one hundred nor more than one thousand dollars. (P. C. 264.)

Art. 213. Judge may require voter to answer under oath.—Any judge may require a citizen to answer under oath before he secures an official ballot, whether he has been furnished with any paper or ballot on which is marked the names of any one for whom he has agreed or promised to vote, or for whom he has been requested to vote, or has such paper or marked ballot in his possession, and he shall not be furnished with an official ballot until he has delivered to the judge such marked ballot or paper, if he has one. And any person who gives, receives or secures, or is interested in giving or receiving, an official ballot, or any paper whatever, on which is marked, printed or written the name or names of any person or persons for whom he has agreed or proposed to vote, or for whom he has been requested to vote, or has such paper marked, written or printed in his possession as a guide or indication by which he could make out his ticket, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not less than one hundred dollars nor more than five hundred dollars, and confinement in the county jail for thirty days. (Acts 1905, p. 536.)

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

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

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

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

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

Art. 219. Official ballot to be posted.—It shall be the duty of the county clerk of each county to post in a conspicuous place in his office, for the inspection and information of the public, the names of all candidates that have been lawfully certified to him to be printed on the official ballot, for at least ten days before he orders the same to be printed on said ballot, and he shall order all the names of the candidates so certified printed on the official ballot as herein otherwise provided; and in case the county clerk refuses or wilfully neglects to comply with this requirement, he shall be guilty of a misdemeanor, and shall be punished by a fine of not less than two hundred dollars nor more

than five hundred dollars, or to hard labor on the public roads of the county in which the offense was committed for any period of time not less than sixty days nor more than one year or both such penalties. (Acts 1905, p. 554.)

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

The above article, as originally enacted, reads as follows: "Any person who is found guilty of a misdemeanor under this act shall be subject to a fine of not less than two hundred dollars nor more than five hundred dollars, or to hard labor on the public road of the county in which the offense was committed for any period of time not less than sixty days nor more than one year, or to both such penalties." Acts 1903, ch. 101, sec. 108; Acts 1905, 1st C. S., ch. 11, sec. 148.

Art. 222, post, in its original form reads as follows: "Any person who fraudulently or willfully does anything in violation of this act to affect the result of any primary, special or general election is guilty of a misdemeanor unless some other penalty for such act is specially provided for." Acts 1903, ch. 101, sec. 109; Acts 1905, 1st C. S., ch. 11, sec. 150.

Art. 226, post, in its original form, is as follows: "Any judge, clerk, chairman or member of an executive committee, collector of taxes, county clerk, sheriff, county judge or judge of an election, president or member of a State convention, or Secretary of State who willfully fails or refuses to discharge any duty imposed on him by this law, is guilty of a misdemeanor unless the particular act under some other section of the law is made a felony." Acts 1903, ch. 101, sec. 115; Acts 1905, 1st C. S., ch. 11, sec. 154.

Construing together the above three sections of the act of 1905, it would seem that the compilers of the revised Penal Code failed to present in the Code all the offenses described in the original act. The various things denounced in the act of 1905 are made misdemeanors by sections 150 and 154 of that act (Penal Code, arts. 222, 226) and section 148 (Penal Code, art. 220) fixes the penalty where it is not otherwise specifically denominated in the act. If the original act is to stand unimpaired by the revision, as would seem to result from the decision in Berry v. S., 156 S. W. 626, the Penal Code is incomplete in so far as it attempts to enumerate the offenses against the right of suffrage. In view of the doubt as to whether the revision has limited the scope of the original act, and as to just what acts directed or prohibited by the act of 1905, and its subsequent amendments, come within the criminal provisions, the compilers have not attempted to set out the omitted provisions. The omitted provisions, with their amendments will be found ante, Civ. St. arts. 2912, 2920-2924, 2927, 2933, 2935, 2937-2954, 2957-2970, 2972-2974, 2976-2985, 2990-2995, 2997-2999, 3001, 3003-3011, 3013, 3015-3023, 3026, 3084-3138, 3140, 3145-3174.

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

Art. 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, Civ. St., 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. (Acts 1917, 1st C. S., ch. 40, sec. 1.)

Art. 222. Doing any act in violation of this law.—Any person who fraudulently or wilfully does anything in violation of this law to affect the result of any primary, special or general election, is guilty of a misdemeanor unless some other penalty for such act is specially provided for. (Acts 1905, p. 558.)

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

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

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

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

Art. 227. Permitting illegal voting.—Any judge of an election or primary, who wilfully or knowingly permits a person to vote, whose name does not appear on the

list of qualified voters of the precinct, and who fails to present his poll tax receipt or certificate of exemption, or makes affidavit of its loss or that it was misplaced or inadvertently left at home, except in cases where no certificate of exemption or tax receipt is required, is guilty of a misdemeanor. (Id. p. 558.)

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

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

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

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

Art. 232. Failure of candidate to file statement.—Any candidate for any public office who fails to file with the county judge of his county, within ten days after the date of a primary or general election, an itemized statement of all money or things of value paid or promised by him before or during his candidacy for such office, including his traveling expenses, hotel bills and money paid to newspapers, and make affidavit to the correctness of such account, showing to whom paid or promised, whether he was elected or not, is guilty of a misdemeanor, and, on conviction, shall be fined not less than two hundred nor more than five hundred dollars, may be sentenced to work on the county roads not less than thirty days nor more than twelve months. (Id. p. 560.)

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

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

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

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

Art. 237. Editors or managers of newspapers.—If any editor or manager of a newspaper or printed journal, or if any person or persons having control thereof, shall demand or receive any money, thing of value, reward or promise of future benefit for publishing anything as editorial matter in advocacy of or opposition to any candidate,

or for or against any proposition submitted to a vote of the people, he or they, and also the individual or parties offering such reward, shall be punished as in the last preceding section, and if the offense be committed by the president of any corporation, or by any officer thereof, with the knowledge or consent of its president, in addition to punishment of the individual, its charter shall be forfeited. Either party to a violation of this and the preceding section may be compelled to testify regarding thereto, but shall not be punished for any act regarding which he may have been required to testify. (Acts 1905, p. 561.)

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

Art. 239. Loaning money to pay poll tax.—Any person who loans or advances money to another knowingly to be used for paying the poll tax of such other person is guilty of a misdemeanor. (Id.)

Art. 240. Voting at primary elections.—Any person who votes or offers to vote at a primary election or convention of a political party, having voted at a primary election or convention of any other party on the same day, is guilty of a misdemeanor. (Id.)

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

Art. 242. False certificate by chairman.—Any chairman of a county executive or district or state executive committee who is charged with the duty of certifying the names of the candidates selected by a primary convention or primary election or elections, who wilfully omits to certify the name of any candidate legally chosen, or who certifies falsely regarding anyone chosen or defeated, is guilty of a misdemeanor. (Id. p. 562.)

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

Art. 244. Employés permitted to go to polls.—Any person or corporation who refuses to an employé entitled to vote the privilege of attending the polls, or subjects such employé to a penalty or deduction of wages because of the exercise of such privilege, is guilty of a misdemeanor. (Id.)

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

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

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

Art. 248. Altering or obliterating ballot.—If any person shall wilfully alter or obliterate, suppress or destroy any ballots, election returns or certificates of election, he shall be deemed guilty of a felony, and shall be punished by imprisonment in the state penitentiary not less than three nor more than five years. (Id.)

Art. 249. Delivering poll tax receipt to fictitious person.—Any collector of taxes, who shall knowingly or wilfully issue and deliver a poll tax receipt or certificate of exemption to a fictitious person, shall be punished by confinement in the state penitentiary not less than three nor more than five years. (Acts 1905, p. 562.)

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

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

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

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

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

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

Art. 256. Person in military service attempting to influence voter.—Any person in the civil or military service of the United States in this state who, by threats, bribery, menace or other corrupt means, attempts to control or controls the vote of an elector, or annoys, injures or punishes him for the manner in which he exercises his elective franchise in any election, is guilty of a misdemeanor, and may be arrested and tried at any future time when he may be found in Texas. (Id.)

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

Art. 258. Judge of election assisting voter to prepare ballot.—Any judge or other officer at an election who assists any voter to prepare his or her ballot, except when a voter is unable to prepare the same on account of blindness or some bodily infirmity such as renders him unable to write, or is over sixty years of age, or who shall aid such voter by using any other than the English language, or shall violate any of the provisions of Article 3003 [Civ. St.] as amended by this Act, shall be deemed guilty of a misdemeanor; and any judge or other officer of an election who, in assisting a voter so incapacitated, or over sixty years of age, in the preparation of his or her ballot, shall prepare the same otherwise than such voter shall direct in the English language, shall be deemed guilty of a misdemeanor. Any person convicted under this Article shall be punished by a fine of not less than $200 and not more than $500, or by confinement in the County jail for not less than two months and not more than twelve months, or both by such fine and imprisonment. (Acts 1905, p. 564; Acts 1918, 4th C. S., ch. 30, sec. 2; Acts 1919, ch. 55, sec. 2.)

Art. 259. Person or employé of State using his authority.—Any officer or employé of the state, or of a political subdivision thereof, who, directly or indirectly, uses his authority or official influence to compel or induce any officer, clerk or employé of the state, or any political subdivision thereof, to subscribe, pay or promise to pay, any political assessment, shall be guilty of a misdemeanor. (Acts 1905, p. 564.)

Art. 260. Person holding public office.—Any person who, while holding a public office, or seeking a nomination or appointment thereof, corruptly uses or promises to use, directly or indirectly, any official authority, or influence possessed or anticipated, in any way, to aid any person in securing an office or public employment, or any nomination,

confirmation, promotion, appointment or increase of salary, upon consideration that the vote or political influence or action of the person so to be benefited, or any other person, shall be given or used in behalf of any candidate, officer or party, or upon any other corrupt consideration, is guilty of a misdemeanor. (Id.)

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

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

Art. 263. National banks and other corporations, contributions by.—That it shall be unlawful for any national bank, or any other corporation organized by authority of any law of congress, and doing business in this state, or authorized to do business in this state, or any other corporation organized by the authority of the laws of this state, or of any foreign country, or any corporation authorized by the authority of the laws of any other state of the United States, doing business in this state, or authorized to do business in this state, to make any money contribution, or its equivalent, or to offer to pay at any future time any money, or its equivalent, directly or indirectly, for the purpose of aiding or defeating the election of any candidate for the office of representative in congress, or presidential or vice presidential electors from this state, or any candidate for any state, district, county or precinct office in this state, or the success or defeat of any political measure submitted to a vote of the people of this state.

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

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

Art. 264a. Nomination of judge, clerk, and supervisor for election on proposed amendment to the Constitution; duty of managers and judges.—Whenever any proposed amendment to the Constitution of this State is to be voted upon by the qualified voters of this State, either at an election held for that purpose or at any election for the State officers, the county chairman of any organization advocating, and the county chairman of any organization opposing the adoption of such amendment, or if such county chairman fails to act, then three members of the county executive committee of any organization advocating, or three members of the county executive committee opposing the adoption of such constitutional amendment may at any time not less than five days before the election at which such proposed amendment is to be voted upon, nominate one judge, one clerk and one supervisor to serve as judge, clerk and supervisor, respectively, for the voting box for which they are so selected, who shall be qualified voters of the voting precinct or box for which they are chosen, by presenting in writing to the county judge of the county the names of such judges, clerks and supervisors so selected, and such county judge shall appoint the parties nominated to act in such capacities at the respective voting precincts and boxes for which they are respectively selected. Should the county judge fail or refuse to appoint such officers, they shall apply to the officers and judges of the voting precinct or box for which they were respectively nominated, and the manager and judges of such precinct or box shall permit such persons so selected to act in the capacities named. (Acts 1911, p. 144, ch. 80, sec. 1.)

Art. 264b. Same; penalty.—The managers or judges of the election so refusing, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than $100.00 and not more than $500.00, and shall be imprisoned in the county jail for not less than twenty days and not more than sixty days. (Id. sec. 2.)

Art. 264c. Election on proposed amendment to Constitution; report by supervisor as to fraud and irregularity.—Any supervisor who shall discover any fraud or irregularity in the conduct of an election or in counting the votes or in making returns thereof, within five days after said election, shall file a written report under oath with the county clerk of the county in which he resides, setting out fully any irregularity or fraud or semblance thereof occurring in said voting precinct or box that would in any manner affect the true result of said election in said voting precinct. The clerk of the county court of said county shall keep said report on file in his office and shall permit the same to be inspected upon application by any citizen of this State. It shall be the duty of such supervisor to call the attention of

the officers holding such election to any fraud, irregularity or mistake, illegal voting attempted, or legal voting prevented, or other failure to comply with the law governing such election at the time it occurs, if practicable, and if he has knowledge thereof at the time; and he shall not report any matter to which he should have called attention at the time, to which he did not call attention at the time, unless he shows some good and sufficient reason why the same was not called to the attention of such election officers. (Id. sec. 4.)

Art. 264d. Same; false return or certificate; penalty.—Any manager, judge or clerk of any such election, who shall knowingly make any false return or false certificate of the result of any such election, shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by confinement in the penitentiary for not less than one nor more than five years. (Id. sec. 5.)

Art. 264e. Same; intimidation or obstruction of voters; penalty.—Any election officer or supervisor who shall intimidate or attempt to intimidate any voter, or knowingly refuse to allow any qualified voter to vote, or any person who, within one hundred feet of the voting box on election day, shall intimidate or attempt to intimidate any qualified voter from voting, or in any manner by word or act attempt to influence any voter to cast his vote for or against any question provided under this Act to be voted upon, shall be deemed guilty of a misdemeanor and upon conviction, shall be fined in any sum not less than $50.00 nor more than $500.00. Provided, further, that the provisions of this Section shall not be construed to prevent the officers of the election from assisting any qualified voter in making out his ticket as is provided for under the General Election Laws. (Id. sec. 5a.)

Art. 264f. Same; false returns of election to Secretary of State; penalty.—Any officer of any county upon whom is placed by law the duty of making and certifying to the Secretary of State returns of any such election, who shall knowingly make or certify to any false certificate or false statement of the result of any such election shall be deemed guilty of a felony, and upon conviction shall be punished by confinement in the penitentiary for not less than one nor more than five years. (Id. sec. 6.)

Art. 264g. Same; refusal of county judge to appoint nominated officers of election; penalty.—Should any county judge refuse to appoint the officers as provided for and required in Section 1 of this Act [Art. 264a], upon application to him, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not less than $50.00 nor more than $500.00, and by imprisonment in the county jail for not less than ten days nor more than thirty days, and in addition, such refusal of such county judge shall be grounds for his impeachment and removal from office. (Id. sec. 7.)

Art. 264h. Same; repeal of existing statutes.—This law shall not repeal any existing statute with reference to the conducting of elections, but shall be cumulative thereof. (Id. sec. 16.)

CHAPTER THREE

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

As to offenses omitted from revised Penal Code, see note under art. 220, ante.

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

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

Art. 267. (167) Tumults, mobs and disturbances at elections.—If any person shall disturb any election by inciting or encouraging a tumult or mob, or shall cause any disturbance in the vicinity of any poll or voting place, he shall be punished by fine of not less than one hundred nor more than five hundred dollars, and, in addition thereto, may be imprisoned in the county jail for a period not exceeding one month. (Acts Aug. 23, 1876, p. 311, sec. 25.)

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

Art. 269. (169) Carrying arms about elections.—If any person, other than a peace officer, shall carry any gun, pistol, bowie knife or other dangerous weapon, concealed or unconcealed, on any day of election, during the hours the polls are open, within the distance of one-half mile of any poll or voting place, he shall be punished as prescribed in article 167 [267] of this Code. (Acts Aug. 23, 1876, p. 311, sec. 25.)

CHAPTER FOUR

MISCELLANEOUS OFFENSES AFFECTING THE RIGHT OF SUFFRAGE

As to offenses omitted from revised Penal Code, see note under art. 220, ante.

For Acts 1919, ch. 88, regulating and limiting expenditures at primary elections, see ante, Civil Statutes, arts. 3174¼-3174¼h.

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

Art. 271. (171) Illegal voting.—If any person knowing himself not to be a qualified voter shall, at any election held, vote for any officer to be then chosen, or for or against any measure or proposition to be determined by said election, he shall be punished by confinement in the penitentiary not less than two

nor more than five years. (O. C. 275, amended by Acts March 23, 1887, p. 37.)

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

When a constitutional amendment or other question submitted by the legislature is to be voted on, the form in which it is submitted shall be described by the governor in his proclamation in such terms as to give the voter a clear idea of the scope and character of the amendment, and printed once at the bottom of each ballot as described by this act the words, "for" and "against" under it; provided, the legislature has failed to prescribe a form. If a proposition or question is to be voted on by the people of any city, county or other subdivision of the state, the form in which such proposition shall be voted on shall be prescribed by the local or municipal authority submitting it. (Acts 1905, p. 531.)

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

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

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

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

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

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

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

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

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

Art. 281. (183) Not applicable in cases of contest.—The provisions of the fore-

going article shall not apply to cases in which a contest may have grown out of any election, within one year after the date of such election. (Acts Aug. 23, 1876, p. 308, sec. 16.)

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

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

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

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

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

Art. 287. (191) Election officer disclosing vote or giving information.—Any officer upon whom a duty is imposed by an act to provide for the registration of all voters in all cities containing ten thousand inhabitants or more, who shall disclose to any person the name of any candidate for whom any elector has voted, or gives any information by which it can be ascertained for whom any elector has voted, or any person who shall remove any ballot from any polling place, or any person who shall knowingly apply or receive any ballot in any polling place other than that in which he is entitled to vote, or any person who shall show his ballot after it is marked to any person in such a way as to reveal the contents thereof, or the name of the candidate or candidates for whom he marked his ballot, or any person who shall, contrary to this act, examine his ballot or solicit the voter to show the same, or person other than an officer of election, who shall deliver any ballot to an elector, or any elector who shall deliver a ballot to the presiding officer to be voted, except the one he received from the election officer, or any elector or any one who shall, contrary to the provisions of this act, place any mark upon or do anything to his ballot by which it may afterwards be identified as the one voted by any particular individual, upon conviction, shall be punished by a fine not less than fifty dollars and not more than five hundred dollars, or by imprisonment in the county jail not less than three months nor more than one year, or both, in the discretion of the court. (Id. sec. 28.)

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

CHAPTER FIVE

PRIMARY ELECTIONS

As to offenses omitted from revised Penal Code, see note under art. 220, ante.

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

exceeding sixty days, or by both such fine and imprisonment. (Acts 1895, p. 40.)

Art. 290. (192b) Procuring an illegal vote.—Every person who shall knowingly procure any illegal vote to be cast at any such primary election shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished as provided in the preceding article. (Acts 1895, p. 40.)

Art. 291. (192c) Officer making false return.—Any presiding officer, manager, judge or clerk of any primary election, called and held by authority of any political party in this state, who shall knowingly make or return, or cause to be made or returned, a false statement of the result of any such primary election, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding sixty days, or by both such fine and imprisonment. (Acts 1895, p. 40.)

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

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

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

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

CHAPTER SIX

ELECTION OF UNITED STATES SENATORS

See, also, ante, Civil Statutes, arts. 3174a-3174z.

Art. 295a. Application of other election laws.—Every law regulating or in any manner governing elections or the holding of primaries in this State shall be held to apply to each and every election or nomination of a candidate for a United States Senator so long as they are not in conflict with the Constitution of the United States or of any law or statute enacted by the Congress of the United States regulating the election of United States Senators or the provisions of this Act. (Acts 1913, 1st C. S., ch. 39, sec. 3.)

Art. 295b. Same; corrupt practices.—At each and every primary election held in this State for the nomination of a candidate for United States Senator, each and every provision of the laws of this State which has for its object the protection of the ballot and the safe guarding of the public against fraudulent voting, illegal methods, undue influence, corrupt practices, and in fact each and every restriction of whatever kind or character or nature as applied to any election held in this State whether general, special or primary shall be held to apply to a primary election held for or when a candidate for United States Senator is to be nominated when not in conflict with the provisions of this Act. And the violation of any such provisions or restrictions at any such primary election shall be punished in the same manner as prescribed by law for the violation of any election law whether general, special or primary. (Id. sec. 6.)

Art. 295c. Same; certain provisions made applicable.—When the law with reference to holding senatorial primaries is silent the election officers in securing supplies, in conducting the election and in making returns and in canvassing the votes shall in every particular follow the methods provided by law covering primary elections or general elections held for the purpose of electing or nominating State, district, county, and precinct offices. (Id. sec. 7.)

Art. 295d. Same; applicable provisions enumerated.—The following provisions shall be held to apply to all primaries and elections for United States Senator whether special or general. (Id. sec. 12.)

Art. 295e. Disbursements for political purposes.—No person shall receive or accept any money, property or other thing of value, or any promise or pledge thereof, constituting a disbursement made for political purposes contrary to law. (Id. sec. 13.)

Art. 295f. Same; want of knowledge no defense.—In any prosecution for the violation of this provision it shall be a defense if the accused person shall prove that he had neither knowledge that such disbursements constituted a disbursement made for political purposes contrary to law, nor any reasonable cause to believe that it constituted such disbursement. (Id. sec. 14.)

Art. 295g. Disbursements through agents prohibited; filing authorization.—No candidate for United States Senator shall make any disbursement for political purposes except under his personal direction, which for every purpose shall be considered his act, through a party committee, or through a personal committee, whose authority to act shall be filed, as provided by this Act. (Id. sec. 15.)

Art. 295h. Personal campaign committee; filing authorization to make disbursements; secretary of committee; revocation of authority; filling vacancy; presumptions.—Any candidate for United States Senator may select a personal campaign committee to consist of one or more persons, but before any personal campaign

committee shall make any disbursement in behalf of any candidate, or shall incur any obligation, express or implied, to make any disbursement in his behalf, it shall file with the Secretary of State a written statement, signed by such candidate for United States Senator setting forth that such personal campaign committee has been appointed and giving the name and address of each member thereof, and the name and address of the secretary thereof. If such campaign committee consists of only one person, such person shall be deemed the secretary thereof. Any candidate for United States Senator may revoke the selection of any member of such personal campaign committee by a revocation in writing which, with proof of personal service on the member whose selection is so revoked, shall be filed with the officer with whom the appointment was filed. Such candidate may fill the vacancy thus created in the manner in which an original appointment is made. The acts of every member of such personal campaign committee will be presumed to be with the knowledge and approval of the candidate until it has been clearly proved that the candidate did not have knowledge of and approved the same, and that in the exercise of reasonable care and diligence, he could not have had knowledge of or any opportunity to disapprove the same. (Id. sec. 16.)

Art. 295i. Disbursements by persons other than candidates and their committees prohibited; exceptions.—No person or group of persons, other than a candidate or his personal campaign committee or a party committee, shall in an election for a United States Senator or nomination of a candidate for United States Senator make any disbursement for political purposes otherwise than through a personal campaign committee or a party committee, except that expenses incurred for rent of hall or other room for public speaking, for printing, for postage, for advertising, for distributing printed matter, for clerical assistance and for hotel and traveling expenses solely in connection with a public speaking engagement, may be contributed and paid by a person or group of persons residing within the county where such expenses are incurred, but not otherwise. (Id. sec. 17.)

Art. 295j. What disbursements by candidates authorized.—No candidate for the nomination or election for United States Senator shall make any disbursements for political purposes except:

(1) For his personal hotel and traveling expenses and for postage, telegraph and telephone expenses.

(2) For payments which he may make to the State pursuant to law.

(3) For contributions to his duly registered campaign committee.

(4) For contribution to his party committee.

(5) For other purposes enumerated by law when such candidate has no personal campaign committee, but not otherwise.

(6) After the primary, no candidate for United States Senator for election shall make any disbursement in behalf of his candidacy, except contributions to his party committee, for his own actual necessary personal traveling expenses, and for postage, telegraph and telephone expenses. (Id. sec. 18.)

Art. 295k. What disbursements by committee authorized.—No party committee nor personal campaign committee shall make any disbursements except:

(1) For maintenance of headquarters and for hall rentals, incident to the holding of public meetings.

(2) For necessary stationery, postage and clerical assistance to be employed for the candidate at his headquarters or at the headquarters of the personal campaign committee, or party committee incident to the writing, addressing and mailing of letters and campaign literature.

(3) For necessary expenses incident to the furnishing and printing of badges, banners and other insignia, to the printing and posting of hand bills, posters, lithographs and other campaign literature and the distribution thereof through the mails or otherwise.

(4) For campaign advertising in newspapers, periodicals or magazines, as provided by law.

(5) For actual and necessary personal expenses of public speaking.

(6) For traveling expenses of members of party committees or personal campaign committees. Nothing herein shall be construed as authorizing the employment on a salary or any other reward, any campaign manager, booster or political organizer. (Id. sec. 19.)

Art. 295l. Rendition of bills for disbursements; time for; bills presented out of time not to be paid.—Every person who shall have any bill, charge or claim upon or against any personal campaign committee, any party committee or any candidate for United States Senator for any disbursement made, services rendered, or thing of value furnished, for political purposes or incurred in any manner in relation to any primary or election for United States Senator, shall render in writing to such committee or candidate, such bill, charge or claim within ten days after the day of election or primary in connection with which such bill, charge or claim was incurred. No candidate for United States Senator and no personal campaign or party committee shall pay any bill, charge or claim so incurred prior to any primary or election which is not so presented within ten days after such primary or election. (Id. sec. 20.)

Art. 295m. Filing statement of disbursements; contents; final statement.—Every candidate for United States Senator and the secretary of every party committee shall on the second Saturday occurring after such candidate for United States Senator or committee has first made a disbursement or first incurred any obligation, express or implied, to make a disbursement for political purposes, and thereafter, on the second Saturday of each calendar month, until all disbursements shall have been accounted for, and also on the Saturday preceding any election or primary, file a financial statement verified upon the oath of such candidate for United States Senator or upon the oath of the Secretary of such committee, as the case may be, which statement shall cover all transactions not accounted for and reported upon in statements theretofore filed. Each statement after the first shall contain a sum-

mary of all preceding statements, and summarize all items theretofore reported under the provisions of each subdivision of this Act in a separate total, and shall state the sum and total of all disbursements up to date of the report. On or before the second Saturday after the election, a final statement shall be filed by said candidate for United States Senator and the Secretary of every personal campaign committee, and the secretary of every party committee, which said statement shall include all former statements and be as full and complete as that required for the statements required to be made on the last Saturday before the election and required by this Act. (Id. sec. 21.)

Art. 295n. Filing statements with county clerk and Secretary of State.—The statement of every candidate for United States Senator and the statement of his personal campaign committee shall be filed with the county clerk of the county where such candidate resides and with the Secretary of State. (Id. sec. 22.)

Art. 295o. Contents of statements.—Each statement shall give in full detail:

(1) Every sum of money and all property, and every other thing of value received by such candidate or committee during such period from any source whatsoever which he uses or has used, or is at liberty to use for political purposes, together with the name of every person from which same was received, the specific purposes for which it was received, and the date when each was received, together with the total amount received from all sources in any amounts or manner whatsoever.

(2) Every promise or pledge of money, property or other thing of value received by such candidate or committee during such period, the proceeds of which he uses or has used or is at liberty to use for political purposes, together with the names of the person by whom each was promised or pledged, and the date when each was so promised or pledged together with the total amounts promised or pledged from all sources in any amount or manner whatsoever.

(3) Every disbursement made by such candidate or committee for political purposes during such period, together with the name of every person to whom the disbursement is made, the specific purpose for which each was made, and the date when each was made, together with the total amount of disbursements made in any amounts or manner whatsoever.

(4) Every obligation, express or implied, to make any disbursement incurred by such candidate or committee for political purposes during such period, together with the names of the person or persons to or with whom each such obligation has been incurred, the specific purpose for which each was made, and the date when each was incurred, together with the total amount of such obligations made in any amounts or manner whatsoever. (Id. sec. 23.)

Art. 295p. Persons receiving payments to file statements with Secretary of State; penalty for violation.—Each and every person who shall receive any payment directly or indirectly, for political purposes in a campaign before a primary or a general election for United States Senator whether as salary or as expenses, shall within thirty days after such payment has been made, or such payment has been promised, make a sworn statement showing in detail said payment or promised payments, by who made, what services were rendered for same. This statement shall be filed with the Secretary of State. Any person who comes within the provisions of this section and fails to make the statements herein, shall upon conviction be confined in the county jail for not less than ten nor more than thirty days. (Id. sec. 24.)

Art. 295q. Blanks for statements; distribution.—Blanks for all statements required by law shall be prepared by the Secretary of State and copies thereof, together with a copy of this Act, shall be furnished by the Secretary of State to the secretary of every personal campaign committee and to the secretary of every party committee, and to every candidate for United States Senator upon the filing of nomination papers, and all other persons required by law to file such statements who may apply therefor. (Id. sec. 25.)

Art. 295r. Name of candidate not to be printed on ballot if statements not filed.—The name of no candidate for United States Senator chosen at a primary election or otherwise, shall be printed on the official ballot for the ensuing election, unless there has been filed by or on behalf of said candidate and by his personal campaign committee, if any, the statements of accounts and expenses relating to the nominations of candidates for United States Senator required by this Act. (Id. sec. 26.)

Art. 295s. Persons other than candidates or committees to file statements of disbursements; contents of statements.—Every person other than a candidate or a personal campaign committee or party committee, who shall within any twelve months before or after any election for United States Senator make any disbursements for any political purposes relating to the election or nomination of a candidate for United States Senator exceeding in the aggregate, twenty-five ($25) dollars in amount and value, shall file within forty-eight hours after making any disbursements, causing the aggregate of such disbursements to reach such amount, a sworn statement thereof with the clerk of the county wherein he resides. (2) Such statements shall give in full detail, with date, every item of money, property, or other thing of value constituting any part of such disbursement, the exact means by which and the manner in which each such disbursement is made, and the name and address of every person to whom each was made, and the specific purpose for which each was made. (Id. sec. 27.)

Art. 295t. Limitation of amount of disbursements; proviso.—No disbursement shall be made and no obligation, express or implied, to make such disbursement or payment, shall be incurred by or on behalf of any candidate for the nomination for United States Senator which shall be in the aggregate in excess of $5,000.00, and $1,000.00 additional when a second primary is necessary: Provided that the expenditures allowed in Section 17 [Art. 295i] shall not be included in estimating the $5,000.00, or the addition-

al $1,000.00 for the second primary. (Id. sec. 28.)

Art. 295u. Delegation of authority to make disbursements; limitation on amount.—Any candidate for United States Senator may delegate to his personal campaign committee, or to any party committee or his party, in writing duly subscribed by him, the expenditure of any portion of the total disbursements which are authorized to be incurred by him or on his behalf, by the provisions of this Act, but the total of all disbursements, by himself, by his personal campaign committee in his behalf, by all party committees in his behalf, or otherwise made in his behalf, shall not exceed in the aggregate the amounts in this Section, except as provided by law. Provided that the expenditures allowed in Section 17 hereof [Art. 295i] shall not be included in estimating the total amount. (Id. sec. 29.)

Art. 295v. Persons other than candidates failing to comply with requirements; penalty.—Any person other than a candidate for United States Senator and any or all members of any personal campaign committee, or any party committee, who shall fail to do and perform any and all the things required by him or them in reference to the disbursement or collection, or the payment of money, or things of value for political purposes, as defined by this Act, shall upon conviction be confined in the county jail not less than thirty nor more than one hundred days, and in addition thereto may be fined in a sum of not less than one hundred, nor more than five hundred dollars. (Id. sec. 30.)

Art. 295w. Persons other than candidates doing things prohibited; penalty.—Any person (not a candidate) and any and all members of any personal campaign committee or party committee who shall do any of the things forbidden by this Act with reference to the payment, collection or disbursement of money or other things of value for political purposes, as defined herein, shall, upon conviction, be confined, in the county jail not less than thirty nor more than one hundred days, and in addition thereto may be fined in a sum of not less than two hundred nor more than five hundred dollars. (Id. sec. 31.)

Art. 295x. Candidate failing to do things required; penalty.—Any candidate for United States Senators who shall fail to do and perform any of the things or acts required of him under the provision of this Act relating to the disbursement or collection of money or anything of value for political purposes, shall upon conviction be confined in the county jail for not less than thirty nor more than one hundred days, and in addition thereto, may be fined not less than two hundred, nor more than five hundred dollars, nor shall he be entitled to hold the office for which he may be elected, or if nominated, his name shall not be placed upon the official ballot for the ensuing election. (Id. sec. 32.)

Art. 295y. Candidate doing things forbidden; penalty.—If any candidate for United States Senator shall do any of the things or acts forbidden by the provisions of this Act with reference to the disbursement or collection of money, or anything or things of value, for political purposes as defined by this Act, he shall upon conviction, be confined in the county jail not less than thirty nor more than one hundred days, and in addition thereto may be fined in any sum not less than two hundred, nor more than five hundred dollars, nor shall he be entitled to hold the office for which he may be elected, or if nominated, his name shall not be placed upon the official ballot for the ensuing election. (Id. sec. 33.)

Art. 295z. Any other candidate may have his name placed on ballot under same restrictions.—Any person who has not been defeated at the primary election preceding the general or special election for United States Senators, desiring to have his name appear upon the official ballot at any general election as a candidate for United States Senator who is not the nominee of any political party or political organization may do so only upon presenting a petition to the Secretary of State signed by at least ten per cent of the qualified voters in the State of Texas as measured by the total vote for Governor at the preceding general election. Said petitioner shall conform in every particular to the requirements of the laws of this State with reference to placing the name of any candidate, other than the nominee of any party upon the official ballot, provided, further, that in no case shall the name of any person be placed upon the official ballot at any general election as a candidate for United States Senator as the nominee of any party unless he has been nominated under the provisions of this Act and has complied with every provision of the laws of this State with reference to the nomination of candidates for United States Senators. (Id. sec. 36.)

TITLE 7

OF OFFENSES WHICH AFFECT THE FREE EXERCISE OF RELIGIOUS OPINION

CHAPTER ONE

DISTURBANCE OF RELIGIOUS WORSHIP

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

See Clark v. S., 78 S. W. 1078.

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

Art. 298. (195) Double penalty for second offense.—Double the punishment prescribed in article 296 shall be imposed for any subsequent offense of the same kind. (O. C. 286.)

CHAPTER TWO
SUNDAY LAWS

Art. 299. (196) Working on Sunday.—Any person who shall hereafter labor, or compel, force, or oblige his employés, workmen or apprentices to labor on Sunday, or any person who shall hereafter hunt game of any kind whatsoever on Sunday, within one-half mile of any church, school house or private residence, shall be fined not less than ten nor more than fifty dollars. (Acts 1887, p. 108.)

See Ex parte Kennedy, 58 S. W. 129; Stephens v. Porter, 69 S. W. 423; York v. Yzaguairre, 71 S. W. 563; Benson v. S., 85 S. W. 800; Ex parte Axsom, 141 S. W. 793; State v. Country Club, 173 S. W. 570; Grimes v. S., 200 S. W. 378.

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

Ex parte Axsom, 141 S. W. 793; Grimes v. S., 200 S. W. 378.

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

Davis v. S., 39 S. W. 937; Borders v. S., 66 S. W. 1102.

Art. 302. (199) Selling goods on Sunday.—Any merchant, grocer, or dealer in wares or merchandise, or trader in any business whatsoever, or the proprietor of any place of public amusement, or the agent or employé of any such person, who shall sell, barter, or permit his place of business or place of public amusement to be open for the purpose of traffic or public amusement on Sunday, shall be fined not less than twenty nor more than fifty dollars. The term, place of public amusement, shall be construed to mean circuses, theaters, variety theaters and such other amusements as are exhibited and for which an admission fee is charged; and shall also include dances at disorderly houses, low dives and places of like character, with or without fees for admission. (Id.; Acts 1883, p. 66; Acts 1887, p. 108.)

See Brown v. S., 44 S. W. 176; Searcy v. S., 51 S. W. 1119; Ex parte Brown, 61 S. W. 396; Watson v. S., 79 S. W. 31; Armstrong v. S., 84 S. W. 827; Savage v. S., 88 S. W. 351; Ex parte Jacobson, 115 S. W. 1193; Muckenfuss v. S., 116 S. W. 51, 20 L. R. A. (N. S.) 783; Ex parte Wright, 120 S. W. 868; Ex parte Roquemore, 131 S. W. 1101, 32 L. R. A. (N. S.) 1186; Ex parte Lingenfelter, 142 S. W. 555; Oliver v. S., 144 S. W. 604; Ex parte Zuccaro, 162 S. W. 844; Bergere v. Parker, 170 S. W. 808; Lempke v. S., 171 S. W. 217; Zucarro v. S., 197 S. W. 982, L. R. A. 1918B, 354; Grimes v. S., 200 S. W. 378.

Art. 303. (200) Exceptions from operation of preceding article.—The preceding article shall not apply to markets or dealers in provisions as to sales of provisions made by them before 9 o'clock a. m., nor to the sale of burial or shrouding material, newspapers, ice, ice cream, milk, nor to the sending of telegraph or telephone messages at any hour of the day nor to keepers of drug stores, hotels, boarding houses, restaurants, livery stables, bath houses, or ice dealers, nor to telegraph or telephone offices. (Acts 1891, p. 173.)

See Searcy v. S., 51 S. W. 1119; Watson v. S., 79 S. W. 31; Savage v. S., 88 S. W. 351; Grimes v. S., 200 S. W. 378.

TITLE 8
OF OFFENSES AGAINST PUBLIC JUSTICE

CHAPTER ONE
OF PERJURY

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

See Ferguson v. S., 35 S. W. 369; Martinez v. S., 46 S. W. 826; McAvoy v. S., 51 S. W. 923; Flournoy v. S., 59 S. W. 903; Kurtley v. S., 59 S. W. 45; Robertson v. S., 80 S. W. 1000; Windom v. S., 119 S. W. 309; Poulter v. S., 157 S. W. 166; Shipp v. S., 196 S. W. 840.

Art. 305. (202) Not perjury, when.—A false statement made through inadvertence, or under agitation, or by mistake, is not perjury. (O. C. 288.)

Mason v. S., 122 S. W. 871; Mares v. S., 158 S. W. 1130; Johnson v. S., 160 S. W. 964.

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

Rambo v. S., 64 S. W. 1039.

Art. 307. (204) And about something past or present.—The false statement must be of something past or present; oaths of office, or any other promissory oaths, are therefore not included in the definition of perjury, except that part of the official oath prescribed by the constitution which relates to dueling. (O. C. 290.)

Art. 308. (205) In what sort of proceeding.—All oaths or affirmations legally taken in any stage of a judicial proceeding, civil or criminal, in or out of court, or before a grand jury, are included in the description of this offense. (Acts 1875, p. 170; O. C. 290a.)

Art. 309. (206) Immaterial statement not perjury.—The statement of any circumstance wholly immaterial to the matter in respect to which the declaration is made is not perjury. (O. C. 291.)

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

See Dorrs v. S., 40 S. W. 311; Montgomery v. S., 40 S. W. 805; Higgins v. S., 53 S. W. 1012; Manning v. S., 81 S. W. 957; Clayton v. S., 180 S. W. 1089.

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

CHAPTER TWO
OF FALSE SWEARING

Art. 312. (209) "False swearing," definition of.—If any person shall deliberately and wilfully, under oath or affirmation legally administered, make a false statement by a voluntary declaration or affidavit, which is not required by law or made in the course of a judicial proceeding, he is guilty of false swearing, and shall be punished by imprisonment in the penitentiary not less than two nor more than five years. (O. C. 294.)

Campbell v. S., 68 S. W. 513; Shipp v. S., 196 S. W. 840.

Art. 313. (210) Past or present.—The false swearing must, as in regard to perjury, be relative to something past or present. (O. C. 295.)

Art. 314. (211) Officer falsely reporting collection of public moneys.—If any officer of this state, or of any district or county thereof, who is charged by law with the duty of receiving or collecting public moneys, other than taxes, for the use of the state or counties, and reporting the same, under oath, to the district, county or commissioners' court of any county, shall falsely report the amount of such collections, or any part thereof, he shall be deemed guilty of false swearing, and, upon conviction, shall be punished as prescribed in article 209. (Acts 1874, pp. 182-3.)

Art. 315. (212) False swearing in relation to quarantine matters.—Any person suspected of violating any quarantine law or regulation, and who, upon being sworn by any one authorized to administer an oath by the provisions of any law of this state, shall knowingly swear falsely about any matter concerning which the quarantine laws and regulations permit examination, shall be deemed guilty of false swearing, and shall, on conviction in a court of competent jurisdiction, be punished by imprisonment in the penitentiary not less than two nor more than five years. (Acts 1883, p. 27.)

Art. 316. (213) Witness before grand jury divulging proceedings, etc.—Any grand juror, or any person who shall appear before any grand jury in this state, and who, after being sworn according to law as a witness before said grand jury, shall afterwards divulge, either by word or sign, any matter about which said witness may have been interrogated, or any proceeding or fact said witness may have learned by reason of being said witness, shall be guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than one hundred nor more than one thousand dollars, and may be in addition thereto imprisoned in the county jail not exceeding six months; provided, this act shall not apply to persons required to testify to any of the aforesaid matters before a judicial tribunal. (Acts 1887, p. 131.)

Hines v. S., 39 S. W. 935; Higdon v. S., 79 S. W. 546; Misso v. S., 135 S. W. 1173.

Art. 317. False swearing to enlistment paper.—Every person who enlists or re-enlists in the active militia of this state shall sign and make oath to an enlistment paper, which shall be filed in the office of the adjutant general. Such oath shall be taken and subscribed to before a field officer, or the commanding officer of a signal corps, troop, battery or company, who are hereby authorized to administer such oaths; and such oaths may be taken before any officer authorized by the laws of this state to administer oaths. A person making a false oath to any statement contained in such enlistment paper shall, upon conviction, be deemed guilty of false swearing and punished accordingly. (Acts 1905, p. 179.)

Art. 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, Civ. St.], 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 wilfully 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, ch. 141, sec. 7; Acts 1917, ch. 188, sec. 8.)

Art. 317b. False swearing by school census trustee.—The census trustee shall arrange the forms for white and colored children separately in alphabetical order, according to the family name of the children reported thereon. He shall also make, on a prescribed form, separate census rolls for the white and colored children of his district, showing the name, age, sex and color of each child, and the name of the parent, guardian or person having control of said children by whom it is reported. He shall also make a summary of his rolls showing the number of children of each race that will be of the different ages over seven and under seventeen on the first day of next September, which shall continue to be the scholastic age, as is now provided by law, he shall make oath

to his rolls and summaries, and to the faithful and accurate discharge of his duties, deliver the rolls, together with the forms arranged in alphabetical order, to the county superintendent on or before June first next after his appointment.

Any census trustee who shall wilfully fail or refuse to obtain the necessary information in regard to any child which will be over seven and under seventeen years of age on the first day of September next thereafter, or who shall willfully fail or refuse to include any child within said ages in his rolls, or shall wilfully make any false report, roll or summary, shall be guilty of false swearing, and shall be punished as prescribed by law for that offense. And if the county superintendent finds or believes that any census trustee has violated any duty required under this act, such county superintendent shall report said census trustee to the grand jury of the county at its next session after discovering such breach of duty. (Acts 1897, S. S., ch. 16, repealed; Acts 1905, ch. 124, sec. 89.)

The above provision was omitted from the Revised Penal Code; but is included in this compilation as art. 317b, in view of the decision in Berry v. S., 156 S. W. 626.

Art. 317c. False statement in affidavit of bidder for state supplies.—Any person making a false statement in any such affidavit shall be deemed guilty of a felony and shall be punished as now prescribed for that offense; provided, however, that in addition to any other county having venue of such offense Travis county shall also have venue of the same, and such person, regardless of where the offense was committed, may be indicted by the grand jury of Travis county and be tried in Travis county. (Acts 1919, ch. 167, sec. 5.)

This article is a part of sec. 5 of Acts 1919, ch. 167. For the remainder of this act, see ante, Civ. St. arts. 7150¼-7150¼p.

CHAPTER THREE

OF SUBORNATION OF PERJURY AND FALSE SWEARING

Art. 318. (214) Subornation of perjury, or false swearing.—If any person shall designedly induce another to commit perjury or false swearing, he shall be punished as if he had himself committed the crime.

Art. 319. (215) Attempt at subornation of perjury.—If any person shall, by any means whatever, corruptly attempt to induce another to commit the offense of perjury or false swearing, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years. (O. C. 297, 298.)

CHAPTER FOUR

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

Art. 320. (216) Officer in charge of prisoner wilfully permitting escape in capital case.—Any officer, jailer or guard, having the legal custody of any person accused or convicted of a capital offense, who wilfully permits such person to escape, or to be rescued, shall be punished by confinement in the penitentiary not less than two nor more than ten years. (O. C. 312.)

Art. 321. (217) In felonies.—Any officer, jailer or guard, who has the legal custody of any person accused or convicted of a felony less than capital, who wilfully permits such person to escape, or to be rescued, shall be punished by imprisonment in the penitentiary for a term not less than two and not exceeding five years. (O. C. 313.)

Art. 322. (218) In misdemeanors.—Any officer, jailer or guard, having the legal custody of a person accused or convicted of a misdemeanor, who wilfully permits such person to escape, or to be rescued, shall be fined not exceeding one thousand dollars. (O. C. 314.)

Art. 323. (219) Negligently permitting escape in capital case.—Any officer, jailer or guard, who has the legal custody of a person accused or convicted of a capital offense, and who negligently permits such person to escape or to be rescued, shall be punished by a fine not exceeding two thousand dollars. (O. C. 315.)

Art. 324. (220) In felonies.—Any officer, jailer or guard, who has the legal custody of a person accused or convicted of a felony less than capital, and who negligently permits such person to escape or to be rescued, shall be punished by fine not exceeding one thousand dollars. (O. C. 316.)

Art. 325. (221) In misdemeanors.—Any officer, jailer or guard, who has the legal custody of a person accused or convicted of a misdemeanor, and who negligently permits such person to escape or to be rescued, shall be punished by fine not exceeding five hundred dollars. (O. C. 317.)

Art. 326. (222) Officer refusing to arrest or receive in felony.—Any sheriff or other officer, who willfully refuses or fails from neglect to execute any lawful process in his hands requiring the arrest of a person accused of felony, whereby such person escapes, or wilfully refuses to receive in a jail under his charge, or to receive into his custody, any person lawfully committed to such jail and ordered to be confined therein on an accusation of felony, or lawfully committed to his custody on such accusation, shall be fined not exceeding two thousand dollars. (Acts 1860, p. 96; O. C. 318.)

Art. 327. (223) Same in cases of misdemeanor.—Any sheriff or other officer, who wilfully refuses or fails from neglect to execute any lawful process in his hands requiring the arrest of a person accused of a misdemeanor, whereby the accused escapes, or who wilfully refuses to receive into a jail under his charge, or to receive in his custody any person lawfully committed to such jail on an accusation of misdemeanor, or lawfully committed to his custody on such accusation, shall be punished by fine not exceeding five hundred dollars. (Acts 1860, p. 96; O. C. 319.)

Art. 328. (224) Private person appointed to execute, same as officer.—If any private person, appointed with his own consent to execute a warrant of arrest, shall be guilty of any one of the offenses heretofore enumerated in this chapter, he shall be punished in the same manner as an officer in a like case. (O. C. 320.)

Art. 329. (225) Conveying arms, disguises, etc., into jail to aid felon.—If any person shall convey, or cause to be conveyed, into any jail, any disguise, instrument, arms,

or any other thing useful to aid any prisoner in escaping, with intent to facilitate the escape of a prisoner lawfully detained in such jail, on an accusation of felony, or shall, in any other manner calculated to effect the object, aid in the escape of a prisoner legally confined in jail, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years. (O. C. 321; Acts 1858, p. 162.)

See Jenkins v. S., 93 S. W. 554.

Art. 330. (226) Same in misdemeanor.—If any person shall, by any of the means contemplated in the preceding article, aid in the escape of a person legally confined in jail upon an accusation for a misdemeanor, he shall be fined not exceeding five hundred dollars. (O. C. 323.)

Post, art. 337.

Art. 331. (227) Breaking into jail to rescue prisoner.—If any person shall break into any jail for the purpose of effecting the rescue or escape of a prisoner therein confined, or for the purpose of aiding in the escape of any prisoner so confined, he shall be punished by imprisonment in the penitentiary for a term not less than two nor more than six years. (O. C. 322, 324.)

See post, art. 337; Starks v. S., 42 S. W. 379; Kippen v. S., 62 S. W. 420.

Art. 332. (228) Aiding prisoner charged with felony to escape from officer.—If any person shall wilfully aid in the escape of a prisoner from the custody of an officer, by whom he is legally held in custody on an accusation of felony, by doing any act calculated to effect that object, he shall be punished by imprisonment in the penitentiary not less than two nor more than seven years; and if, in aiding in the escape, he shall make use of arms, he shall be punished by imprisonment in the penitentiary for a term not less than two nor more than ten years. (Acts 1858, p. 162; O. C. 325.)

Post, art. 337.

Art. 333. (229) Same; aid in case of misdemeanor.—If any person shall wilfully aid a prisoner to escape from the custody of an officer by whom he is legally detained in custody after conviction of a misdemeanor, or while being so detained in custody on an accusation for misdemeanor, by doing an act calculated to effect that object, he shall be punished by fine not exceeding five hundred dollars; and if, in aiding in the escape, he shall make use of arms, he shall be punished by fine not exceeding one thousand dollars. (O. C. 326; amended Acts 1905, p. 377.)

See post, arts. 337, 346; Brannon v. S., 72 S. W. 184; Blanchette v. S., 125 S. W. 26.

Art. 334. (230) Assisting inmate of state institution for correction of juveniles to escape.—Any person who shall knowingly assist any inmate lawfully confined in the state institution for the training of juveniles to escape, or who shall knowingly conceal such inmate, or advise or abet the escape of such inmate, or who shall furnish such inmate with money, arms, or any character of means to escape, with the purpose of facilitating the escape of such inmate, shall be deemed guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary for a term of not less than two nor more than five years. (Acts 1889, p. 98, sec. 15.)

Art. 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, ch. 144, sec. 9; Acts 1917, ch. 111, sec. 1.)

Art. 334b. Persuading inmates of State Home for Dependent and Neglected White Children.—Any person who shall persuade, coerce, employ, induce in any manner any child who has been committed to said Home from any institution or from any home selected by the persons herein empowered to make such selections without the knowledge and consent of such persons shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than $100.00, and not more than $500.00 or be imprisoned in the county jail for not less than sixty days nor more than six months or by both such fine and imprisonment. (Acts 1919, ch. 159, sec. 11.)

For other parts of Acts 1919, ch. 159, see ante, Civ. St. arts. 5234¾-5234¾j.

Art. 335. (231) Telegraph officer divulging process.—Any executive officer, director, superintendent, manager, operator, clerk, messenger or other party in the employ of a telegraph company, who shall wilfully divulge, or in any manner make known, except to the proper authority, the contents of any warrant, affidavit or telegram relating to any crime already committed, or for the prevention of the same, shall, upon conviction, be fined in a sum not less than five hundred dollars nor more than one thousand, or be imprisoned in the state penitentiary for a term not less than two years nor more than five years. (Acts 1871, p. 40, sec. 7.)

Art. 336. (232) Preventing execution of civil process.—If any person shall prevent or defeat the execution of any process in a civil cause, by any means not amounting to actual resistance, but which are calculated to prevent the execution of such process, he shall be punished by fine not exceeding five hundred dollars; evading the execution of such process is not an offense under this article. (O. C. 327.)

Post, art. 340.

Art. 337. (233) Offenses complete without actual escape.—The offenses enumerated in articles 329, 330, 331, 332 and 333 are complete without the actual escape of the prisoner; and a person accused of any of said offenses may be prosecuted and tried, although the person escaping be retaken, and although after being retaken he is brought to trial and acquitted. (O. C. 328–9.)

Blanchette v. S., 125 S. W. 26.

Art. 338. (234) County convict escaping from employer.—Any person who has been convicted of a misdemeanor or petty offense, and afterwards hired under authority of law, who shall escape from his employer or person hiring him during the term of which he may have been hired, shall be punished by imprisonment in the county jail for a term not exceeding two years. (Acts 1876, p. 228, sec. 4.)

See Mills v. S., 55 S. W. 339.

Art. 339. (235) Person resisting officer in case of felony.—If any person shall willfully oppose or resist an officer in executing or attempting to execute any lawful warrant for the arrest of another person in a case of felony, he shall be punished by confinement in the penitentiary for a term not less than two nor more than five years; and, if arms be used in such resistance, he shall be punished by imprisonment in the penitentiary not less than two nor more than seven years. (O. C. 331; Acts 1858, p. 163.)

Post, art. 345.

Art. 340. (236) In cases of misdemeanors.—If any person shall wilfully oppose or resist an officer in executing or attempting to execute any lawful warrant for the arrest of another person in a case of misdemeanor, or in arresting or attempting to arrest any person without a warrant, where the law authorizes or requires the arrest to be made without a warrant, he shall be punished by a fine of not less than twenty-five nor more than five hundred dollars; and, if arms be used, by a fine of not less than fifty nor more than one thousand dollars. (O. C. 332; Acts 1881, p. 108.)

Post, art. 345; Harless v. S., 109 S. W. 934.

Art. 341. (237) In civil cases.—If any person shall wilfully resist or oppose an officer in executing, or attempting to execute, any process in a civil cause, he shall be fined not exceeding five hundred dollars; and, if arms be used in such resistance, the punishment shall be doubled. (O. C. 333.)

Ante, art. 336; Moseley v. S., 38 S. W. 197.

Art. 342. Resisting officers of levee improvement district.—The district supervisors of any levee improvement district, and the district engineer and his assistants, from the time of their appointments, and the state reclamation engineer and his deputies, are hereby authorized to go upon any lands or waters for the purpose of examining the same and locating all levees and other improvements, making plans, surveys, maps and profiles, together with all necessary teams, help and instruments, without subjecting themselves to an act of trespass; and any person or persons, firm or corporation, who shall wilfully prevent or prohibit any of such officers from entering any lands or waters for such purposes, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding twenty-five dollars for each day he, they or it shall so prevent or hinder such officer from entering upon such lands or waters; and any justice of the peace of the county shall have jurisdiction in all such offenses. (Acts 1909, p. 152 repealed; Acts 1915, ch. 146, sec. 42.)

Art. 342a. Unlawful construction of levee improvements.—From and after the taking effect of this Act it shall be unlawful for any person, corporation or levee improvement district, without first obtaining the approval of plans for the same by the State Reclamation Engineer, to construct, attempt to construct, cause to be constructed, maintain or cause to be maintained, any levee or other such improvement on, along or near any stream of this state which is subject to floods, freshets or overflows, so as to control, regulate or otherwise change the flood waters of such stream; and any person, corporation or district violating this section of this Act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for a period of not more than one year, or by both such fine and imprisonment, and each day any such structure is maintained or caused to be maintained shall constitute a separate offense. And in the event any such structure is about to be constructed, is constructed, or maintained by any person or corporation without approval of plans by the State Reclamation Engineer, it shall be the duty of the Attorney General, on the request of the State Reclamation Engineer, to file suit in one of the district courts of Travis county, in which the venue of such suits is hereby fixed, to enjoin the construction or maintenance of such structure. (Id. sec. 62.)

Art. 342b. Same; purpose and scope of act.—This Act shall not be construed to repeal any of the provisions of Chapter 118, General Laws of the Thirty-second Legislature, Regular Session, entitled "Drainage Districts—Authorizing the Commissioners Courts of the Several Counties of the State to Establish Same," nor of Chapter 36, General Laws Thirty-third Legislature, First Called Session, entitled, "Drainage Districts —Amending Sections 7, 8, 23, 29, 36 and 61, Chapter 118, General Laws, Regular Session, Thirty-second Legislature, Relating Thereto," nor any of the irrigation laws of this State. (Id. sec. 63.)

Art. 342c. Same; repeal.—Chapter 85, General Laws of the State of Texas, passed by the Thirty-first Legislature, Regular Session, entitled "An Act to authorize the Commissioners Court of the several counties in Texas to create and establish improvement districts to prevent overflows and to construct and maintain levees and other improvements on rivers, creeks and streams to prevent overflows, etc., etc., and declaring an emergency," is hereby expressly repealed, and all other laws and parts of laws in conflict with the provisions of this Act are also hereby expressly repealed. (Id. sec. 65.)

Art. 342d. Resisting officers of drainage district.—The drainage commissioners of any district and the civil engineer from the time of their appointment, are hereby authorized to go upon any lands lying within said district for the purpose of examining

the same, locating the canals, drains, ditches and levees, making plans, surveys, maps and profiles, and are hereby authorized to go upon any lands beyond the boundaries of such district and in any county for the purpose of examining the same, and locating the necessary outlets for any of the canals, drains or ditches of such district, together with all necessary teams, help, tools and instruments, without subjecting themselves to action of trespass, and any person who shall wilfully prevent or prohibit any of such officers from entering any land for such purposes shall be guilty of a misdemeanor, and upon conviction may be fined in any sum not exceeding twenty-five dollars for each day he shall so prevent or hinder such officer from entering upon any land, and any justice of the peace in the county shall have jurisdiction of all such offenses. (Acts 1907, p. 78; Acts 1911, ch. 118, sec. 41.)

Art. 343. Resisting navigation and canal commissioners and engineers.—The navigation and canal commissioners of any district and the engineers from the time of their appointment are hereby authorized to go upon any lands lying within said district for the purpose of examining the same, making plans, surveys, maps and profiles, together with all necessary teams, help, tools and instruments, without subjecting themselves to action or [for] trespass; and any person who shall wilfully prevent or prohibit any such officer from entering any land for such purposes, shall be guilty of a misdemeanor, and, upon conviction, may be fined in any sum not exceeding twenty-five dollars for each day he shall so prevent or hinder such officer from entering upon any land; and any justice of the peace in the county shall have jurisdiction of all such offenses. (Acts 1909, p. 43.)

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, ch. 172, sec. 84; Acts 1917, ch. 87, sec. 84.)

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

Art. 343b. Obstructing State Superintendent of Weights and Measures.—Any person who shall hinder or obstruct in any way the State Superintendent, or his deputy, inspectors, sealer or local sealer in the performance of their duties shall be guilty of a misdemeanor. (Acts 1919, ch. 131, sec. 25.)

For the remainder of Acts 1919, ch. 131, see ante, Civ. St. arts. 7846¼, 7846¼g-7846¼zzz.

Art. 343c. Interfering with eradication of predatory animals.—Any person who shall in any way interfere with such work or who shall attempt to keep any persons named in Section 5 of this Act [Civ. St. Art. 7169e] from entering on any public or private lands for the purpose of exterminating injurious predatory animals shall be deemed guilty of a misdemeanor and shall be fined in the sum of not less than $10.00 or more than $500.00, and in addition thereto may be confined in the county jail for not less than one month or for not more than twelve months, provided that such persons so appointed under the provisions of this Act shall upon request exhibit his certificate of appointment which shall, among other things, contain a provision that such person is drawing a salary by virtue of such appointment. (Acts 1919, ch. 107, sec. 6.)

For the remainder of Acts 1919, ch. 107, see, ante, Civ. St. arts. 7169a-7169e.

Art. 344. (238) Accused resisting process.—If the party against whom a legal warrant of arrest is directed, in any criminal case, resist its execution, when attempted by any person legally authorized to execute the same, he shall be fined not exceeding five hundred dollars; and, if arms be used in making the resistance, in such manner as would make him liable for assault and battery or assault with intent to murder, or any other offense against the person, he shall receive the highest penalty affixed by law for the commission of such offense in ordinary cases. (O. C. 334.)

Fulkerson v. S., 67 S. W. 502; Sullivan v. S., 148 S. W. 1091.

Art. 345. (239) Process must be legal.—To render a person guilty of any of the offenses included within the meaning of articles 339 and 340, the warrant or process must be executed, or its execution attempted, in a legal manner. (O. C. 335.)

Art. 346. (240) "Accusation" defined.—The word "accusation," as used here, and in every part of this Code, means a charge made in a lawful manner against any person, that he has been guilty of some offense which subjects him to prosecution in the name of the state. A person is said to be "accused" of an offense from the time that any "criminal action" shall have been commenced against him.

A legal arrest without warrant;

A complaint to a magistrate;

A warrant legally issued; and indictment, or an information, are all examples of "accusations," and a person proceeded against by either of these is said to be "accused." (O. C. 336.)

Blanchette v. S., 125 S. W. 26.

Art. 347. (241) "Legally confined in jail" defined.—A person is "legally confined in jail," or "legally detained in custody," when he has been committed or arrested upon a legal warrant, or arrested in any of the modes pointed out in the Code of Criminal Procedure. (O. C. 337.)

Art. 348. (242) "Jail" defined.—The word "jail" means any place of confinement used for detaining a prisoner. (O. C. 338.)

Art. 349. (243) "Officer" defined.—By "officer," as used in this chapter, is meant any peace officer, as sheriff, deputy sheriff, constable of a beat, marshal, constable or policeman of a city or town, any jailer or guard, or any person specially authorized by warrant to arrest. (O. C. 339.)

Art. 350. (244) (228) "Arms" defined.—The term "arms," as used in this chapter, includes any deadly weapon.

Art. 351. (245) Refusing to aid an officer.—If any person, being called on by a magistrate, or peace officer, shall fail or refuse to aid such officer in any matter in which, by law, he may be rightfully called on to aid or assist in the execution of a duty incumbent upon such magistrate or peace officer, he shall be punished by fine not exceed-

ing one hundred dollars. (O. C. 339a; Acts 1858, p. 163.)

CHAPTER FIVE

FALSE CERTIFICATE, AUTHENTICATION OR ENTRY BY AN OFFICER

Art. 352. (246) Commissioner of deeds giving false certificate.—If any person, being a commissioner of deeds and depositions, who is residing out of this state, and acting as such commissioner under authority of a law of the state, shall fraudulently certify to the execution of any instrument of writing which was never in fact acknowledged or proved before him, as the same purports to have been acknowledged or proved, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years. (O. C. 340.)

See C. C. P. art. 249.

Art. 353. (247) "Instrument of writing" defined.—By "instrument in writing" is meant any deed, conveyance, transfer, release, obligation or other written instrument of any kind or description whatever, which such commissioner is, by law, authorized to authenticate for record. (O. C. 341.)

Art. 354. (248) Commissioner certifying falsely to deposition.—If any such commissioner shall falsely certify to any deposition purporting to have been taken before him, and to be used in any cause pending in a court of this state, he shall be punished in the same manner as is prescribed in article 352. (O. C. 342.)

Art. 355. (249) Same as to affidavit.—If any such commissioner shall falsely certify to any affidavit purporting to have been made before him, and which, by law, he is authorized to take, he shall be punished as prescribed in article 352. (O. C. 343.)

Art. 356. (250) Clerks of court making false entry.—If any clerk of a court in this state shall knowingly make any false entry upon the records of his court, which may prejudice or injure the rights of any person, he shall be punished by confinement in the penitentiary not less than two nor more than five years. (O. C. 344.)

Art. 357. (251) Giving false certificate.—If any such clerk shall give a false certificate, stating that any person has done any act whatever, to which he has a right to certify, or that such person is entitled to any right whatever, when such clerk may by law give such certificate if the same were true, he shall be punished as directed in the preceding article. (O. C. 345.)

Art. 358. (252) Notary public giving false certificate.—If any notary public, or other officer authorized by law, shall give a false certificate for the purpose of authenticating any instrument of writing for registration, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years. (O. C. 346.)

Art. 359. (253) Officer giving blank certificate.—If any officer, authorized by law to take depositions or administer oaths in this state, shall falsely certify that any depositions was sworn to before him, or any oath made, or shall with fraudulent intent place his certificate, signature or seal to any affidavit which is drawn with blanks as to any other matter of substance, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years. Within the meaning of this article, shall be included the case of an officer who, with design that the same may be filled up and used for fraudulent purposes, attaches his signature or seal of office to any paper wholly blank. (O. C. 347; Acts 1858, p. 163.)

Art. 360. (254) Failing to keep a record of acknowledgments.—Any county clerk, justice of the peace, notary public, or any other officer in this state authorized by law to take acknowledgments or proof of instruments required or permitted by law to be placed on record, who shall wilfully fail, neglect or refuse to enter and record in a well-bound book a short statement of each acknowledgment or proof taken by him and sign the same officially, shall be fined in any sum not less than one hundred nor more than five hundred dollars. (Acts 1874, p. 156.)

Art. 361. (255) Requisites of such record.—By "short statement," as used in the preceding article, is meant that such statement shall recite the true date on which such acknowledgment or proofs were taken, the name of the grantor and grantee of such instrument, its date, if proved by a subscribing witness, the name of the witness, the known or alleged residence of the witness, and whether personally known or unknown to the officer; if personally unknown, this fact shall be stated, and by whom such person was introduced to the officer, if by any one; and the known or alleged residence of such person. Such statement shall also recite, if the instrument is acknowledged by the grantor, his then place of residence, if known to the officer; if unknown, his alleged residence, and whether such grantor is personally known to the officer; if personally unknown, by whom such grantor was introduced, if by any one, and his place of residence. If land is conveyed or charged by the instrument, the name of the original grantee shall be mentioned, and the county where the same is situated; and a failure to comply with any one of the requirements shall be punished as prescribed in the preceding article. (Acts 1874, p. 156.)

Art. 362. (255a) False certificate as to corporate indebtedness, etc.—If any mayor, county judge, tax assessor, or other officer or person, for the purpose of securing the certificate of the attorney general, provided for in the issuance and sale of bonds by any county, city or town in the state of Texas, shall knowingly make, or be concerned in making or forwarding, to the attorney general, a false certificate as to the amount of the taxable value of the property in such county, city or town, as shown by the last official assessment, or knowingly and falsely certify as to the amount of indebtedness of such county, city or town, or the rate of tax levied to provide interest and sinking fund for such indebtedness, or other facts required by the attorney general, he shall be guilty of felony, and, upon conviction therefor, shall be punished by confinement in the penitentiary not less than one nor more than five years. (Acts 1893, p. 85.)

Art. 362a. False certificate to physician.—That it shall be a misdemeanor and shall disqualify from office for the Board of Medical Examiners [Arts. 799a–799g, post] to issue a certificate of license to any person, only as set forth and prescribed from office; the Governor shall appoint a new Board in full, as provided in this Act. (Acts 1911, ch. 76, sec. 16.)

CHAPTER SIX

MISCELLANEOUS OFFENSES UNDER THIS TITLE

1. EXTORTION

Art. 363. (256) Extortion by officers.—If any officer or person, authorized by law to demand or receive fees of office, shall willfully collect any fee or fees due him by law in excess of the fee or fees allowed by law for such service, or for fees not allowed by law, he shall be punished by imprisonment in the state penitentiary not less than two nor more than five years for each offense. (O. C. 352; Acts 1883, p. 5; Acts 1907, p. 307.)

Johnson v. S., 40 S. W. 982; Ben C. Jones & Co. v. Smith, 109 S. W. 1111.

Art. 364. Officers demanding illegal fees.—If any officer or other person, authorized by law to demand or receive fees of office, shall wilfully make out his account for fees in excess of those allowed by law, or for fees not allowed by law, and shall present or file such account with the proper officer with whom the law requires the same to be presented or filed, he shall be punished by a fine of not less than twenty-five or more than two hundred and fifty dollars for each offense. (Acts 1907, p. 307.)

Art. 365. (257) Applies to all officers.—The two preceding articles apply to all persons holding any office to which fees are attached, and to the heads of the departments of the government in whose offices fees may be charged. (O. C. 353.)

2. CONVERSION

Art. 366. (258) Conversion by sheriff, etc.—If any sheriff, or other officer, having collected money for any party to a suit, shall, without the consent of such party, unlawfully convert the same, or any part thereof, to his own use, he shall be punished in the same manner as if he had committed theft of such money. (O. C. 354a; Acts Feb. 12, 1858.)

Art. 367. (259) Appropriation of trust funds.—If any officer of any court who has the legal custody of any money, evidence of debt, scrip, instrument of writing or other article, that may have been deposited in court to abide the result of legal proceedings, shall appropriate the same to his own use, he shall be punished as if he had committed theft of such money, evidence of debt, scrip, instrument of writing or other article. (Acts 1876, p. 7.)

Art. 368. (260) Officer failing to deposit trust funds, etc.—Any officer of any court having the custody by law of any money, evidence of debt, scrip, instrument of writing or other article that may have been deposited in court to abide the result of any legal proceedings, who shall fail to seal up in a secure package the identical money or other article received by him, and deposit the same in some iron safe or bank vault; or who, when such money or other article is so deposited, shall fail to keep it always accessible and subject to the control of the proper court; or who shall fail to keep, in a well-bound book, a correct statement showing each and every item of money or other article so received or deposited, on what account received, and what disposition has been made of the same, shall be punished by fine not less than ten nor more than two hundred dollars, or by imprisonment in the county jail for a period not exceeding three months; and may, in addition thereto, be punished by the proper court for contempt. (Acts 1876, p. 7.)

Art. 369. (261) Failing to turn over funds, etc., to successor.—Any officer, such as is enumerated in the preceding article, who shall fail or refuse to turn over to his successor in office, on the expiration of his own term of office, the record of trust funds therein specified, together with the packages of money or other articles in his possession or control, shall be punished as prescribed in the preceding article. (Id.)

3. PECULATION

Art. 370. (262) State officer buying claims against state.—Any officer of this state who shall trade for, buy or be in any way concerned in the purchase of any claim or demand against the state shall be fined in the sum of one thousand dollars. (Acts 1873, p. 62.)

Art. 371. (263) "State officer" defined.—By the term, "officer of this state," as used in the preceding article, is meant the governor, lieutenant governor, the heads or employés of any of the executive departments, members and officers of both houses of the legislature, the judges of the several courts, district and county attorneys, sheriffs, tax collectors and tax assessors.

Art. 372. Officers and employés of state penitentiary.—No officer or employé of the state penitentiaries shall be permitted to purchase any goods or merchandise or other property from the state or penitentiary system, except such surplus fruits, vegetables, ice, water, steam and lights as may be produced or manufactured on the premises of the penitentiary, or to appropriate to his private use or employment the labor, services or use of any state penitentiary convict, or of any animal, vehicle or other personal property belonging to the state, unless it be by the express consent of the penitentiary board, had by an order to that effect entered of record on the minutes of said board, providing for the amount to be paid by such officer or employé for the use, employment and services of such convict or convicts, or the use of any personal property belonging to the state; and no employé or officer using any of the state property shall be allowed to use same in keeping boarders for profit, unless such boarder or boarders be in the employ of the state penitentiary system; and no penitentiary sergeant, guard or other officer or employé of the penitentiary shall accept or receive any salary or other compensation from any person or corporation hiring or otherwise em-

ploying state convicts. Any such officer or employé who shall violate any of the provisions of this article shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any court of competent jurisdiction, shall be punished by dismissal from his office or employment, and by a fine of not less than twenty-five nor more than two hundred dollars; and, if the conviction be for accepting or receiving any salary or compensation from a hirer or employer of state convicts, the party so convicted shall, in addition to the penalty above described, be confined in the county jail not less than one month nor more than one year.

Any person, co-partnership or firm, or any member of such co-partnership or firm, or any agent, servant or representative of such person, co-partnership or firm, or any officer, agent, servant or representative of any corporation, hiring or employing state convicts by contract with the state or penitentiary system of hire, lease, or for any share or portion or per cent of the crops or other products of the labor of such convicts, who shall pay, or promise or offer to pay, either directly or indirectly, to any sergeant, guard or other employé of the state having such convicts in charge or under his control, either in whole or in part, any money or other valuable thing, shall be guilty of a felony, and, on conviction thereof, shall be punished by confinement in the penitentiary for two years. (Acts 1903, p. 161.)

Art. 373. (264) County or city officer trading in claims.—Any officer of any county in this state, or of any city or town therein who shall contract, directly or indirectly, or become in any way interested in any contract for the purchase of any draft or order on the treasurer of such county, city or town, or for any jury certificate or any other debt, claim or demand for which said county, city or town may or can in any event be made liable, shall be punished by a fine of not less than ten nor more than twenty times the amount of the order, draft, jury certificate, debt, claim or liability so purchased or contracted for. (Acts 1874, p. 47.)

Texas Anchor Fence Co. v. City of San Antonio, 71 S. W. 301; Collmorgen v. S., 168 S. W. 519.

Art. 374. Mayor and members of city council.—It shall be unlawful for the mayor or any member of any city council or board of aldermen, of any city or town in this state, to accept, directly or indirectly, any frank, privilege, free light or water, or sewerage service, or other service, or a lower rate therefor than the regular rate established by said council or board of aldermen, or any gift or anything of value from any water, gas, light and sewer companies, corporations or persons. The servants, agents, officers or employés, or any person acting, directly or indirectly, in behalf of any of said companies, corporations or persons mentioned, who shall, directly or indirectly, give or grant any privilege, frank, free water, light, gas, sewerage service or free service of any kind, or any gift of anything of value to any mayor, or to a member of any such city council, board of aldermen, or any such mayor, or a member of any such council or board of aldermen, who shall receive, accept or enjoy such free light, water, gas, or sewerage service, or other free service, or a lower rate than the regular rate, or any gift of anything of value, as prohibited herein, shall be guilty of a misdemeanor, and, upon conviction therefor, shall be fined in any sum not less than one hundred dollars nor more than one thousand dollars, or by confinement in the county jail not exceeding twelve months, or by both such fine and imprisonment. (Acts 1907, p. 218.)

Art. 375. (265) Ex-officers included, when.—Within the term "officer," as used in the preceding article, are included ex-officers until they have made a final settlement of their official accounts. (Acts 1874, p. 47.)

Art. 376. (266) County or city officers becoming interested in contracts.—If any officer of any county in this state, or of any city or town therein, shall become in any manner pecuniarily interested in any contracts made by such county, city or town, through its agents or otherwise, for the construction or repair of any bridge, road, street, alley or house, or any other work undertaken by such county, city or town, or shall become interested in any bid or proposal for such work or in the purchase or sale of anything made for or on account of such county, city or town, or who shall contract for or receive any money or property, or the representative of either, or any emolument or advantage whatsoever in consideration of such bid, proposal, contract, purchase or sale, he shall be fined in a sum not less than fifty nor more than five hundred dollars. (Acts 1874, p. 47.)

Art. 377. County judges, commissioners or members of navigation board.—Neither the county judge nor any county commissioner, nor member of the navigation board, nor the navigation and canal commissioners or engineer, shall be, directly or indirectly, interested for themselves or as agents for any one else in the contract for the construction of any work to be performed by such navigation district; and, if said officers, or either of them, shall, directly or indirectly, become interested in any contract for such work, or in any fee paid by such navigation district whereby he or others shall receive any money consideration or other thing of value, except in payment of services as provided by law, he shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by imprisonment in the county jail for not less than six months nor more than one year. (Acts 1909, p. 45.)

Art. 378. County judge and other officers of improvement district.—Neither the County Judge nor any County Commissioner, nor the district engineer, nor the district supervisors, shall be directly or indirectly interested, for themselves or as agents for anyone else, in the contract for or construction of any work to be performed by such district; and if any of said officers shall directly or indirectly become interested in any contracts for such work or any fee paid by such district, whereby he shall receive any money consideration or other thing of value, other than such fees and compensation as may be provided for herein, he shall be guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the county jail for not less than six months nor more than one year. (Acts 1909, p. 154, ch. 85, repealed; Acts 1915, ch. 146, sec. 55.)

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, ch. 172, sec. 22; Acts 1917, ch. 87, sec. 22.)

See ante, art. 343a, and note thereunder.

Art. 379a. Officers not to be interested in contracts of drainage district.—Neither the county judge or any county commissioner or drainage commissioner nor the drainage engineer shall be directly or indirectly, interested for themselves or as agents for any one else in the contract for the construction of any work to be performed by such drainage district, [Arts. 2567–2625, Civ. St. ante] and if said officers or either of them shall directly or indirectly, become interested in any contract for such work, or in any fee paid by such drainage district whereby he shall receive any money consideration or other thing of value, he shall be guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the county jail for not less than six months nor more than one year. (Acts 1907, p. 78; Acts 1911, ch. 118, sec. 63.)

Art. 380. (267) Purchase of witness fees by officer.—Any county judge, clerk or deputy clerk of any district or county court, sheriff or his deputy, justice of the peace or constable, who shall purchase or otherwise acquire from the party interested any fee or fees coming to any witness in any proceeding whatever, either before the district or county court, or the court of any justice of the peace, or before any coroner's inquest, shall be punished by fine not exceeding one hundred dollars. (O. C. 354b; Acts 1858, p. 164.)

4. NEPOTISM

Art. 381. "Nepotism" defined.—Subject to the exceptions set forth in Article 384, it shall hereafter be unlawful for any officer of this State, or for any officer of any district, county, city, precinct, school district or other municipal subdivision of this State, or for any officer or member of any State, district, county, city, school district or other municipal board, or judge of any court, created by or under authority of any General or Special Law of this State, or member of the Legislature, to appoint, or vote for, or to confirm, the appointment to any office, position, clerkship, employment or duty, of any person related within the second degree by affinity or within the third degree by consanguinity to the person so appointing or so voting, or to any other member of any such board, the Legislature, or court of which such person so appointing or voting may be a member, when the salary, fees, wages, pay or compensation of such appointee is to be paid for, directly or indirectly, out of or from public funds or fees of office of any kind or character whatsoever. (Acts 1907, p. 12; Acts 1909, p. 85; Acts 1915, ch. 95, sec. 1.)

Art. 382. Officers included.—The inhibitions declared by and set forth in this law shall apply to and include the Governor, Lieutenant Governor, Speaker of the House of Representatives, Railroad Commissioners, heads of departments of the State Government, judges and members of any and all boards and courts established by or under authority of any General or Special Law of this State, members of the Legislature, mayors, commissioners, recorders, aldermen and members of school boards of incorporated cities and towns, public school trustees, officers and members of boards of managers of the State University and of its several branches, and of the various State educational institutions and of the various State eleemosynary institutions, and of the penitentiaries; but this enumeration is not intended and shall not be construed or held to exclude from the operation and effect of this law any person included within its general provisions. (Acts 1907, p. 12; Acts 1909, p. 85; Acts 1915, ch. 95, sec. 1.)

Art. 383. Persons within second or third degree.—It shall be unlawful for any officer or other person included within any of the provisions of this law to appoint or vote for appointment or for confirmation of appointment to any such office, position, clerkship, employment, or duty of any person whose services are to be rendered under his direction or control and to be paid for, directly or indirectly, out of any such public funds or fees of office, and who is related by affinity within the second degree or by consanguinity within the third degree to any such officer or person included within any of the provisions of this law, in consideration, in whole or in part, that such other officer or person has theretofore appointed, or voted for the appointment or for the confirmation of the appointment, or will thereafter appoint or vote for the appointment, or for the confirmation of the appointment, to any such office, position, clerkship, employment or duty, of any person whomsoever related within the second degree by affinity or within the third degree by consanguinity to such officer or other person making such appointment. (Acts 1909, p. 85.)

Art. 384. Exceptions.—Nothing in this law shall apply to any appointment to the office of notary public or to confirmation thereof. (Id. p. 85.)

Art. 385. Shall not approve account.—No executive, legislative, judicial or ministerial officer or other person included within any of the provisions of article 381 shall approve any account or authorize the drawing of or drawing warrant or order, to pay any salary, fee, wages, or compensation of such ineligible officer or person, knowing him to be so ineligible. (Id. p. 85.)

Art. 386. Penalty.—Any violation of any of the provisions of this law shall constitute a misdemeanor involving official misconduct, and shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars. (Id. p. 85.)

Art. 387. District judge appointing stenographer.—Nothing in this law shall be held or deemed to permit any district judge

within this state to appoint as official stenographer of his district any person related within the third degree to the judge or district attorney of such district, but any such appointment is hereby declared unlawful under the provisions of this law and subject to the penalties herein provided. (Id. p. 85.)

5. FAILURE OF DUTY

See, also, Title 18, ch. 25.

Art. 388. (268) Officer refusing to issue or execute process, etc.—Whenever any officer who is by law charged with the issuance or execution of process, either in civil or criminal actions, corruptly and wilfully refuses to issue or execute such process, or corruptly or wilfully refuses to perform any other duty enjoined upon him by law, he shall, when the act or omission is not otherwise provided for or punished, be deemed guilty of a misdemeanor, and shall be fined not exceeding five hundred dollars, and may, in the discretion of the jury, be imprisoned in the county jail not exceeding one year. (O. C. 348.)

Art. 389. (269) (253) Failure to arrest offender.—If any justice of the peace, sheriff or other peace officer shall wilfully neglect to return, arrest or prosecute any person committing a breach of the peace or other crime or misdemeanor which has been committed within his view or knowledge, or shall wilfully and knowingly absent himself from any place where such crime or misdemeanor is being committed, or is about to be committed, for the purpose of avoiding seeing or having a knowledge of the same, he shall be guilty of a misdemeanor, and, on conviction, shall be fined not less than seventy-five dollars nor more than five hundred dollars. (O. C. 354.)

See Green v. S., 61 S. W. 482.

Art. 390. Refusal of sheriff or constable.—Any sheriff or constable who refuses or neglects to perform any duty imposed upon him by the law for the organization of the militia, or to execute any lawful process which shall have been issued by the governor or proper officer of a court martial, shall, upon conviction thereof in the district court, be deemed guilty of a misdemeanor, and shall be fined not more than five hundred dollars, and may, in the discretion of the jury, be imprisoned in the county jail not exceeding one year. (Acts 1905, p. 203.)

Art. 391. Refusal of district or county attorney.—Any district or county attorney who refuses to perform any duty imposed upon him by the law for the organization of the militia, shall, upon conviction thereof in the district court, be deemed guilty of a misdemeanor, and shall be fined not more than five hundred dollars, and may, in the discretion of the jury, be imprisoned in the county jail not exceeding one year. (Id. p. 203.)

Art. 392. County clerk marking "exempt."—Any county clerk who marks "exempt" any person enrolled as liable to military duty, whom he knows not to be exempt, shall, upon conviction, be deemed guilty of a misdemeanor, and shall be fined not more than five hundred dollars, and may in the discretion of the jury, be imprisoned in the county jail not exceeding one year. (Id. p. 203.)

Art. 392a. Unlawful issuance of subpœna in felony case.—Hereafter it shall be unlawful for the district clerk or any of his deputies in any county in Texas to issue any subpœna for any witness in a felony case filed or pending in the court of which he is clerk or deputy unless the requirements of the preceding section [Art. 526a, C. C. P.] of this Act have been in all things complied with and any such clerk or deputy thus offending shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than twenty-five nor more than two hundred dollars. (Acts 1913, ch. 150, sec. 2.)

Art. 393. (270) Officers of old county failing to deliver records to new.—Any district or county clerk, sheriff, justice of the peace, county treasurer or surveyor, or any other officer of a county to which some other unorganized or disorganized county is attached for judicial or other purposes, who shall fail, neglect or refuse to turn over to the proper officers of such unorganized or disorganized county, on demand, and after the organization of such unorganized or disorganized county and the qualification of its officers, all books, records, maps, and all other property belonging to said county so organized that may be in his possession, shall be fined in a sum not less than one hundred nor more than one thousand dollars, or be confined in the county jail for a period not exceeding one year. (Acts 1874, p. 188.)

Art. 394. (271) Approval of bond when security is non-resident.—Any officer whose duty it may be to pass upon and approve the official bond of a sheriff, or other county officer, who shall approve such bond, when any surety thereon is not a resident of the county of such sheriff or other officer, shall be punished by fine not less than one hundred nor more than five hundred dollars. (Id. p. 93.)

Art. 395. (272) Officer failing to report collections for state.—Any district attorney, sheriff, deputy sheriff, constable, or other officer, whose duty it may be to collect money, other than taxes, for the use of the state, who shall fail to report to the district court of his county, in writing and under oath, on the first day of each term thereof, the amount of money that may have come into his hands for the use of the state since the last term of said court, from whom the same was collected, and by virtue of what process, shall be punished by fine not less than twenty nor more than two hundred dollars. (Id. p. 182.)

Art. 396. (273) Officer failing to report collections for county.—Any officer, such as is named in the preceding article, whose duty it may be to collect money, other than taxes, for the use of any county, who shall fail to report in writing, and under oath, to the commissioners' court of such county at each regular term thereof, the amount of money that may have come into his hands for the use of such county since the last term of said court, from whom the same was received, and by virtue of what process, shall be punished as prescribed in the preceding article. (Id. p. 182.)

Art. 397. (274) Town or city officer failing to report collections.—Any town or city marshal, or constable, or other officer or

person who may collect money other than taxes, for the use of such town or city, who shall fail to report in writing, and under oath, to the mayor and board of aldermen, or common council, of such town or city, on the first Monday of each month, the amount of money that may have come into his hands during the month preceding such report, for the use of such town or city, from whom the same was collected, and by virtue of what process, shall be punished as prescribed in article 395. (Id. p. 182.)

Art. 398. (275) Justices shall report jury service, etc.—Justices of the peace shall report to the county clerk, on the first Monday in each month, the names of the persons who have served as jurors in his court for the preceding month, and the number of days and fractions of days that they have served respectively, and the number of cases in which they have served respectively on each of said days or fractional days; and it shall be the duty of the county clerk to issue his warrant against the county treasurer in favor of each of the persons so serving as jurors. Every justice failing to make and file such report shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than twenty-five nor more than two hundred and fifty dollars. (Acts 1881, p. 32, sec. 2.)

Art. 399. (276) Commissioners' court failing to make a tabular statement, etc.—If the commissioners' court of any county in this state shall wilfully fail, neglect or refuse to make, or cause to be made, a tabular statement of the assets, expenditures and indebtedness of such county at each regular term of the said court, specifying therein the names of creditors and the items of indebtedness, with their respective dates of accrual, and also the names of persons to whom moneys have been paid, with the amounts paid each during the quarter for which such statement is prepared, or shall wilfully fail, neglect or refuse to publish an exhibit, showing the aggregate receipts and disbursements of each separate fund for the quarter, in some newspaper published in the county (or if there be no newspaper, then by posting such exhibit in at least four public places in the county), immediately after the first regular term in each calendar year, or shall wilfully fail, neglect or refuse to post such exhibit made at the third regular meeting of said court in each calendar year, at the court house door, and at least three other public places in the county, the members of the court so failing, neglecting or refusing shall be fined in any sum not less than twenty nor more than one hundred dollars. (Acts 1873, p. 13; Acts 1891, p. 91.)

Art. 400. County tax assessor failing to report.—The commissioner of agriculture shall collect and publish statistics and such other information regarding such industries of this state and of other states as may be considered of benefit in developing the agricultural resources of this state. He shall cause a proper collection of agricultural statistics to be made annually, and, to this end, he shall furnish blank forms to the tax assessors of each county before the first of January of each year, including forms as to the acreage in cotton, grain and other leading products of the state, to be filled out by persons assessed for taxes, together with such instructions as will properly direct said assessor in filling them out. It is hereby made the duty of said tax assessor to return said blanks, with accurate answers, to the commissioner of agriculture on or before the first day of June following. It is further made the special duty of the said tax assessor to forward by registered mail to the commissioner of agriculture lists of the names and addresses of all ginners within their counties when asked to do so by the commissioner. Failure upon the part of any county tax assessor to make such reports as are required shall be deemed a misdemeanor, and, upon conviction thereof, such tax assessor shall be punished by a fine of not less than fifty dollars nor more than two hundred and fifty dollars. (Acts 1907, p. 129.)

Art. 401. County judge, commissioner or clerk.—When the commissioners' court has compared and examined the quarterly report of the treasurer and found the same correct, it shall cause an order to be entered upon the minutes of the court, stating the approval thereof, which order shall recite separately the amount received and paid out of each fund by the treasurer since the preceding treasurer's quarterly report, and the balance of such fund, if any, remaining in the treasurer's hands, and shall cause the proper credit to be made in the accounts of the treasurer in accordance with said order; and the said court shall actually inspect and count all the actual cash and assets in the hands of the treasurer belonging to the county at the time of the examination of his said report; and, prior to the adjournment of each regular term of the court, the county judge and each of the commissioners shall make affidavit in writing that the requirements of this article have been in all things fully complied with by them at said term of said court, and that the cash and other assets mentioned in the said county treasurer's quarterly report made by said treasurer to said court, and held by him for the county, have been fully inspected and counted by them, giving the amount of said money and other assets in his hands; which affidavit of the members shall be filed with the county clerk of the county, and by him recorded in the minutes of the said county commissioners' court of the term at which the same were filed; and the same shall be published in some newspaper published in the county, if there be a newspaper published in the county, for one time, to be paid for at the same rate as other legal notices.

And any county judge, county commissioner or county clerk in this state who shall negligently or intentionally fail or refuse to comply with the requirements of this article, shall be deemed guilty of a misdemeanor, and, upon conviction thereof in a court of competent jurisdiction, shall be fined in any sum not less than twenty-five nor more than five hundred dollars. (Acts 1897, p. 27.)

Art. 402. (277) Commissioners failing to attend court.—Should any member of the county commissioners' court of any county in this state wilfully fail or refuse to attend any regular meeting or term of said court at which the business or question of levying a county tax for any purpose is to be acted on,

he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than two hundred nor more than five hundred dollars. (Acts 1885, p. 51.)

Art. 403. (278) County treasurer failing to report.—If any county treasurer in this state shall fail, neglect or refuse to furnish to the commissioners' court of his county, upon demand, a tabular statement of the amount of county funds by him received from any given time, the amount on hand, the amounts paid out, to whom paid, on what account, from what fund taken, and the kinds of funds received and disbursed, he shall be fined in any sum not less than one hundred nor more than five hundred dollars, and, in addition thereto, he may be punished for contempt by said commissioners' court. (Acts March 8, 1873, p. 14.)

At the time the above article was carried into the revised Penal Code it had been amended by Acts 1905, ch. 149, which reads as follows:

County treasurer failing to report.—If any county treasurer in this State shall fail, neglect or refuse to furnish to the commissioners court of this county, upon demand, a detailed statement of the amount of county funds, including permanent and available county school funds, received by him from any given time, and when and from whom received, the amount of each fund on hand, the amount paid out, when and to whom paid, on what account, and the kinds of funds received and disbursed; or shall fail, neglect or refuse to exhibit to said commissioners court upon demand, all his books and accounts from any given time, together with all vouchers relating to the same, for the inspection and auditing by said court; or shall fail, neglect or refuse to forthwith produce to said commissioners court, upon demand, all cash and other assets in his hands belonging to his county, to be counted by said commissioners court, he shall be fined in any sum not less than one hundred dollars, nor more than five hundred dollars, and, in addition thereto, he may be punished for contempt by said commissioners court. (Acts 1905, p. 369, ch. 149, sec. 1, amending art. 278, Penal Code of 1895.)

Art. 404. (279) Clerk failing to keep indexes.—Any clerk of the county or district court in this state who shall fail to provide and keep in his office, as part of the records thereof, well-bound alphabetical indexes and cross-indexes of the names of the parties to all suits disposed of or pending in his court, together with a reference opposite each party's name to the page of the minute book upon which is entered the final judgment in each case, shall be punished by fine not less than fifty nor more than one hundred dollars for each offense. Each month's failure shall constitute a separate offense. (Acts 1876, p. 25.)

Art. 405. (280) Clerk permitting withdrawal of deeds when records are burned.—If the clerk of the county court of any county in this state, the land records or records of titles in which, have been burned or otherwise destroyed, or any deputy of such clerk, shall permit any deed filed for record in his office to be withdrawn within twelve months after the same is filed, he shall be fined not less than one hundred nor more than five hundred dollars, and may, in addition thereto, be imprisoned in the county jail for a period of time not to exceed one year. (Acts 1876, p. 252.)

Art. 406. (281) To what deeds not applicable.—The preceding article shall not apply to deeds executed or purporting to have been executed subsequent to the destruction of such land records or records of titles. (Acts 1876, p. 252.)

Art. 407. (282) County judge practicing in inferior courts.—Any county judge in this state, who shall practice, or offer or attempt to practice as an attorney or counselor at law, in any county court or court of a justice of the peace, shall be fined not less than one hundred nor more than five hundred dollars. (Acts 1876, p. 616.)

Moreno v. S., 143 S. W. 156.

Art. 408. (283) May practice law in certain counties.—County judges, in those counties wherein the civil or criminal jurisdiction of the county courts has been or may hereafter be diminished, shall have the right to practice as attorneys in all justices' and county courts in cases wherein the courts over which they preside have neither original nor appellate jurisdiction; provided they are licensed lawyers. (Acts 1879, S. S., ch. 16.)

Art. 409. (284) Issuing marriage license to minor, etc.—If the clerk of any county court, or other officer authorized by law to issue a license for marriage, shall, without the consent of the parent or guardian of the party applying, issue a marriage license to a male person under the age of twenty-one years, or to a female under the age of eighteen years, he shall be fined not exceeding one thousand dollars. (O. C. 791a; Acts 1860, p. 101.)

This article is somewhat modified by the amendment in 1911 of the Civil Statutes relating to the issuance of marriage licenses. See art. 4611, Civ. St.

Art. 410. (285) Father's consent sufficient, when.—Where both parents of any minor may be alive, the consent of the father alone shall be sufficient to authorize the issuance of license to the minor. (O. C. 791b; Acts 1858, p. 186.)

Art. 411. Performing marriage without license.—Should any person authorized by law to celebrate the rites of matrimony in this state perform the marriage ceremony without a license first having been issued as required by law, such person shall be guilty of a misdemeanor, and, on conviction, shall be punished by fine of not less than fifty nor more than five hundred dollars. (Acts 1899, p. 307.)

Art. 412. (286) Surveyor failing to return corrected field-notes.—If any district or county surveyor in this state, who has been paid his fees for making and recording a survey, shall fail or unnecessarily delay to correct the field-notes of such survey, upon the request of the commissioner of the general land office, or of the party interested, and return the same to the general land office when such field-notes have been returned to him by such commissioner for correction, shall be fined in a sum not less than double nor more than four times the amount of the fees originally paid him for such survey. (Acts 1871, p. 12.)

Art. 413. (287) Surveyor failing or refusing to make survey on homestead

application, etc.—Any district or county surveyor who shall fail or refuse to make a survey upon a homestead application, within one month after such application is made, or who shall fail to record the field-notes of such survey and forward certified copies thereof and all other papers relating thereto to the general land office within one month after such survey is made, or who shall fail to correct any field-notes of such surveys that may be returned to him for correction by the commissioner of the general land office, within ten days after receipt thereof, or who shall charge, demand or receive higher fees than those allowed by law for making, recording and certifying to such survey, shall be fined not less than ten and not more than one hundred dollars for each offense. (Acts 1873, p. 102.)

Art. 414. (288) (269) Not applicable, when.—No surveyor shall be punishable criminally for a failure or refusal to make a survey upon a homestead application, or for a failure to record and return the field-notes of any such survey, unless the fees allowed by law for such services shall have been first tendered him.

Art. 415. (289) Surveyor wilfully altering lines.—If any surveyor or other person shall, without authority of law, wilfully destroy, deface, alter or change any established line, corner or line or bearing tree of any legal survey, or shall wilfully make any new line or corner on any established legal survey, without authority of law, he shall be fined not less than one hundred nor more than five hundred dollars. (Acts 1874, p. 220.)

Art. 416. Destroying or defacing corner or lines.—Should any person in this state destroy or deface any mark or object fixed or established as a line, corner or bearing of any survey, or any permanent mark or any bench mark made or set by the topographical surveyors, he shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than one hundred dollars nor more than one thousand dollars. (Acts 1907, p. 286.)

Art. 417. (289a) Failure of surveyor to survey mining claim.—Upon receiving the application for the survey of any mining claim and fee provided by law, the surveyor shall record the application, together with the affidavit; and he shall thereupon forwith proceed to survey said claim, and forward the field-notes to the commissioner of the general land office within thirty days after filing the application, in default of which he shall pay the aggrieved party such damages as he may sustain, and, in addition thereto, shall be deemed guilty of a misdemeanor, and, on conviction, fined not less than twenty dollars nor more than one hundred dollars; and it shall be the duty of the applicants to see that the field-notes are so returned. (Acts 1895, p. 198.)

Art. 418. (289b) Parents, etc., refusing to answer questions of school trustees.—In taking the scholastic census provided for by law, the trustees (district school trustees) are hereby authorized and empowered to administer all oaths necessary to obtain a full, complete, and correct census of all children residing in their respective districts; and said trustees may require each parent, guardian, or other person having in charge any child or children to answer under oath as to the names and ages of such child or children; and any person refusing to answer such questions under oath shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than five nor more than twenty-five dollars. (Acts 1893, p. 199.)

When the above article was carried into the Revised Penal Code it had been superseded by Acts 1897, S. S., ch. 16, which had been superseded by Acts 1905, p. 285, ch. 124, which was in part carried into the Rev. St. 1911, as art. 2774, which read as follows:

Parents refusing to answer questions of school census trustee.—The county superintendent of public instruction shall, on the first day of January of each year, or as soon as practicable thereafter, appoint one of the trustees of each school district, or some other qualified person, to take the scholastic census, who shall be known as the census trustee of the district. It shall be the duty of the census trustee to take, between the first day of May and the first day of June after his appointment, a census of all the children that will be over seven and under seventeen years of age on the first day of the following September, and who are residents of the school district on said first day of May, and to make report under oath to the county superintendent on or before the first day of June next thereafter. In taking the said census he shall visit each home, residence, habitation and place of abode, and shall, by actual observation and interrogation, enumerate the children thereof in the following manner: He shall use for each parent, guardian or person having control of any such children, a prescribed form showing the name, color, and nationality of the person rendering such children, the name and number of the school district in which the children reside, and the name, sex and date of birth of each child of which he is the parent or guardian, or of which he has control, and which child will be over seven and under seventeen years of age on the first day of September next following. The census trustee shall require such form to be subscribed and sworn to by the person rendering the children, and he is hereby authorized to administer oaths for this purpose. When the census trustee visits any home or house or place of abode of a family, and fails to find either the parent or any person having legal control, it shall be the duty of the census trustee to leave the prescribed census blank for the use of parents at such home or place of abode, with a note to the parent or guardian having legal control of child or children, requiring that the form be filled out, sworn and subscribed to before the census trustee, or any officer authorized to administer oaths, and that the blank, when so filled out, shall be delivered by the parent or person having legal control of the child or children to the census trustee.

Every person having control of any child which will be over seven and under seventeen years of age on the first day of September next thereafter, and who, being requested by the census trustee to prepare said form giving the information required, or to give the information necessary to enable the trustee to prepare the same, shall refuse to do so,

or shall refuse to make oath to said form when filled according to his statement of facts in regard to said children, or shall fail to return the form left at his home in his absence, as above required, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than five nor more than ten dollars. And it shall be the duty of the census trustee at once to file with some justice of the peace of competent jurisdiction complaint against such person. Only children of the same family shall be listed on one form, and if one person has under his control children of different family name, he should use a separate form for each family name. (Acts 1893, p. 199; Acts 1897, S. S. ch. 16, repealed; Acts 1905, p. 285, ch. 124, sec. 89.)

Art. 419. [Superseded by Acts 1911, S. S. Ch. 11, sec. 23.]

See post, art. 1513a.

Art. 420. Tax assessor and equalization board.—Any county tax assessor who shall violate or in any respect fail to comply with any of the provisions of the law creating the state tax board, and any member of any board of equalization, and any county tax assessor, who shall modify or change, or vote to modify or change, in any manner whatsoever the finding, valuation or apportionment of any intangible assets as so fixed, determined, declared and certified by said state tax board, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred nor more than one thousand dollars. (Acts 1905, ch. 146; Acts 1907, p. 476.)

Art. 420a. Mailing notice of delinquent taxes; contents of notice; duplicates; furnishing statements of taxes on demand; duties of district attorney; redemption.—Not later than the first day of May, 1916, in all counties of less than 50,000 inhabitants, and not later than the first day of May, 1917, in all counties of more than 50,000 inhabitants, and not later than the first day of June in every year following thereafter, it shall be the duty of the Collector of Taxes in the various counties of this state to mail to the address of every record owner of any lands or lots situated in such counties, a notice showing the amount of taxes appearing delinquent or past due and unpaid against all such lands and lots according to the delinquent tax records of their respective counties on file in the office of the Tax Collector, and a duplicate of which shall also have been filed in the office of the Comptroller of Public Accounts of the State of Texas and approved by such officer; such notice shall also contain a brief description of the lands or lots appearing delinquent, and various sums or amounts due against such lands or lots for each year they appear to be delinquent according to such records, and it shall also be the duty of the tax collectors of the various counties in this State not later than the dates named, and every year thereafter, to furnish to the county or district attorneys of their respective counties duplicates of all such statements mailed to the tax payers in accordance with the provisions of this Act, together with similar statements, or in lieu thereof, lists of lands and lots located in such counties containing amounts of State and county taxes due and unpaid, and the years for which due, on lands or lots appearing on such records in the name of "Unknown" or "Unknown Owners," or in the name of persons whose correct address or place of residence in or out of the county said tax collector is unable by the use of due diligence to discover or ascertain; and it shall be the further duty of the tax collector to furnish on demand of any person or persons, firm or corporation, like statements with reference to any particular lot or tract of land for whatever purpose desired, which shall be in all instances certified by him with the seal of his office attached; said notices or statements herein provided for shall also recite that unless the owner or owners of such lands or lots described therein shall pay to the tax collector the amount of taxes, interest, penalty and costs set forth in such notice within 90 days from date of notice, then, and in that event, the county or district attorney will institute suits not later than January 1, next, for the collection of such moneys, and for the foreclosure of the constitutional lien existing against such lands and lots; and whenever any person or persons, firm or corporation shall pay to the tax collector all of the taxes, interest, penalties and costs shown by the records aforesaid to be due and unpaid against any tract, lot or parcel of land for all of the years for which said taxes may be shown to be due and unpaid, then it shall be the duty of the tax collector to issue to such person or persons, firm or corporation a redemption receipt covering such payment as is now required by law. (Acts 1915, ch. 147, sec. 1.)

Art. 420b. Records from which notices and statements are to be made; examination of records of district court and county clerk; publication of delinquent list; duties of tax collector.—In making up the notices or statements provided for in Section 1 of this Act [Art. 420a], it shall be the duty of the tax collectors of the various counties in the State to rely upon the delinquent tax records compiled, or to be compiled, under the provisions of Article 7685 and Article 7707 of the Revised Civil Statutes of the State of Texas for 1911, which have been approved by the commissioners court of such counties and a duplicate of which has been filed in the office of the Comptroller of Public Accounts of the State of Texas, and which has or shall hereafter be approved by such State officer; and it shall be the duty of the tax collector, whenever there shall be as many as two years of back taxes that have not been included in such delinquent tax records to prepare or cause to be prepared a supplement to such records which shall be prepared in duplicate, one copy to be filed in the office of the county clerk and one copy thereof to be furnished to the Comptroller of Public Accounts subject to his approval; and whenever said supplement shall have been approved by the commissioners court and by the State Comptroller, then the tax collector shall rely thereon for the data covering delinquent taxes for said years in making out the notices or statements provided for in Section 1 of this Act [Art. 420a]; provided, said tax collector in making up said delinquent tax record and supplement, shall examine the records of the district court and the county clerk's office of his county and no tract of land shall be shown delinquent on

said delinquent tax record for any year where the records of the district court or the county clerk's office show that the taxes for said year have been paid. It shall not be necessary to publish said delinquent tax records and supplements thereto if the delinquent list for each year has been advertised as required by Article 7692 of the Revised Civil Statutes of 1911. To enable the tax collector to comply with the provisions of Section 1 of this Act, it shall be the duty of the tax assessors of the various counties of the State to hereafter enter the postoffice address of each and every tax payer after his name on the tax rolls, and the Comptroller shall hereafter provide a column for the entry of such address on the sheets furnished the assessors for making up the tax rolls. (Id. sec. 2.)

Art. 420c. Duties of county and district attorneys to foreclose tax liens; compensation.—Not later than January 1, 1917, in counties of less than 50,000 inhabitants, and not later than January 1, 1918, in counties of more than 50,000 inhabitants, and not later than June 1 of each year thereafter, it shall be the duty of the county attorney, or the district attorney if there be no county attorney, to file and institute suits as otherwise provided by law for the collection of all delinquent taxes due at the time of filing such suit on land or lots situated in such county, together with interest, penalties and costs then due as otherwise provided by law; provided, that for the work of filing such suits, the county or district attorney shall receive a fee of $5 for the first tract of land included in each suit, and $1 for each additional tract included therein; provided, that where unimproved town lots are sued upon or included in a suit with other land or improved town lots in the same town, only one such additional fee shall be added for each twenty lots or any number less than twenty; and, provided further, that in counties containing over 50,000 inhabitants such attorney's fee shall be $2.50 for the first tract and 50 cents for additional fees as above provided. (Id. sec. 3.)

Art. 420d. Same; duties mandatory; violation of law a misdemeanor.—The duties prescribed in this Act for the county tax collector, county and district attorneys and other officers, State and county, are hereby declared to be mandatory and shall not be construed as merely directory, and any county or State official who shall fail or refuse to perform the duties herein set out for him to perform shall be guilty of a misdemeanor, and shall be fined in any sum not less than $100 nor more than $1,000, and in addition thereto shall be subject to removal from office; provided, further, that no county or district officer charged with any duty under Title 126, Chapter 15, of the Civil Statutes, 1911, can make settlement with the commissioners court of his county or the Comptroller of this State until he shall have performed the duties required of him under said Title 126, Chapter 15, of the Civil Statutes of 1911. (Id. sec. 4.)

Art. 420e. Same; repeal.—Article 7707, Revised Civil Statutes of the State of Texas for 1911, and all other laws or parts of laws in conflict with this Act, are hereby expressly repealed. (Id. sec. 5.)

Art. 420f. Assessment of omitted property.—If any tax assessor, or the county judge, or any member of the commissioners court shall intentionally or willfully neglect, fail or refuse to perform any of the acts herein [Civ. St. Arts. 7710–7714, ante] required to be done by such officers, he shall be guilty of a misdemeanor, and on conviction thereof shall be punished by fine of not less than one hundred, nor more than five hundred dollars, or by imprisonment in the county jail for not less than one month nor more than one year, or by both such fine and imprisonment. Such offenses may be prosecuted upon indictment or information in any county of the judicial district to which such county belongs other than the county in which the offense is committed. (Acts 1905, p. 322, ch. 131, sec. 6.)

The above article was omitted from the revised Penal Code, but is inserted in this compilation in view of the decision in Berry v. S., 156 S. W. 626.

Art. 420g. Officer or employé of public free schools failing to perform duties.—Any official or employee of the public free schools failing to perform his or her legal duty in connection with the administration of this law shall be deemed guilty of a misdemeanor, and shall be subject to a fine of not more than five hundred dollars or removal from office or both fine and removal from office. (Acts 1918, 4th C. S., ch. 17, sec. 4.)

For the remainder of this act, see ante, Civ. St. arts. 2904aa-2904aaaa.

Art. 420h. Same subject.—Any official or employee of the public free schools failing to perform his or her legal duty in connection with the administration of this law shall be deemed guilty of a misdemeanor, and shall be subject to a fine of not more than five hundred dollars or removal of office or both fine and removal from office. (Acts 1918, 4th C. S., ch. 38, sec. 4.)

For remainder of this act, see ante, Civ. St. arts. 2904aa-2904aaaa.

Art. 420i. Same subject.—Any teacher, principal, superintendent, trustee, or other school official having responsibility in the conduct of the work of the school, and failing to comply with this provision of the law shall be deemed guilty of a misdemeanor and upon conviction thereof in proper court shall be subject to fine of not less than Twenty-five Dollars ($25.00) and not more than One Hundred Dollars ($100.00), cancellation of certificate, or removal from office as the case may be, or both fine and cancellation of certificate or fine and removal from office. Each day shall be regarded as a separate offense, and it shall be the duty of the trustee, city or county superintendent, or ex-officio superintendent to inspect the schools regularly with regard to the enforcement of this Act and file charges promptly in the court in all cases of violation. (Acts 1918, 4th C. S., ch. 80, sec. 2.)

Acts 1918, 4th C. S., ch. 80, sec. 1, requires the school work in the public free schools to be conducted exclusively in the English language, etc.

Art. 420j. Failure to perform duties relating to certain communicable diseases.—Any local health officer, employee, inspector, physician, nurse, superintendent of clinic or hospital, druggist or other person who fails to perform the duties required of him in this Act, or violates any of the provisions of this Act, shall be deemed guilty of a misdemeanor and upon conviction therefor shall

be fined in any sum not less than five nor more than fifty dollars, and each violation shall be a separate offense. Any health officer or other physician who shall willfully fail to perform the duties required of him in this Act shall, in addition to the penalties imposed by this Section forfeit his right and license to practice medicine within this State; and the district courts of the State shall have jurisdiction of suits for the forfeiture of such license in such cases, and the suit may be filed by any citizen of the State in the court having jurisdiction, under the ordinary rules of venue, and it shall be the duty of the county and district attorneys to represent the petitioners in such suit. (Acts 1918, 4th C. S., ch. 85, sec. 12.)

For remainder of this act, see ante, Civ. St. arts. 4605¼-4605¼k.

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. (Acts 1876, p. 227; Acts 1901, p. 125; Acts 1917, ch. 133, sec. 1.)

See Watelsky v. Cox, 66 S. W. 327; Ft. W. & D. C. R'y v. Carlock and Gillespie, 75 S. W. 932; M. K. & T. R'y v. Bacon, 80 S. W. 573; Fish v. Sadler, 155 S. W. 1185; McCloskey v. San Antonio Traction Co., 192 S. W. 1116; Ex parte McCloskey, 199 S. W. 1101.

7. COMPOUNDING CRIME

Art. 422. (291) (272) Agreeing with offenders not to prosecute.—If any person has knowledge that an offense against the penal laws of this state has been committed, and shall agree with the offender, either directly or indirectly, not to prosecute or inform on him in consideration of money or other valuable things, paid, delivered or promised to him by such offender, or other person for him, he shall be fined not less than one hundred nor more than one thousand dollars.

See Gatlin v. S., 49 S. W. 87; Robertson v. S., 80 S. W. 1000; Gray v. Freeman, 80 S. W. 1110; Medearis v. Granberry, 84 S. W. 1070; Shriver v. McCann, 155 S. W. 317.

8. MALICIOUS PROSECUTION

Art. 423. (292) (273) "Malicious prosecution" defined and punished.—If any person in this state, for the purpose of extorting money from another, or the payment or security of a debt due him by such other person, or with intent to vex, harass or injure such person, shall institute, or cause to be instituted, any criminal prosecution against such other person, he shall be deemed guilty of malicious prosecution, and, upon conviction, shall be fined not less than one hundred nor more than one thousand dollars, or be imprisoned in the county jail not less than one month nor more than one year.

9. FALSE PERSONATION

Art. 424. (293) Falsely pretending to be an officer.—Any person who shall falsely assume or pretend to be a judicial or executive officer of this state, or a justice of the peace, sheriff, deputy sheriff, constable or any other judicial or ministerial officer of any county in the state, and shall take upon himself to act as such, shall be punished by imprisonment in the county jail for a term not exceeding six months, or by fine not exceeding five hundred dollars. (Acts 1866, p. 201.)

See Patterson v. S., 58 S. W. 100; Ex parte Preston, 161 S. W. 115; Brown v. S., 170 S. W. 714.

10. BADGES, UNLAWFUL WEARING

Art. 425. Badges, unlawful wearing.—Any person who shall wilfully and without due authority use or wear the badge, label or button or other emblem of the United Confederate Veterans, United Sons of Confederate Veterans, United Daughters of the Confederacy, Grand Army of the Republic, Women's Relief Corps, the Benevolent and Protective Order of Elks of the United States of American, the Ancient, Free and Accepted Masons, the Independent Order of Odd Fellows, the Knights of Pythias, the Woodmen of the World, any labor organization, or any order, society or organization in the state of Texas, or who shall use or wear the same to obtain aid or assistance or patronage thereby within this state, unless he shall be entitled to use or wear the same under the rules and regulations of the United Confederate Veterans, United Sons of Confederate Veterans, the United Daughters of the Confederacy, Grand Army of the Republic, Women's Relief Corps, the Benevolent and Protective Order of Elks of the United States of America, the Ancient, Free and Accepted Masons, the Independent Order of Odd Fellows, the Knights of Pythias, the Woodmen of the World, any labor organization, or any order, society or organization in the state of Texas, whose badge, label or button or other emblem was so used or worn, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding fifty dollars, or imprisonment for a term not exceeding sixty days, or both, at the discretion of the court or jury trying the case. (Acts 1909, p. 134.)

11. GENERAL PROVISIONS

Art. 426. (294) Wilful neglect of official duty.—If any officer of the law shall wilfully or negligently fail to perform any duty imposed on him by the Penal Code or Code of Criminal Procedure he shall, when the act or omission is not otherwise defined, be deemed guilty of a misdemeanor, and be punished as prescribed in the succeeding article. (O. C. 348a; Acts 1864, pp. 7, 8.)

Art. 427. Selection of jurors in certain counties.—That between the 1st and 15th days of August of each year, in all counties in this state having therein a city or cities containing a population aggregating twenty thousand (20,000) or more people, as shown by the United States census of date next preceding such action, the tax collector of such county or one of his deputies, together with the tax assessor of such county or one of his deputies, together with the sheriff of such county or one of his deputies, together with the county clerk of such county or one of his deputies, together with the district clerk of such county or one of his deputies, shall meet at the court house of such county and shall select from the list of qualified jurors of such county as shown by the tax list in the tax assessor's office for the current year, the jurors for service in the district and county courts of such county for the ensuing year in the manner hereinafter provided. (Acts 1907, p. 269, sec. 1. Amended Acts 1911, p. 150, sec. 1.)

If any of the officers mentioned in this article shall wilfully or negligently fail to serve as herein provided, or if any of the said officers shall wilfully or negligently fail to designate one of their deputies for such service, or if, after such designation, such deputy shall wilfully or negligently fail to serve, the officer so failing to serve or to designate a deputy, or the deputy so failing to serve, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty nor more than five hundred dollars. (Acts 1907, p. 271, ch. 139, sec. 10.)

Art. 428. Putting in or taking names from wheel illegally.—If any person shall put into the wheel or take from the wheel, except at the times and in the manner provided for by law, a card or cards bearing the name or names of any person, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty nor more than five hundred dollars. (Acts 1909, p. 271.)

Art. 429. Providing penalty.—If any person shall violate any of the provisions of said law, or shall wilfully or negligently fail or neglect to perform any duty therein required of him, then, where no penalty is specifically imposed by the terms of said law, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than fifty nor more than five hundred dollars. (Id. p. 271.)

Art. 430. (295) General penalty, in the absence of any other.—Whenever, in the Penal Code or Code of Criminal Procedure, it is declared that an officer is guilty of an offense on account of any particular act or omission, and there is not in the Penal Code any punishment assigned for the same, such officer shall be deemed guilty of a misdemeanor, and shall be fined not exceeding two hundred dollars. (O. C. 349; Acts 1863, p. 12.)

Art. 431. (296) Malfeasance, when not otherwise designated.—All offenses committed by officers of the law, when not otherwise designated, are known under the general term of malfeasance in office. (O. C. 350.)

Art. 432. (297) "Officer" defined.—By an "officer of the law" as used in the preceding article is meant any magistrate, peace officer or clerk of a court. (O. C. 351.)

Art. 433. (298) Sheriff failing to make report to adjutant general.—1. Hereafter it shall be the duty of each sheriff in this state, upon the close of any regular term of the district court in his county, or within thirty days thereafter, to make out and forward by mail to the adjutant general of this state a certified list of all persons who, after indictment for a felony, have fled from said county. Such lists shall contain the full name of each of such fugitives, with a description giving his age, height, weight, color and occupation, the complexion of skin and the color of eyes and hair, and any peculiarities in person, speech, manner or gait that may serve to identify such fugitive, so far as the sheriff may be able to give them, and shall state the offense with which such person is charged.

2. The adjutant general shall prescribe, have printed and forward to the sheriffs of the several counties the necessary blanks up-

on which are to be made the lists herein required.

3. Any sheriff in this state failing or refusing to make out and forward said certified lists, within the time and according to the forms herein provided for, shall be deemed guilty of official misconduct, and, upon conviction, shall be fined not less than ten nor more than one hundred dollars. (Acts 1887, p. 44.)

Art. 434. Sheriff appointing deputies not allowed by law.—Any sheriff of any county of this state who shall appoint any more deputies than are provided for by law, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars; provided, further that this law shall not apply to counties having more than one district court. (Acts 1903, p. 160.)

Art. 434a. Neglecting or refusing to exhibit weight or measure.—Any person neglecting or refusing to exhibit any weight, measure, or weighing or measuring instrument of any kind, or appliances and accessories connected with any or all of such instruments or measures which are in his possession or under his control, to the State Superintendent, his deputy, inspector or to any local inspector or local sealer, for the purpose of allowing the same to be inspected and examined, as provided for in this Act, shall be guilty of a misdemeanor. (Acts 1919, ch. 131, sec. 26.)

For remainder of Acts 1919, ch. 131, see ante, Civ. St. arts. 7846¼, 7846¼g-7846¼zzz.

Art. 434b. Neglecting or refusing to exhibit articles sold at given weight or quantity.—Any person, who, by himself, or his employee, agent, or as the proprietor or manager, shall refuse to exhibit any article, commodity, produce or anything being sold or offered for sale at a given weight or quantity, or ordinarily so sold, to the State Superintendent, or to his deputy or to a sealer or his deputy, or to an inspector or local sealer for the purpose of allowing same to be tested and proved as to quantity contained therein, as provided for in this Act, shall be guilty of a misdemeanor. (Id. sec. 27.)

See note to art. 434a, ante.

TITLE 9

OF OFFENSES AGAINST THE PUBLIC PEACE

CHAPTER ONE

UNLAWFUL ASSEMBLIES

Art. 435. (299) "Unlawful assembly" defined.—An "unlawful assembly" is the meeting of three or more persons with intent to aid each other by violence, or in any other manner either to commit an offense, or illegally to deprive any person of any right, or to disturb him in the enjoyment thereof. (O. C. 355.)

Ex parte Jacobson, 115 S. W. 1193; Cole v. S., 194 S. W. 830; Reynolds v. S., 199 S. W. 1092.

Art. 436. (300) To prevent elections.—If the purpose of the unlawful assembly is to prevent the holding of any public election, or to prevent any particular person or number of persons from voting at a public election, the punishment shall be that which is prescribed in article 266. (O. C. 356.)

Ex parte Jacobson, 115 S. W. 1193.

Art. 437 (301) To prevent execution of law, etc.—If the purpose of the unlawful assembly be to oppose or prevent the execution or enforcement of any law of the state, or the lawful decree or judgment of a court in a civil action, the punishment shall be a fine not exceeding five hundred dollars. (O. C. 357.)

Ex parte Jacobson, 115 S. W. 1193.

Art. 438. (302) To effect the rescue of capital felon.—If the purpose of the unlawful assembly be to effect the rescue of a prisoner lawfully convicted of a capital offense, the punishment shall be a fine not exceeding one thousand dollars. (O. C. 358.)

Ex parte Jacobson, 115 S. W. 1193.

Art. 439. (303) To effect the rescue of a felon.—If the purpose of the unlawful assembly be to effect the rescue of any person lawfully convicted of a felony less than capital, the punishment shall be a fine not exceeding five hundred dollars. (O. C. 359.)

Ex parte Jacobson, 115 S. W. 1193.

Art. 440. (304) To rescue one accused of capital felony.—If the purpose of the unlawful assembly be to rescue any person arrested or imprisoned for a capital offense before trial, the punishment shall be a fine not exceeding five hundred dollars. (O. C. 360.)

Ex parte Jacobson, 115 S. W. 1193.

Art. 441. (305) To rescue one accused of lesser felony.—If the purpose of the unlawful assembly be to rescue any person lawfully arrested or imprisoned for any felony less than capital, the punishment shall be a fine not exceeding three hundred dollars. (O. C. 361.)

Ex parte Jacobson, 115 S. W. 1193.

Art. 442. (306) To rescue one accused of misdemeanor.—If the purpose of the unlawful assembly be to rescue a person accused of a misdemeanor, the punishment shall be a fine not exceeding two hundred dollars. (O. C. 362.)

Ex parte Jacobson, 115 S. W. 1193.

Art. 443. (307) To prevent the sitting of any tribunal.—If the purpose of the unlawful assembly be to prevent or oppose the sitting of any lawful court, board of arbitrators or referees, the punishment shall be a fine not exceeding one thousand dollars. (O. C. 362a.)

Ex parte Jacobson, 115 S. W. 1193.

Art. 444. (308) To prevent the collection of taxes.—If the purpose of the unlawful assembly be to prevent the collection of taxes, or other money due the state, the punishment shall be a fine not exceeding five hundred dollars. (O. C. 363.)

Ex parte Jacobson, 115 S. W. 1193.

Art. 445. (309) To prevent any person from pursuing his labor.—If the purpose of the unlawful assembly be to prevent any person from pursuing any labor, occupation or employment, or to intimidate any person from following his daily avocation, or to interfere in any manner with the labor or employment of another, the punishment shall be by fine not exceeding five hundred dollars. (Revision, 1879.)

See Bradford v. S., 51 S. W. 379; Ex parte Jacobson, 115 S. W. 1193; Reynolds v. S., 199 S. W. 1092.

Art. 446. (310) To frighten any one by disguise.—If the purpose of the unlawful assembly be to alarm and frighten any person by appearing in disguise, so that the real persons so acting and assembling cannot be readily known, and by using language or gestures calculated to produce in such person the fear of bodily harm, the punishment shall be by fine not exceeding five hundred dollars. (O. C. 363a; Acts 1871, p. 19.)

Ex parte Jacobson, 115 S. W. 1193.

Art. 447. (311) (291) To disturb families.—If the purpose of the unlawful assembly be to repair to the vicinity of any residence, and to disturb the inmates thereof by loud, unusual or unseemly noises, or by the discharge of firearms, the punishment shall be by fine not exceeding five hundred dollars. A residence may be either a public or private house.

Ex parte Jacobson, 115 S. W. 1193.

Art. 448. (312) To effect any other illegal object.—If the purpose of the unlawful assembly be to effect any illegal object other than those mentioned in the preceding articles of this chapter, all persons engaged therein shall be liable to fine not exceeding two hundred dollars. (O. C. 364.)

See Follis v. S., 40 S. W. 277.

Art. 449. (313) Lawful meetings not included.—No public meeting for the purpose of exercising any political, religious or other lawful rights, no assembly for the purpose of lawful amusement or recreation, is within the meaning of this chapter. (O. C. 365.)

Ex parte Jacobson, 115 S. W. 1193.

Art. 450. (314) Lawful meetings included if unlawful purpose is afterward agreed on.—Where the persons engaged in any unlawful assembly, met at first for a lawful purpose, and afterward agreed upon an unlawful purpose, they are equally guilty of the offense defined in article 435. (O. C. 376.)

CHAPTER TWO

RIOTS

Art. 451. (315) "Riot" defined.—If the persons unlawfully assembled together do or attempt to do any illegal act, all those engaged in such illegal act are guilty of riot. (O. C. 366.)

Ex parte Jacobson, 115 S. W. 1193.

Art. 452. (316) To prevent collection of taxes.—If the purpose of a riot be to prevent the collection of taxes or other money due the state, any person engaged therein shall be punished by fine not less than two hundred dollars and not exceeding one thousand dollars, although the purpose of the riot be not effected; and if such illegal purpose be effected, in addition thereto, imprisonment in the county jail not exceeding two years may be added. (O. C. 367.)

Art. 453. (317) Execution of law.—If any person, by engaging in a riot, shall prevent the execution or enforcement of any law of the state, or the lawful decree or judgment of any court in a civil cause, he shall be punished by imprisonment in the county jail not exceeding two years, and by fine not less than two hundred nor more than one thousand dollars. (O. C. 368.)

Art. 454. (318) Rescue of felon under sentence of death.—If any person, by engaging in a riot, shall rescue another, lawfully convicted or under lawful sentence of death, he shall be punished by imprisonment in the penitentiary not less than five nor more than ten years. (O. C. 369.)

Art. 455. (319) Rescue of felon less than capital.—If any person, by engaging in a riot, shall rescue any prisoner, lawfully convicted of felony less than capital, or lawfully under sentence for such offense, he shall be punished by imprisonment in the penitentiary not less than two nor more than seven years. (O. C. 370.)

Art. 456. (320) (300) Rescue of one convicted of misdemeanor.—If any person, by engaging in a riot, shall rescue any prisoner, lawfully convicted of a misdemeanor, he shall be punished by imprisonment in the county jail not less than six months nor more than two years.

Art. 457. (321) Rescue of one imprisoned for capital felony.—If any person, by engaging in a riot, shall rescue any prisoner, lawfully arrested or imprisoned for a capital felony, he shall be punished by confinement in the penitentiary not less than two nor more than seven years. (O. C. 371.)

Art. 458. (322) Felony less than capital.—If any person, by engaging in a riot, shall rescue any prisoner, lawfully arrested or imprisoned for a felony less than capital, he shall be punished by confinement in the penitentiary not less than two nor more than seven years. (Acts 1858, p. 164; O. C. 372.)

Art. 459. (323) (303) Misdemeanor.—If any person, by engaging in a riot, shall rescue any prisoner, lawfully arrested or imprisoned for a misdemeanor, he shall be punished by confinement in the county jail not less than six nor more than twelve months.

Art. 460. (324) Preventing any person from labor.—If any person, by engaging in a riot, shall prevent any other person from pursuing any labor, occupation or employment, or intimidate any other person from following his daily avocation, or interfere in any manner with the labor or employment of another, he shall be punished by confinement in the county jail not less than six months nor more than one year.

See Morawietz v. S., 80 S. W. 997.

Art. 461. (325) Disturbing residence.—If any person, by engaging in a riot, shall disturb the inmates of any residence by loud, unusual or unseemly noises, or by the discharge of fire-arms in the immediate vicinity of such residence, he shall be punished by fine not less than fifty nor more than five hundred dollars. A residence may be either a public or private house. (Id.)

Art. 462. (326) Committing any other illegal act.—If any person, by engaging in a riot, shall commit any illegal act other than those mentioned in the ten preceding articles, he shall, in addition to receiving the punishment affixed to such illegal act by other provisions of this Code, be also punished by confinement in the county jail not exceeding one year, or by fine not exceeding one thousand dollars. (O. C. 373.)

See McKinney v. S., 68 S. W. 176.

Art. 463. (327) Half penalty when object not accomplished.—When the purpose of the riot was to effect any of the illegal acts mentioned in the preceding articles of this chapter, and such unlawful object is not effected, the punishment may, in the discretion of the jury, be diminished to half

the penalty affixed to such riot where the illegal purpose was effected. (O. C. 374.)

Art. 464. (328) All participants guilty.—A person, engaged in any riot, whereby an illegal act is committed, shall be deemed guilty of the offense of riot, according to the character and degree of such offense, whether the said illegal act was in fact perpetrated by him, or by those with whom he is participating. (O. C. 375.)

Art. 465. (329) Where assembly was at first lawful.—Where the assembly was at first lawful, and the persons so assembled afterward agree to join in the commission of an act which would amount to riot, if it had been the original purpose of the meeting, all those who do not retire when the change of purpose is known are guilty of riot. (O. C. 377.)

Art. 466. (330) One may be prosecuted before others are arrested.—Any one person engaged in an unlawful assembly or riot may be prosecuted and convicted before the others are arrested, but the indictment or information must state, and it must be proved on the trial, that three or more persons were assembled, and their names given, if known; if not known, it must be so alleged. (O. C. 378.)

Art. 467. (331) Indictment, requisites of.—The indictment or information must likewise state the illegal act which was the object of the meeting, or which they proceeded to do, if the assembly was originally lawful. (O. C. 379.)

Art. 468. (332) Duty of officers in case of riot.—If any persons shall be unlawfully or riotously assembled together, it shall be the duty of any magistrate or peace officer, so soon as it may come to his knowledge, to go to the place of such unlawful or riotous assembly and command the persons assembled to disperse; and all who continue so unlawfully assembled, or engaged in a riot, after being warned to disperse, shall be punished by the addition of one-half the penalty to which they would otherwise be liable, if no such warning had been given. (O. C. 380.)

CHAPTER THREE

AFFRAYS AND DISTURBANCES OF THE PEACE

Art. 469. (333) "Affray" defined.—If any two or more persons shall fight together in a public place, they shall be punished by fine not exceeding one hundred dollars. (O. C. 381.)

See Piper v. S., 51 S. W. 1118; Austin v. S., 124 S. W. 639; McGraw v. S., 163 S. W. 967.

Art. 470. (334) Disturbance of the peace.—If any person shall go into or near any public place, or into or near any private house, and shall use loud and vociferous or obscene, vulgar or indecent language, or swear or curse, or yell or shriek, or expose his person, or rudely display any pistol or other deadly weapon, in a manner calculated to disturb the inhabitants of such public place or private house, he shall be fined in any sum not exceeding one hundred dollars. (O. C. 382; Acts 1883, p. 12.)

See Nichols v. S., 40 S. W. 502; Green v. S., 56 S. W. 916; Fuller v. S., 87 S. W. 832; Jones v. S., 96 S. W. 29; King v. Brown, 94 S. W. 328; Kellett v. S., 103 S. W. 882; James v. San Antonio & A. P. Ry. Co., 116 S. W. 642; Jones v. S., 130 S. W. 1001; Taylor v. S., 145 S. W. 599; Samino v. S., 204 S. W. 233.

Art. 471. Vulgar or profane language over telephone.—If any person shall use any vulgar, profane, obscene or indecent language over or through any telephone in this state, he shall be guilty of a misdemeanor, and, on conviction, shall be fined in any sum not less than five dollars nor more than one hundred dollars. (Acts 1909, p. 87.)

Art. 472. (335) "Public place" defined.—A public place, within the meaning of the two preceding articles, is any public road, street or alley of a town or city, or any inn, tavern, store, grocery or workshop, or place at which people are assembled, or to which people commonly resort for purposes of business, amusement, recreation or other lawful purpose. (Acts 1883, p. 12.)

Austin v. S., 124 S. W. 639; Jones v. S., 130 S. W. 1001; Taylor v. S., 145 S. W. 599.

Art. 473. (336) Shooting in public place.—If any person shall discharge any gun, pistol or fire-arms of any description, or shall discharge any cannon cracker or torpedo on or across any public square, street or alley in any city, town or village, or in any street, or within one hundred yards of any business house, in this state, he shall be fined in any sum not exceeding one hundred dollars. (Acts 1901, p. 300; Acts 1886, p. 210.)

Art. 474. (337) Horse racing on public road and street.—Any person who shall run, or be in any way concerned in running any horse race in, along or across any public square, street or alley in any city, town or village, or in, along or across any public road within this state, shall be fined in a sum not less than twenty-five nor more than one hundred dollars. (Acts 1873, pp. 83, 84.)

CHAPTER FOUR

UNLAWFULLY CARRYING ARMS

Art. 475. (338) Unlawfully carrying arms.—If any person in this State shall carry on or about his person, saddle, or in his saddle bags any pistol, dirk, dagger, slung-shot, sword, cane, spear or knuckles made of any metal or any hard substance, bowie knife, or any other knife manufactured or sold for the purposes of offense or defense, he shall be punished by fine not less than $100.00 nor more than $500.00, or by confinement in the county jail for not less than one month nor more than one year. (Acts 1905, p. 56; Acts Jan. 30, 1889; Acts 1918, 4th C. S., ch. 91, sec. 1.)

Brittain v. S., 37 S. W. 758; Lomax v. S., 43 S. W. 92; Bain v. S., 44 S. W. 518; Ray v. S., 70 S. W. 23; Mangum v. S., 90 S. W. 31; Prater v. S., 108 S. W. 687; Veal v. S., 125 S. W. 919; Ricen v. S., 138 S. W. 403; Lattimore v. S., 145 S. W. 588; Tippett v. S., 189 S. W. 485; Pyka v. S., 192 S. W. 1066; Brinkley v. S., 198 S. W. 940.

Art. 476. (339) Not applicable, when, and to whom.—The preceding article shall not apply to a person in actual service as a militiaman, nor to any peace officer in the actual discharge of his official duty, nor to the carrying of arms on one's own premises or place of business, nor to persons travelling provided, this exception shall not apply to any deputy constable, or special policeman who does not receive a compensa-

tion of forty dollars or more per month for his services as such officer, and who is not appointed in conformity with the statutes of this State authorizing such appointment; provided, further, that this exception shall not apply to the Game, Fish and Oyster Commissioner, nor to any deputy, when not in the actual discharge of his duties as such, nor to any game warden, or local deputy Game, Fish and Oyster Commissioner except when in the actual discharge of his duties in the county of his residence, nor shall it apply to any game warden or deputy Game, Fish and Oyster Commissioner who does not actually receive from the State fees or compensation for his services. (Acts 1871, p. 25; Acts 1918, 4th C. S., ch. 91, sec. 1.)

See Culp v. S., 40 S. W. 969; Carroll v. S., 57 S. W. 94; Barker v. Satterfield, 111 S. W. 437; Lattimore v. S., 145 S. W. 588; Figueroa v. S., 159 S. W. 1188; Ransom v. S., 165 S. W. 932; Hunter v. S., 166 S. W. 164; Tippett v. S., 189 S. W. 485.

Art. 477. (340) Carrying arms in church or other assembly.—If any person shall go into any church or any religious assembly, any schoolroom, ballroom, or other place where persons are assembled for amusement or for educational or scientific purposes, or into any circus, show or public exhibition of any kind, or social gathering, or to any election on the day or days of any election where any portion of the people of this state are collected to vote at an election, or to any other place where people may be assembled to muster or perform any other public duties, and shall have or carry about his person any pistol or other firearm, dirk, dagger, slungshot, swordcane, spear, brass knuckle, bowie knife, or any other kind of a knife made and manufactured for the purpose of offense and defense, he shall be punished by a fine of not less than one hundred ($100.00) dollars nor more than five hundred ($500.00) dollars, or by confinement in the county jail not less than thirty days nor more than twelve months, or by both such fine and imprisonment. (Acts 1871, p. 25; Acts 1915, ch. 80, sec. 1.)

See Burns v. S., 38 S. W. 204; Monson v. S., 76 S. W. 570.

Art. 478. (341) Not applicable to whom.—The preceding article shall not apply to peace officers or other persons authorized or permitted by law to carry arms at the places therein designated. (Acts 1871, p. 25.)

Art. 479. (342) Arrest without warrant; officer failing punished.—Any person violating any of the provisions of articles 475 and 477 may be arrested without warrant by any peace officer and carried before the nearest justice of the peace for trial; and any peace officer who shall fail or refuse to arrest such person on his own knowledge, or upon information from some credible person, shall be punished by fine not exceeding five hundred dollars. (Acts 1871, p. 26.)

See Montgomery v. S., 65 S. W. 537; Brown v. King, 93 S. W. 1017; Garner v. S., 97 S. W. 98; Ricen v. S., 138 S. W. 403; Condron v. S., 155 S. W. 253.

Art. 480. (343) Not applicable to frontier counties.—The provisions of this chapter shall not apply to or be enforced in any county which the governor may designate by proclamation as a frontier county and liable to incursions by hostile Indians. (Acts 1871, p. 26.)

TITLE 10

OFFENSES AGAINST PUBLIC MORALS, DECENCY AND CHASTITY

CHAPTER ONE

UNLAWFUL MARRIAGES

Art. 481. (344) "Bigamy" defined.—If any person who has a former wife or husband living shall marry another in this state, such person shall be punished by imprisonment in the state penitentiary for a term not less than two nor more than five years. (O. C. 384; Acts 1887, p. 37.)

McAfee v. S., 41 S. W. 627; Rogers v. S., 204 S. W. 222.

Art. 482. (345) Preceding article not applicable, when.—The provisions of the preceding article shall not extend to any person whose husband or wife shall have been continually remaining out of the state, or shall have voluntarily withdrawn from the other and remained absent for five years, the person marrying again not knowing the other to be living within that time; nor shall the provisions of said article extend to any person who has been legally divorced from the bonds of matrimony. (O. C. 385.)

See Poss v. S., 83 S. W. 1109; Barrios v. S., 204 S. W. 326.

Art. 483. (346) (326) Intermarriage of whites and blacks.—If any white person and negro shall knowingly intermarry with each other within this state, or having so intermarried, in or out of the state, shall continue to live together as man and wife within this state, they shall be punished by confinement in the penitentiary for a term not less than two nor more than five years. (O. C. 386.)

Flores v. S., 129 S. W. 1111.

Art. 484. (347) (327) "Negro" and "white person" defined.—The term "negro," as used in the preceding article, includes also a person of mixed blood descended from negro ancestry from the third generation, inclusive, although one ancestor of each generation may have been a white person. All persons not included in the definition of "negro" shall be deemed a white person within the meaning of this article.

Art. 485. (348) Proof of marriage.—In trials for the offenses named in the preceding articles of this chapter, proof of marriage by mere reputation shall not be sufficient. (O. C. 328.)

See Vinsant v. S., 60 S. W. 550; Hearne v. S., 58 S. W. 1009; Bryan v. S., 139 S. W. 981.

CHAPTER TWO

INCEST

Art. 486. (349) Punishment.—All persons who are forbidden to marry by the succeeding articles, who shall intermarry or carnally know each other, shall be punished by imprisonment in the penitentiary not less than two nor more than ten years. (O. C. 388.)

See Jackson v. S., 40 S. W. 498; Clark v. S., 45 S. W. 576; Stanford v. S., 60 S. W. 254; Skidmore v. S., 123 S. W. 1129, 26 L. R. A. (N. S.) 466; Pridemore v. S., 129 S. W. 1112, 29 L. R. A. (N. S.) 858; Vickers v. S., 169 S. W. 669.

Art. 487. (350) Certain marriages prohibited.—No man shall marry his mother, his father's sister or half-sister, his mother's sister or half-sister, his daughter, the daughter of his father, mother, brother or sister, or of his half-brother or sister, the daughter of his son or daughter, his father's widow, his son's widow, his wife's daughter, or the daughter of his wife's son or daughter. (O. C. 389.)

Pridemore v. S., 129 S. W. 1112, 29 L. R. A. (N. S.) 858; Vickers v. S., 169 S. W. 669.

Art. 488. (351) Same subject.—No woman shall marry her father, her father's brother or half-brother, her mother's brother or half-brother, her own brother or half-brother, her son, the son of her brother or sister, or of her half-brother or half-sister, the son of her son or daughter, her mother's husband after the death of her mother, her daughter's husband after the death of her daughter, her husband's son, the son of her husband's son or daughter. (O. C. 390.)

Art. 489. (352) Relationship, how proved; proof of marriage unnecessary.—Upon a trial for incest, the fact of the relationship between the parties may be proved in the manner in which that fact is established in civil suits; and proof of cohabitation or carnal knowledge shall be in all cases sufficient, without proof of marriage. (O. C. 391.)

CHAPTER THREE

OF ADULTERY AND FORNICATION

Art. 490. (353) (333) "Adultery" defined.—"Adultery" is the living together and carnal intercourse with each other, or habitual carnal intercourse with each other without living together, of a man and woman when either is lawfully married to some other person. (O. C. 392.)

See Proctor v. S., 35 S. W. 172; Solomon v. S., 45 S. W. 706; Hoy v. S., 45 S. W. 916; Goodwin v. S., 158 S. W. 274; Strauss v. S., 173 S. W. 663.

Art. 491. (354) (334) Proof of marriage.—The proof of marriage in such cases may be made by the production of the original marriage license and return thereon, or a certified copy thereof, or by the testimony of any person who was present at such marriage, or who has known the husband and wife to live together as married persons. (O. C. 393.)

See Hilton v. S., 53 S. W. 114; Whicken v. S., 55 S. W. 48.

Art. 492. (355) (335) Both parties guilty.—When the offense of adultery has been committed, both parties are guilty, although only one of them may be married. (O. C. 394.)

Art. 493. (356) Punishment for adultery.—Every person guilty of adultery shall be punished by fine not less than one hundred nor more than one thousand dollars. (O. C. 392; Acts 1858, p. 165.)

Art. 494. (357) (337) "Fornication" defined.—"Fornication" is the living together and carnal intercourse with each other, or habitual carnal intercourse with each other without living together, of a man and woman, both being unmarried.

See Boatwright v. S., 60 S. W. 761; Cannedy v. S., 125 S. W. 31; Strauss v. S., 173 S. W. 663; Stubblefield v. S., 200 S. W. 1090.

Art. 495. (358) Punishment for fornication.—Every person guilty of fornication shall be punished by fine not less than fifty nor more than five hundred dollars. (Id.)

CHAPTER FOUR

BAWDY AND DISORDERLY HOUSES

Art. 496. (359) "Bawdy house" and "disorderly house" defined.—A "bawdy house" is one kept for prostitution or where prostitutes are permitted to resort or reside for the purpose of plying their vocation. A "disorderly house" is any assignation house or any theater, playhouse or house where spirituous, vinous or malt liquors are kept for sale, and prostitutes, lewd women or women of bad reputation for chastity are employed, kept in service or permitted to display or conduct themselves in a lewd, lascivious or indecent manner, or to which persons resort for the purpose of smoking or in any manner using opium, or any house in which spirituous, vinous or malt liquors are sold or kept for sale, without first having obtained a license under the laws of this state to retail such liquors; or any house located in any county, justice precinct or other subdivision of a county where the sale of intoxicating liquor has been prohibited under the laws of this state, in which such non-intoxicating malt liquor is sold or kept for the purpose of sale, as requires the seller thereof to obtain internal revenue license under the laws of the United States as a retail malt liquor dealer; or any house located in any county, justice precinct or other subdivision of a county in which the sale of intoxicating liquor has been legally prohibited, where the owner, proprietor or lessee thereof has posted license issued by the United States of America, authorizing such owner, proprietor or lessee thereof to pursue the occupation and business of a retail liquor dealer, or a retail malt liquor dealer. (O. C. 396; Acts 1910, S. S. p. 32; Acts 1907, p. 246; Acts 1887, p. 63; Acts 1889, p. 33.)

See Stokeley v. S., 40 S. W. 971; Ex parte Smith, 43 S. W. 1000; Ramey v. S., 45 S. W. 489; Hamilton v. S., 60 S. W. 39; Jelinek v. S., 115 S. W. 908; Lane v. Bell, 115 S. W. 918; Tacchini v. S., 126 S. W. 1139; Sullivan v. S., 136 S. W. 456; Harden v. S., 136 S. W. 768; State v. Duke, 137 S. W. 654; Farrell v. S., 141 S. W. 535; Cabiness v. S., 146 S. W. 934; Bird v. S., 148 S. W. 738; Gill v. S., 150 S. W. 616; Johnson v. S., 153 S. W. 875; Eckles v. Nowlin, 158 S. W. 794; Minter v. S., 159 S. W. 286; Johnson v. Elliott, 168 S. W. 968; Soto v. S., 171 S. W. 279; State v. Travis County Court, 174 S. W. 365; Spence v. Fenchler, 180 S. W. 597; Limantia v. S., 199 S. W. 619; Claunch v. S., 203 S. W. 891; Claunch v. S., 204 S. W. 436.

This article held to repeal arts. 157, 158, 160 ante. See Claunch v. S., 203 S. W. 891.

Art. 497. "Assignation house" defined.—An "assignation house" is a house, room or place where men and women meet by mutual appointment, or by appointment made by another, for the purpose of sexual intercourse, whether at such place vinous, spirituous or malt liquors are kept for sale or are used or not. (Acts 1907, p. 246; Acts 1910, S. S., p. 32.)

Art. 498. Alluring females to visit same.—It shall be unlawful for any person to invite, solicit, procure, allure or use any means for the purpose of alluring or procuring any female to visit and be at any particular house, room or place for the purpose of meeting and having unlawful sexual intercourse with any male person, or to take part,

or in any way participate in any immoral conduct with men or women, or to use at such place any intoxicating liquors, or to give to any person the name and address, or either, or photograph of any female for the purpose of enabling the person to whom such name, address or photograph of such female is given and furnished, to meet and have unlawful sexual intercourse, or to bring about or procure such unlawful sexual intercourse with such female by any other person. Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than fifty nor more than two hundred dollars, and, in addition thereto, shall be confined in the county jail not less than one nor more than six months. (Acts 1907, p. 246.)

Wilson v. S., 115 S. W. 837; Ex parte Yoshida, 156 S. W. 1166; Denman v. S., 178 S. W. 332; Dooms v. S., 178 S. W. 334; Denman v. S., 179 S. W. 120; Johnson v. S., 201 S. W. 990.

Art. 499. (360) Includes any room, etc.—Any room or part of a building or other place appropriated or used for either of the purposes above enumerated is a disorderly house within the meaning of this chapter. (O. C. 397.)

See Tracy v. S., 61 S. W. 127; Ex parte Yoshida, 156 S. W. 1166.

Art. 500. (361) Punishment for keeping, or owner of the house having information that his house is being kept or used, etc.—Any person who shall, directly or as agent for another, or through any agent, keep or be concerned in keeping, or aid or assist or abet in keeping, a bawdy house or a disorderly house, in any house, building, edifice or tenement, or shall knowingly permit the keeping of a bawdy house or a disorderly house in any house, building, edifice or tenement owned, leased, occupied or controlled by him, directly as agent for another, or through any agent, shall be deemed guilty of keeping, or being concerned in keeping, or knowingly permitted to be kept, as the case may be, a bawdy house or a disorderly house, as the case may be, and, on conviction, shall be punished by a fine of two hundred dollars, and by confinement in the county jail for twenty days for each day he shall keep, be concerned in keeping or knowingly permit to be kept, such bawdy or disorderly house. (O. C. 398; Acts 1907, p. 246; Acts 1858, p. 165; Acts 1889, p. 34.)

Callahan v. S., 38 S. W. 188; Bates v. S., 76 S. W. 462; Clopton v. S., 105 S. W. 994; Wilson v. S., 115 S. W. 837; Lane v. Bell, 115 S. W. 918; Wilson v. S., 136 S. W. 447; Sullivan v. S., 136 S. W. 456; Brown Cracker & Candy Co. v. City of Dallas, 137 S. W. 342; Novy v. S., 138 S. W. 139; Farrell v. S., 141 S. W. 535; Davis v. S., 145 S. W. 939; Cabiness v. S., 146 S. W. 934; Gill v. S., 150 S. W. 616; Johnson v. S., 153 S. W. 875; Eckles v. Nowlin, 158 S. W. 794; Minter v. S., 159 S. W. 286; Davidson v. S., 173 S. W. 1037; State v. Travis County Court, 174 S. W. 365; Spence v. Fenchler, 180 S. W. 597; Moore v. S., 181 S. W. 438; Speers v. S., 190 S. W. 164; Limantia v. S., 199 S. W. 619; Claunch v. S., 204 S. W. 436.

Art. 501. Owner, lessee or agent controlling premises.—Any owner, lessee, or the agent of either, controlling the premises, having information that the premises are being kept, used or occupied as a bawdy or disorderly house, shall be held guilty of knowingly permitting the premises to be kept as a bawdy or disorderly house, as the case may be, unless he shall immediately proceed to prevent the keeping, using or occupying of such house, building, edifice or tenement for such purpose by giving such information to the county or district attorney, against the person or persons violating the provisions of this act, or take such other action as may reasonably accomplish such result. (Id. p. 246.)

Art. 502. (362) "Disorderly house" further defined.—Any person who shall directly, as agent for another, or through an agent, knowingly employ or have in his service in any capacity in any theater, playhouse, dance house, or house where spirituous or malt liquors are kept for sale, any prostitute, lewd woman or women of bad reputation for chastity, or permit any such woman to display or conduct herself therein in an indecent manner, shall be guilty of keeping a disorderly house, and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, and by confinement in the county jail for twenty days for each day that such person is kept in service or employed or permitted to display or conduct herself as hereinbefore provided. (Acts 1889, p. 33; amended Acts 1907, p. 246.)

See Clopton v. S., 105 S. W. 994; Lane v. Bell, 115 S. W. 918.

Art. 503. (362a) Keeping same may be enjoined.—The habitual, actual, threatened or contemplated use of any premises, place, building or part thereof, for the purpose of keeping, being interested in, aiding or abetting the keeping of a bawdy or disorderly house, shall be enjoined at the suit of either the state or any citizen thereof. (Id. p. 246.)

Art. 504. Who may be made parties defendant.—Any person who may use, or who may be about to use, or who may aid or abet any other person in the use of any premises, place or building, or part thereof, may be made a party defendant in such suit; provided, that the provisions of this article and article 505 shall not apply to, nor be so construed as to interfere with the control and regulation of bawds and bawdy houses by ordinances of incorporated towns and cities acting under special charters and where the same are actually confined by ordinance of such city within a designated district of such city. (Id. p. 246.)

Art. 505. Duty of attorney general, district or county attorney.—The attorney general and the several district and county attorneys shall institute and prosecute all suits that said attorney general, or such district or county attorney, may deem necessary to enjoin such use; provided, that such suit may be brought and prosecuted by any one of such officers; and provided, further, that nothing in the above proviso contained shall prevent such injunction from issuing at the suit of any citizen of this state, who may sue in his own name; and such citizen shall not be required to show that he is personally injured by the acts complained of; and the procedure in all cases brought hereunder shall be the same as in other suits for injunction, as near as may be; provided, that when the suit is brought in the name of the state by any of the officers aforesaid, the petition for injunction need not be verified. (Id. p. 246.)

Art. 506. (363) Sheriffs and other officers, district judges and grand juries,

their duties in the premises.—Sheriffs and their deputies, constables and their deputies, mayors, marshals, chiefs of police, their deputies and assistants, and policemen of towns and cities are especially charged diligently to discover and report to the proper legal authorities, and by all lawful means to aid in the enforcement of the law for all violations of the articles of this chapter; the district judges are required to give them specially in charge to the grand juries, and grand juries are required at every term of the district court of their county to call before them each and all officers charged with the enforcement of the articles of this chapter and examine them under oath touching their knowledge and information of violations thereof, and as to their diligence in their enforcement. (Acts 1889, p. 33.)

CHAPTER FOURA

PANDERING

Art. 506a. Procuring females for houses of prostitution, etc.; penalty.—Any person who shall procure or attempt to procure or be concerned in procuring, with or without her consent, a female inmate for a house of prostitution, or who, by promises, threats, violence or by any device or schemes, shall cause, induce, persuade or encourage a female person to become an inmate of a house of prostitution, or shall procure a place as inmate in a house of prostitution for a female person, or any person who shall, by promises, threats, violence or by any device or scheme, cause, induce, persuade or encourage an inmate of a house of prostitution to remain therein as such inmate, or any person who shall, by fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority, procure any female person to become or remain an inmate of house of ill fame, or to enter any place in which prostitution is encouraged or allowed in this State, or to come into this State or leave this State for the purpose of prostitution, or who shall procure any female person to become an inmate of a house of ill fame within this State, or to come into this State or to leave this State for the purpose of prostitution, or who shall give or agree to receive or give any money or thing of value for procuring, or attempting to procure, any female person to become an inmate of a house of ill fame within this State, or to come into this State or leave this State for the purpose of prostitution, shall be guilty of pandering, and, upon conviction for an offense under this Act, shall be deemed guilty of a felony and shall be punished by confinement in the penitentiary for any term of years, not less than five. (Acts 1911, p. 29, sec. 1.)

Art. 506b. Defenses; part of acts without state; venue.—It shall not be a defense to a prosecution for any of the Acts prohibited in the foregoing section, that any part of such act or acts shall have been committed outside this State, and the offense shall in such case be deemed and alleged to have been committed and the offender tried and punished in any county in which the prostitution was intended to be practiced, or in which the offense was consummated, or in which any overt acts in furtherance of the offense shall have been committed. (Id. sec. 2.)

Art. 506c. Marriage of female; competency as witness.—Any such female person referred to in the foregoing sections shall be a competent witness in any prosecution under this Act to testify for or against the accused as to any transaction or as to any conversation with the accused or by such accused with another person or persons in her presence, notwithstanding her having married the accused before or after the violation of the provisions of this Act, whether called as a witness during the existence of the marriage or after its dissolution; provided, however, that any testimony or statement given by such female during the trial for any such offense above named shall not be used as evidence against her in any criminal prosecution. (Id. sec. 3.)

Art. 506d. Keeping place for procuring females; employment of procurers; punishment.—Any person who shall keep, or be concerned in keeping or maintaining, any house or station or place of rendezvous or place of resort for females, under the guise of securing, for such female, a place of employment, but with the intent to place such female in a house of prostitution or in the possession of another person, to be used for prostitution, shall be deemed guilty of a felony, and, upon conviction, shall be punished by imprisonment in the penitentiary for a term of years not less than five. Any person keeping such house or station or place of rendezvous or resort for females, who shall employ any other person to procure any female to go to such place of resort, shall be guilty of a felony, and, upon conviction, shall be punished by imprisonment in the penitentiary for any term of years not less than five. (Id. sec. 4.)

Art. 506e. Same; marriage as defense.—The act or state of marriage shall not be a defense to any violation of this Act. (Id. sec. 5.)

CHAPTER FIVE

MISCELLANEOUS OFFENSES

Art. 507. (364) "Sodomy" defined and punished.—If any person shall commit with mankind or beast the abominable and detestable crime against nature, he shall be deemed guilty of sodomy, and, on conviction thereof, he shall be punished by confinement in the penitentiary for not less than five nor more than fifteen years. (O. C. 399c; Acts 1860, p. 97.)

See Lewis v. S., 35 S. W. 372.

Art. 508. (365) Indecent publications and exposures.—If any person shall make, publish or print any indecent and obscene print, picture or written composition, manifestly designed to corrupt the morals of youth, or shall designedly make any obscene and indecent exhibition of his own or the person of another, in public, he shall be fined not exceeding one hundred dollars. (O. C. 399.)

Edwards v. S., 85 S. W. 797.

Art. 509. Disseminating scandals and lechery.—Every person or persons who shall, within this state, engage in the business of editing, publishing or disseminating any newspaper, pamphlet, magazine, or any printed paper, devoted mainly to the publication of scandals, whoring, lechery, assignations,

intrigues between men and women, and immoral conduct of persons; or any person or persons who shall knowingly have in his or her possession for sale, or shall keep for sale, or distribute, or in any way assist in the sale, or shall gratuitously distribute, or give away, any such newspaper, pamphlet, magazine, or printed paper, in this state, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by imprisonment in the penitentiary for a term of not less than two nor more than five years. (Acts 1897, p. 160.)

Art. 510. (366) Desecration of grave.—If any person shall wrongfully destroy, mutilate, deface, injure or remove any tomb, monument, gravestone or other structure in any place used or intended for the burial of the dead, or any fence, railing or curb for the protection of such structure, or any inclosure for any such place of burial, or shall wrongfully injure, cut, remove or destroy any tree or shrub growing within any such inclosure, he shall be punished by imprisonment in jail not exceeding six months, or by fine not exceeding five hundred dollars. (O. C. 399a; Acts 1858, p. 166.)

See Bird v. S., 79 S. W. 25.

Art. 511. (367) Interference with dead bodies.—If any person not authorized by law, or by a relative or friend, for the purpose of reinterment, shall disinter, remove or carry away any human body, or the remains thereof, or shall conceal the same, knowing it to be so illegally disinterred, he shall be punished by fine not exceeding two thousand dollars. (O. C. 399b; Acts 1858, p. 166.)

See Leack v. S., 72 S. W. 600.

Art. 512. College, physician or surgeon receiving dead bodies.—No school, college, physician or surgeon shall be allowed or permitted to receive any such body or bodies until bond shall have been given to the state by such physician or surgeon, or by or in behalf of such school or college, to be approved by the clerk of the county court in and for the county in which such physician or surgeon may reside, or in which such school or college may be situated, and to be filed in the office of said clerk, which bond shall be in the penal sum of one thousand dollars, conditioned that all such bodies which the said physician or surgeon or said college shall receive thereafter shall be used; and all such experiments on the lower animals shall be conducted only for the promotion of medical science; and whosoever shall sell or buy such body or bodies, or in any way traffic in the same, or shall transmit or convey, or cause or procure to be transmitted or conveyed, said bodies to any place outside the state, shall be guilty of a misdemeanor, and shall, on conviction, be liable to a fine not exceeding two hundred dollars for each offense, or to be imprisoned for a term not exceeding two years in the county jail. (Acts 1907, p. 119.)

Art. 513. Punishment for.—Any person having duties imposed upon him by the provisions of this law who shall refuse, neglect or omit to perform said duties, or any of them, as required by said law, shall, on conviction thereof, be liable to a fine of not less than one hundred dollars nor more than five hundred dollars for each offense. (Id. p. 119.)

Art. 513a. Dancing performances by women in tents.—It shall hereafter be unlawful for any person, persons, firm, troupe, company, corporation, or aggregation of persons, traveling from place to place, composed in whole or in part of women to show or exhibit in any dancing performances, or as dancers in a tent, enclosure, temporary structure, or in any location whatsoever; provided that it shall not be unlawful under this Act for any regularly organized show, theatrical company or troupe to show or exhibit dancing performances in permanently established Opera-houses, Play-houses, or Auditoriums; or for any licensed circus to give dancing exhibitions in connection with any regular performances, provided said circus exhibits for no longer period of time than one day in succession in any town or city in this state. (Acts 1919, ch. 21, sec. 1.)

Art. 513b. Same subject; punishment.—Any person, persons, firm, troupe, corporation, company or aggregation of persons, violating any provision of this Act shall be deemed guilty of a misdemeanor and upon conviction therefor, shall be fined not less than $100.00, nor more than $500.00 and shall in addition thereto be sentenced to not less than thirty days, nor more than one year in the county jail in which county the offense is committed. (Id. sec. 2.)

TITLE 11

OFFENSES AGAINST PUBLIC POLICY AND ECONOMY

CHAPTER ONE

ILLEGAL BANKING, PASSING SPURIOUS MONEY, AND BANK GUARANTY

Art. 514. (368) Issuing bills to pass as money.—If any person within this state shall issue any bill, promissory note, check or other paper intended to circulate as money, he shall be fined not less than ten dollars nor more than fifty dollars for each bill, promissory note, check or other paper so issued. (O. C. 400.)

Art. 515. (369) Includes corporations.—Any officer of any banking company or body corporate, who signs his own name, or that of another, by the authority of such other, to any bank bill, promissory note, check or other paper, being evidence of a promise to pay, and intended to circulate as money, is guilty of the offense punishable by the preceding article. (O. C. 401.)

Art. 516. (370) Also indorsement of foreign bills.—Any person who may bring into this state any bank bill, purporting to be issued by any bank in any other state or territory of the Union, or in any foreign country, and shall sign or indorse the same to be circulated as money in this state, shall be deemed guilty of the offense mentioned in article 514. (O. C. 402.)

Art. 517. (371) Passing paper of broken bank.—If any person shall fraudulently pass or transfer, or offer to pass or transfer, any paper purporting to be bank paper, and to be issued by any bank, which, having once existed, has since broken, or the money of the same becomes valueless, he shall be punished by confinement in the penitentiary not less than two nor more than five years. (O. C. 403; Acts 1858, p. 166.)

Art. 518. (372) Not applicable to United States banks.—The provisions of this chapter shall not apply to any bank incorporated under the laws of the United States, nor to bills issued by such bank. (Acts 1858, p. 166.)

Art. 519. Misappropriating funds of savings banks.—It shall be unlawful for any director or officer of any bank or banking and trust company, which shall establish or maintain, or continue to maintain, a savings department, or which shall use the word "savings," as provided in this article, to knowingly, misappropriate any moneys or funds belonging to such savings department, or to use or consent to the use of any such moneys or funds otherwise than for the payment of lawful demands of savings depositors, and in the making of such investments as are prescribed by law, and in the payment of such dividends to the shareholders as are allowed by the law to be paid therefrom, or to borrow any of the funds belonging to such savings department, or to in any way be an obligor for moneys loaned by or borrowed of such savings department, or to receive or accept, directly or indirectly, any commission, brokerage or other valuable thing or favor of any kind by reason or on account of any loan or investment made out of the funds of such savings department, or to sell such savings department any security or other investment, or willfully and knowingly do, or perform, any act or transaction by or as a result of which at any time the assets of such savings department, including cash, shall not at least equal in amount the deposits in such savings department, at least fifteen per cent of which shall be actual cash in such savings department. (Acts 1909, p. 406.)

Art. 520. Penalty for.—Any officer or director of any state bank or banking and trust company, who shall knowingly violate the provisions of this article, shall be deemed guilty of a felony, and shall, upon conviction, be punished by imprisonment in the state penitentiary for a term of not less than one nor more than five years. (Id. p. 406.)

Art. 521. State banks, authority to do business.—All state banks transacting business in this state shall be required, on or after the first day of January, 1910, to hold a certificate of authority to transact a banking business, issued by the commissioner in compliance with the provisions of this law, and to keep the same conspicuously posted at all times in the banking house where such business is transacted. It shall be the duty of the commissioner of insurance and banking to issue to each state bank, which the state banking board shall have approved and certified to him as provided by law as being entitled to transact a banking business, a certificate of authority in such form as the state banking board shall approve, to be signed by him under his official seal, certifying that such state bank is authorized under the laws of this state to engage in the banking business. Such certificate of authority, when issued to guaranty fund banks, shall contain the following statement on the face thereof in bold type: "The non-interest bearing and unsecured deposits of this bank are protected by the state bank guaranty fund." And, when issued to bond security banks, shall contain the following statement on the face thereof in bold type: "All deposits of this bank are protected by security bond under the laws of the state of Texas." And, when issued to the state banks other than guaranty fund banks and bond security banks, it shall contain neither of these nor any similar statement. The commissioner of insurance and banking shall close all state banks which the state banking board shall disapprove and determine not entitled under the laws of this state to transact a banking business, and shall proceed in such cases in the manner provided by law with respect to insolvent banks, unless such banks shall go into voluntary liquidation; provided, that hereafter the secretary of state shall, on issuance of any charter to any bank or banking and trust company, deliver the same to the commissioner of insurance and banking, who shall deliver such charter to such corporation, together with the certificate herein provided for, upon such corporation showing to the satisfaction of the state banking board that it has complied with the state banking laws. Any person or persons who shall in any capacity transact, or hold themselves out as transacting, the business of banking for or on behalf of any state bank or state banking and trust company, after the first day of January, 1910, without such bank or banking and trust company shall hold a certificate of authority, as herein provided for, except in cases where such certificates shall not yet have been issued to newly incorporated banks as herein provided for, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished for each offense, each day being considered as a separate offense, by a fine of not less than one hundred dollars and not exceeding one thousand dollars, or by imprisonment in the county jail for not less than one nor more than twelve months, or by both such fine and imprisonment. (Id. p. 406.)

Art. 522. Non-interest bearing and unsecured deposits protected.—All guaranty fund banks provided for by law are hereby authorized and empowered, if they desire so to do, to publish, by any form of advertising which they may adopt, or upon their stationery, the following words: "The non-interest bearing and unsecured deposits of this bank are protected by the depositors guaranty fund of the state of Texas." All bond guaranty banks provided for by law are hereby authorized and empowered, if they desire so to do, to publish, by any form of advertising which they may adopt, or upon their stationery, the following words: "The deposits of this bank are protected by guaranty bond under the laws of this state." Said banks are authorized to use the terms "guaranty fund bank," or "guaranty bond bank," as the case may be, but they are hereby prohibited from describing said forms of guaranty by any other terms or words than herein named. Any guaranty fund bank or bond security bank or any officer, director, stockholder, or other person, for any such bank who shall write, print, publish, or advertise in any manner or by any means or permit any one for them, or for said bank, to write, print, publish or advertise any statement that the deposits of any such bank are secured otherwise than as permitted in this article, or who shall make or publish any advertisement or statement to

the effect that the state of Texas guarantees or secures the deposits in any such bank or banking and trust company, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than one hundred dollars nor more than five hundred dollars, or confined in the county jail for not less than three months nor more than twelve months, or by both such fine and imprisonment. Any person who shall write, print, publish or advertise the above statement, authorized to be used by bond security banks or guaranty fund banks, other than as herein authorized, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than one hundred dollars nor more than five hundred dollars, or confined in the county jail for not less than three months nor more than twelve months, or by both such fine and imprisonment. (Id. p. 406.)

Art. 523. Embezzling or misapplying funds.—Every president, cashier, director, teller, clerk or agent of any state bank, or banking and trust company, incorporated under the laws of Texas, who embezzles, abstracts or wilfully misapplies any of the moneys, funds or credits of such state bank, or who, without authority from the directors, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment or decree, or who makes any false entry in any book, report or statement of such state bank, with intent in either case to defraud such state bank, or any other corporation, body politic or any individual, person, firm or association, or to deceive any officer of such state bank, the commissioner of insurance and banking, or any examiner or special agent, authorized by law to examine the affairs of any such state bank, and every person who, with like intent, aids or abets any officer, clerk or agent in any violation of this article, shall be deemed guilty of a felony, and shall, upon conviction, be imprisoned in the state penitentiary for a term of not less than five years nor more than ten years. (Id. p. 406.)

Art. 524. Director borrowing funds.—Any director of a state bank or banking and trust company, incorporated under the laws of this state, who shall, either directly or indirectly, borrow any of the funds of such bank in excess of ten per cent of its capital and surplus, without the consent of a majority of the directors of the bank first having been obtained and made a matter of record at a regular meeting of the board, or without the written consent of such majority of the directors, other than the borrowers, being jointly executed by them and filed in the archives of such bank before the loan is made; and any officer of a state bank who shall knowingly become indebted to such bank, directly or indirectly, in any sum whatever, without the consent of a majority of the board, other than the borrower, obtained or recorded or filed in like manner, and any officer or director of such bank who shall knowingly loan or assent to the loaning of any of its funds to any officer, or any of its funds to any director in excess of ten per cent of its capital and surplus, without such consent being first obtained and recorded or filed, or who shall knowingly permit any such officer or director to become indebted to the bank or liable to it without such consent, shall be deemed guilty of a felony, and shall be punished by imprisonment in the state penitentiary for a term of not less than two years, upon conviction thereof. (Id. p. 406.)

Art. 525. Officer or director, failure of duty.—Any officer, director or employé of any state bank or trust company, who knowingly or wilfully fails or refuses to perform any duty imposed upon him by law, or who shall do or perform or assist in doing or performing any act or transaction prohibited by the provisions of this law, for the punishment of which provision is not otherwise herein made, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than five hundred nor more than one thousand dollars, or by imprisonment in the county jail for a term of not less than thirty days nor more than ninety days, or by both such fine and imprisonment. (Id. p. 406.)

Art. 526. Commissioner of insurance, etc., not to be interested in.—Neither the commissioner of insurance and banking, nor any regularly appointed clerks or employés of the department of insurance and banking, nor any state bank examiner, shall, at any time during his incumbency, be financially interested, directly or indirectly, in any state bank or banking and trust company, subject to the supervision of the department of insurance and banking, or knowingly be or become indebted, either directly or indirectly, to any such state bank or banking and trust company. (Id. p. 406.)

Art. 527. Penalty for.—Any officer or employé, named in the foregoing article, violating its provisions shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding five hundred dollars; and the venue in such case shall be in the county wherein such state bank or banking and trust company is located. The violation of the provisions of this article shall work a forfeiture of the office or position held by the person guilty of such violation. (Id. p. 406.)

Art. 528. Certifying check without funds, penalty for.—Any officer, clerk or agent of any state bank or banking and trust company incorporated under the laws of Texas, who shall wilfully certify to any check, or checks, before the amount thereof shall have been regularly entered to the credit of the drawer, upon the books of such state bank or banking and trust company, shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by fine of not less than five hundred nor more than five thousand dollars, or by imprisonment in the state penitentiary for not more than one year, or by both such fine and imprisonment. (Id. p. 406.)

Art. 529. Failure to notify commissioner of banking of violation of law.—Any state bank examiner, or special agent, who shall knowingly and intentionally fail or refuse to notify the commissioner of insurance and banking in writing of any violation of the criminal provisions of this law within ten days after the same shall come to his notice or attention, unless such notice shall, within his knowledge, have been previously given by some other bank examiner or spe-

cial agent, or any commissioner of insurance and banking, who shall knowingly and intentionally fail or refuse to notify in writing the county or district attorney charged by law with the duty of the prosecution thereof, of any such violation, within ten days after the same shall have come to his knowledge or attention, shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than three nor more than twelve months, or by both such fine and imprisonment, and, upon conviction, shall be removed from office. (Id. p. 406.)

Art. 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. (Acts 1917, ch. 205, sec. 3.)

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 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. sec. 7.)

This article is a part of sec. 7 of Acts 1917, ch. 205, amending the former law relating to limitation of loans. The rest of the section is set forth ante as art. 539 of the civil statutes.

Art. 530. Examiner violating oath of office.—For any violation of his oath of office, or of any duty imposed upon him by law, any examiner shall be deemed guilty of a felony, and, upon conviction, shall be punished by imprisonment in the penitentiary for a term not exceeding five years, and upon indictment of any such examiner for any violation of this law, he shall be disqualified from further discharging the duties of such office, until such indictment is fully disposed of. (Acts 1905, p. 514.)

Art. 531. Duty of commissioner of insurance and banking.—It shall be the duty of the commissioner of insurance and banking, not less than twice during any one year, to call upon each bank organized under this act, and trust company or savings bank, doing business under the provisions of this law for a statement as provided by law; and he may call upon any one or more of such corporations to make such statements at any time, though it be more than a second statement within the year; and the commissioner shall give no notice to any person whatsoever of the day on which he will call for such statement. For a violation of this prohibition, or of any other duty herein imposed upon him, he shall be deemed to have committed a misdemeanor in office, and, upon conviction of the same, upon indictment or information of any parties, in the name of the state, before a competent tribunal, he shall be punished by removal from office, and by a fine of not less than five hundred dollars for each violation of this law. Should any president, cashier or secretary, or any officer of such corporation, or any director thereof, refuse to make the statement so required of him or them, or wilfully and corruptly make a statement, he or they, and each of them, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, upon information, punished by a fine for each offense not exceeding five hundred dollars and not less than one hundred dollars, or by imprisonment not less than one nor more than twelve months in the city or county jail, or by both such fine and imprisonment. (Id. p. 514.)

Art. 532. Receiving deposits when insolvent.—If any president, director, manager, cashier, or other officer, of any banking institution, or the owner, agent, or manager, of any private bank or banking institution, or the president, vice president, secretary, treasurer, director, or agent, of any trust company or institution, doing business in this state, shall receive or assent to the reception of any deposit of money or other valuable thing into such bank or banking institution, or trust company or institution, or if any such officer, owner, or agent, of such bank or banking institution, or if any president, vice president, secretary, treasurer, director, or agent, of such trust company or institution, shall create or assent to the creation of any debt, debts, or indebtedness, in consideration of or by reason of which indebtedness any money or valuable property shall be received into such bank or banking institution, or trust company or institution, after he shall have had knowledge of the fact that such bank, banking institution, or trust company or institution, or the owner or owners of any such private bank, is insolvent or in failing circumstances, he shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by confinement in the penitentiary for a term of not less than two nor more than ten years; provided, that the failure of any such bank or banking institution, or trust company or institution, shall be prima facie evidence of knowledge on the part of any such officer or person that the same was insolvent or in failing circumstances when the money or property was received on deposit. (Acts 1897, p. 130.)

The provision of this article that failure of the bank shall be prima facie evidence of knowledge by the bank officers of its insolvency held unconstitutional, because not embraced in the title of the act. See Roby v. S., 51 S. W. 1114.

See, ante, Civil St., art. 554.

CHAPTER ONE A

RURAL CREDIT UNIONS

Art. 532a. Rural credit unions; examination by State Bank Commissioner; embezzlement of funds.—Ten or more citizens of this State may associate themselves

together, by articles of agreement, and form a rural credit union, and upon the approval of the State Banking Board may become a corporation upon complying with such provisions of the Act regulating State banks as may be applicable to the transaction of the business herein authorized to be done. The State Banking Board may permit the formation of such corporation when it is satisfied that the proposed field of operation is favorable to the success of a rural credit union, and that the standing of the proposed members is such as to give assurance that its affairs will be administered in accordance with the spirit of this Act, and it shall be the duty of the Commissioner of Banking to issue a charter to said rural credit union to do business in conformity with the provisions of this Act. The State Bank Commissioner, or his deputy, shall have authority to examine the accounts, books and papers of rural credit unions herein authorized to be organized. Any rural credit union violating the provisions of this Act shall be subject to the forfeiture of its charter, and any officer or member misapplying or embezzling funds belonging to such rural credit union, shall be subject to prosecution and punishment as already provided for violating the provisions of the State Banking laws. (Acts 1913, ch. 87, sec. 3.)

Art. 532b. Same; Prosecution for misapplication of funds.—The State Bank Commission shall require such rural credit unions to keep such books as he may deem necessary for the proper conduct of their business; may make examination and report of the transaction of such rural credit unions' business and institute necessary proceedings for the prosecution of any officer or director misapplying the rural credit unions' funds. The rural credit unions shall be subject to the general supervision of the State Bank Commissioner. (Id. sec. 5.)

CHAPTER ONE B

CO-OPERATIVE SAVINGS AND CONTRACT LOAN COMPANIES

Art. 532c. Pecuniary interest of corporate officers prohibited; penalty.—No director or officer of any company transacting business in this State or organized under the laws of this State shall receive any money or valuable thing for negotiating, procuring, recommending or aiding in any purchase or sale by any such company of any property or any loan from such company, nor be pecuniarily interested, directly or indirectly, either as principal, co-principal, agent or beneficiary in any such purchase, sale or loan; provided that nothing contained in this article shall prevent the company from making a loan upon a contract by the borrower not in excess of the reserve value thereof. Any person violating any provision of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by fine of not less than one hundred nor more than five hundred dollars. (Acts 1915, 1st C. S., ch. 5, sec. 25.)

Art. 532d. Fraudulent representations by officers.—Any officer or agent of any company acting under the provisions of this Act who shall knowingly misrepresent any material fact relative to the contract or certificate issued or to be issued and sold by any such company to any purchaser thereof, shall be guilty of a felony and upon conviction shall be punished by fine of not less than five hundred dollars or by imprisonment in the penitentiary for any period of time not more than three years or by both such imprisonment and fine. (Id. sec. 26.)

Art. 532e. Engaging in business contrary to law; proviso.—No person, firm, corporation, or association of persons or joint stock company shall hereafter engage in this State in the business provided for in this Act, except in compliance with this Act, and any corporation which does so engage shall have its charter forfeited by suit of the Attorney General and shall be liable to a penalty of not less than one hundred dollars a day nor greater than five hundred dollars a day for each day that it does so engage; all such suits to be brought as other penalty suits which the Attorney General is authorized to bring; any person who does so engage in violation of the provisions hereof 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; provided, however, that existing corporations, individuals, associations and joint stock companies engaged in the business defined in this Act at the time this measure goes into effect shall have twelve months thereafter to adjust their business affairs and bring their business under the terms of this Act; provided, however, that they must within sixty days after this Act goes into effect submit a statement of their business to the Commissioner of Insurance and Banking, together with the certificate of their intention to accept the provisions of this Act, and comply therewith. (Id. sec. 27.)

Art. 532f. Partial invalidity; application of general corporation laws.—Should any section of this Act be held unconstitutional or void for any reason or as to any particular company, corporation, individual or association, such holding shall not affect the remainder of the Act. The general corporation laws of this State where not in conflict herewith shall govern corporations chartered or operating under this Act; and the general laws specifying charges which may be made by the Commissioner of Insurance and Banking shall apply to corporations chartered or operating hereunder. (Id. sec. 29.)

CHAPTER TWO

OF LOTTERIES AND RAFFLES

Art. 533. (373) Establishing a lottery.—If any person shall establish a lottery or dispose of any estate, real or personal, by lottery, he shall be fined not less than one hundred nor more than one thousand dollars. (O. C. 404; Const., art. 3, sec. 47.)

See Barry v. S., 45 S. W. 571; Pendergast v. S., 57 S. W. 851; Howard v. S., 91 S. W. 785.

Art. 534. (374) Selling lottery tickets.—If any person shall sell, offer for sale or keep for sale, any ticket or part ticket in any lottery, he shall be fined not less than ten nor more than fifty dollars. (O. C. 405.)

Ex parte Napoleon, 144 S. W. 269.

Art. 535. (375, 376) Raffle for over $500; offering for sale ticket in raffle

for over $500.—If any person shall establish a raffle for, or dispose by raffle of, any estate, real or personal, exceeding five hundred dollars in value, he shall be fined not less than one hundred dollars nor more than one thousand dollars; or if any person shall establish a raffle for, or shall dispose by raffle of, any estate, real or personal, of the value of five hundred dollars, or less, he shall be fined not less than five dollars nor more than two hundred dollars. If any person shall offer for sale or keep for sale any chance, ticket or part ticket, in any raffle of real estate, real or personal, of any value whatever, he shall be fined not less than ten dollars nor more than fifty dollars, and all laws and parts of laws in conflict with this article are hereby repealed. (O. C. 406, 407; amended Acts 1909, p. 98.)

Art. 536. (377) Dealing in futures.—If any person shall, directly or through an agent or agents, manage or superintendent for himself, or shall as agent or representative of any other person, firm or corporation, conduct, carry on or transact any business which is commonly known as dealing in futures, in cotton, grain, lard, any kinds of meats or agricultural products, or corporation stocks, or shall keep any house, or manage, conduct, carry on or transact any business commonly known as a produce or stock exchange, or bucket shop, where future contracts are bought and sold with no intention of an actual bona fide delivery of the article or thing so bought or sold, such person, whether acting for himself or for another, as aforesaid, shall be deemed guilty of a misdemeanor, and shall be fined in any sum not less than one hundred nor more than five hundred dollars, and, in addition thereto, shall be imprisoned in the county jail not less than thirty days nor more than six months; provided, that each day that such business or house is carried on or kept shall constitute a separate offense. (Acts 1887, p. 10, sec. 1.)

See Cothran v. S., 36 S. W. 273; Goldstein v. S., 36 S. W. 278; Fullerton v. S., 75 S. W. 534; Scales v. S., 81 S. W. 947; Morris v. Logan, 94 S. W. 123; Id., 97 S. W. 820; Salmon v. S., 120 S. W. 427; Mackay Telegraph-Cable Co. v. Bain, 163 S. W. 98.

Art. 537. (378) Permitting premises to be used for such business.—Whoever knowingly permits any such business to be carried on in his building, house, booth, arbor or erection of which he is the owner, or has the possession, care, management or renting, shall be guilty of a misdemeanor, and, on conviction, fined in any sum not less than one hundred nor more than five hundred dollars. Each day he so permits shall constitute a separate offense. (Id. sec. 2.)

CHAPTER THREE

BUCKET SHOPS—DEFINING AND PROHIBITING SAME

Art. 538. A bucket shop defined.—A bucket shop, within the meaning of this law, is any place wherein dealing in futures is carried on contrary to any of the provisions hereof. (Acts 1907, p. 172, sec. 1.)

Art. 539. Futures or dealing in futures defined.—By each of the expressions, "futures," "dealing in futures," and "future contracts," as these terms are used in this law is meant: 1. A sale or purchase, or contract to sell, or any offer to sell or purchase, any cotton, grain, meat, lard, or any stocks or bonds of any corporation, to be delivered in the future, when it was not the bona fide intention of the party being prosecuted under this chapter, at the time that such sale, contract, purchase, or offer to sell or purchase, was made, that the thing mentioned in such transaction should be delivered and paid for as specified in such transaction. 2. Any such sale, purchase, offer or contract, where it was the intention of the party being prosecuted hereunder at the time of making such contract or offer, that the same should, or, at the option of either party, might be settled by paying or receiving a margin or profit on such contract. 3. Any purchase, sale or offer of sale or purchase, or contract for future delivery of any of the things mentioned in this article on, by or through any exchange or board of trade, the rules, by-laws, customs or regulations of which permit such contract or transaction to be settled or closed by delivery or tender of any grade or grades of the thing mentioned in such contract or transaction, other than the grade upon which the price is based in said transaction, at any price other than the actual price for spot delivery of such other grade or grades, at the time and place of delivery or tender. (Id. p. 172, sec. 2.)

Art. 540. Penalty for.—If any person shall, either directly or indirectly, carry on or conduct, or be in any wise interested in carrying on or conducting, any bucket shop, he shall be punished by two years confinement in the penitentiary. (Id. p. 172, sec. 3.)

Art. 541. Renting or leasing property used for.—If any owner or person, in the management or control of any property, shall knowingly rent or lease the same to be used as a bucket shop, or shall knowingly permit the same to be used, he shall be fined not less than one hundred nor more than two thousand dollars, and may in addition thereto, be confined in the county jail not less than one nor more than six months. (Id. p. 172, sec. 4.)

Art. 542. Agent or broker making contract.—If any person shall act or offer to act as the agent or broker of any other person in making or offering to make any future contract, he shall be fined not less than one hundred nor more than two thousand dollars, and shall be confined in the county jail not less than one nor more than six months. (Id. p. 172, sec. 5.)

Art. 543. Penalty for making future contract.—If any person shall make or offer to make for himself any future contract, he shall be fined not less than one hundred nor more than five hundred dollars, and may be confined in the county jail not less than ten nor more than thirty days; provided, it may be shown in defense of any prosecution under this law that the transaction out of which such prosecution arose was a "hedging" contract between parties in this state and a party or parties without this state; and if such contract was made in whole or in part by any message sent by telegraph or telephone, that such message was delivered to

the telegraph or telephone company sending the same by the defendant himself, and not through or by any broker or agent, and that such company rendering such service was a common carrier, exclusively so engaged, with no direct or indirect connection with or interest in such transaction, other than the transmission of such message and receiving the charges therefor which are not in excess of the usual rate for commission messages between the points of transmission and receipt of such message. (Id. p. 172, sec. 6.)

Art. 544. Telegraph or telephone company.—If any telegraph or telephone company, or any agent thereof, shall knowingly permit any telegraph or telephone wire or instrument to remain in any bucket shop, or shall knowingly permit any of the wires, instruments or equipments of such telegraph or telephone company, to be used by any person engaged in any business rendered unlawful by this law, whether or not the same be leased by the person or persons so illegally using the same, such company or agent shall be fined not less than one hundred nor more than one thousand dollars, and each day that this article is violated shall constitute a separate offense. (Id. p. 172, sec. 7.)

Art. 545. Proof prima facie.—In any prosecution under this law in which it shall be a material issue as to whether or not in the offer to or contract to sell or purchase for future delivery anything mentioned in this law, it was the intention of the defendant that such thing should be delivered and paid for in accordance with the terms of such offer or contract, proof by the state that such contract was for the future delivery of such thing, shall constitute a prima facie case for the state on this issue, and the burden shall be upon the defendant to prove that the thing so contracted for, or offered to be contracted for, was in fact delivered in accordance with the terms of such contract, or that it was the bona fide intention of the defendant, at the time of making such contract, that such thing should be so delivered; and the court trying the case shall so charge the jury. (Id. p. 172, sec. 8.)

Art. 546. What constitutes prima facie case.—If, in any prosecution under this law, it shall be a material issue as to whether or not the rules, regulations, by-laws or customs of any exchange or board of trade on, by or through which any contract or offer for future delivery was made, permitted such contract or transaction to be settled or closed by the delivery or tender of any grade or grades of the thing mentioned in such contract or transaction, other than the grade upon which the price was based in said transaction, at any price other than the actual price for spot delivery of such other grade or grades, at the time and place of such delivery or tender, proof that the same was made or offered or pretended to be made by, through or upon any exchange or board of trade shall constitute a prima facie case for the state. (Id. p. 172, sec. 9.)

Art. 547. Persons not exempt from testifying.—No person shall be exempt from testifying as to any violation of the provisions of this law by reason of being himself guilty of such violation, but no person called by the state or a grand jury to testify shall be prosecuted for any violation of any of the provisions of this law, testified to by such person. (Id. p. 172, sec. 10.)

CHAPTER FOUR

GAMING

Art. 548. (379) Playing cards in a public place.—If any person shall play at any game of cards at any house for retailing spirituous liquors, store house, tavern, inn, or other public house, or in any street, highway or other public place, or in any outhouse where people resort, or at any place except a private residence occupied by a family; or, if any person shall bet or wager any money or other thing of value, or representative of either, at any game of cards, except in a private residence occupied by a family, and the provisions of the act that permits gaming in a private residence shall not apply in case such residence is one commonly resorted to for the purpose of gaming, he shall be fined not less than ten nor more than twenty-five dollars. (O. C. 409.)

See Harvell v. S., 53 S. W. 622; Rankin v. S., 56 S. W. 929; Williams v. S., 60 S. W. 248; Id., 87 S. W. 1156; Mohan v. S., 60 S. W. 552; Hodges v. S., 72 S. W. 179; Wilkerson v. S., 72 S. W. 850; Russell v. S., 72 S. W. 190; Floeckinger v. S., 75 S. W. 303; Williams v. S., 87 S. W. 1155; Gallegos v. S., 95 S. W. 123; Lamar v. S., 95 S. W. 509; Beard v. S., 101 S. W. 796; Cain v. S., 106 S. W. 770; Purvis v. S., 137 S. W. 701; Chapman v. S., 140 S. W. 441; Chapman v. S., 140 S. W. 442; Soape v. S., 150 S. W. 612; Minter v. S., 159 S. W. 286; Robinson v. S., 163 S. W. 434; Sloan v. S., 170 S. W. 156; Stallings v. S., 170 S. W. 159; Fondren v. S., 179 S. W. 1170.

Art. 549. (380) What included in preceding article.—All houses commonly known as public, and all gaming-houses, are included within the meaning of the preceding article. Any room attached to such public house and commonly used for gaming, is also included, whether the same be kept closed or open. A private room of an inn or tavern is not within the meaning of public places, unless such room is commonly used for gaming; nor is a private business office or a private residence to be construed as within the meaning of a public house or place; provided, said private residence shall not be a house for retailing spirituous liquors. (O. C. 410; Acts 1866, p. 97.)

See Williams v. S., 60 S. W. 248; Osborn v. S., 72 S. W. 592; Cain v. S., 106 S. W. 770.

Art. 550. (381) Offense complete without betting.—In prosecutions under the two preceding articles, it shall not be necessary for the state to prove that any money or article of value, or the representative of either, was bet at such game, when the prosecution is for playing cards at a house for retailing spirituous liquors, store house, tavern, inn or any other public place, or in any street, highway or other public place, or in any outhouse where people resort, or at any place except a private residence occupied by a family; provided, that nothing in this title shall be so construed as to prevent the playing of any game for amusement at a private residence occupied by a family. (O. C. 417; Acts 1901, p. 26; Acts 1866, p. 98.)

See Hankins v. S., 72 S. W. 191; Wilkerson v. S., 72 S. W. 850; Floeckinger v. S., 75 S. W. 303; Williams v. S., 87 S. W. 1155; Gallegos v. S., 95 S. W. 123; Beard v. S., 101 S. W. 796; Soape v. S., 150 S. W. 612.

Art. 551. (382, 388a) Gaming table, bank, etc., keeping or exhibiting.—If any person shall, directly or as agent or employé

for another or through any agent or agents, keep or exhibit, for the purpose of gaming, any policy game, any gaming table, bank, wheel or device of any name or description whatever, or any table, bank, wheel or device for the purpose of gaming, which has no name, or any slot machine, any pigeon hole table, any jenny lind table, ten pin alley or table or alley of any kind whatsoever, regardless of the name, or whether named or not, or of the number of pins, balls, or rings used for gaming, shall be guilty of a felony, and, upon conviction, shall be punished by confinement in the penitentiary not less than two nor more than four years, regardless of whether any of the above mentioned games, tables, banks, alleys, wheels, devices or slot machines are licensed by law or not; provided, that any such alley, table, bank, wheel, machine or device shall be considered as used for gaming, if the table fees, alley fees, or money or anything of value is bet thereon. (Acts 1905, ch. 22; Acts 1907, p. 108; Acts 1913, ch. 137, secs. 1, 2.)

Cain v. S., 106 S. W. 770; Hanks v. S., 111 S. W. 402, 17 L. R. A. (N. S.) 1210; Morris v. S., 121 S. W. 1112; Polk v. S., 154 S. W. 988; Stevens v. S., 159 S. W. 505; Robertson v. S., 159 S. W. 713.

Art. 551 of the Revised Criminal Statutes of 1911 is repealed by Acts 1913, ch. 137, sec. 1. Art. 558 of said Criminal Statutes is amended by renumbering said article 551 to take the place of said repealed article 551.

Art. 552. (383) Table or bank includes, what.—It being intended by the foregoing article to include every species of gaming device known by the name of table or bank, of every kind whatever, this provision shall be construed to include any and all games which in common language are said to be played, dealt, kept or exhibited. (O. C. 413.)

Cain v. S., 106 S. W. 770.

Art. 553. (384) Games specifically enumerated.—Lest any misapprehension should arise as to whether certain games are included within the meaning of the foregoing articles, it is declared that the following games are within the meaning and intention of said articles, viz.: Faro, monte, vingt et un, rouge et noir, roulette, A. B. C., chuck-a-luck, keno, pool and rondo; but the enumeration of these games specially shall not exclude any other properly within the meaning of the two preceding articles. Any game played for money upon a billiard table, or table resembling a billiard table, other than the game of billiards licensed by law, is punishable under the provisions of this chapter. (O. C. 414.)

See Christopher v. S., 53 S. W. 852; Chancellor v. S., 107 S. W. 823; Morris v. S., 121 S. W. 1112; Bird v. S., 148 S. W. 738; Mares v. S., 158 S. W. 1130.

Art. 554. (385) Indictment.—In any indictment or information for the class of offenses named in the three preceding articles, it is sufficient to state that the person accused kept a table or bank for gaming, or exhibited a table or bank for gaming, without giving the name or description thereof, and without stating that the table or bank, or gaming device, was without any name, or that the name was unknown. (O. C. 415.)

Art. 555. (386) Proof.—In prosecutions under articles 551, 552 and 553, it shall be sufficient to prove that any game therein mentioned was played, dealt or exhibited, without proving that money or other articles of value were won or lost thereon. (O. C. 416.)

Art. 556. (387) "Played," "dealt" and "exhibited" defined.—The words "played" and "dealt" have the meaning attached to them in common language. The word "exhibited" is intended to signify the act of displaying the bank or game for the purpose of obtaining bettors. (O. C. 417.)

Art. 557. (388) Gaming table, bank, etc., betting at.—If any person shall bet or wager at any gaming table, or bank, or pigeon hole, or jenny lind table, or nine or ten-pin alley, such as are mentioned in the six preceding articles, or shall bet or wager any money or other thing of value at any of the games included in the six preceding articles, or at any of the following games, viz.: Poker-dice, jack-pot, high-dice, high-die, low-dice, low-die, dominoes, euchre with dominoes, poker with dominoes, sett with dominoes, muggins, crack-loo, crack-or-loo, or the game of matching money or coins of any denomination for such coins, or for other things of value, or at any game of any character whatever that can be played with cards, dice or dominoes, or at any table, bank or alley, by whatsoever name the same may be known, or whether named or not, and without reference as to how the same may be played, and without reference as to how the same may be constructed or operated, or shall bet or wager upon anything in any place where people resort for the purpose of betting or wagering, he shall be fined not less than ten dollars nor more than fifty dollars; provided, no person shall be indicted under this article for playing said games with dominoes or cards at a private residence occupied by a family, unless same is commonly resorted to for the purpose of gaming; and provided, further, that no banking game played with cards or dominoes shall be exempted from the provisions of this chapter on account of being played at a private residence occupied by a family; and provided, further, that for betting on any gaming table or bank, the court or jury may, in addition to said fine, impose a jail penalty of not less than ten nor more than thirty days. (O. C. 418; Acts 1907, p. 107; Acts 1881, p. 17.)

See Rutherford v. S., 45 S. W. 579; Hill v. S., 66 S. W. 554; Harris v. S., 66 S. W. 565; Donathan v. S., 66 S. W. 781; Borders v. S., 66 S. W. 1102; Faucett v. S., 79 S. W. 548; Barton v. S., 95 S. W. 110; Thompson v. S., 96 S. W. 1085; Marks v. S., 101 S. W. 805; Simons v. S., 120 S. W. 208; Austin v. S., 135 S. W. 1167; Purvis v. S., 137 S. W. 701; Parshall v. S., 138 S. W. 759; Knox v. S., 138 S. W. 787; Sparks v. S., 142 S. W. 1183; Bowles v. S., 150 S. W. 626; Robertson v. S., 159 S. W. 713; Wilson v. S., 189 S. W. 1071; Renfro v. S., 199 S. W. 1096.

Art. 558. (388a) [Amended by renumbering the article 551.]

See art. 551, and note thereunder.

Art. 559. (388b) Keeping or renting for.—If any person shall rent to another, or shall keep or be in any manner interested in keeping, any premises, building, room or place for the purpose of being used as a place to bet or wager, or to gamble with cards, dice, dominoes, or to keep or exhibit for the purpose of gaming, any bank, table, alley, machine, wheel or device whatsoever, or as a place where people resort to gamble, bet or wager upon anything whatever, or shall knowingly permit property or premises of which he is owner, or which is under his control, to be so used, shall be guilty of a

felony, and, upon conviction, shall be punished by confinement in the penitentiary not less than two nor more than four years, regardless of whether any of the above mentioned games, tables, banks, alleys, machines, wheels or devices or things, are licensed by law or not; and any place or device shall be considered as used for gaming or to gamble with or for betting or wagering, if any fees, money, or anything of value is bet thereon, or if the same is resorted to for the purpose of gaming or betting. (Acts 1907, p. 108.)

Moore v. S., 137 S. W. 690; Parshall v. S., 138 S. W. 759; Knox v. S., 138 S. W. 787; Goodwin v. S., 143 S. W. 939; De Los Santos v. S., 146 S. W. 919; Davis v. S., 151 S. W. 313; Strong v. S., 156 S. W. 656; Robertson v. S., 159 S. W. 713; Williams v. S., 159 S. W. 732.

This article repeals arts. 382, 389, and 390 of the Code of 1895 (arts. 551, 572, and 573). See Robertson v. S., 159 S. W. 713; Williams v. S., 159 S. W. 732.

Art. 560. (388c) Betting at places resorted to.—If any person shall bet or wager at any gaming table or bank, or other thing, mentioned in this law, or shall bet or wager upon anything in any place to which people resort for the purpose of betting or wagering, he shall be punished by a fine of not less than ten nor more than fifty dollars; provided, that where the conviction is for betting at any gaming table or bank, the court or jury may, in addition to said fine, impose a jail penalty of not less than ten nor more than thirty days. (Id. p. 108.)

Art. 561. (388d) Persons equipping gaming house.—If any person shall, in any manner, aid in equipping or furnishing any gaming house, or place where people resort for the purpose of gaming, wagering or abetting, he shall be punished by confinement in the county jail for a period of not less than thirty nor more than ninety days. (Id. p. 109.)

Art. 562. (388e) Persons permitting device on premises.—If any person shall knowingly permit any gaming paraphernalia, table, or device or equipment of a gaming house, of any character whatever, to remain in his possession or on premises under his control or of which he is owner, and to be used for gaming purposes, he shall be punished by confinement in the county jail for a period of not less than thirty days nor more than one year. (Id. p. 109.)

Art. 563. (388f) Persons going in gaming house.—If any person shall go into or remain in any gambling house, knowing the same to be such, or shall remain in any place where any of the games prohibited by this act, or, within his knowledge, being played, dealt or exhibited, he shall be punished by a fine or not less than twenty-five nor more than fifty dollars. Gambling house and gaming house, as used in this law, is meant any place where people resort for the purpose of gaming, betting or wagering. (Id. p. 109.)

Walters v. S., 125 S. W. 11; Barfield v. S., 137 S. W. 920; Renfro v. S., 199 S. W. 1096.

Art. 564. (388g) Officers to suppress same.—Whenever it shall come the knowledge of any sheriff, constable, police officer or other peace officer, by affidavit of a reputable citizen, or otherwise, that any of the provisions of this law are being violated, it shall be the duty of such officer to immediately avail himself of all lawful means to suppress such violation; and he shall be authorized, by any search warrant that is issued by virtue of this law, to enter any house, room or place to be searched, using such force as may be necessary to accomplish such purpose. (Id. p. 109.)

Art. 565. (388h) When justice to issue search warrant.—Upon the filing with any justice of the peace, county or district judge, or any other magistrate, of an affidavit in writing, made by a reputable citizen, that gaming, betting or wagering, as prohibited by this law, is being conducted in any building, room, premises or place, describing the same sufficiently for identification, it shall be the duty of such officer, with whom said affidavit is filed, to immediately issue a warrant, commanding the peace officer to whom same is directed, to immediately enter and search such building, room, premises or place, and in the event the same is a gaming house, as defined in this law, to arrest all parties found therein, or making their escape therefrom, and to take possession of any gambling paraphernalia, device or equipment found therein; and it shall be the duty of such officer to immediately take the persons arrested before the nearest magistrate, and lodge the proper complaint against each person so arrested. (Id. p. 109.)

Art. 566. (388i) Gambling house public nuisance.—The existence of any gambling house, or gaming table, or bank, or gaming paraphernalia, or device of whatever kind or character, and all equipments of such gambling house, is hereby declared to be against public policy, and the same is hereby declared to be a public nuisance; and no suit shall be brought or maintained in any of the courts of this state for the recovery of same, or for any insurance thereon, or for damages by reason of any injury to or for the destruction of same. (Id. p. 109.)

Art. 567. (388j) Used for, terminates lease.—The use of any house, property or premises, by any tenant or lessee for any purpose, made unlawful by this law, shall terminate all rights and interests of such tenant or lessee in same, and shall entitle the owner thereof to the immediate possession of said house, property or premises. (Id. p. 110.)

Art. 568. (388k) Officers to seize gaming tables.—It shall be the duty of every sheriff, constable, police officer or other peace officer, by virtue of the warrant authorized by this act, to seize and take into his possession all gaming tables, devices and other equipments or paraphernalia of gambling houses, the existence of which has come to his knowledge, and to immediately file with the justice of the peace, county judge or district judge, a list in writing of the property seized, and shall designate the place where same was seized, and the owner of same, or person from whom possession was taken. Thereupon it shall be the duty of said justice of the peace, county or district judge, to note same upon his docket, and to issue, or cause the clerk of the court to issue, a notice in writing to the owner or person in whose possession the articles seized were found, commanding him to appear at a designated time, not earlier than five days from the service of such notice, and show cause why such articles should not be destroyed. If personal service can not be had upon the person to whom same is directed, a copy of said notice

shall be posted for not less than five days, either upon the court house door of the county where the proceedings are begun or upon the building or premises from which the property seized was taken. (Id. p. 110.)

Art. 569. (388*l*) Same destroyed by order of court.—If, upon a hearing of the matter referred to in the preceding section, the justice of the peace, county judge or district judge, before whom the cause is pending, shall determine that the property seized is a gaming table, or bank, or is used as equipment or paraphernalia for a gambling house, and was being used for gaming purposes, he shall order same to be destroyed; but any part of same may, by order of the court, be held as evidence to be used in any prosecution or case until the prosecution or case is finally disposed of. Property not of that character or not so used shall be ordered returned to the person entitled to possession of the same. It shall be the duty of the officer, within not less than fifteen nor more than thirty days from the entry of said order, to destroy all property, the destruction of which has been ordered by the court, unless the owner, lessee or person entitled to possession under this law, shall, before the destruction of said property, file a suit to recover same. (Id. p. 110.)

Art. 570. (388m) Persons interested in, rights of.—Any person having interest in, or entitled to possession of, any property seized under this law, shall have the right at any time before the destruction of such property, as in ordinary civil cases, to try the issue of whether or not such property is a gaming table, or bank or device or was used as equipment or paraphernalia of any gambling house, and to recover the possession of the same, and to maintain any other character of suit not inconsistent with this law; and it shall be the duty of the officer having said property in his possession, after notice of the pendency of said suit, to safely keep said property, pending the same. (Id. p. 110.)

Art. 571. (388n) Indictment for, sufficiency of.—In any indictment or information for keeping or exhibiting a gaming table, alley, machine, wheel, device or bank, it shall be sufficient to state that the person accused kept the table, alley, machine, wheel, device or bank for gaming, or exhibited the same for gaming, without giving the name or description thereof and without stating that the table, bank, alley, machine, wheel or gaming device was without any name, or that the same was unknown; and it shall not be necessary in the prosecution to prove that money or other articles of value were won or lost thereon. (Id. p. 110.)

Arts. 572, 573. (389, 390) [Repealed.]

See ante, art. 559, and note.

Art. 574. (391) Procedure in gaming cases.—Any court, officer or tribunal, having jurisdiction of the offenses enumerated in this chapter, or any district or county attorney, may subpœna persons and compel their attendance as witnesses to testify as to the violations of any of the provisions of the foregoing articles. Any person so summoned and examined shall not be liable to prosecution for any violation of said articles about which he may testify; and, for any offense enumerated in this chapter, a conviction may be had upon the unsupported evidence of an accomplice or participant. (O. C. 420a.)

See Bailey v. S., 53 S. W. 117; Blades v. S., 66 S. W. 565; Griffin v. S., 66 S. W. 782; Barnes v. S., 152 S. W. 1043.

Art. 575. Betting at baseball or football.—It shall be unlawful for any person in this state to enter into an agreement with another, either orally, written or implied, whereby either one or both shall bet or wager money or anything of value, or otherwise become a party to any gambling scheme based upon the final result or outcome, or any play or portion thereof of a game of baseball, or football; provided, that nothing herein shall prohibit contesting baseball or football teams, or their duly authorized agents or managers from entering into an agreement as to the manner of disposition of gate receipts derived from such games. (Acts 1907, p. 222, sec. 1.)

Art. 576. Punishment for.—Any person found guilty of violating this law shall be subject to a fine of not less than five dollars nor more than one hundred dollars. (Id. p. 222, sec. 2.)

Art. 577. Pool selling or bookmaking.—It shall be unlawful for any person, association of persons, or any corporation to, at any place in this state, engage or assist in pool selling or bookmaking on any horse race, or, by means of any pool selling or bookmaking, to take or accept any bet, or aid any other person in betting or taking or accepting any bet upon any horse race to be run, trotted or paced in this state. (Acts 1909, p. 91; 1905, p. 398, sec. 1.)

See Windsor v. S., 79 S. W. 312; American Metal Co. v. San Roberto Mining Co., 202 S. W. 360.

Art. 578. Betting on horse racing.—That it shall be unlawful for any person or association of persons, or any corporation, at any place in this state, by pool selling or bookmaking or by means of telegraph, telephone or otherwise, to aid or assist any other person in wagering, betting or placing a bet, or in offering to wager, bet or place a bet of anything of value on any horse race to be run, trotted, or paced at any place in this state or elsewhere. (Acts 1909, p. 91.)

Art. 579. Owner or lessee using place for pool selling.—It shall be unlawful for the owner, agent or lessee of any property in this state to permit the same to be used as a place for selling pools, or bookmaking, or wagering, or receiving or assisting any person in placing any bet of, or in receiving or transmitting any offer to bet, anything of value on any horse race to be run, trotted or paced at any place in this state or elsewhere. (Id.)

Art. 580. Penalty for three preceding articles.—Any person, violating any one of the provisions of articles 577, 578 and 579, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than two hundred dollars nor more than five hundred dollars, and by imprisonment in the county jail not less than thirty days nor more than ninety days. And any corporation holding a charter, or foreign corporation holding a permit, to do business in this state, which shall violate any of said provisions of articles 577, 578 and 579, shall thereby forfeit its charter or permit to do business in this state, as the case may be,

and in addition thereto, shall be liable to the state for a penalty of not less than two hundred nor more than five hundred dollars; and the person or persons, acting for said corporation in the violation of any of the provisions of either of said articles, shall, upon conviction, be punished by a fine of not less than two hundred nor more than five hundred dollars, and by imprisonment in the county jail for not less than thirty days nor more than ninety days. (Id.)

Art. 581. Buying pools, penalty for.—If any person shall, at any place in this state, buy pools or otherwise wager anything of value on any horse race to be run, trotted or paced, at any place in this state or elsewhere, or shall offer to wager, or shall offer to place any money or other thing of value with any other person, to be transmitted to any other place, to be wagered on any such horse race, he shall, upon conviction, be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. (Id.)

Art. 582. Evidence sufficient to convict.—A conviction for the violation of any of the provisions herein may be had upon the unsupported evidence of an accomplice or participant, and such accomplice or participant shall be exempt from prosecution for any offense under this law about which he may be required to testify. (Id.)

Sparks v. S., 142 S. W. 1183; Bell v. S., 171 S. W. 239.

CHAPTER FIVE

NEGLECT OF OFFICERS TO ARREST OR PROSECUTE IN GAMING CASES

Art. 583. (392) Justice of the peace, etc., failing to prosecute.—If any justice of the peace, mayor or recorder, shall know the fact that an offense against the gaming laws has been committed by any person, and shall fail or neglect to cause such person to be arrested and prosecuted for the same, he shall be punished by fine not less than twenty-five nor more than one hundred dollars. (O. C. 423a; Acts 1858, p. 167.)

Art. 584. (393) Peace officer failing to inform.—If any peace officer shall know that any person has committed an offense against the gaming laws, and shall neglect or fail to give information thereof to some justice of the peace, mayor or recorder, having jurisdiction to try such offense, he shall be punished by fine not less than twenty-five nor more than one hundred dollars. (O. C. 423b; Acts 1858, p. 167.)

Art. 585. (394) "Offense against gaming laws" defined.—By the term "offense against the gaming laws," as used in the two preceding articles, is meant any offense included within the provisions of chapter three of this title. (O. C. 423c; Id.)

CHAPTER SIX

BETTING ON ELECTIONS

Art. 586. (395) Penalty.—If any person shall, whether before or after the happening of any public election held under authority of law within any election precinct of this State for any purpose whatever, wager or bet in any manner whatever upon the result of any such election, he shall be fined not less than One Hundred Dollars nor more than One Thousand Dollars, or by confinement in the county jail for not less than twenty nor more than sixty days, or by both such fine and imprisonment. (O. C. 421; Acts 1858, p. 167; Acts 1915, ch. 22, sec. 1.)

Art. 587. (396) "Public election" defined.—A public election, within the meaning of the preceding article, is any election held under authority of law in any election precinct in this State for any purpose whatever. (O. C. 422; Acts 1915, ch. 22, sec. 2.)

Art. 588. (397) What "bet or wager" includes.—The bet or wager may be of money or of any article of value, and any device in the form of purchase or sale or in any other form made for the purpose of concealing the true intention of the parties, is equally within the meaning of a bet or wager. (O. C. 423.)

CHAPTER SIX A

STATE WIDE INTOXICATING LIQUOR PROHIBITION

See Constitution, art. 16, § 20, as amended.

Art. 588¼. Manufacture, sale, etc., of intoxicating liquors unlawful.—It shall be unlawful for any person, directly or indirectly, to manufacture, sell, barter, exchange, transport, export, receive, deliver, solicit, take orders for, furnish or possess, spirituous, vinous or malt liquors or medicated bitters, capable of producing intoxication, or any other intoxicant whatever, or any equipment for making such liquors, except for medicinal, mechanical, scientific or sacramental purposes. (Acts 1919, 2d C. S., ch. 78, sec. 1.)

This act, taken in connection with the amendment of art. 16, § 20, of the state Constitution, and the prohibition amendment to the United States Constitution and the act of Congress enacted pursuant thereto (the Volstead Act) supersede, or at least render imperative all other state laws relating to intoxicating liquors. Such laws are therefore omitted from this compilation.

This act supersedes Acts 1918, ch. 24, on the same subject.

Art. 588¼a. Manufacture, sale, etc., of liquors containing in excess of 1 per cent of alcohol unlawful.—It shall be unlawful for any person, directly or indirectly, to manufacture, sell, barter, exchange, transport, export, receive, deliver, solicit or take orders for, furnish or possess, any spirituous, vinous or malt liquors, or medicated bitters, or any potable liquor, mixture or preparation, containing in excess of 1 per cent of alcohol by volume, or any equipment for making such liquors, except for medicinal, mechanical, scientific or sacramental purposes. (Id. sec. 2.)

Art. 588¼aa. Definitions.—The words "intoxicating liquors," or "liquors" hereafter used in this Act shall be held to include and comprehend all liquors referred to in the first and second sections of this Act and the said liquors prohibited by the said first and second sections of this Act will hereafter be referred to herein for convenience as "intoxicating liquors." (Id. sec. 3.)

Art. 588¼b. Liquors described in sections one and two construed to include, what.—The various liquors described in Sections 1 and 2 of this Act [arts. 588¼, 588¼a] shall be construed to include all distilled, malt, spirituous, vinous, fermented or alco-

holic liquors and all alcoholic liquids and compounds, whether medicated, proprietary, patented or not, and by whatever name called, which require a federal tax as a beverage, or which contain more alcohol than is necessary to extract the medicinal properties of the drug contained in such preparation and to hold the medicinal agents in solution and preserve the same. (Id. sec. 4.)

Art. 588¼bb. Person defined.—The word "person" as used in this Act shall be held to include both natural persons and corporations, but where the offense is committed by a corporation, then the corporation shall be punished as prescribed in Section 36 [art. 588¼qq] of this Act. (Id. sec. 5.)

Art. 588¼c. Intoxicating liquor for beverage purposes for use in residence; denatured alcohol; denatured rum; medicinal purposes; toilet, etc., preparations; storage in bonded warehouses.—The provisions of this Act shall not prohibit the possession of intoxicating liquor for beverage purposes for use by the owner and members of his family, or bona fide guests, in a bona fide residence, if such liquors were purchased and deposited in such residence before this Act goes into effect. Nothing in this Act shall prohibit the manufacture, transportation, storage, and sale of denatured or pure ethyl alcohol, or denatured rum for use only in the industrial or mechanical arts or for scientific purposes or in chemical laboratories or hospitals, or to prevent the manufacture, transportation, sale and keeping and storing for sale any medicinal preparations manufactured in accordance with formulas prescribed by the United States Pharmacopeia or National Formulary or American Institute of Homeopathy, or of alcoholic, patent or proprietary medicines which do not require the payment of the Federal Tax as a beverage and which contain no more alcohol than is necessary to extract the medicinal properties of the drug contained in such preparation, and to hold the medicinal agents in solution, and to preserve the same and which are manufactured and sold for legitimate and lawful purposes and not as beverages, or to prevent the manufacture and sale of bona fide alcohol toilet, or antiseptic preparations and solutions or flavoring extracts which do not require the payment of Federal tax as a beverage and which contain no more alcohol than is necessary for the extraction, solution and preservation of the agents contained therein, and which are manufactured and sold for legitimate and lawful purposes and not as beverages, and upon the outside of the bottle or package of each is printed in English conspicuously and legibly and clearly the quantity by volume of alcohol in such preparation.

The Manufacturer of flavoring extracts or toilet, medicinal, antiseptic preparations or solutions, patent or proprietary medicines, or preparations permitted to be manufactured by this Act shall be permitted to purchase, possess, transport and store alcohol necessary for the manufacture of said article, but not to be sold or given away, provided that such manufacturer shall secure a permit from the Comptroller, and provided that said manufacturer shall make a monthly report to be filed with the Comptroller on or before the 10th day of each month, showing the name and quantity of every such preparation, solution or medicine so manufactured, and the percentage of alcohol contained in each such preparation, solution or medicine. Provided further that said manufacturer shall, upon request of the Attorney General of the State, the Comptroller of the State, or the District or County Attorney of the county in which such manufacturer has his place of business, furnish to the officer making such request any information called for by such officer with reference to the manufacture, storage or sale of any such alcoholic preparation, solution or medicine, and any information with reference to the quantities and dates of sale and transportation of any such preparation, solution or medicine to any person or persons designated in such request. And provided further that any of the officers herein above named shall have the right at any reasonable time within business hours to examine the books and records and all data in the possession of such manufacturer with reference to the manufacture, storage or sale of such alcoholic preparations.

Nothing herein shall prevent the storage in United States bonded warehouses in the custody of a United States collector of internal revenue of all liquors manufactured prior to the taking effect of this Act or to prevent the transportation of such liquors for purposes not inhibited by this Act. (Id. sec. 6.)

Art. 588¼cc. Alcohol for non-beverage purposes; wine for sacramental purposes; permits to manufacture and sell.—That alcohol for nonbeverage purposes and wine for sacramental purposes may be manufactured and sold as follows:

The Comptroller of Public Accounts may issue permits to persons, to manufacture and sell equipment for the manufacture of liquor not prohibited herein; to manufacture alcohol and wine; to manufacture alcoholic, patent or proprietary medicine, flavoring extracts and culinary preparations and other nonbeverage alcoholic preparations; to wholesale and retail druggists or pharmacists and to persons permitted to possess alcohol and wine for authorized purposes. Such permits shall not be in conflict with the prohibitions contained herein. (Id. sec. 7.)

Art. 588¼d. Permits to manufacture and sell; issue; pharmacists; bonds of retailers.—A permit shall not be issued by the Comptroller to any person who has, within two years next preceding the issuing of the same, been adjudged guilty of violating any of the provisions of this Act, or of any permit, or of any law of this State, or of the United States, prohibiting or regulating the liquor traffic; nor shall a permit be issued for the purpose of selling such liquor at retail, unless such sale be made by a pharmacist designated in the permit and duly licensed by the State Board of Pharmacy, nor until a bond shall be given and approved, and the applicant has filed written application therefor setting forth the qualifications and the purposes for which the permit will be used, together with such other information as the Comptroller may require. The bond herein required of a retailer shall be made payable to the Governor of this State at Austin, in Travis County, Texas, shall be in the sum of One Thousand dollars conditioned for the faithful observance of this Act; the

bond shall be upon such form as may be drawn and prescribed by the Attorney General and for any breach of the same suit may be brought in the District Court of Travis County to recover the entire amount of same as a penalty for such violation of the law and breach of the bond. Said bond, if signed by personal sureties, must be signed by two solvent sureties, or, if by a surety company, then by a surety company authorized to transact business in the State of Texas. The bond shall be subject to the approval of the Comptroller and shall be filed in his office. The attorney General shall bring all actions for breach of said bond in the name of the State. (Id. sec. 8.)

Art. 588¼dd. Same subject; contents; duration; wine for sacramental purposes.—Such permit when issued shall contain date of issue, shall be in writing, signed by the Comptroller of Public Accounts, shall name and give the address of the person to whom issued, give location where such liquors, equipment or material is to be manufactured, kept, stored or sold, and fix the maximum quantity of such liquor permitted to be kept or stored and specifically designate and limit the acts permitted, give the name and address of all individuals authorized to do the permitted acts; provided the name and address of the agents, employés and servants of common carriers may be omitted by the Comptroller of Public Accounts from such permit, and such permit shall expire on the 31st day of December next succeeding the date of issue thereof.

Nothing in this act shall be construed as requiring that any priest, rabbi or minister of any religious denomination or sect to have a permit in order to purchase or receive shipments of wine for sacramental purposes; and nothing in this Act shall make it unlawful for any priest, rabbi or minister or any religious denomination or sect to purchase, order or receive, wine for sacramental purposes or for any common carrier to ship, transport, carry or deliver same to any priest, rabbi or minister of any religious denomination or sect for sacramental purposes only; provided, however, that where such shipment or purchase is made a record thereof shall be made and kept and the priest, rabbi or minister making such purchase or shipment shall be identified. Such quantities of wine may be purchased and kept on hand for sacramental purposes as may be necessary for the particular church or religious institution for the use and service of which same is purchased or shipped. (Id. sec. 9.)

Art. 588¼e. Labels attached to containers.—All persons manufacturing alcohol or wine, or either, shall securely and permanently attach to any container of such liquor as the same is manufactured, and thereafter, persons possessing such liquor in wholesale quantities shall securely keep and maintain thereon, a manufacturer's label, stating name of manufacturer, kind and quantity of liquor contained therein, with a copy of the permit authorizing the manufacture thereof; provided further that every person having in his possession any intoxicating liquor, purchased after this act becomes effective, for permitted purposes, shall have pasted on or permanently attached to the container a copy of the prescription or affidavit as the same may be, upon which authority it was purchased as is provided for in this act. (Id. sec. 10.)

Art. 588¼ee. Record of liquors manufactured or sold.—All persons authorized to manufacture alcohol shall keep a separate record of such liquors manufactured or sold, giving date and quantity of such liquor manufactured and sold, the quantity of such liquor on hand, name and address of persons to whom such liquor was sold, the name and address of all agents in any way connected with such manufacture, sale, or purchase, or the keeping, storing, delivering, consigning, and distribution of such liquor, the name and address of all common, or other carriers, receiving, transporting, and delivering said liquor, and a copy of the application on which the purchase or sale of such liquor was made, and a detailed account of the dispositions of such liquor. A copy of such record shall be sent to the Comptroller of Public Accounts every third month after the Act goes into effect by the 10th of the month for the quarter preceding. (Id. sec. 11.)

Art. 588¼f. Sales by wholesale and retail druggists; records.—It shall be unlawful for a wholesale druggist to sell alcohol or wine, except in wholesale quantities, to persons having permits to purchase in such quantities. Such wholesale druggist shall keep an accurate record of all sales and label the containers of such liquor, setting forth the kind of liquor contained therein, by whom manufactured, and the person to whom sold. A copy of such record shall be sent to the Comptroller of Public Accounts every third month after this Act goes into effect by the 10th of the month for the quarter preceding. It shall be unlawful for a retail druggist or pharmacist to sell any liquor except alcohol for nonbeverage purposes or wine for sacramental purposes. Such druggist or pharmacist shall keep a record giving the name of the doctor issuing the prescriptions containing alcohol, the amount, date of sales, the name and signature of the purchaser, the person making the sale, and a copy of the prescription. (Id. sec. 12.)

Art. 588¼ff. Physicians' prescriptions; permits.—Every physician who issues a prescription for ethyl alcohol, or any alcoholic liquor, shall first secure a permit from the Comptroller of Public Accounts, except as herein provided, and shall keep a record, alphabetically arranged in a separate book provided by the Comptroller of Public Accounts, which shall show: Date, amount, to whom issued, directions for use (Stating the amount and frequency of dose), and the druggist to whom addressed. Such physician shall send a copy of such record to the Comptroller of Public Accounts, not later than the fifth day of the month for the quarter preceding. (Id. sec. 13.)

Art. 588¼g. Same subject; who may issue; filling; revocation of permit.—A physician who issues prescriptions must be in active practice, in good standing with his profession, not addicted to the use of any narcotic drug, and have a permit as provided herein for issuing prescriptions. Such physician before issuing any prescriptions must make a careful personal, physical examination of the person to whom the alcohol is prescribed, and in no case issue such prescription to any person whom he has reason to be-

lieve will use alcohol for beverage purposes, nor prescribe more than a pint of alcohol to any person at a time. Nor shall such prescriptions be filled at any pharmacy or drug store in which the physician has any financial interest. For any shift or device by which intoxicating liquors may be improperly prescribed, or for any violation of this section, in addition to the penalty prescribed, for the first offense under this Act, the Comptroller of Public Accounts may suspend the permit of such physician to issue prescriptions for alcohol for a period of one year, and for the second offense, in addition to the punishment prescribed herein, the permit of such physician shall be deemed revoked forthwith. The revocation of such permit, if revoked by the court, shall be sent to the authority granting the permit and shall act as a ban to the granting of any further permit to such physician to issue prescriptions. (Id. sec. 14.)

Art. 588¼gg. Common carriers; permits.—It shall be the duty of every railroad company, express company, or other common carrier that transports any liquor to secure first a permit from the Comptroller of Public Accounts and to keep correctly at the place of receipt for shipment, in typewriting or in a clear and legible hand, that the same may be easily read, a permanent alphabetically arranged record of the receipt of such liquors and the name and post office address, street address, or other description of domicile of the consignor and consignee, and the place of delivery. Nothing herein shall be construed to authorize the transportation of liquor for other than permitted purposes. (Id. sec. 15.)

Art. 588¼h. Same subject; to whom deliveries may be made.—Common carriers may deliver liquor to persons who have permits to manufacture or possess the same in wholesale quantities, upon the presentation of a verified copy of the permits from the Comptroller of Public Accounts, and affidavit to the carrier that such liquor will not be used in violation of the law; and that the common carrier may also receive for shipment, and ship and deliver, liquor to persons for the uses permitted herein when affidavit is presented to the carrier that such liquor will not be used in violation of the law. The copy of the record hereinbefore mentioned shall be sent by the transportation company to the Comptroller of Public Accounts of the State where the delivery was made, not later than the 10th day of the month for the quarter next preceding. (Id. sec. 16.)

Art. 588¼hh. Same subject; records; form and contents; oath of consignee.—The record to be kept by the transportation company at the place of delivery shall show: Name of consignor, consignee, kind of liquor and quantity; the number of permit from the Comptroller of Public Accounts; and the signature of the consignee.

The affidavit of the consignee to be attached to the above record shall be as follows:

State of ———
County of ——— } ss

——— being duly sworn, deposes and says, that my address is ——— (or other definite description, giving street number or hotel); I am not a minor, nor of intemperate habits. I am the owner of a package in the office of a common carrier, to-wit: ——— It contains (giving amount and kind of liquor) ——— which I have ordered in writing the ——— day of ——— upon the authority of permit No. ———; that the purpose for which I ordered such liquor is ———; that I have not received from any carrier or any person, nor have I had in my control at any place or places, more than ——— (amount) of alcohol or wine within the last three days preceding this date, and I do not have liquor on hand except ———; that I will not use any of such liquor nor allow anyone else to use such liquor for beverage purposes or for purposes other than herein stated.

———

Sworn to and subscribed in my presence ——— day of ———, 19—.

———

The agent of the common carrier is hereby authorized to administer the oath to the foregoing consignee, who, if not personally known to the agent, shall first be identified before the delivery of the liquor to him. The names and addresses of the person identifying the consignee shall be included in the record. The affidavit shall be made in the form prescribed, in a permanent record, and if such permanent record has not been furnished the carrier by the Comptroller of Public Accounts, after application for the same, then the affidavit of the consignee shall be pasted or permanently attached at the bottom of the record mentioned therein and a copy attached permanently to the container of such liquor. If such container is inclosed in a package with other material, then such copy shall be attached to it or pasted on it when it is taken from such package and before the liquor is delivered. (Id. sec. 17.)

Art. 588¼i. Forms of affidavits, records and prescriptions.—The Comptroller of Public Accounts shall have printed forms of records, affidavits, and prescriptions, as provided herein, and shall furnish the same at cost to only such persons as are authorized by the terms of this Act to sell, transport, purchase, manufacture or use alcohol. The affidavits or prescriptions to be filed with the druggist shall be printed in book form, numbering such affidavit with a consecutive serial number from one to one hundred, and each book shall be given a number, and a stub in each book shall carry the same number as the affidavit or prescriptions, showing the copy of the record of such sale. The book containing such stub shall be returned to the Comptroller of Public Accounts when the affidavits or prescriptions are used, or not later than six months from the date that such book or affidavits and prescriptions were delivered to such druggist or physician. All unused, mutilated, or defaced blanks shall be returned with the book. No druggist or physician shall make such sale or issue such prescriptions, except on blanks herein provided. The form of such record shall be prescribed by the Comptroller of Public Accounts.

The Comptroller shall charge a fee of five dollars for each and every character of permit issued by him under this Act. (Id. sec. 19.)

Art. 588¼ii. Complaints of violations of law by pharmacists; revocation of

permit.—If at any time there shall be filed with the Comptroller of Public Accounts a complaint under oath setting forth that any pharmacist, who has a permit to sell alcohol for medicinal, mechanical, or scientific purposes, or wine for sacramental purposes, is not in good faith conforming to the provisions of this Act, or is guilty of violating this Act, the Comptroller of Public Accounts or his agent shall immediately issue an order citing such pharmacist to appear at a place in the State where he resides before the Comptroller of Public Accounts, on a day named not more than thirty days, nor fewer than fifteen days, from the issuing of such order, at which time the question of the cancellation of such permit shall be heard. If it be found that such pharmacist is guilty of violating any of the provisions of this Act, such permit shall be revoked and no permit shall be granted to such person, firm, or corporation for two years thereafter. (Id. sec. 20.)

Art. 588¼j. Place of delivery of liquor.—In case of a sale where a shipment or delivery of such intoxicating liquor is made by a common or other carrier the sale or delivery thereof shall be deemed to be made in the county wherein the delivery is made by such carrier, to the consignee, his agent, or employés. A prosecution for such sale or delivery may likewise be had in the county wherein the sale is made or from which the shipment is made, or in any county through which the shipment is made. (Id. sec. 21.)

Art. 588¼jj. Advertising liquors, etc., unlawful.—It shall be unlawful to advertise anywhere, on land or water, by any means or method, intoxicating liquors, or to advertise the manufacture, method of manufacture, sale, keeping for sale or furnishing of the same, or where, how, from whom and at what price the same may be obtained, provided that the manufacturer of alcohol or wine and wholesale druggists having a permit under this act shall be allowed to send price lists to those to whom they are permitted to sell alcohol or wine under this act; it shall also be unlawful to permit any sign or billboard containing such prohibited advertisement to remain upon one's premises or to circulate any prohibited price list, order blank or other matter designed to induce or secure orders for such intoxicating liquors. The officers charged with the enforcement of this act are authorized to remove, paint over or otherwise obliterate any such advertisement from any sign, billboard or other place when it comes to his notice, and shall do so upon the demand of any citizen who has first requested the person in charge of such advertisement, or the owner of the property on which it is located and such person fail to remove such advertisement as required by law. Any advertisement or notice containing the picture of a brewery, distillery, bottle, keg, barrel, or box or other receptacle represented as containing intoxicating liquors, or designed to serve as an advertisement thereof, shall be within the inhibition of this section.. It shall be unlawful for any newspaper or periodical to print in its columns statement concerning the manufacture or distribution of alcoholic liquors directly or indirectly, for which the said newspaper or periodical receives compensation of any kind, without printing at the beginning and at the close of said statement in type of the same size used in the body of the said article the following statement: "Printed as paid advertising." (Id. sec. 22.)

Art. 588¼k. Removal of prohibited liquors, etc.—Within thirty days after the date when this act has become operative, every person except licensed pharmacists, wholesale druggists, manufacturing chemists, or hospitals or other places provided for herein to legally possess liquor, shall remove, or cause to be removed, all intoxicating liquors in his possession for prohibited purposes, and failure to do so shall be evidence that such liquor is kept therein for the purpose of being sold, bartered, exchanged, given away, furnished or otherwise disposed of in violation of the provisions of this act; and provided further, that any licensed pharmacist, wholesale druggist, manufacturing chemist, or person in charge of hospital or other place having liquor or alcohol shall report to the Comptroller of Public Accounts within the thirty-days' period the kinds and amounts of intoxicating liquors, or the manufacture thereof, shall be permanently removed and obliterated. Such signs shall be removed within five days after this act becomes operative.

All screens, stained glass, or other obstructions which prevent a clear view of the interior of any room or place where intoxicating liquors were sold as a beverage, within one year before this act became operative shall be removed or changed so as to give a permanent unobstructed view of the interior of said room or place, if beverages of any kind are sold therein. (Id. sec. 23.)

Art. 588¼kk. Sale, etc., of compound, etc., for making intoxicating liquors.—It shall be unlawful to advertise, sell, deliver, or possess any preparation, compound, or table from which intoxicating liquor as a beverage is made, or any formula, directions, or recipes for making intoxicating liquors for beverage purposes. (Id. sec. 24.)

Art. 588¼*l*. Transportation of liquor without notice to carrier thereof unlawful.—It shall be unlawful for any person to use or induce any railroad company, express company, or any other carrier, or any servant or employee thereof, or any person or persons, to carry, transport, or ship any package or receptacle containing liquors without notifying the carrier, its servant or agent, or any person who carries the same, of the true nature and character of the shipment. But failure to notify such carrier shall not be a defense for illegal transportation. (Id. sec. 25.)

Art. 588¼*ll*. Soliciting, etc., orders for liquor unlawful.—It shall be unlawful for any person to solicit, or receive from any person for the purpose of forwarding for the person from whom received, any orders for intoxicating liquors from any person or to give any information how such prohibited liquors may be received or where such liquors are, or to send for such liquors, except for the purposes permitted by this Act. (Id. sec. 26.)

Art. 588¼m. Action for damages for injuries caused by sale, etc., of liquors.—Every wife, husband, child, parent, guardian,

or other person who shall be injured in person or property or means of support or otherwise by any intoxicated person by reason of the unlawful selling, giving, or furnishing or transporting to any person of the liquors mentioned shall have a right of action in his or her name against any person or persons or corporation who shall, by unlawful selling, transporting or giving any such orders, have caused or contributed to any such injury; and in any action provided for in this Section the plaintiff shall have a right to recover actual and exemplary damages. In case of the death of either party, the action or right of action given by this section shall survive to and against his or her executors or administrator, and the amount so recovered by either wife or child shall be his or her sole and separate property. Such damages together with the costs of suit, shall be recoverable in an action before any court of competent jurisdiction; and in any case where parents shall be entitled to such damages, either the father or mother may sue alone therefor, but recovery by one of such parties shall be a bar to suit brought by the other. (Id. sec. 27.)

Art. 588¼mm. Unlawful orders to carrier for delivery of liquor.—It shall be unlawful to give to any carrier, or any officer, agent or person acting or assuming to act for such carrier, an order requiring the delivery to any person of any liquor or package containing liquors consigned to or purporting to or claimed to be consigned to a person when the purpose of the order is to enable any person not an actual bona fide consignee to obtain such liquors. (Id. sec. 28.)

Art. 588¼n. Transportation, etc., of liquor without certain information attached to packages unlawful.—It shall be unlawful for any person to transport liquor or to receive or possess any liquors from a common or other carrier unless there appears on the outside of the package containing such liquors the following information:

Name and address of the consignor or seller, name and address of the consignee or persons receiving the liquor; kind and quantity of liquor contained therein and number of permit. Any consignee accepting or receiving any package containing any such liquors upon which appears a false statement, or any person consigning, shipping, transporting, or delivering and such package, knowing that such statement appearing on the outside in false, shall be deemed guilty of violating the provisions of this act. (Id. sec. 29.)

Art. 588¼nn. No property rights in liquors possessed, etc., unlawfully; seizure and destruction.—No property rights of any kind shall exist in any intoxicating liquors manufactured or sold or kept for sale for beverage purposes in violation of law, and in all such cases the same may be searched for, seized, and ordered to be destroyed. (Id. sec. 30.)

Art. 588¼o. Purchase of liquor sold, etc., in violation of act unlawful.—It shall be unlawful for any person within this State to purchase for himself or for another, or to receive from any carrier intoxicating liquors sold, bartered or given to him or delivered to him in violation of this Act, and such person shall be punished accordingly as provided in the penal section [Art. 588¼qq] of this Act. (Id. sec. 31.)

Art. 588¼oo. Renting, keeping, etc., building, etc., for unlawful manufacture, etc., of liquor unlawful.—It shall be unlawful for any person to rent to another or to keep or to be in any way interested in keeping any premises, building, room, boat or place to be used for the purpose of storing, manufacturing, selling, transporting, receiving or delivering, or bartering or giving away intoxicating liquors in violation of this Act and any one who knowingly does so shall be guilty of violating this Act and shall be punished accordingly as provided in the penal Section [Art. 588¼qq] hereof. (Id. sec. 32.)

Art. 588¼p. Common nuisances; punishment.—Any room, house, building, boat, structure or place of any kind similar or dissimilar to those named, where intoxicating liquor is kept, possessed, sold, manufactured, bartered or given away, or to be transported to or transported from in violation of law, and all intoxicating liquors and all property kept in and used in maintaining such place are hereby declared to be a common nuisance and any person who maintains or assists in maintaining such common nuisance shall be guilty of violating this act and shall be punished accordingly. (Id. sec. 33.)

Art. 588¼pp. Same subject; abatement; injunction; bond of owner of premises.—The Attorney General or county or district attorney of the county where such nuisance, as defined in Section 33 of this Act [Art. 588¼p], exists or is kept or maintained, may maintain an action in the name of the State of Texas to abate and perpetually enjoin such nuisance and upon judgment of the court ordering, such nuisance shall be abated, all intoxicating liquor, containers, utensils and instrumentalities used in the maintenance of such nuisance shall be ordered by the court to be destroyed, same shall be destroyed by any officer authorized to execute civil process; the court shall also order that the place where said nuisance is kept or maintained be closed for one year or until the owner, lessee, tenant or occupant thereof shall file bond with sufficient sureties to be approved by the court making the order in the penal sum of $1,000.00, payable to the State of Texas, at Austin, Texas, and conditioned that intoxicating liquor will not thereafter be manufactured, sold, bartered, stored, transported to or from, or given away in violation of law. In case of the violation of any condition of such bond, the whole sum may be recovered as a penalty in the name and for the State of Texas in the District Courts of Travis County, all suits to be brought by the Attorney General. In all cases where any person has been convicted of a violation of the provisions of this Act for acts done in keeping or maintaining the nuisance defined in Section 33 hereof, and such conviction has been final, then a certified copy of such judgment of conviction shall be considered as prima facie evidence of the existence of such nuisance in any action to abate the same. (Id. sec. 34.)

Art. 588¼q. Seizure and destruction of liquor; search warrant.—A search warrant may be issued under Title 6 of the Code of Criminal Procedure of this State for the purpose of searching for and seizing and de-

stroying any intoxicating liquor possessed, sold or to be sold or transported, or to be transported, or manufactured in violation of this Act, and for the purpose of searching for and seizing and destroying any containers, instrumentalities for manufacture or of transportation used or to be used in the unlawful possession, sale, manufacture or transportation of intoxicating liquors. No warrant shall be issued to search a private dwelling occupied as such, unless some part of it is used as a store, shop, hotel or boarding house, or for some purpose other than a private residence, or unless the affidavits of two credible persons show that such residence is a place where intoxicating liquor is sold or manufactured in violation of the terms of this act.

The application for the issuance of and the execution of any such search warrant, and all proceedings relative thereto, shall conform as near as may be to the provisions of title 6 of the Code of Criminal procedure of this State, except where otherwise provided in this act.

In the event any such liquor or utensils, containers or instrumentalities herein referred to are found, the officer executing the warrant shall seize same. The liquor and articles so seized shall not be taken from the custody of officer by writ of replevin or other process, but shall be held by the officer to await the final judgment in the proceedings. (Id. sec. 35.)

Art. 588¼qq. Punishment for violations of act; corporations.—Any person violating any of the provisions of this act shall be deemed guilty of a felony and upon conviction thereof shall be punished by confinement in the Penitentiary for any period of time not less than one (1) year or more than five (5) years.

Any corporation violating any of the provisions of this act shall be subject to a penalty in favor of the State of Texas, which shall be recoverable in an action in the name of the State to be brought by the Attorney General in any district court of Travis County or such action may be brought in the district court of any county where the offense is committed, by the Attorney General or by the county or district attorney of such county with the consent and approval of the Attorney General. In any such action for penalties, the State shall recover the sum of Five Hundred ($500.00) Dollars for any violation of the law, provided that each separate violation of the law shall be considered a separate offense is within the terms of this section, or where the offense is of a continuing character, then each day shall be considered a separate infraction of the law, for which the penalty may be recovered. The officers, agents or servants of any corporation against which any such penalty suit may be brought shall not be excused from testifying on the ground that their testimony mightincriminate them, but where they are called upon by the State to testify and do testify they shall not be prosecuted for their participation in those acts about which they have testified. (Id. sec. 36.)

Art. 588¼r. Compensation to district or county attorney for bringing penalty suits.—It is further provided that where penalty suits are brought in Section 36 of this Act [Art. 588¼qq], with the consent and approval of the Attorney General, that the district or county attorney bringing the same shall receive as compensation for his services twenty-five (25) per cent of the amount of penalties recovered and collected, which amount may be held by the district or county attorney recovering the same when he collects and pays over the balance of the judgment to the State. (Id. sec. 37.)

Art. 588¼rr. Restraining violations of act.—In addition to all other remedies now provided by law and provided in this Act, the Attorney General is hereby authorized to enjoin the violation of any section or sections of this act, and suit therefor may be maintained in the name of the State of Texas in any District Court in Travis County, Texas, and for such purpose venue and jurisdiction is hereby conferred upon the district courts of Travis County, Texas; and the district or county attorney of any county, wherein any of the provisions of this act, are violated, is authorized to institute and maintain, in the district court of any such county, a suit in the name of the State to enjoin and prevent the violation of any section or sections of this act. This remedy by an injunction given in this section shall be cumulative of and in addition to the other provisions of this act providing penalties or creating and defining crimes and punishments, and may be maintained with or without prosecutions or penalty suits herein otherwise provided for. (Id. sec. 38.)

Art. 588¼s. Violations of injunction; punishment.—Any person violating the terms of any injunction issued under the provisions of Section 38 of this Act [Art. 588¼rr] shall be punished for contempt by fine of not less than One Hundred ($100.00) Dollars nor more than Five Hundred ($500.00) Dollars, and by imprisonment in the county jail for not less than thirty (30) days, nor more than six (6) months. (Id. sec. 39.)

Art. 588¼ss. Witnesses.—No person shall be excused from testifying against persons who have violated any provisions of this act for the reason that such testimony will tend to incriminate him, but no person required to so testify shall be punished for acts disclosed by such testimony. (Id. sec. 40.)

Art. 588¼t. Pending prosecutions, etc.—All suits or actions, civil or criminal, pending under the law in force the day this Act takes effect, may be prosecuted to final judgment and such judgment entered in like manner with the same effect as though this Act was not passed and all rights and action, civil or criminal, accrued under any existing law are hereby preserved and saved and excepted from the operation and effect of this Act, and the same may be prosecuted by suit for recovery or conviction in like manner and to the same extent as might be done if this act was not passed. (Id. sec. 41.)

Art. 588¼tt. Partial invalidity of act.—If any provisions of this act shall be held to be invalid, it is hereby provided that all other provisions of this act, which are not held to be invalid, shall continue in full force and effect. (Id. sec. 42.)

CHAPTER SEVEN

UNLAWFULLY SELLING INTOXICATING LIQUOR

Arts. 589-591. [Omitted.]

These articles are made inoperative by the amendment of art. 16, § 20, of the state Constitution, and by Acts 1919, 2d C. S., ch. 78, ante, arts. 588¼ to 588¼tt.

Art. 592. (398) Selling liquor to wild Indians.—If any person shall sell, give or barter, or cause to be sold, given or bartered, any ardent spirits, or any spirituous or intoxicating liquors, or firearms, or ammunition, to any Indian of the wild or unfriendly tribes, he shall be fined not less than ten nor more than one hundred dollars. (O. C. 408; Acts 1866, p. 71.)

Art. 593. [Omitted.]

This article is made inoperative by the amendment of art. 16, § 20, of the state Constitution and by Acts 1919, 2d C. S., ch. 78, ante, arts. 588¼-588¼tt.

Art. 593a. Sale or other disposition of liquors in bawdy houses.—That if any person, whether the owner, lessee, manager, housekeeper, proprietor, servant, agent, employé, inmate, visitor or any other person shall sell, give away or drink, or permit to be sold, given away or drunk, any spirituous or vinous or malt liquors, whether capable of producing intoxication or not, in any bawdy house, disorderly house or assignation house, shall be guilty of a misdemeanor, and upon conviction such person or persons shall be punished by imprisonment in the county jail for a period of not less than thirty days nor more than ninety days, and by a fine of not less than fifty nor more than five hundred dollars. (Acts 1911, ch. 15, sec. 1.)

Art. 593b. Same; definition of terms.—For the purposes of this Act a bawdy house is one kept for prostitution, or where prostitutes are permitted to resort for the purpose of plying their vocation.

A disorderly house is an assignation house or any theater or any play house or house or place where prostitutes or lewd women or women of bad reputation for chastity are employed, kept in service, or permitted to resort or permitted to display or conduct themselves in a lewd or lascivious or indecent manner.

An assignation house is a house or room or place where men and women meet by appointment made by themselves or by another for the purpose of sexual intercourse. (Id. sec. 2.)

Art. 593c. Same; incriminating testimony.—No person shall be exempt from giving testimony in any proceeding for the enforcement of this Act, but the testimony given by a witness shall not be used against him or her, in any criminal action or proceeding, nor shall any criminal action or proceeding be brought against such witness on account of any testimony so given by him or her. (Id. sec. 3.)

Arts. 594-606. [Omitted.]

These articles are made inoperative by the amendment of art. 16, § 20, of the state Constitution, and by Acts 1919, 2d C. S., ch. 78, ante, arts. 588¼-588¼tt.

Arts. 606a-606q. [Omitted.]

These articles, consisting of Acts 1913, ch. 67, as amended by Acts 1913, 1st C. S., ch. 31, as amended by Acts 1917, ch. 18, as amended by Acts 1918, 4th C. S., ch. 31, and as amended by Acts 1919, ch. 95, are made inoperative by the amendment of art. 16, § 20, of the state Constitution, and by Acts 1919, 2d C. S., ch. 78, ante, arts. 588¼-588¼tt.

Art. 607. (408) Evidence when persons are jointly indicted.—Where persons are jointly indicted, or otherwise prosecuted for selling liquor in violation of law, it shall be sufficient to show, by general reputation, that they are understood to be members of the firm. (O. C. 423f; Acts 1858, p. 168.)

Art. 608. (409) Members of firm liable personally.—Any one member of a firm may be separately prosecuted for the offense of selling liquor in violation of law. (O. C. 423g; Acts 1858, p. 168.)

Art. 609. (410) If owner is unknown, persons selling liable.—Where any establishment for the sale of liquor is conducted without the name of the owner being known, any and all persons who may be found selling liquor in such establishment, in violation of law, shall be subject to prosecution as separate offenders. (O. C. 423h; Id.)

Art. 610. (411) Procedure in case of firm.—When a firm is prosecuted for a violation of the law relating to the sale of liquor, the fine shall be assessed against the parties jointly, but each defendant shall be liable for the whole amount; and in cases of prosecution against a firm, if all the defendants be not arrested, a verdict and judgment for the full amount of the fine may be rendered against any one or more who may be tried. (O. C. 423i; Id.)

Arts. 610a-610*l*. [Omitted.]

These articles, consisting of Acts 1918, 4th C. S., ch. 7, and Acts 1918, 4th C. S., ch. 12, are made inoperative by the amendment of art. 16, § 20, of the state Constitution, and by Acts 1919, 2d C. S., ch. 78, ante, arts. 588¼-588¼tt.

CHAPTER EIGHT

VIOLATIONS OF THE LAW REGULATING THE SALE OF INTOXICATING LIQUORS

Arts. 611-616. [Omitted.]

These articles, as amended and added to by Acts 1918, 4th C. S., ch. 5, and Acts 1918, 4th C. S., ch. 6, are made inoperative by the amendment of art. 16, § 20, of the state Constitution, and by Acts 1919, 2d C. S., ch. 78, ante, arts. 588¼-588¼tt.

Arts. 617-621. [Superseded by Acts 1913, 1st C. S., ch. 30, amending art. 7452, Rev. Civ. St. 1911.]

Arts. 622-633. [Omitted.]

These articles are superseded and made inoperative by the amendment of art. 16, § 20, of the state Constitution, and by Acts 1919, 2d C. S., ch. 78, ante, arts. 588¼-588¼tt.

CHAPTER EIGHT A

POOL HALLS

Art. 633a. Maintaining or operating pool hall prohibited.—On and after the 1st day of May, A. D., 1919, it shall be unlawful for any person acting for himself or for others to maintain or operate a pool hall within this State. The term "pool hall" as herein used mean and include any room, hall, building or part of building, tent, or enclosure of any kind or character, similar or dissimilar to those named or any enclosed open space in which or where are exhibited for hire, revenue, price, fees, or gain of any kind; or for advertising purposes of any kind, any pool or billiard table or tables, or stands or structures of any kind or character on or in which are or may be played pool or billiards of any kind or character or any game, similar or dissimilar to the game of pool or billiards

played with balls, cues or pins or any similar devices; any such table or tables, stands or structures of any kind or character used or exhibited in connection with any place where goods, wares or merchandise or other things of value are sold or given or where or upon which any money or thing of value is paid or exchanged, shall be regarded as a place where is exhibited the tables, stands, or structures herein referred to for hire, revenue and gain. (Acts 1919, ch. 14, sec. 1.)

This act supersedes Acts 1913, ch. 74, secs. 12, 13, 15, the provisions of which were declared unconstitutional by the Supreme Court, in Ex parte Mitchell, 177 S. W. 953.

Art. 633b. Same subject; punishment.—Any person or persons, who shall operate or maintain any pool or billiard hall as described herein, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five ($25.00) dollars and not more than one hundred ($100.00) dollars, or by confinement in the county jail for not less than thirty days nor more than one year, or by both such fine and imprisonment; provided that each day such pool or billiard hall is operated or maintained shall constitute a separate offense. (Id. sec. 2.)

For section 3 of this act, see ante, Civ. Stat. art. 4688a.

CHAPTER NINE

VAGRANCY

Art. 634. "Vagrancy" defined.—The following persons are and shall be punished as vagrants, viz.:

(a) Persons known as tramps, wandering or strolling about in idleness, who are able to work and have no property to support them.

(b) Persons leading an idle, immoral or profligate life, who have no property to support them, and who are able to work and do not work.

(c) All persons able to work, have no property to support them, and who have no visible or known means of a fair, honest and reputable livelihood. The term "visible or known means of a fair, honest and reputable livelihood," as used in this article, shall be construed to mean reasonably continuous employment at some lawful occupation for reasonable compensation, or a fixed and regular income from property or other investments, which income is sufficient for the support and maintenance of such person.

(d) All able-bodied persons who habitually loaf, loiter and idle in any city, town or village, or railroad station, or any other public place in this state for the larger portions of their time, without any regular employment and without any visible means of support. An offense under paragraph (d) of this article shall be made out whenever it is shown that any person has no visible means of support, and only occasionally has employment at odd jobs, being for the most of the time out of employment.

(e) Persons trading or bartering stolen property, or who unlawfully sell any vinous, alcoholic, malt, intoxicating or spirituous liquors.

(f) Every common gambler or person who for the most part maintains himself by gambling.

(g) All companies of gypsies, who, in whole or in part, maintain themselves by telling fortunes.

(h) Every able-bodied person who shall go begging for a livelihood.

(i) Every common prostitute.

(j) Every keeper of a house of prostitution.

(k) Every keeper of a house of gambling or gaming.

(l) Every person who shall abandon his wife, or child, or children, without just cause, leaving such wife, or child, or children, without support, or in danger of becoming a public charge.

(m) Every able-bodied person who lives without employment or labor, and who has no visible means of support.

(n) All persons who are able to work and do not work, but hire out their minor children, or allow them to be hired out, and live upon their wages, being without other means of support.

(o) All persons over sixteen years of age and under twenty-one, able to work and do not work, and have no property to support them, and have not some known, visible means of a fair, honest and reputable livelihood, and whose parents, or those in loco parentis, are unable to support them, and who are not in attendance upon some educational institution.

(p) All persons who advertise and maintain themselves in whole or in part as clairvoyants or foretellers of future events, or as having supernatural knowledge with respect to present or future conditions, transactions, happenings or events. (Acts 1909, p. 111.)

Art. 635. Person unlawfully soliciting orders for intoxicating liquors, vagrant.—Any person who unlawfully solicits orders for intoxicating liquors. (Id. p. 112.)

Art. 636. Male person habitually associating with prostitutes, vagrant.—All male persons who habitually associate with prostitutes, or habitually loiter in or around houses of prostitution, or who, without having visible means of support, receive financial aid or assistance from prostitutes. (Id. p. 112.)

See Ellis v. S., 145 S. W. 339.

Generally under the chapter, see Cox v. S., 205 S. W. 131.

Art. 637. Duty of sheriff and other officers.—It shall be the duty of every sheriff, deputy sheriff and constable in every county, and of the police, town marshal, deputy marshal, and other like officials, in every county, city, town or village in the state, to give information under oath to any officer empowered to issue criminal warrants of all vagrants within their knowledge, or upon information in their respective counties, cities, towns and villages; thereupon the said officer shall issue a warrant for the apprehension of the person alleged to be a vagrant. (Id. p. 112.)

Art. 638. Information charging vagrancy.—All information charging vagrancy shall be under oath; and, while it is made the special duty of the officers named in article 637 hereof to file the said information whenever they shall have knowledge or good reason to suspect that any person is a vagrant, as defined by any clause or article of this law, yet any information charging vagrancy may be filed under oath by any resident of the state. (Id. p. 112.)

Art. 639. Court having jurisdiction; penalty for.—Whenever any person shall have been arrested on a charge of vagrancy, he shall immediately be carried before any

court having jurisdiction of the offense herein named, and, upon conviction thereof, shall be fined in any sum not to exceed two hundred dollars. (Id. p. 112.)

Art. 640. Failure of officer to perform duty, penalty for.—If any of the officers named in article 637 shall fail, refuse, or neglect to perform the duties therein required, he shall be guilty of a misdemeanor, and shall be punished by a fine of not less than twenty-five dollars, nor more than one hundred dollars. (Id. p. 112.)

CHAPTER NINE A

ABANDONMENT OF WIFE OR CHILDREN

Art. 640a. Desertion and failure to support wife or children; penalty.—That any husband who shall wilfully or without justification, desert, neglect or refuse to provide for the support and maintenance of his wife, who may be in destitute or necessitous circumstances, or any parent who shall wilfully or without justification, desert, neglect or refuse to provide for the support and maintenance of his or her child or children under the age of sixteen years in destitute or necessitous circumstances, shall be deemed guilty of a misdemeanor and on conviction thereof shall punished by a fine of not less than twenty-five dollars and not more than five hundred dollars or by imprisonment in the county jail not more than one year, or by both such fine and imprisonment. (Acts 1907, p. 133, ch. 62; Acts 1913, ch. 101, sec. 1.)

Art. 640b. Order for support pendente lite; contempt.—At any time before the trial, upon petition of the complainant and upon notice to the defendant, the court or judge thereof in vacation, may enter such temporary orders as may seem just, providing for the support of the deserted wife or children, or both, pendente lite, and may punish for the violation of or refusal to obey such order or orders as for contempt. (Id. sec. 2.)

Art. 640c. Proof of marriage and paternity; confidential communications; evidence as to wilfulness of desertion.—No other or greater evidence to prove the marriage of such husband and wife, or that the defendant is the father or mother of such child or children, shall be required than is or shall be required to prove such facts as in a civil action. In no prosecution under this Act shall any existing statute prohibiting disclosures of confidential communications between husband and wife apply, to strictly relevant facts and both husband and wife shall be competent and compellable witnesses to testify against each other to any and all relevant matters, including the fact of such marriage, and the parentage of such child or children. Proof of the desertion of such wife, child or children in destitute or necessitous circumstances or of neglect or refusal to provide for the support and maintenance of such wife, child or children shall be prima facie evidence that such desertion, neglect or refusal is wilful. (Id. sec. 3.)

Art. 640d. Venue.—An offense under this Act shall be held to have been committed in the county in which such wife, child or children may have been at the time such abandonment occurred, or in the county in which such wife, child or children shall have resided for six months next preceding the filing of the complaint, information or indictment. (Id. sec. 4.)

Art. 640e. Expenses of extradition and prosecution.—It shall be the duty of the commissioners' court of the county in which a complaint, information or indictment under this Act is filed to furnish the funds necessary for extraditing or arresting and returning to such county any defendant under this Act who is not at the time in such county or who has gone to another State. (Id. sec. 5.)

Art. 640f. Liberal construction; partial invalidity.—This Act shall be liberally construed and if any section thereof be declared invalid, the remaining parts of the law shall not be affected thereby, as it is the intent of the Legislature to preserve all, any and every portion of said Act, if possible. (Id. sec. 6.)

CHAPTER TEN

MISCELLANEOUS OFFENSES UNDER THIS TITLE

Art. 641. (414) Pawnbroker failing to comply with the law.—If any pawnbroker, or person doing any business as such, shall receive any article in pledge, or sell the same without complying with the laws regulating pawnbrokers in this state, he shall be punished by fine not less than twenty-five dollars nor more than one hundred dollars. (Acts 1879, p. 154; Acts 1874, p. 154.)

Art. 641a. Junk dealers buying from minors without written consent of parent or guardian.—If any person engaged in doing or following the business or occupation known or called "Junk Business" or "Junk Dealers" or agent, clerk or representative of any such person, who shall buy, take or receive anything, article, commodity or part thereof, for or in connection with said business or occupation from any person under the age of twenty-one without first receiving the written consent, together with the affidavit hereinafter required, from the guardian or parent, with whom the minor is residing, to so buy, take or receive such thing, article or commodity, or part thereof, shall be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. (Acts 1918, 4th C. S., ch. 82, sec. 1.)

Art. 641b. Junk dealers buying without affidavit.—If any person engaged in doing or following the business or occupation known as, or called "Junk Business" or "Junk Dealers," or the agent, clerk or representative of any such person, who shall buy, take or receive any thing, article, commodity or part thereof for or in connection with said business or occupation, from any person without first receiving the affidavit hereinafter required from said person selling or delivering said thing, article, commodity or part thereof, shall be punished by a fine of not less than twenty-five dollars, nor more than two hundred dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. (Id. sec. 2.)

Art. 641c. Affidavits.—The affidavit required by the two preceding sections shall be in writing or be printed and be made only by the person selling or delivering the thing, ar-

ticle, commodity or part thereof to the said "Junk Dealer" or "Junk Business" and shall be signed by the affiant, and if he be unknown to the purchaser or receiver of said thing, article, commodity, or part thereof, said affidavit shall also be signed by one or more identifying and identified witnesses, and it shall describe the thing, article, commodity or part thereof sold or delivered with accuracy sufficient to certainly identify same; it shall state when, from whom and where the said thing, article, commodity or part thereof was obtained and as to how the person selling or delivering same came into possession thereof; said affidavit shall be made at the expense of the purchaser and be kept in a well bound book and be open to the free inspection of the public at all hours of the day. Any thing, article, commodity or part thereof found in the possession of said "Junk Dealer" or in said "Junk Business" not accompanied by said identifying and descriptive affidavit shall subject said "Junk Dealer" or the owner of said "Junk Business" or the agent, clerk or representative receiving same, to the punishment prescribed by the preceding sections of this Act, and each thing, article, commodity or part thereof so bought or received without said affidavit, shall constitute a separate offense. (Id. sec. 3.)

Art. 641d. Definitions.—The terms "Junk Dealer" and "Junk Business" as used herein, shall be construed to include every person, firm, corporation or association engaged in the business of buying or receiving second-hand articles or parts thereof other than in carload lots, of any and every nature and kind, except liquids, fuel, feed, foodstuffs and furniture. (Id. sec. 4.)

Art. 642. (415) Insurance agent doing business without authority.—If any person shall transact the business of life, fire or marine insurance in this state, either as agent, solicitor or broker, without his, or the company or association he represents, first obtaining a certificate of authority therefor from the commissioner of insurance and banking, he shall be punished by fine not less than five hundred nor more than one thousand dollars, and by imprisonment in the county jail not less than three nor more than six months. (Acts 1875, p. 44.)

Art. 643. (416) Any violation of insurance laws.—If any person shall violate any provision of the laws of this state regulating the business of life, fire or marine insurance, he shall be punished by fine not less than five hundred nor more than one thousand dollars. (Acts 1874, p. 200; Acts 1875, p. 44.)

Art. 644. (417) Who are insurance agents.—Any person who solicits insurance on behalf of any insurance company, whether incorporated under the laws of this or any other state, or foreign government, or who takes or transmits other than for himself, any application for insurance, or any policy of insurance, to or from such company, or who advertises or otherwise gives notice that he will receive or transmit the same, or who shall receive or deliver a policy of insurance of any such company, or who shall examine or inspect any risk, or receive or collect or transmit any premium of insurance, or make or forward any diagram of any building or buildings, or do or perform any other act or thing in the making or consummating of any contract of insurance for or with any such insurance company other than for himself, or who shall examine into, or adjust or aid in adjusting, any laws for or on behalf of any such insurance company, whether any of such acts shall be done at the instance or request, or by the employment of such insurance company, or of or by any broker or other person, shall be held to be the agent of the company for which the act is done, or the risk is taken, as far as relates to all the liabilities, duties, requirements and penalties set forth in this act; provided, that the provisions of this act shall not apply to citizens of this state who arbitrate in the adjustment of losses between the insurers and assured, nor to the adjustment of particular or general average losses of vessels or cargoes, by marine adjusters; provided, further, that the provisions of this act shall not apply to practicing attorneys at law in the state of Texas acting in the regular transaction of their business as such attorneys at law, and who are not local agents nor acting as adjusters for any insurance company. (Acts 1879, S. S. ch. 36, sec. 1.)

Art. 645. (418) Penalty for acting as agent unlawfully.—Any person who shall do or perform any of the acts or things mentioned in the preceding article for any insurance company hereinbefore referred to, without such company having first complied with the requirements of the laws of this state, or having received the certificate of authority from the commissioner of insurance and banking of the state of Texas, as required by law, shall be guilty of a misdemeanor, and, on conviction by any court of competent jurisdiction, for the first offense be fined five hundred dollars, and also a sum equal to the state, county and municipal licenses required to be paid by such insurance company for doing business in this state, and shall be imprisoned in the county jail, where the offense is committed, for the period of three months, unless the fine assessed against him and the sum of licenses herein mentioned and the cost of the court be sooner paid; and for any second or other offense, such person shall be fined in the sum of one thousand dollars, and shall be imprisoned in the county jail for the period of six months, unless the fine assessed against him and the costs of the court be sooner paid. (Id. sec. 2.)

Art. 646. (419) Consolidation of railroad corporations declared unlawful.—It shall be unlawful for any railroad corporation, or other corporation, or the lessees, purchasers or managers of any railroad corporation, to consolidate the stocks, property, works or franchises of such corporation with, or lease or purchase the stocks, property, works or franchises of any other railroad corporation owning or having under its control or management a competing or parallel line; nor shall any officer, agent, manager, lessee or purchaser of such railroad corporation act, or become an officer, agent, manager, lessee or purchaser of any other corporation in leasing or purchasing any parallel or competing line. (Acts 1887, p. 137, sec. 1.)

Art. 647. (420) Penalty; officer, etc., not liable, when.—Any officer, director, manager, superintendent, agent, purchaser or

lessee of any such railroad corporation, or other corporation, who shall violate, or aid in violating, any of the provisions of this act, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than one thousand dollars nor more than four thousand dollars; provided, that no person shall be liable to punishment under this act who has not, by virtue of his office, agency or position, a voice in the management of the railway company, or who has not, by virtue of his office, agency or position, some power to prevent a violation of this act. (Id. sec. 2.)

Art. 648. (421) "Railroad corporation" defined.—Railroad corporation, or other corporation, as used in this act, is declared to mean any corporation, company, person or association of persons, who own or control, manage or operate any line of railroad in this state. (Id. sec. 3.)

Art. 649. (422) Venue of offenses; duty of judges to give law in charge to grand juries.—Indictments and prosecutions under the provisions of this act may be found and made in any county through or into which the line of railroad may run, and it shall be the duty of district judges to charge the grand juries upon this law the same as in other cases. (Id. sec. 4.)

Art. 649a. Refusal to carry out plans for destruction of certain animals.—When a land holder shall fail or refuse to carry out the plans furnished to the Commissioners' Court by the Commissioner of Agriculture, said land owner shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than Fifty ($50.00) Dollars, nor more than One Hundred ($100.00) Dollars. (Acts 1918, 4th C. S., ch. 62, sec. 6.)

For the rest of this act see ante, Civ. St., arts. 6328e-6328j.

CHAPTER ELEVEN

INSURANCE COMPANIES

For the law relating to insurance generally, see ante, Civil Statutes, Title 71, arts. 4705-4972k.

FIRE INSURANCE

See, also, ante, Civ. St., arts. 4862-4875.

Arts. 649a-660. [Omitted.]

These articles are contained in the Civil Statutes, ante, arts. 4876, 4876a, 4877, 4879, 4885, 4880-4884, 4886, 4890, 4887, 4888, 4891-4896. To avoid duplication they are omitted here.

Art. 661. Violation of act; penalty.—Any insurance company affected by this Act, or any officer or director thereof, or any agent or person acting for or employed by any insurance company, who, alone, or in conjunction with any corporation, company or person, who shall wilfully do or cause to be done, or shall wilfully suffer or permit to be done any act, matter or thing prohibited or declared to be unlawful by this Act, or who shall wilfully omit or fail to do any act, matter or thing required to be done by this Act or shall cause or wilfully suffer or permit any act, matter or thing directed not to be done, or who shall be guilty of any wilful infraction of this Act, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than three hundred dollars ($300.00), nor more than one thousand dollars ($1,000) for each offense. (Acts 1910, 4 S. S., p. 125, sec. 25; Acts 1913, ch. 106, sec. 26.)

Art. 662. Unlawful to accept rebate.—No person shall knowingly receive or accept from any insurance company or from any of its agents, sub-agents, brokers, solicitors, employés, intermediaries or representatives, or any other person, any rebate of premium payable on the policy, or any special favor or advantage in the dividends or other financial profits accrued or to accrue thereon, or any valuable consideration, position or inducement not specified in the policy of insurance, and any person so doing shall be guilty of a violation of the provisions of this Section, and shall be punished by a fine of not exceeding one hundred dollars ($100.00) or by imprisonment in the county jail for not exceeding ninety days, or by both such fine and imprisonment. (Acts 1910, 4 S. S., p. 125, sec. 22; Acts 1913, ch. 106, sec. 23.)

Art. 662a. [Omitted.]

This article is also found in the Civil Statutes, ante, art. 488. To avoid duplication it is omitted here.

Art. 663. Incriminating testimony.—No person shall be excused from giving testimony or producing evidence when legally called upon to do so at the trial of any other person or company charged with violating any of the provisions of this Act on the ground that it may incriminate him under the laws of this State; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence under this Act, except for perjury in so testifying. (Acts 1910, 4 S. S., p. 125, sec. 26; Acts 1913, ch. 106, sec. 27.)

Arts. 664, 664a. [Omitted.]

These articles are also found in the Civil Statutes, ante, arts. 4902, 4904. To avoid duplication they are omitted here.

Art. 664b. Shall file bond.—Every fire insurance company, not organized under the laws of this state applying for a certificate of authority to transact any kind of insurance in this state shall, before obtaining such certificate, file with the commissioner of insurance and banking, a bond, with good and sufficient surety or sureties to be approved by the commissioner of insurance and banking, payable to the commissioner of insurance and banking, and his successors in office, in a sum equal to twenty-five per cent of its premiums collected from citizens or upon property in this state during the preceding calendar year, as shown by its annual report for such year; provided, however, the bond in no case shall exceed fifty thousand dollars, nor be less than ten thousand dollars, conditioned that said company will pay all its lawful obligations to citizens of this state. Such bonds shall be subject to successive suits by citizens of this state so long as any part of the same shall not be exhausted, and the same shall be kept in force unimpaired until all claims of citizens of this state arising out of obligations of said company have been fully satisfied. Such bonds shall provide that in the event the company shall become insolvent or cease to transact business in this state at any time when it has outstanding policies of insurance in favor of citizens of this state or upon property in this state the commissioner of insurance and banking shall have the pow-

er, after having given ten days notice to the officers of such company or any receiver in charge of its property and affairs, to contract with any other insurance company transacting business in this state for the assumption and reinsurance by it of all the insurance risks outstanding in this state of such company which is insolvent, or which has ceased to transact business in this state, which contract shall also provide for the assumption by such reinsuring company of all outstanding and unsatisfied lawful claims then outstanding against such company which has become insolvent, or ceased to transact business in this state, and in the event of the commissioner making any such contract and if the same shall be approved as reasonable by the attorney general and the governor of this state the reinsuring company shall be entitled to recover from the makers of such bond the amount of the premium or compensation so agreed upon for such reinsurance. Any company desiring to do so may at its option in lieu of giving the bond required by this section deposit securities of any kind in which it may lawfully invest its funds with the state treasurer of this state upon such terms and conditions as will in all respects afford the same protection and indemnity as is herein provided for to be afforded by said bond. (Acts 1909, p. 182, ch. 102, sec. 1.)

The above act, comprising arts. 664b-664d, was omitted from the revised Penal Code; but is included in this compilation in view of the decision in Berry v. S., 155 S. W. 626.

Art. 664c. Same; time for compliance with act.—Every fire insurance company not organized under the laws of this State which shall hold a certificate of authority to transact any kind of insurance business in this State, when this Act takes effect, shall within ninety days thereafter comply with the requirements of Section 1 of this Act [Art. 664b], as to companies hereafter obtaining certificates of authority and it shall be the duty of the Commissioner of Insurance and Banking to revoke the certificate of authority failing to so comply within such period. (Id. sec. 2.)

See note under art. 664b, ante.

Art. 664d. Same; penalty for violation.—Every fire insurance company not organized under the laws of this state, hereafter issuing or causing or authorizing to be issued any policy of insurance other than life insurance shall first have filed with the Commissioner of Insurance and Banking during the calendar year in which such policy may issue or authorize or cause to be issued a bond of good and sufficient sureties to be approved by such commissioner in a sum of not less than ten thousand dollars, conditioned for the payment of all lawful obligations to citizens of this State arising out of any policies or contracts issued by such fire insurance company, which such bond shall be subject to successive suits by citizens of this State so long as any part of the same shall not be adjusted and so long as there remains outstanding any such obligations or contracts of such fire insurance company. Any person violating the provisions of this Section shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred nor more than five hundred dollars or by imprisonment in the county jail for not less than three nor more than twelve months, or by both such fine and imprisonment. This Act shall not apply to any person, firm or corporation or association doing an interinsurance, co-operative or reciprocal business. (Id. sec. 3.)

See note under art. 664b, ante.

FRATERNAL BENEFICIARY ASSOCIATIONS

Arts. 665-667. [Omitted.]

These articles are contained in the Civil Statutes, ante, arts. 4827-4836. To avoid duplication they are omitted here.

Art. 668. [Repealed by Acts 1913, ch. 113, sec. 33.]

Arts. 668a-668p. [Omitted.]

These articles are contained in the Civil Statutes, ante, arts. 4838-4845, 4847, 4849-4851, 4853, 4855. To avoid duplication they are omitted here.

Art. 668q. Labor organizations excluded.—The provisions of this Act shall not apply to nor include the Brotherhood of Locomotive Firemen, Brotherhood of Locomotive Engineers, Brotherhood of Railroad Trainmen, Order of Railway Conductors, Order of Railway Telegraphers, Switchmen's Union of North America, and Railway Mail Association. (Acts 1899, p. 200, sec. 16; Acts 1903, p. 179; Acts 1905, p. 206, ch. 106, sec. 1.)

The above article was omitted from the revised Penal Code; but is included in this compilation in view of the decision in Berry v. S., 156 S. W. 626.

Art. 669. [Omitted.]

This article is contained in the Civil Statutes, ante, art. 4859. To avoid duplication it is omitted here.

Art. 670. Penalties.—Any person, officer, member or examining physician of any society authorized to do business under this Act who shall knowingly or willfully make any false or fraudulent statement or representation in or with reference to any application for membership, or for the purpose of obtaining money from or benefit in any society transacting business under this Act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, or imprisonment in the county jail for not less than thirty days, nor more than one year, or both in the discretion of the court; any person who shall wilfully make a false statement of any material fact or thing in a sworn statement as to the death or disability of a certificate holder in any such society for the purpose of procuring payment of a benefit named in the certificate of such holder, and any person who shall wilfully make any false statement in any verified report or delaration [declaration] under oath required or authorized by this Act, shall be guilty of perjury, and shall be proceeded against and punished as provided by the statutes of this State in relation to the crime of perjury.

Any person who shall solicit membership for, or in any manner assist in procuring membership in any fraternal benefit society not licensed to do business in this State, or who shall solicit membership for, or in any manner assist in procuring membership in such society not authorized as herein provided to do business as herein defined in this State, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty nor more than two hundred dollars.

Any person who solicits for or organizes lodges of such association as are described in the first section of this Act [Art. 665] without first obtaining from the Commissioner of Insurance and Banking a certificate of authority showing that the association has complied with the provisions of this Act, and is entitled to do business in this State, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred dollars, nor more than two hundred and fifty dollars, or by imprisonment in the county jail for not less than three nor more than six months, or by both such fine and imprisonment; provided, the provisions of this Section shall not be so construed as to prohibit any member or members of a local or subordinate lodge from soliciting any person or persons to become a member of any local or subordinate lodge already in existence; and providing, further, the provisions of this Section shall not apply to any member or members of any local or subordinate lodge who participate in, supervise or directs or conducts the organization or establishment of any local or subordinate lodge within the limits of the county of his or their residence or lodge district. All certificates of authority for agents or solicitors shall be issued by the Commissioner upon application made therefor by any of the general officers of the association, or by any agent whom the properly authorized governing body of the association has, by resolution, filed with the Commissioner of Insurance and Banking, duly empowered to make such application, and all such certificates shall be revoked by the Commissioner upon the request of the association and may be revoked for cause upon like ground and in like manner as the as the certificates of authority of agents for life insurance companies under the laws of this State. All such certificates shall be renewed annually and shall expire on the first day of April of each year, and a fee of $1.00 shall be paid for the use of the State for the issuance of said such certificate.

Any society or any officer, agent or employé thereof neglecting or refusing to comply with or violating any of the provisions of this Act, the penalty for which neglect, refusal or violation is not specified in this Section, shall be fined not exceeding two hundred dollars upon conviction thereof. (Acts 1909, p. 369, sec. 33; Acts 1913, ch. 113, sec. 32.)

Section 33 of Acts 1913, ch. 113, repeals Acts 1909, 1st C. S., p. 357; Acts 1909, 2d C. S., p. 443, and Acts 1911, p. 169. Acts 1909, 1st C. S., p. 357, sec. 37, repealed Acts 1899, p. 195; Acts 1901, p. 250; Acts 1903, p. 179; and Acts 1905, p. 206.

Arts. 671, 672. [Repealed by Acts 1913, ch. 113, sec. 33.]

See ante, art. 670 and note thereunder.

MUTUAL ASSESSMENT ACCIDENT INSURANCE COMPANIES

Arts. 673-679. [Omitted.]

These articles are contained in the Civil Statutes, ante, arts. 4794, 4797-4800, 4804, 4805. To avoid duplication they are omitted here.

Art. 680. Officers or employés violating this law, penalty.—Any officer or other employé of the mutual insurance company, who shall use or appropriate, or knowingly permit to be used or appropriated by another, any money belonging to such mutual insurance company, in any manner other than is herein provided, shall be deemed guilty of a felony, and, upon conviction, shall be punished by imprisonment in the state penitentiary for any length of time for not less than two nor more than ten years. (Acts 1903, p. 175.)

MUTUAL FIRE, LIGHTNING, HAIL, AND STORM INSURANCE COMPANIES

Arts. 681-682a. [Omitted.]

These articles are contained in the Civil Statutes, ante, arts. 4907n, 4907b, 4907e-4907i. To avoid duplication they are omitted here.

Art. 683. Failure to report condition; false statements; misappropriation of funds.—Failure to report the company's condition as required in Section 12 of this Act [Art. 682a], shall be considered a misdemeanor, punishable by a fine of not less than one hundred dollars, nor more than five hundred dollars for such offense.

The intentional submitting of a false statement, or the intentional misappropriation of the funds of mutual companies, shall be considered a felony, punishable by confinement in the penitentiary for a term of years not less than five, nor more than ten years for such offense. (Acts 1903, p. 166; Acts 1913, ch. 29, sec. 14.)

LIFE INSURANCE COMPANIES

See, also, ante, Civ. St., arts. 4724-4774.

Art. 684. Shall invest funds how, penalty for violation.—Co-operative life insurance companies shall invest their funds only in bonds of the state of Texas, or of some county, city, town, school district, or other subdivision organized, or which may hereafter be organized and authorized, or which may hereafter be authorized, to issue bonds under the constitution and laws of this state, or in mortgages upon improved, unincumbered real estate, the title to which is valid, situate within the state of Texas, worth double the amount of the loan thereon, exclusive or buildings, unless such buildings are insured in some fire insurance company authorized to transact business under the laws of this state, and the policy or policies transferred to the company, or in not more than one office building located in some city or town of this state in which the home office of such company is located, the actual value of which is not less than the amount invested therein. All moneys of any such company, coming into the hands of any officer thereof or subject to his control, when not invested as prescribed in this article, shall be deposited in the name of such company in some bank or banks in this state, which are subject to either state or national regulation and supervision, and which have been approved by the commissioner of insurance and banking as depositories therefor. No co-operative life insurance company shall purchase or hold real estate, except the building in which it has its home office and the land upon which it stands, or such as it shall acquire in good faith through foreclosure sale or otherwise in satisfaction of debts contracted or loans made in the course of its dealings. Any officer or director of any such company, who shall knowingly and wilfully violate or assent to the violation of the provisions of this article, shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by imprisonment in the penitentiary for a term of not less

than one nor more than five years. (Acts 1909, p. 287.)

Art. 685. Commissioner annually to make valuation of all policies; net premiums to pay death losses; penalty for officers diverting funds.—The commissioner of insurance and banking shall annually make valuations of all outstanding policies of co-operative life insurance companies as of December 31 of each year in accordance with the one year preliminary term method based upon the American Experience Table of Mortality and three and one-half per cent interest per annum.

The net premiums upon all policies issued by any such company shall be computed in accordance with the provisions of this article, and no portion of such net premium collected upon any policy, and no portion of the gross premium collected upon any policy, except the expense loading, shall ever be used or applied for the payment of any expenses of the company of any kind or character, or for any other purpose than the payment of death losses, surrender values, or lawful dividends to policy holders, loans to policy holders, or for the purposes of such investments of the company as are prescribed in this law. Any officer, director or employé of any co-operative life insurance company, who shall knowingly and wilfully violate the provisions of this article, shall be deemed guilty of a felony, and, upon conviction, shall be punished by imprisonment in the penitentiary for a term of not less than one nor more than five years. (Id. p. 287.)

Art. 686. Detailed medical examination of persons before entering into contract of insurance, penalty.—No co-operative life insurance company shall enter into any contract of insurance upon the life of any person without having previously made, or caused to be made, a detailed medical examination, prescribed by its medical director and approved by its board of directors, of the insured, by a duly qualified and licensed medical practitioner, and without his certificate that the insured was in sound health at the date of examination. Any officer or agent or employé of such company violating the provisions of this article, or effecting, or attempting to effect, a contract of insurance contrary to the provisions hereof, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred nor more than five hundred dollars, or by imprisonment in the county jail for not less than six months, or by both such fine and imprisonment. (Id. p. 289.)

Art. 687. Director or officer not to receive anything or be pecuniarily interested in, when.—No director or officer of any insurance company, transacting business in this state, or organized under the laws of this state, shall receive any money or valuable thing for negotiating, procuring, recommending or aiding in any purchase or sale by such company of any property or any loan from such company, nor be pecuniarily interested, either as principal, co-principal, agent or beneficiary, in any such purchase, sale or loan; provided, that nothing contained in this article shall prevent a life insurance corporation from making a loan upon a policy held therein, by the borrower, not in excess of the reserve value thereof. Any person violating any provisions of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than three hundred dollars nor more than one thousand dollars. (Id. p. 197.)

Art. 688. Insurance companies not to discriminate.—No insurance company doing business in this state shall make or permit any distinction or discrimination in favor of individuals between insurants (the insured), of the same class and of equal expectation of life, in the amount of, or payment of, premiums or rates charged for policies of life or endowment insurance, or in the dividends or other benefits payable thereon; nor shall any such company or agent thereof make any contract of insurance or agreement as to such contract other than as expressed in the policy issued thereon, nor shall any such company or any officer, agent, solicitor or representative thereof, pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance, any rebate of premium payable on the policy, or any special favor or advantage in the dividends or other benefits to accrue thereon or any paid employment or contract for service of any kind, or any valuable consideration or inducement whatever, not specified in the policy contract of insurance; or give, sell or purchase, or offer to give, sell or purchase, as an inducement to insurance or in connection therewith, any stocks, bonds or other securities of any insurance company or other corporation, association or partnership, or any dividends or profits to accrue thereon, or any thing of value whatsoever not specified in the policy, or issue any policy containing any special or board contract or similar provision, by the terms of which said policy will share or participate in any special fund derived from a tax or a charge against any portion of the premium on any other policy. Any company or agent violating the provisions of this article shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, and the said company shall, as an additional penalty, forfeit its certificate of authority to do business in this state; and the said agent shall, as an additional penalty, forfeit his license to do business in this state for one year; provided, the company shall not be held liable under this article for any act of its agent, unless such act was authorized by its president, one of its vice presidents, its secretary or an assistant secretary, or by its board of directors. (Id. p. 198.)

Art. 689. Person soliciting insurance without certificate of authority, penalty.—Any person who, for direct or indirect compensation, solicits insurance, in behalf of any company, or transmits for a person other than himself, an application for a policy of insurance to or from such company, or assumes to act in negotiation of insurance without a certificate of authority to act as agent or solicitor for such company, or after such certificate of authority shall have been canceled or revoked, shall be guilty of a misdemeanor, and, upon conviction,

shall be punished by a fine of not less than one hundred dollars. (Id. p. 208.)

Art. 690. Agent procuring by fraudulent representation.—Any such agent or solicitor who knowingly procures, by fraudulent representations, payment of an obligation for the payment of a premium of insurance shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than one hundred dollars, nor more than one thousand dollars. (Id. p. 208.)

Art. 691. Agent embezzling or misappropriating money, etc.—Any insurance agent or solicitor who collects premiums for an insurance company lawfully doing business in this state and who embezzles or fraudulently converts or appropriates to his own use, or with intent to embezzle, takes, secretes or otherwise disposes of or fraudulently withholds, appropriates, lends, invests or otherwise uses or applies, any money or substitutes for money received by him as such agent or broker, contrary to the instructions or without the consent of the company, for or on account of which the same was received by him, shall be deemed guilty of theft of property of the value of the amount involved in either case and shall be punished accordingly (Id. p. 208.)

Art. 692. Agent or examining physician making false statement, penalty.—Any solicitor, agent, or examining physician who shall knowingly or wilfully make any false or fraudulent statement or representation, in or with reference to any application for insurance, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars. (Id. p. 208.)

Art. 693. Officers of foreign insurance company filing false statement, penalty.—Any officer of any insurance company not organized under the laws of this state, who shall file with the commissioner of insurance and banking any statement, report or other paper required or provided for by law to be so filed, which shall contain any material statement or fact known to be false by the person filing the same, or any person who shall execute or cause to be executed any such false statement, report or other paper to be so filed, shall be deemed guilty of a felony, and, upon conviction, shall be punished by imprisonment in the penitentiary for a term of not less than one year. (Id. p. 211.)

INDEMNITY CONTRACTS

Arts. 693a-693h. [Omitted.]

These articles are contained in the Civil Statutes, ante, arts. 4972a-4972h. To avoid duplication they are omitted here.

Art. 693i. Penalty for violation of act.—That any attorney who shall, except for the purpose of applying for certificate of authority as herein provided, exchange any contract of indemnity of the kind and character specified in this Act, or directly or indirectly solicit or negotiate any application for same, without first complying with the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subjected to a fine of not less than one hundred dollars nor more than one thousand dollars. (Acts 1915, ch. 156, sec. 9.)

Arts. 693j-693l. [Omitted.]

These articles are contained in the Civil Statutes, ante, arts. 4972i-4972k. To avoid duplication they are omitted here.

CHAPTER TWELVE

BUILDING AND LOAN ASSOCIATIONS

Art. 693m. Embezzlement or misapplication of funds or property; false entries in books, and false reports and statements; failure to make reports.—Every officer, director, member of any committee, clerk or agent of any building and loan association doing business in this State, who embezzles, abstracts or misapplies any of the moneys, funds or credits of such corporation, who issues or puts into circulation any warrant or other orders, who assigns, transfers, cancels or delivers up any note, bond, draft, mortgage, judgment, decree, or any other written instrument belonging to such association, who certifies to or makes a false entry in any book, report or statement of or to such association, with intent in either case to deceive, injure or defraud such association, or any member thereof, or to deceive any one appointed to examine the affairs of such association, shall be deemed guilty of a felony, and on conviction thereof shall be imprisoned in the State penitentiary for a period of not less than one year nor more than ten years. Any officer whose duty it is, failing to make the reports required by this Act, [arts. 1313a–1313y, Civ. St.] shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than twenty-five dollars nor more than two hundred dollars, or shall be imprisoned not less than one month nor more than six months. (Acts 1913, 1st C. S., ch. 33, sec. 23.)

Art. 693n. Unlawful to act as agent for association not authorized to do business in state.—It shall be unlawful for any person to act as agent for any building and loan association not authorized to do business in this State, [arts. 1313a–1313y, Civ. St.] or to solicit, sell, or dispose of any shares of any such unauthorized association; and any person or persons acting for any such unauthorized association, or in any manner aiding in the transaction of the business of such association in this State, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than fifty dollars, nor more than five hundred dollars for each offense, and in default of payment of such fine shall be imprisoned in the county jail, for a period not to exceed one year. All fines collected under the provisions of this section shall be paid into the State Treasury. (Id. sec. 35.)

TITLE 12

OF OFFENSES AFFECTING PUBLIC HEALTH

CHAPTER ONE

OCCUPATION AND ACTS INJURIOUS TO HEALTH

Art. 694. (423) Offensive trades and nuisances.—If any person shall carry on any trade, business or occupation injurious to the health of those who reside in the vicinity, or shall suffer any substance which has that effect to remain on premises in his possession, he shall be punished by fine not less than ten nor more than one hundred dollars; and each separate day of carrying on such business, trade or occupation, or of permitting such substance to remain on the premises, shall be considered a separate offense. (O. C. 424.)

See Dickinson v. S., 41 S. W. 759; Crowder v. Graham, 201 S. W. 1053.

Art. 695. (424) Pollution or obstruction of water courses.—If any person shall in any wise pollute or obstruct any water course, lake, pond, marsh or common sewer, or continue such obstruction or pollution, so as to render the same unwholesome or offensive to the inhabitants of the county, city, town or neighborhood thereabout, he shall be fined in a sum not exceeding five hundred dollars. (O. C. 399d; Acts 1869, p. 97.)

Art. 695a. Unlawful to pollute water courses and other bodies of water; penalty; persons liable; provisos.—It shall be unlawful for any person, firm or corporation, private or municipal, to pollute any water course, or other public body of water, from which water is taken for the uses of farm, live stock, drinking and domestic purposes, in the state of Texas, by the discharge, directly or indirectly, of any sewage or unclean water or unclean or polluting matter or thing therein, or in such proximity thereto as that it will probably reach and pollute the waters of such water course or other public body of water from which water is taken, for the uses of farm live stock, drinking and domestic purposes; provided, however, that the provisions of this bill shall not affect any municipal corporation situated on tide water; that is to say, where the tide ebbs and flows in such water course. A violation of this provision shall be punished by a fine of not less than one hundred dollars and not more than one thousand dollars. When the offense shall have been committed by a firm, partnership or association, each member thereof who has knowledge of the commission of such offense, shall be held guilty. When committed by a private corporation, the officers and members of the board of directors, having knowledge of the commission of such offense, shall each be deemed guilty; and when by a municipal corporation, the mayor and each member of the board of aldermen or commission, having knowledge of the commission of such offense, as the case may be, shall be held guilty as representatives of the municipality; and each person so indicated as above shall be subject to the punishment provided hereinbefore; provided, however, that the payment of the fine by one of the persons so named shall be a satisfaction of the penalty as against his associates for the offenses for which he may have been convicted; provided, the provisions of this Act shall not apply to any place or premises located without the limits of an incorporated town or city, nor to manufacturing plants whose affluents contain no organic matter that will putrify, or any poisonous compounds, or any bacteria dangerous to public health or destructive of the fish life of streams or other public bodies of water. (Acts 1913, ch. 47, sec. 1, amended; Acts 1915, ch. 23, sec. 1.)

Art. 695b. Same; Restraining order on conviction.—Upon the conviction of any person under Section 1 of this Act [Art. 695a], it shall be the duty of the court, or judge of the court, in which such conviction is had, to issue a writ of injunction, enjoining and restraining the person or persons or corporation responsible for such pollution, from a further continuance of such pollution; and for a violation of such injunction, the said court and the judge thereof shall have the power of fine and imprisonment, as for contempt of court, within the limits prescribed by law in other cases; provided, that this remedy by injunction and punishment for violation thereof shall be cumulative of the penalty fixed by Section 1 of this Act; and the assessment of a fine for contempt shall be no bar to a prosecution under Section 1; neither shall a conviction and payment of fine under Section 1 be a bar to contempt proceedings under this section. (Acts 1913, ch. 47, sec. 2, amended; Acts 1915, ch. 23, sec. 1.)

Art. 695c. Same; time for compliance with act by cities and persons.—Any city or town of this State, with a population of more than fifty thousand inhabitants, which has already an established sewerage system dependent upon any water course or other public body of water, from which water is taken for the uses of farm, live stock, drinking and domestic purposes, or which discharges into any water course or public body of water, from which water is taken for the uses of farm, live stock, drinking and domestic purposes, shall have until January 1, 1917, within which to make other provisions for such sewage. Cities and towns of less population than fifty thousand inhabitants shall have until January 1, 1917, within which to make other arrangements for the disposal of such sewage. Any person, firm or corporation, private or municipal, coming under or affected by the terms of this bill, or any independent contractor having the disposal of the sewage of any city or town, shall have until January 1, 1917, within which to make other arrangements for the disposal of such sewage, or other matter which may pollute the water, as defined in this bill. (Acts 1913, ch. 47, sec. 3, amended; Acts 1915, ch. 23, sec. 1.)

Art. 695d. Duties of State Board of Health; inspector.—The Texas State Board of Health is authorized, and it is hereby made its duty, to enforce the provisions of this Act; and to this end the Governor shall appoint, by and with the consent of the Senate, an inspector to act under the direction of the said Board of Health and the State Health Officer making such in-

vestigations, inspections and reports, and performing such other duties in respect to the enforcement of this Act as the said Board of Health officer may require. (Acts 1913, ch. 47, sec. 4, amended; Acts 1915, ch. 23, sec. 1.)

Art. 695dd. Failure to test water supply, etc.—In all cases where the authorities of any city, or town, or village, or any person, or firm, or corporation, or company, their officers and their receivers, or agents furnishing drinking water to cities or towns of Five Thousand (5000) inhabitants or less, shall fail or refuse to carry out the provisions of this Act, and shall furnish for public use, drinking water that is contaminated, impure and unclean, shall be guilty of a misdemeanor and shall be punished on conviction thereof by a fine in any sum not to exceed $500.00 for any such offense, and upon any conviction of a second offense, its contract, franchise or charter shall be subject to forfeiture by proceedings to that effect, in an injunction proceeding brought by the State Authorities, or the District or County Attorney, which shall be heard and disposed of without undue delay as other injunction suits. (Acts 1919, ch. 133, sec. 5.)

For remainder of Acts 1919, ch. 133, see ante, Civ. St. arts. 1024b-1024e.

Art. 695e. [Repealed by Acts 1919, ch. 142, sec. 1.]

Art. 696. (425) Leaving dead body of animal in highway or near private residence.—If any person shall leave the carcass, or body of any horse, mule, ox, steer, cow or other animal which died in the actual possession of such person in any public road or highway, or in any street or alley of any village, town or city in this State, or within fifty yards of such public road, highway, street or alley, or shall leave any such carcass, or body within five hundred yards of any private residence, he shall be fined in any sum not less than five dollars, nor more than one hundred dollars. (Acts 1913, ch. 83, sec. 1.)

Art. 697. Public buildings, railways, persons, etc., subject to rules of health officer.—If any person having control of any public building, or any agent, manager, operator, employé or receiver of any railway company, sleeping car company, or any individual, shall fail to comply with the provisions of this chapter, and the rules and regulations promulgated by the state health officer, under the provisions thereof, he shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than fifty nor more than two hundred dollars. (Acts 1903, p. 180.)

CHAPTER ONE A

SANITARY REGULATIONS FOR HOTELS, RESTAURANTS, ETC.

Art. 697a. Sterilizing dishes, etc.; napkins.—Any person or persons conducting or managing or their agents of any hotel, cafe, restaurant and any other public place where meals are served, must after the taking effect of this Act, sterilize in hot boiling water, all plates, cups, saucers, knives, forks, spoons and such other utensils as may be used in serving meals and drinks, after being used and before permitting them to be used again; provided that the water in which said eating utensils are sterilized, shall be changed every two hours; provided further that no napkins shall be furnished for use after being used once until laundered. (Acts 1915, ch. 7, sec. 1.)

Art. 697b. Same; penalty.—Any person or person[s] conducting or managing or their agents of any public eating house mentioned in section 1 of this Act [Art. 697a], who violates the provisions thereof, shall be fined not less than five ($5.00) dollars nor more than one hundred ($100.00) dollars for each separate offense. (Id. sec. 2.)

CHAPTER TWO

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

Art. 698. (426) [Superseded by Art. 700 (c) (6), post.]

Art. 699. Manufacture and sale of adulterated and misbranded foods.—That no person, firm or corporation, shall within this State manufacture for sale, have in his possession with the intent to sell, offer or expose for sale, or sell or exchange any article of food, or drug which is adulterated or misbranded within the meaning of this Act. The term "food" as used herein shall include all articles used for food, drink, flavoring, confectionery or condiment, by man, whether simple, mixed or compounded. That the term "drug" as used in this Act shall include all medicines and preparations for internal or external use recognized in the United States Pharmacopoeia or National Formulary, and any substance or mixture of substances intended to be used for the cure, mitigation or prevention of disease of either man or animal. (Acts 1907, ch. 39; Acts 1909, p. 167, repealed; Acts 1911, p. 76, ch. 47, sec. 1, superseding Art. 699, revised Pen. Code.)

Art. 700. Drugs, confectionery, and foods, when deemed adulterated.—That for the purposes of this Act an Article shall be deemed to be adulterated: (a) In the case of drugs; (1) if, when sold under or by a name, recognized in the eighth decennial revision of the United States Pharmacopoeia or in such United States Pharmacopoeia as was official at the time of labeling it, or in the National Formulary, it differs from the standard strength, quality or purity laid down therein; (2) if, when sold under or by a name not recognized in the eight decennial revision of the United States Pharmacopoeia, but which is found in some other Pharmacopoeia or other standard work on materia medica, it differs materially from the standard of strength, quality or purity laid down in such work; (3) if its strength, quality or purity falls below the professed standard under which it is sold. (b) In the case of confectionery: If it contain terra alba, barytes, talc, chrome yellow, or other mineral substance or poisonous color or flavor, or other ingredients deleterious or detrimental to health or any vinous, malt or spirituous liquor or compound, or narcotic drug. (c) In the case of food; (1) if any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength; (2) if any substance has been substituted wholly or in part for the article; (3) if any valuable constituent of the article

has been wholly or in part abstracted, or if the product be below that standard of quality, quantity, strength or purity represented to the purchaser or consumer; (4) if it be mixed, colored or powdered, coated or stained in a manner whereby damage or inferiority is concealed; (5) if it contain any added poisonous or other added deleterious ingredient which may render such article injurious to health, provided, that when in the preparation of food products for shipment they are preserved by any external application applied in such manner that the preservative is necessarily removed mechanically, or by maceration in water or otherwise, and directions for the removal of said preservative shall be printed on the covering of the package, the provisions of this Act shall be construed as applying only when said products are ready for consumption; (6) if it consists in whole or in part of a filthy, decomposed or putrid animal or vegetable substance, or any portion of an animal or vegetable unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter. For the purpose of this Act, the term "filthy" shall be deemed to apply to food not securely protected from flies, dust, dirt, and as far as may be necessary by all reasonable means from all foreign or injurious contaminations. (Acts 1907, ch. 39; Acts 1909, p. 167, repealed; Acts 1911, p. 77, ch. 47, sec. 2, superseding art. 700, revised Pen. Code.)

Art. 701. "Misbranded" defined.—That the term "misbranded," as used herein, shall apply to all drugs or articles of food or articles which enter into the composition of food, the package or label of which shall bear any statement, design or device regarding such article or the ingredients or substances contained therein which shall be false or misleading in any particular. That for the purposes of this Act an article shall also be deemed to be misbranded: (a) In the case of drugs; (1) if it be an imitation of or offered for sale under the name of another article; (2) if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package, or if the package fail to bear a statement on the label of the quantity or proportion of any morphine, phenocetice, opium, cocaine, heroin alpha, or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanelid or any derivative or preparation of any such substances contained therein. (b) In the case of food: (1) if it be an imitation of or offered for sale under the distinctive name of another article; (2) if it be labeled or branded so as to deceive or mislead the purchaser or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package, or if it fail to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin alpha, or beta eucaine, phenacetin, chloroform, cannabis indica, chloral hydrate or acetanelid, or any derivative or preparation of any of such substances contained therein; (3) if in package form and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package; (4) if the package containing it or its labels bear any statement, design or device regarding the ingredients or the substances contained therein, which statement, design or device shall be false or misleading in any particular, provided than that an article of food which does not contain any added poisonous or deleterious ingredient shall not be deemed to be adulterated or misbranded in the following cases: First in case of mixtures or compounds which may be now or from time to time hereafter known as articles of food, under their own distinctive names, and not an imitation of or offered for sale under the distinctive name of another article, if the name be accompanied on the same label or brand with a statement of the place where said article has been manufactured or produced; second, in the case of articles labeled, branded or tagged so as to plainly indicate that they are compounds, imitations or blends; that the term "blend," as used herein, shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose or coloring and flavoring only; and provided, further, that nothing in this Act shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredients to disclose their trade formulas except in so far as the provisions of this Act may require to secure freedom from adulteration or misbranding. (Acts 1907, ch. 39; Acts 1909, p. 167, repealed; Acts 1911, p. 78, ch. 47, sec. 3, superseding art. 701, revised Pen. Code.)

Arts. 702, 703. [Repealed by Acts 1911, ch. 47, sec. 26.]

Art. 704. Manufacture and sale of certain foods, discolored and adulterated.—It shall be unlawful for any person to manufacture, sell, offer or expose for sale or exchange any article of food to which has been added formaldehyde, boric acid or borates, benzoic acid or benzoate sulphurous acids or sulphites, salacyclic acid or salacylates, abrastal, beta naphthal, fluorine compounds, dulcin, glucin cocaine, sulphuric acid or other mineral acid except phosphoric acid, any preparation of lead or copper or other ingredient injurious to health; provided, that nothing in this Act shall be construed as prohibiting the sale of catsups, sauces, concentrated fruits, fruit juices, and like substances preserved with one-tenth of one per cent of benzoate of soda, or the equivalent benzoic acid, when a statement of such fact is plainly indicated upon the label; provided, further, that the oxides of sulphur may be used for bleaching, clarifying and refining food products. (Acts 1907, ch. 39; Acts 1909, p. 169, repealed; Acts 1911, p. 79, ch. 47, sec. 4, superseding art. 704, revised Pen. Code.)

Art. 705. Baking powder to be labeled, how.—Whoever manufactures for sale within this State, or offers or exposes for sale or exchange or sells any baking powder or compound intended for use as a baking powder under any name or title whatsoever shall securely affix or cause to be securely affixed to the outside of every box, can or package containing such baking powder or like mixture or compound a label distinctly printed in plain capital letters in the English language, containing the name and residence of

the manufacturer or dealer, and the ingredients of the baking powder. Baking powder containing less than 10 per cent of available carbon dioxide shall be deemed to be adulterated. (Acts 1907, ch. 39; Acts 1909, p. 169, repealed; Acts 1911, p. 79, ch. 47, sec. 5, superseding art. 705, revised Pen. Code.)

Art. 706. Sale of impure milk.—That it shall be unlawful for any person either by himself or agent to sell or expose for sale or exchange any unwholesome, watered, adulterated or impure milk or swill milk or colestrum, or milk from cows kept upon garbage, swill or any other substance in a state of putrefaction or other deleterious substances, or from cows kept in connection with any family in which there are infectious diseases or from sick or diseased cows; provided, "skim milk" may be sold if on the can, or package from which such milk is old, the words "skim milk" are distinctly painted in letters not less than one inch in length. (Acts 1907, ch. 39; Acts 1909, p. 169, repealed; Acts 1911, p. 79, ch. 47, sec. 6, superseding art. 706, revised Pen. Code.)

Art. 707. [Repealed by Acts 1911, ch. 47, sec. 26.]

Art. 708. Exemptions from provisions of act.—That no dealer shall be prosecuted under the provisions of this Act, when he can establish a guaranty signed by the wholesaler, jobber, manufacturer, or other party residing within this State or in the United States from whom he purchases such article, to the effect that the same is not adulterated or misbranded within the meaning of this Act, designating it. Said guaranty, to afford protection, shall contain the name and address of the party making the sale of such articles to such dealer, and in such case said party or parties shall be amenable to the prosecutions, fines and other penalties, which would attach, in due course to the dealer under the provisions of this Act. (Acts 1907, ch. 39; Acts 1909, p. 169, repealed; Acts 1911, p. 79, ch. 47, sec. 7, superseding art. 708, revised Pen. Code.)

Art. 709. Unlawful for officers to issue certificates of purity.—It shall be unlawful for the Dairy and Food Commissioner or his deputy or assistants while they hold office to furnish to any individual, firm or corporation any certificate as to the purity or excellence of any article manufactured or sold to or by them to be used as food or drug or in the preparation of foods or drugs. (Acts 1907, ch. 39; Acts 1909, p. 171, repealed; Acts 1911, p. 81, ch. 47, sec. 17, superseding art. 709, revised Pen. Code.)

Art. 710. Obstruction of officers.—Any person who shall wilfully hinder or obstruct the Dairy and Food Commissioner, or his inspector, or other persons by him duly authorized in the exercise of the powers conferred upon him by this Act, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than $25.00 nor more than $200.00. (Acts 1907, ch. 39; Acts 1909, p. 172, repealed; Acts 1911, p. 81, ch. 47, sec. 19, superseding art. 710, revised Pen. Code.)

Art. 711. Penalty for violations of act.—Whoever shall do any of the acts or things prohibited, or willfully neglect or refuse to do any of the Acts or the things enjoined by this Act, or in any way violate any of its provisions, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than $25.00 nor more than $200.00. (Acts 1907, ch. 39; Acts 1909, p. 169, repealed; Acts 1911, p. 79, ch. 47, sec. 8, superseding art. 711, revised Pen. Code.)

MILL PRODUCTS

Art. 712. Standard weights, etc.—Mill products hereinafter mentioned, shall have the following standard weights, viz.: Flour, one hundred and ninety-six pounds per barrel, or forty-eight pounds per sack; corn meal, bolted or unbolted, thirty-five pounds per sack, and feed made from cereals of any kind, whether pure, mixed or adulterated, one hundred pounds per sack. Fractional barrels and sacks shall weigh in the same proportion; and these weights shall be net and exclusive of the barrel or sack in which such product is packed. (Acts 1905, p. 227, sec. 1.)

Attention is called to art. 730, post. The subject matter of art. 730 was first enacted in 1905 (Acts 1905, p. 207, sec. 1). The latter act took effect at the same time as Act 1905, p. 227, constituting art. 712. It should be noticed that Acts 1905, p. 207, sec. 1 contains the same language as is embraced in art. 712, except that it includes "cotton seed meal." Acts 1905, p. 207, sec. 1 was amended in 1907 (Acts 1907, p. 243), and "cotton seed meal" was dropped out and "rice bran" and "rice polish" added. This would seem to present a question as to whether the amendatory act of 1907 superseded Acts 1905, p. 227, sec. 1 (art. 712, above).

Art. 713. Correct name and true net weight to be marked or branded on hogshead, sack, package, etc.—The correct name and the true net weight of the contents of each and every hogshead, barrel, box, cask, bale, sack or package of any of the foregoing products, whether sold in single packages or lots, shall be plainly marked, branded or stenciled in large, legible letters and figures, not less than two inches in size, upon the exterior of such hogshead, barrel, box, cask, bale, sack or package, in a conspicuous place, as the head in case of hogsheads or barrels, and the front or branded side in case of sacks, bales or packages; and it shall be unlawful for any person, firm or corporation, or the agent, employé or representative of any person, firm or corporation, to sell or exchange, or offer for sale or exchange, any of such products so packed or contained, until the provisions hereof have been complied with. (Id. sec. 2.)

Art. 714. Penalty for offering same for sale not so marked or branded.—It shall be unlawful for any person, firm or corporation, or the agent, employé or representative of any person, firm or corporation, to sell or exchange, or offer for sale or exchange, whether in single packages or lots, any product composed of mixed cereals of any kind, or any cereal adulterated in any manner, unless the word "adulterated" is plainly marked, printed or stenciled diagonally across the other marks or brands, if any, on the hogshead, barrel, box, bale, cask, sack or package containing the same, or in case there are no other marks thereon, then across such hogshead, barrel, box, cask, bale, sack or package, in a conspicuous place in large legible letters and figures not less than two inches in size. (Id. sec. 3.)

Art. 715. Penalty for violating any provision of this law.—If any person shall knowingly violate the provisions of this law, he shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not less than twenty-five dollars nor more than one thousand dollars, and each transaction shall be deemed a separate offense. (Id. sec. 4.)

Art. 716. Manufactured wheat or corn products, packages how marked or branded.—Any person, firm, corporation or agent, employé or representative of any person, firm, corporation, manufacturer or dealer in said manufactured wheat or corn products in original packages, and offering the same for sale in this state, whether said packages are sold singly or in lots, and all manufacturers or dealers of flour, meal or feed from the above enumerated grain products in this state, when offering the same for sale in original packages, whether sold in single packages or lots, shall place in large, legible letters and figures, not less than two inches in size, on the package or packages so offered for sale, the name of the contents and the actual net weight of the contents of said package or packages; and it shall be unlawful for any such person to sell, or offer to sell, any of the articles mentioned in this act which have been falsely labeled, knowing the same to be falsely labeled. All adulterated wheat or corn products shall have stamped upon the sacks or barrels, "adulterated." (Acts 1899, p. 304.)

CHAPTER THREE

NURSERY AND FARM PRODUCTS

Art. 717. Keeping of trees, shrubs, plants, etc., affected with contagious diseases prohibited.—No person in this state shall knowingly or wilfully keep any peach, almond, apricot, nectarine or other trees affected with the contagious disease known as yellows. Nor shall any person keep for sale any apple, peach, plum or other tree affected with nematode galls, crown galls, or root rot. Nor shall any person knowingly or wilfully keep any plum, cherry or other trees affected with the contagious disease or fungus known as black knot; nor any tree, shrub or plant infested with or by the San Jose scale or other insect pest dangerously injurious to, or destructive of, trees, shrubs or other plants; nor any orange or lemon trees, citrus stocks, cape jasmines or other trees, plants or shrubs infested with "white fly" or other injurious insect pests or contagious diseases of citrus fruits; nor subtropical plants, shrubs, evergreens or ornamentals; nor any china, forest or other trees, shrubs or plants, infested with injurious insect pests or contagious diseases. Every such tree, shrub or plant shall be a public nuisance, and as such, it shall be the duty of the commissioner of agriculture or his representatives to abate it; and no damage shall be awarded for entering upon the premises upon which there are trees, shrubs or plants infected with yellows, black knot, crown gall or other infectious or dangerous disease, or infested with San Jose scale or other dangerous insect pest, for the purpose of legally inspecting the same; nor shall any damages be awarded for the treatment by the commissioner of agriculture, or his duly authorized agents or representatives of such trees, shrubs or plants, or for altogether destroying such trees, if necessary to suppress such insect, pest or disease, if done in accordance with the provisions of this article. But the owner of the trees, shrubs or plants shall be notified immediately upon its being determined that such trees, shrubs or plants should be destroyed, by a notice in writing signed by the commissioner or the person or persons representing him, which said notice in writing shall be delivered in person to the owner of such trees, shrubs or plants, or left at the usual place of residence of such owner, or, if such owner be not a resident of the locality, to notify by leaving such notice with the person in charge of the premises, trees, shrubs, or plants, or in whose possession they may be. Such notice shall contain a brief statement of the facts found to exist, whereby it is necessary to destroy such trees, shrubs or plants, and shall call attention to the law under which it is proposed to destroy them; and the owner shall, within ten days from the date upon which such notice shall have been received, remove and burn all such diseased or infected trees, shrubs or plants. If, however, in the judgment of said commissioner, or person representing him, any tree, shrub or plant infected with any disease, or infested with dangerously injurious insects, can be treated with sufficient remedies, he may direct such treatment to be carried out by the owner under the direction of the commissioner, agent, employé or representatives. In case of objections to the findings of the chief inspector, employés or representatives of the commissioner, an appeal may be made to the commissioner, whose decision shall be final. An appeal must be taken within five days from service of said notice, and shall act as a stay of proceedings until it is heard and decided. When the commissioner, or chief inspector, or employé, or representative, appointed by him, shall determine that any tree or trees, shrubs or other plants must be treated or destroyed forthwith, he may employ all necessary assistance for that purpose; and such representative or representatives, agent or agents, employé or employés may enter upon any or all premises necessary for the purpose of such treatment, removal or destruction. But such commissioner or the person representing him shall, before such treatment or destruction, first require the owner or person in charge of the trees, shrubs or plants, to treat or destroy same, as the case may be; and, upon the refusal or neglect upon the part of said owner or person in charge to so treat or destroy such trees, plants or shrubs, then such commissioner, chief inspector, or person or persons representing him shall treat or destroy such trees, shrubs or plants; and all charges and expenses thereof shall be paid by such owner or person in charge of said trees, shrubs or plants, and shall constitute a legal claim against such owner or person in charge, which may be recovered in any court having jurisdiction upon the suit of such commissioner or chief inspector, or the county attorney of the county where the premises are situated, together with all costs, including an attorney fee of

ten dollars, to be taxed as other costs. (Acts 1905, ch. 121; Acts 1909, p. 316.)

Art. 718. Commissioner of agriculture cause examination of.—The commissioner of agriculture shall cause an examination to be made at least once each year, of each and every nursery or other place where trees, shrubs or plants, commonly known as nursery stock, are grown or exposed for sale, for the purpose of ascertaining whether the trees, shrubs or plants therein kept, or propagated for sale, are infected with contagious disease or diseases, or infested with insect pests. If, after such examination, it is found that the said trees, shrubs or other plants so examined are apparently free in all respects from any contagious or infectious disease or diseases, dangerously injurious insect pest or pests, the said commissioners shall issue to the owner or proprietor of the stock so examined a certificate, setting forth the fact that the stock so examined was at the time of such examination apparently free from any and all such disease or diseases, insect pest or pests. No such certificate shall be negotiable or transferable, and shall be void if sold or transferred. Any such act or sale or transference shall be punishable as provided by this article. (Acts 1909, p. 318.)

Art. 719. Nursery stock consigned for transportation shall be accompanied by certificate.—All nursery stock, consigned for shipment, or shipped by freight, express or other means of transportation shall be accompanied by a copy of said certificate attached to each car, box, bale, bundle or package. It is specifically provided that when such box, bale, bundle or package, contains nursery stock to be delivered to more than one individual, partnership or corporation, that each portion of such nursery stock to be delivered to such individual, partnership or corporation shall also bear a copy of the certificate of inspection issued as provided in this article. Should any individual, partnership or corporation, nursery agent, or dealer or broker, send out or deliver, within the state, trees, vines, shrubs, plants, buds or cuttings, commonly known as nursery stock, and which are subject to the attacks of insects and diseases above provided for, unless he has in his possession a copy of said certificate, dated within a year thereof, deface or destroy such certificate, or wrongfully be in possession of such certificate, or fail to attach proper tags on each and every shipment, such tags bearing a copy of the said certificate, he shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than one hundred dollars nor more than two hundred dollars. (Id., p. 318.)

Art. 720. Shipment of into the state shall be accompanied by certificate of inspection.—No individual, partnership or corporation, outside the state, shall be permitted to ship nursery stock into this state, without first filing with the commissioner of agriculture a certified copy of his or their certificate of inspection, issued by the proper authorities in the state, in which the proposed shipment originates. This certificate must show that the stock to be shipped has been examined by the proper officer of inspection in that state or province, and that the stock is apparently free from all dangerous insect pests or contagious diseases; and that when fumigation is required by the commissioner of agriculture, that the stock has been properly fumigated. Immediately upon receipt of the filing with the commissioner of agriculture of this certificate, he shall, in addition, make further investigation as to the moral standing and integrity of the applicant as will satisfy him that the applicant is entitled to receive a certificate. A fee of five dollars shall be required from the applicant, upon receipt of which, the commissioner of agriculture may issue a certificate permitting the applicant to ship into the state. Each box, bale or package of nursery stock from outside the state shall bear a tag, on which is printed a copy of the certificate of this state, and also a copy of the certificate of the state in which it originates. (Id., p. 318.)

Art. 721. Transportation company or common carrier not to receive, when.—No transportation company or common carrier shall receive, transport or deliver shipments of nursery stock originating either within or without the state which do not bear shipping tags or labels, showing the certificate of inspection of the state in which it originates, together with the permit from this state, if it be a shipment from without the state. Any individual, partnership or corporation from without the state, or any agent of any transportation company, common carrier, or any person or persons, who shall violate the provisions of this article, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than fifty nor more than two hundred dollars, together with all costs for each offense.

Provided, that no transportation company or common carrier shall be liable for damages to the consignee or consignor for refusing to receive for transportation or delivery such trees, packages, bales, bundles or boxes, when not accompanied by copies of the certificates provided for in this article. The agent of such companies or common carriers shall report any such shipment to the commissioner of agriculture immediately. Shipments of nursery stock into this state, or originating within the state, without tags or proper certificates, as provided for in this article, shall be fined as provided herein. (Id., p. 319.)

Art. 722. Commissioner of agriculture, power to revoke certificate.—The commissioner shall have the power to revoke any certificate which has been issued, when he shall find that false representations have been made by the party or parties to whom certificates have been issued, or who have refused to comply with the law, instructions, rules and regulations given by the commissioner of agriculture in reference to the provisions of this law and its enforcement. Any individual, partnership, or corporation, who shall be guilty of interfering with, refusing or preventing, the commissioner of agriculture, or his representatives, in the execution of their official duties, to enter upon any premises owned, used or leased by them; and any person who shall make false representations for the purpose of obtaining a certificate from the commissioner of agriculture, shall be guilty of a misdemeanor, and, upon

conviction, shall be fined not less than twenty-five dollars nor more than two hundred dollars, together with all costs for each offense. (Id., p. 319.)

Art. 723. Shall enforce this law and make and enforce regulations.—The commissioner of agriculture shall enforce the provisions of this law, and make and enforce such rules and regulations as may be deemed necessary for carrying the same into effect, not inconsistent with the same, and for the inspection of nurseries, orchards, forest trees, greenhouses and any other premises, deemed necessary to carry out the provisions of this law, together with all products originating from same within the meaning of this law. He shall also appoint one person who shall be designated as chief inspector, whose duty it shall be to inspect, or cause to be inspected, under the directions of the commissioner of agriculture, all trees, plants and shrubs, of every kind whatsoever, grown, produced or offered for sale by any nursery, dealer, individual or corporation in this state, and also to inspect, or cause to be inspected, all orchards provided for in this law, and may employ such other person or persons, expert or experts, as may be necessary from time to time for administering and carrying into operation and enforcing the provisions of this law; provided, that the chief inspector employed under the provisions of this law shall not, during the time of such service, be interested in, or connected with, any nursery business whatsoever. The said commissioner shall fix and collect reasonable fees for the inspection, as provided for in this law; provided, that not less than two dollars and fifty cents nor more than fifteen dollars shall be charged for each inspection under the provisions of this law. All fees, collected under the provisions of this article, shall be paid to the department of agriculture, and credited to the fund provided for administering this law. (Id. p. 319.)

Art. 724. Giving false certificate.—If the said commissioner, or any of his agents or employés, give a false certificate, or a certificate without an actual examination of the nursery stock for which such certificate is given, to any owner, proprietor or lessee of any nursery, or owner of nursery stock, or to any other person, for use under the provisions of this law, he shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars for each offense. (Id. p. 320.)

Art. 725. "Nursery stock" defined.—The term, "nursery stock," within the meaning of this law, shall include all fruit trees and vines, shade trees and forest trees, whether such shade or forest trees be especially grown for sale in a nursery or taken from the forests and offered for sale, all scions, seedlings, roses, evergreens, shrubbery or ornamentals, also such greenhouse plants or propagation stock, all classes of berry plants, cut flowers taken from plants, bushes, shrubs or other trees growing in this state, which may be a medium for disseminating injurious insect pests and contagious diseases. (Id., p. 320.)

Art. 726. "Nursery" defined.—The term, "nursery," shall be construed to mean any grounds or premises on which nursery stock is grown, or exposed for sale. "Being in the nursery business" applies to any individual, partnership or corporation which may either sell or grow, or both grow and sell, nursery stock, regardless of the variety or quantity of nursery stock sold or grown. (Id., p. 320.)

Art. 727. "Dealer" defined.—The term, "dealer," shall be construed to apply to any individual, partnership or corporation not growers of nursery stock, but who buy and sell nursery stock for the purpose of reselling and reshipping under their own name or title, independently of any control of those from whom they purchase. An "agent of a nursery or dealer" shall be construed to apply to any individual, partnership or corporation selling nursery stock, either as being entirely under the control of the nursery or dealer with whom the nursery stock offered for barter and traffic originates, or some co-operative basis for handling nursery stock with the grower or dealer, as specified in this article. That any such agent shall have proper credentials from the dealer he represents or co-operates with, and failing in that, any such agent shall be classed as a dealer, and subject to such rules and regulations as may be adopted relative to them, and shall be amenable to the same penalties for violations of any provisions of this law, or the rules and regulations of the commissioner. Provided, that any agent of any dealer or nurseryman, as specified in this article, who shall knowingly deliver to any individual, partnership or corporation, any tree, shrub, or plant infested or diseased, as specified in the provisions of this law, even though such trees, shrubs or plants are received in a box, bale or package, bearing a certificate of inspection, as provided in this law, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than twenty-five dollars nor more than five hundred dollars for each such delivery to each individual, partnership or corporation. (Id., p. 321.)

Art. 728. Making false representations.—That any person, persons, company of persons, co-partnership, any member of a company or co-partnership, any corporation or any stockholder or officer thereof, any agent, servant or employé of any such person, persons, company of persons, co-partnership, member or stockholder of any company, co-partnership or corporation or officer aforesaid, who shall hereafter, knowingly, make any false representation or representations of the name, quality or nature of any nursery product for the purpose of inducing any vendee to buy the same, or who shall deliver to any vendee, knowingly, any such product other than that contracted for, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned in the county jail not less than thirty days nor more than six months, or both so fined and imprisoned. (Acts 1907, p. 304.)

Art. 729. Statute of limitation shall run, when.—The statute of limitation shall not begin to run against a prosecution under the foregoing article until such product shall have developed and disclosed the fraud. (Id., p. 304.)

CHAPTER THREE A
COTTON PEST

Art. 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 the 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 ($1000.00) 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 location of such pest to the Commissioner of Agriculture shall, upon conviction, be subject to a like fine. (Acts 1917, 3d C. S., ch. 11, sec. 10; Acts 1919, ch. 41, sec. 13.)

See ante, Civ. St., arts. 4475a-4475k.

Art. 729½a. Transportation of cotton products in quarantine districts, etc.—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 terms of this Act, to any part of the State in violation of this Act or of any proclamation, or any rule, regulation, or other restriction authorized by this Act; or any person or persons who shall plant, cultivate, grow, gather, transport or market cotton in or from any territory in this State that has been quarantined and declared a non-cotton zone and placed under restrictions by any of the proclamations or restrictions authorized by this Act; or any person or persons who shall plant and grow cotton in any regulated zone or quarantined district or any part thereof in which cotton is permitted to be grown under rules and regulations promulgated by the Commissioner of Agriculture, and who shall fail to comply with any of the said rules and regulations so promulgated for the control and direction of cotton growing and marketing in such restricted zone; or who shall violate any proclamation, regulation or restriction authorized by this Act; or who shall wilfully refuse or knowingly neglect to comply with any such proclamation, restriction or regulation promulgated and maintained for the protection of the cotton industry against the menace of infestation by the pink boll worm, shall be deemed builty 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, and each Act in violation of the restrictions herein authorized governing the planting, growing, marketing and cleaning the fields, shall constitute a separate offense. (Acts 1917, 3d C. S., ch. 11, sec. 11; Acts 1919, ch. 41, sec. 14.)

CHAPTER FOUR
FEED STUFFS

Art. 730. Printed on tag, certificate of name, number of pounds and analysis; penalty for failure.—Every lot or parcel of concentrated feeding stuffs, as defined in article 732, used for feeding farm live stock, sold, offered or exposed for sale in the state of Texas, for use within this state, shall have printed on a tag, described in article 734, a plainly printed statement clearly and truly certifying the number of net pounds of feeding stuff in the package, stating the name or names of material of which such weight is composed, where the contents are of a mixed nature, the name, brand or trade mark under which the article is sold, the name and address of the manufacturer or importer, the place of manufacture, such information as is required by article 740, if any, and a chemical analysis stating the minimum percentages it contains of crude protein, allowing one per cent of nitrogen to equal six and one-quarter per cent of protein, of crude fat, of nitrogen-free extract, and the maximum percentage it contains of crude fiber; these constituents to be determined by the methods adopted at the time by the association of official agricultural chemists of the United States. Mill products hereinafter mentioned, shall have the following standard weight, viz.: Flour, one hundred and ninety-six pounds per barrel, or forty-eight pounds per sack; corn meal, bolted or unbolted, thirty-five pounds per sack; rice bran, one hundred and forty-three pounds per sack; rice polish, two hundred pounds per sack; and other feeds made from cereals of any kind, whether pure, mixed or adulterated, one hundred pounds per sack. Fractional barrels and sacks shall weigh in the same proportion, and those weights shall be net and exclusive of the barrel or sack in which said product is packed. And any person, firm or association of persons, engaged in the manufacture of mill products of any character whatsoever, who shall use any bag, box, barrel or any other receptacle, into which to put such product other than the one bearing the name of such mill manufacturing the same, shall be guilty of a misdemeanor, and, upon conviction therefor, shall be fined in any sum from one hundred dollars to one thousand dollars, or, in addition thereto, be confined in the county jail for a term of thirty days, or both such fine and imprisonment. (Acts 1905, p. 207, sec. 1, amended; Acts 1907, p. 243.)

See ante, art. 712 and note thereunder.

Art. 731. "Concentrated commercial feeding stuff" defined.—The term, "concentrated commercial feeding stuffs," as herein used, shall not include hay or straw, the whole seed or grains of wheat, rye, barley, oats, Indian corn, rice, buckwheat or broom corn, or any other whole or unground grains or seeds. (Acts 1905, p. 207.)

Art. 732. "Concentrated feed stuff" defined.—The term, "concentrated feed stuffs," as herein used, shall include wheat bran, wheat shorts, linseed meals, cotton seed meals, pea meals, cocoanut meals, gluten meals, gluten feeds, maize feeds, starch feeds, sugar feeds, dried brewer's grains, malt sprouts, hominy feeds, cerealine feeds, rice meals, rice bean, rice polish, rice hulls, oat feeds, corn and oat chops, corn chops, ground beef or mixed fish feeds, and all other materials of similar nature not included in this article. (Id., p. 207.)

Art. 733. Manufacturer or party selling to file what, and deposit samples.—Before any concentrated feeding stuff, as defined in article 732, is so offered or exposed for sale, the importer, manufacturer and party who causes it to be sold, or offered for sale, within the state of Texas, for use within this state, shall, for each and every feed stuff, bearing a distinguishing name and trade mark, file with the director of the Texas agricultural and experiment station a certified copy of the statement named in article 730, and shall also deposit with said director a sealed glass jar or bottle containing not less than one pound of the feeding stuff to be sold or offered for sale, accompanied by an affidavit that it is a fair average sample thereof, and corresponds within reasonable limits to the feeding stuff which it represents in the percentage of protein, fat and crude fiber, and nitrogen-free extract which it contains. This shall not be construed to apply to farmers who grind their own feed stuff, and who do not adulterate same. (Acts 1905, p. 208, sec. 4, amended; Acts 1907, p. 244.)

Art. 734. To pay inspection tax and affix tag.—The manufacturer, importer, agent or seller of each concentrated commercial feeding stuff, as defined in article 731, shall, before the article is offered for sale, pay to the director of the Texas Agricultural experiment station an inspection tax of ten cents per ton for each ton of such concentrated feeding stuff sold or offered for sale in the state of Texas, for use within this state, and shall affix to each lot shipped in bulk, and to each bag, barrel or other package of such concentrated feeding stuffs a tag to be furnished by said director, stating that all charges specified in said section have been paid. The director of said Texas agricultural experiment station is hereby empowered to prescribe the form of such tags, and adopt such regulations as may be necessary for the enforcement of this law. Whenever the manufacturer or importer or shipper of a concentrated feeding stuff shall have filed a statement made in article 730, and have paid the inspection tax, no agent or seller of said manufacturer, inspector or shipper shall be required to file such statement or pay such tax. The amount of the inspection tax and penalties received by said director shall be paid into the state treasury. So much of the inspection tax and penalties collected under this act shall be paid by the state treasurer to the treasurer of the Texas agricultural and mechanical college as the director of the Texas agricultural experiment station may show by his bills has been expended in performing the duties required by this act, but, in no case, to exceed the amount of the inspection tax and penalties received by the state treasurer under this act. Provided, the excess, if any, for the next two years may be used as it accrues, by the board of directors of the agricultural and mechanical college for the purpose of putting up a station administration building, to provide the necessary offices and laboratory space, in order that the purposes of this act may be carried out. (Acts 1905, p. 208, sec. 5, amended; Acts 1907, p. 244.)

Art. 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. (Acts 1905, p. 207, sec. 6; Acts 1907, p. 245; Acts 1917, ch. 106, sec. 1.)

Art. 736. Penalty for counterfeiting tag.—Any person who shall counterfeit, or use a counterfeit, of the tag or tags prescribed by this law, knowing the same to be counterfeited, or who shall use them a second time, after the said tags shall have been once attached, shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined in a sum not exceeding five hundred dollars, one-half of which fine shall be paid to the informer; which fine may be doubled or tripled at each second or third conviction, and so on progressively for subsequent convictions. (Acts 1905, p. 207.)

Art. 737. Shall furnish list of names or trade marks.—All manufacturers and importers of concentrated commercial feeding stuffs, or dealers in same, shall, when requested, furnish the director of the Texas experiment station with a complete list of names or trade marks of such feeding stuffs. (Id. p. 207.)

Art. 738. Analysis of to be made and published annually.—The director of the Texas agricultural experiment station shall cause one analysis or more to be made annually of each concentrated commercial feeding stuff sold, or offered for sale, under the provisions of this act. Said director is hereby authorized in person, or by deputy, to take a sample not exceeding two pounds in weight for analysis from any lot or package of concentrated commercial feeding stuff which may be in the possession of any manufacturer, importer, agent, dealer or buyer in this state; but said sample shall be drawn or taken in the presence of said party or parties in interest or their representatives, and shall be taken from a parcel, lot or number of parcels, which shall not be less than five per cent of the whole lot inspected, and shall be thoroughly mixed and divided into two samples and placed in glass or metal vessels, carefully sealed, and a label placed on each, stating the name or brand of the feeding stuff or material sampled, the name of the party from whose stock the sample is drawn and the date and place of taking such sample; and said label shall be signed by the director or his deputy and the party or parties at interest, or their representative present at the taking and sealing of said sample; provided, that where the party or parties at interest refuse to be present and take part in the sampling of the said feed stuffs, the director or his deputy may take said samples in the presence of two disinterested witnesses; one of said duplicate samples shall be retained by the director, and the other shall be left with the party whose stock was sampled; and the sample or samples retained by

the director shall be for comparison with the certified statements made in articles 730 and 733. The result of the analysis of the sample or samples so prescribed, together with such additional information as circumstances advise, shall be published in reports or bulletins by the Texas agricultural and mechanical college from time to time. (Id. p. 207.)

Art. 739. "Importer" defined.—The term, "importer," for all the purposes of this law, shall be taken to mean all such persons as shall bring into or offer for sale, within this state, concentrated commercial feeding stuffs manufactured without this state. (Id. p. 207.)

Art. 740. Manufacturing or selling adulterated feeding stuffs, penalty for.—Any person manufacturing, selling, or offering for sale, any adulterater feeding stuff within this state, shall, upon conviction therefor, be punished by a fine of not less than twenty-five dollars and not more than two hundred dollars, or be imprisoned in the county jail for a term of not less than thirty days and not more than sixty days, or by both such fine and imprisonment. For the purpose of this act, a feeding stuff shall be deemed to be adulterated if it contains any sawdust, dirt, damaged feed, or any foreign matter whatever, or if it is in any respect not what it is represented to be; or if any rice hulls or chaff, peanut shells, corncobs, oat hulls, or other similar substances of little or no feeding value are admixed therewith; provided, that no wholesome mixture of feeding stuffs shall be deemed to be adulterated if the true percentage of constituents thereof is plainly and clearly stated on the package, and made known to the purchaser at the time of the sale. It shall be the duty of the director of the experiment station to examine, or have examined, for adulteration, all suspicious samples of feeding stuffs, and such other samples as may be desirable. (Acts 1905, p. 210, sec. 11; Acts 1907, p. 245.)

BOLL WORM POISON

Arts. 741-746. [Superseded by arts. 999a-999fff, post.]

CHAPTER FOUR A

INFECTIOUS DISEASES AMONG ANIMALS AND BEES

See Title 17, ch. 4, Penal Code.

CHAPTER FIVE

COCAINE, MORPHINE AND OTHER DRUGS

Art. 747. Unlawful to sell or give away except on prescription, with certain provisos.—It shall be unlawful for any person, firm, or corporation to sell, furnish or give away cocaine, derivations of cocaine, preparations containing cocaine or derivatives of cocaine; morphine, derivatives of morphine, preparations containing morphine or derivatives of morphine; opium, preparations containing opium; chloral hydrate or preparations containing chloral hydrate; canabis indica, canabis sativa, or preparations thereof or any drug or preparation from any canabis variety, or any preparation known and sold under the Spanish name of "MARIHUANA" except upon the original written order or prescription of a lawfully authorized practitioner of medicine, dentistry, or veterinary medicine, which order, or prescription shall be dated and shall contain the name of the person for whom prescribed, or, if ordered by a practitioner of veterinary medicine, shall state the kind of animal for which ordered and shall be signed by the person giving the prescription or order. Such written order, or prescription shall be permanently retained on file by the person, firm, or corporation who shall compound or dispense the article ordered or prescribed, and it shall not be compounded or dispensed a second time except upon the written order of the original prescriber for each and every subsequent compounding or dispensing. No copy or duplicate of such written order or prescription shall be made or delivered to any person, but the original shall at all times be open to inspection by properly authorized officers of the law. Provided, however, that the above provisions shall not apply to preparations containing not more than two grains of opium, or more than one-eighth grain of morphine, or not more than two grains of chloral hydrate, or not more than one-sixteenth grain of cocaine in one fluid ounce, or if a solid preparation, in one avoirdupois ounce, nor to preparations containing not more than one grain per ounce of solid extract of canabis indica, canabis sativa, or preparations thereof or any drug or preparation from any canabis variety; nor to corn cures containing canabis indica, or preparations of the canabis variety. And provided, further, that the above provisions shall not apply to sales by wholesale jobbers, wholesalers and manufacturers to retail druggist, nor to sales at retail by retail druggists to regular practitioners of medicine, dentistry, or veterinary medicine, nor to sales made to manufacturers of proprietary or pharmaceutical preparations for use in the manufacture of such preparations; nor to sales to hospitals, colleges, scientific or public institutions. (Acts 1905, p. 45, sec. 1; Acts 1919, ch. 150, sec. 1; Acts 1919, 2d C. S., ch. 61, sec. 1.)

Art. 748. Unlawful for any practitioner of medicine, dentistry or veterinary to prescribe to habitual users.—It shall be unlawful for any practitioner of medicine, dentistry or veterinary medicine to furnish to or prescribe for the use of any habitual user of the same, any cocaine or morphine, or any derivative or compound of cocaine or morphine, or any preparation containing cocaine or morphine or their derivatives, or any opium or chloral hydrate, or any preparation containing opium or chloral hydrate, canabis or any preparation thereof for the use of any person not under his treatment in the regular practice of his profession, or for any practitioner of veterinary medicine to prescribe any of the foregoing substances for the use of any human being. (Acts 1905, p. 46, sec. 2; Acts 1919, ch. 150, sec. 2.)

See Blair v. S., 96 S. W. 23; Id., 97 S. W. 89.

Art. 748a. Unlawful to manufacture for sale, etc., drugs with false statements on labels, etc.—It shall be unlawful to manufacture for sale, offer or expose for sale, sell or exchange, any drugs, medicine or device advocated for the cure of diseases, if the package or label or any representation pertaining to same shall bear or contain any statement, design or device regarding the curative or therapeutic effect of such article

or any of the ingredients or substances contained therein, which is misleading, false and fraudulent. (Id. sec. 3.)

Art. 748b. Files of prescriptions.—Every pharmacy, store, drug store, factory, salesroom, laboratory that fills prescriptions of drugs named in Sections 1 and 2 of this Act [arts. 747, 748] shall keep a file of such prescriptions, which may be inspected by the Dairy and Food Commissioner, his deputy, or agent. (Id. sec. 4.)

Art. 748c. Complaints.—The Dairy and Food Commissioner, or his inspectors or any person by him duly appointed for that purpose, shall make complaint and cause proceedings to be commenced against any person for the violation of any provision of this Act, and in such case he shall not be obliged to furnish security for costs; and he shall have in the performance of his duties all rights and privileges of a peace officer with power to enter into any factory, store, salesroom, drug store or laboratory, or place where he has reason to believe drugs are made, prepared, sold or offered for sale or exchange, and to examine the files and books of such places, store, drug store, pharmacy and salesroom. (Id. sec. 5.)

Art. 748d. Hindering Dairy and Food Commissioner.—Any person who shall wilfully hinder or obstruct the Dairy and Food Commissioner, or his inspectors, or other persons by him duly authorized in the exercise of the power conferred upon him by this Act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than $25.00 nor more than $200.00. (Id. sec. 6.)

Art. 749. Penalty for violating this law.—Any person who shall violate any of the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than Twenty-five ($25.00) dollars, nor more than Two Hundred ($200.00) dollars, or be imprisoned in the county jail for not less than one month nor more than one year, or punished both by such fine and imprisonment, in the discretion of the court. (Acts 1905, p. 46, sec. 3; Acts 1919, ch. 150, sec. 7.)

Art. 749a. Sale or advertisement of drugs for cure of venereal diseases, etc.—Any person who shall publish, deliver or distribute, or cause to be published, delivered or distributed in any manner whatsoever or who shall permit placards or posters to be or remain on buildings or outhouses or premises controlled by him containing an advertisement concerning a venereal disease, lost manhood, lost vitality, impotency, sexual weakness, seminal emissions, varicocele, self-abuse or excessive sexual indulgence and calling attention to a medicine, article or preparation that may be used therefor or to a person or persons from whom, or an office or place at which information, treatment or condition may be obtained, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than two hundred dollars. The provisions of this article, however, shall not apply to didactic or scientific treatises which do not advertise or call attention to any person or persons from whom, or any office or place at which information, treatment or advice may be obtained, nor shall it apply to advertisements or notices issued by a municipal or county board or department of health, or by the department of health of the State of Texas. (Acts 1918, 4th C. S., ch. 92, sec. 2.)

CHAPTER FIVE A

POISONS

Art. 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 wth 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. (Acts 1917, 3d C. S., ch. 25, sec. 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. sec. 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. sec. 3.)

CHAPTER SIX

UNLAWFUL PRACTICE OF MEDICINE

Art. 750. Authority to practice registered in district clerk's office; change of residence recorded, where.—It shall be unlawful for any one to practice medicine, in any of its branches, upon human beings with-

in the limits of this state who has not registered in the district clerk's office of the county in which he resides, his authority for so practicing, as herein prescribed, together with his age, post-office address, place of birth, school of practice to which he professes to belong, subscribed and verified by oath; which, if wilfully false, shall subject the applicant to conviction and punishment for false swearing as provided by law. The fact of such oath and record shall be indorsed by the district clerk upon the certificate. The holder of the certificate must have the same recorded upon each change of residence to another county, and the absence of such record shall be prima facie evidence of the want of possession of such certificate. (Acts 1907, p. 225.)

Art. 751. District clerk to keep medical register.—It is hereby made the duty of the district clerk of each county in this state to purchase a book of suitable size, to be known as the "medical register" of such county, and set apart one full page for the registration of each physician, and to record in the same the name and record of each practitioner who presents a certificate from the state board of examiners, issued under this act. The clerk shall receive the sum of one dollar from each physician so registered, which shall be his full compensation for all duties required under this act. When any physician shall die or remove from the county, or have his license revoked, it shall be the duty of said clerk to make a note of facts at the bottom of the page as closing the record. On the first day of January in each year, said clerk shall, on request of the board, certify to the office of the state board of medical examiners a correct list of the physicians then registered in the county, together with such other information as said board may require. Any district clerk, upon conviction of knowingly violating any of the provisions of this act, shall be fined not more than fifty dollars. A copy from the medical register pertaining to any person certified to by said clerk under the seal of said court, also a certificate issued by said officer certifying that any person named has or has not registered in said office as required by this act, shall be admitted as evidence in all trial courts. (Id. p. 225.)

Art. 752. Practitioner of medicine to receive verification license.—All legal practitioners of medicine in this state who, practicing under the provisions of previous laws, or under diplomas of a reputable and legal college of medicine, have not already received license from a state medical examining board of this state, shall present to the board of medical examiners for the state of Texas, documents, or legally certified transcripts of documents, sufficient to establish the existence and validity of such diplomas or of the valid and existing license heretofore issued by previous examining boards of this state, or exemption existing under any law, and shall receive from said board verification license, which shall be recorded in the district clerk's office in the county in which the licentiates may reside. Such verification license shall be issued for a fee of fifty cents to all practitioners who have not already received a license from the state board of medical examiners of this state. It is especially provided that those whose claims to state licenses rest upon diplomas from medical colleges, recorded from January 1, 1891, to July 9, 1901, shall present to the state board of medical examiners satisfactory evidence that their diplomas were issued from bona fide medical colleges of reputable standing, which shall be decided by the board of medical examiners before they are entitled to a certificate from said board. This board may, at its discretion, arrange for reciprocity in license with the authorities of other states and territories having requirements equal to those established by this act. License may be granted applicants for license under such reciprocity on payment of twenty dollars. (Id. p. 225.)

Art. 753. Applicants other than those under previous article.—All applicants for license to practice medicine in this state, not otherwise licensed under the provisions of law, must successfully pass an examination before the Board of Medical Examiners established by this law. Applicants, to be eligible for examination, must present satisfactory evidence to the board that they are more than twenty-one years of age, of good moral character, and graduates of bona fide, reputable medical schools. Such schools shall be considered reputable within the meaning of this law, whose entrance requirements and courses of instruction are as high as those adopted by the better class of medical schools of the United States, whose course of instruction shall embrace not less than four terms of five months each. Application for examination must be made in writing under affidavit to the secretary of the board, on forms prepared by the board, accompanied by a fee of twenty-five ($25.00) dollars; except when an applicant desires to practice obstetrics alone, the fee shall be five ($5.00) dollars. Such applicant shall be given due notice of the date and place of examination. Applicants to practice obstetrics in the State of Texas, upon proper application, shall be examined by the Board in obstetrics only, and upon satisfactory examination shall be licensed to practice that branch only; provided, this shall not apply to those who do not follow obstetrics as a profession, and who do not advertise themselves as obstetricians or midwives, or hold themselves out to the public as so practicing. In case any applicant, because of failure to pass examination, be refused a license, he or she shall, after one year, be permitted to take a second examination without an additional fee. (Acts 1907, p. 225; Acts 1915, p. 112, ch. 63, sec. 1, superseding art. 753, revised Pen. Code.)

Art. 753, revised Pen. Code, and art. 5739, Revised St., 1911, were made up from section 7 of Act 1907, p. 226. Act 1915, ch. 63, amends art. 5739, Revised St., 1911, and thus supersedes art. 753, revised Pen. Code.

Art. 754. Not to discriminate against any particular school.—Nothing in this law shall be constructed as to discriminate against any particular school or system of medical practice. This act shall not apply to dentists, legally qualified and registered under the laws of this State, who confine their practice strictly to dentistry; nor to nurses who practice only nursing; nor to masseurs, in their particular sphere of labor, who publicly represent themselves as such; nor to commissioned or contract surgeons of the United States army, navy or public health and marine hospital service, in the performance of

their duties, but such shall not engage in private practice without license from the board of medical examiners; nor to legally qualified physicians of other states called in consultation, but who do not open offices or appoint places in this state where patients may be met or called to see. This act shall be so construed as to apply to persons, other than licensed druggists of this state, not pretending to be physicians, who offer for sale on the streets or other public places, remedies which they recommend for the cure of disease. (Acts 1907, p. 227.)

Art. 755. Shall be regarded as practicing medicine, when.—Any person shall be regarded as practicing medicine within the meaning of this act:

(1) Who shall publicly profess to be a physician or surgeon and shall treat, or offer to treat, any disease or disorder, mental or physical, or any physical deformity or injury, by any system or method, or to effect cures thereof.

(2) Or who shall treat, or offer to treat, any disease or disorder, mental or physical, or any physical deformity or injury, by any system or method or to effect cures thereof, and charge therefor, directly or indirectly, money or other compensation. (Id. p. 227.)

Art. 756. Practicing in violation of law, penalty.—Any person practicing medicine in this state in violation of the provisions of this law shall, upon conviction thereof be fined in any sum not less than fifty dollars nor more than five hundred dollars, and by imprisonment in the county jail for a term not exceeding six months; and each day of such violation shall constitute a separate offense, and in no such case shall the violator be entitled to recover anything for the services rendered. (Id. p. 228.)

Art. 757. (441) Not applicable, to what cases.—The provisions of this chapter shall not apply to any person who has been regularly engaged in the general practice of medicine, in any of its branches or departments, in this state, for five consecutive years prior to January 1, 1875; nor to any person who may have legally qualified himself to practice medicine under the provisions of an act, entitled, "An act to regulate the practice of medicine," passed May 16, 1873; nor to all those who were practicing medicine in Texas prior to January 1, 1885; nor to all those who began the practice of medicine in this state after the above date, who have complied with the laws of this state, regulating the practice of medicine, in force. (O. C. Acts 1901, p. 14.)

Art. 758. Physicians, etc., to report births and deaths.—All physicians, surgeons or accoucheurs who may attend at the birth of a child, or, in the absence of such attendance, either parent of the child, shall report the fact to the clerk of the county court, together with the name of the parent or parents, the sex of the child and the race to which the child belongs, and whether of foreign or native parents, whether still born or alive, within thirty days after said birth occurs, under a penalty of five dollars for each failure to do so; to be collected as other fines for misdemeanors are. All physicians, surgeons, accouchers and coroners, cognizant of death, shall report the same, together with the race, nativity, age, sex, residence, whether alien or citizen, and the cause of death, to the clerk of the county court within thirty days after the occurrence, under a penalty of not less than five dollars nor more than fifty dollars for each failure to do so; these data to be recorded as a part of the vital statistics of the county and state; and the clerk of the county court shall be paid by the county ten cents for each birth or death so recorded, and he shall report monthly all these data to the department of public health and vital statistics. In default of so reporting he shall be fined not less than fifty dollars for each offense. (Acts 1903, p. 220.)

Art. 758a. Soliciting or drumming patients or patronage.—If any physician, surgeon, osteopath, masseur, or any other person who practices medicine or the art of healing the sick or the afflicted, with or without the use of medicine, shall employ or agree to employ, pay or promise to pay, or reward or promise to reward, any person, persons, firm, association of persons, co-partnership, or corporation for securing, soliciting or drumming patients or patronage, such physician, surgeon, osteopath, masseur, or any other person who practices medicine or the art of healing the sick or afflicted, with or without the use of medicine, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished as hereinafter provided. (Acts 1911, p. 97, ch. 55, sec. 1.)

Art. 758b. Same; receiving compensation for soliciting patronage for physicians.—If any person, firm, association of persons, co-partnership or corporation shall accept or agree to accept any payment, fee or reward, or anything of value, for securing, soliciting or drumming for patients or patronage for any physician, surgeon, osteopath, masseur or any other person who practices medicine or the art of healing with or without medicine shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished as hereinafter provided. (Id. sec. 2.)

Art. 758c. Same; penalty.—That any person violating any of the provisions of this Act shall, upon conviction thereof, be fined in any sum not less than $100.00 nor more than $200.00 for each and every offense, and each and every payment or reward or fee or agreement to pay or accept a reward or fee shall constitute a separate offense. (Id. sec. 3.)

Art. 758d. Same; newspaper advertising excepted.—Provided, that nothing in this Act shall be construed to prohibit the inserting in a newspaper or newspapers of an advertisement of a person's business, profession and place of business, or from advertising by hand-bills and paying for services in distributing same. (Id. sec. 4.)

Art. 758e. Incriminating testimony.—No person shall be exempt from giving testimony in any proceedings for the enforcement of this Act, but the testimony given by a witness shall not be used against him or her in any criminal action or proceeding, nor shall any criminal action or proceeding be brought against such witness on account of any testimony so given by him or her. (Id. sec. 5.)

CHAPTER SEVEN

DENTISTRY

Art. 759. Practice of dentistry or dental surgery without license unlawful; exceptions.—It shall be unlawful for any person to practice or offer, or attempt to practice dentistry or dental surgery in the State of Texas, without first having obtained a license from the State Board of Dental Examiners, as provided for in this Act; provided that physicians and surgeons may, in the regular practice of their profession, extract teeth or make application for the relief of pain, and provided further that nothing in this Act shall apply to any person legally engaged in the practice of dentistry in the State of Texas at the time of the passage of this Act, except as hereinafter provided. (Acts 1897, ch. 97, sec. 1; Acts 1905, p. 143; Acts 1919, ch. 31, sec. 1.)

Acts 1919, ch. 31, supersedes the provisions of Chapter 7 of Title 12 of the Revised Penal Code (arts. 759-770), with the possible exception of articles 766 and 770. It also supersedes the provisions of Title 43 of the Revised Civil Statutes of 1911 (arts. 2403-2416), which provisions are omitted from the Civil Statutes.

Art. 760. Extracting teeth unlawful, when.—It shall be unlawful for any person or persons to extract teeth or perform any other operation pertaining to dentistry or dental surgery, for pay, (or for the purpose of advertising, exhibiting or selling any medicine or instrument) unless such person or persons shall first have complied with the provisions of this act. (Acts 1897, ch. 97, sec. 2; Acts 1905, p. 143; Acts 1919, ch. 31, sec. 2.)

Art. 761. Board of examiners; qualifications of applicants for license.—A Board of Examiners, consisting of six practicing dentists of acknowledged ability as such, is hereby created, and shall have authority to examine all persons making application for license to practice dentistry in Texas, and to issue license to any person in the practice to dentistry or dental surgery in the State of Texas; provided such applicant shall be not less than twenty-one years of age, and shall have complied with all the requirements of this Act, and shall have passed a satisfactory examination before such Board. (Acts 1897, ch. 97, sec. 3; Acts 1905, p. 143; Acts 1919, ch. 31, sec. 3.)

Art. 762. Same subject; appointment; terms of office; vacancies.—The members of the said Board shall be appointed by the Governor of the State of Texas, and shall serve two years, except that the members of the Board first appointed shall be made as follows:

Three for one year and three for two years respectively, after which each member shall be appointed for two years; and until his successor is duly appointed. In case of a vacancy occurring in said Board by resignation, removal from the State or by death or otherwise, such vacancy may be filled for its unexpired term by the Governor; provided, however, that no person shall be eligible to appointment on the Board unless he has been actively engaged in the legal practice of dentistry in the State of Texas for a period of not less than three years next preceding his appointment. (Acts 1897, ch. 97, sec. 4; Acts 1905, p. 143; Acts 1919, ch. 31, sec. 4.)

Art. 763. Same subject; oath of office.—Before entering upon the duties of his office, each and every member of the Board shall make oath before any officer authorized to administer oaths, and who shall be empowered to use a seal of office, that he will faithfully and impartially discharge the duties incumbent upon him to the best of his ability; said oath of office shall be filed with the County Clerk of the County in which affiant resides, and the Clerk of said County shall duly record the same on the records of his office, and shall receive a fee of fifty cents for said service. (Acts 1897, ch. 97, sec. 4a; Acts 1905, p. 144; Acts 1919, ch. 31, sec. 5.)

Art. 764. Same subject; record; organization; meetings; quorum.—Said Board shall keep a record, in which shall be registered the name and residence or place of business of all persons authorized under this Act to practice dentistry or dental surgery in this State. It shall elect one of its members President and one Secretary, and it shall meet at least twice in each year, and as much oftener and at such times and places as may be necessary. A majority of the members of said Board shall constitute a quorum, and the proceedings thereof shall be open to the public. Provided further that said Board shall examine and grade all papers submitted by applicants for license and report thereon to such applicant or applicants within thirty days from the time of meeting of said Board. (Acts 1897, ch. 97, sec. 5; Acts 1905, p. 144; Acts 1919, ch. 31, sec. 6.)

Art. 765. Persons desiring to practice dentistry, what is required of.—Any person desiring to commence the practice of dentistry or dental surgery within the State of Texas, after the passage of this Act, shall, before commencing such practice, make application to said Board, and upon payment of $25.00, which shall not be returned to said applicant, and upon presentation of satisfactory evidence of his or her good moral character, and upon presentation of a diploma from a reputable dental college, and upon undergoing a satisfactory examination before said Board. on all the subjects pertaining to dentistry, or upon such subjects as the Board may in its judgment deem necessary, and having complied with all other requirements of this Act, shall be granted a license to practice dentistry or dental surgery in the State of Texas; provided that any person upon presentation of satisfactory evidence before the Board that he or she has been regularly engaged in the legal practice of dentistry in any State in the United States, for a period of three years next preceding said application, and upon complying with other requirements of this Act, shall be entitled to an examination without the presentation of a diploma; provided further that such colleges shall be considered reputable within the meaning of this Act, whose entrance requirements and courses of instruction are as high as those adopted by the better class of dental colleges of the United States; and provided that the Board appointed under this Act shall be the final judges of a reputable dental college. (Acts 1897, ch. 97, sec. 7; Acts 1905, p. 144; Acts 1919, ch. 31, sec. 7.)

Art. 765a. Same subject.—Any person who has heretofore been licensed, authorized,

or granted permission to practice dentistry or dental surgery under the laws of this State, and who has so practiced under said license, authorization or permit. previous to the passage of this Act, and who desires to obtain a license of authority from the Board created under this Act, under presentation and surrender to the Board of said license, authorization or permit, and an affidavit that he is the same person to whom same was originally granted, shall be granted a license under this Act, for which the Board shall receive a fee of $1.00. Provided, however, that no person shall be required to surrender an old license for a new one except he so desires. Provided, also, that if any license issued under this or any previous Act, in Texas, shall be lost or destroyed, the holder of said license may present his application to the Board for a duplicate license, together with his affidavit that the old license has been so lost or destroyed, and upon further affidavit that he is the same person to whom said license was issued. shall be granted a license under this Act. Provided that if the records of said Board fail to show that such person has ever been granted a license, the Board may have the power to exercise its discretion in granting such duplicate license, and for each duplicate license granted the Board shall receive a fee of $1.00. (Id. sec. 8.)

Art. 766. Members of board when not in session may act, when.—Any member of said board may, when the board is not in session, grant a license to practice dentistry to any person whom such member finds, on examination, to be qualified, on the payment of two dollars by such person. A license so granted shall be valid until the next meeting of the board, but no longer. Each member shall make a report of license, so granted by him, at the meeting of the board following the granting of the license. A member shall not grant a license under the provisions of this article to one who has been rejected by the board as disqualified. (Acts 1897, ch. 97, sec. 8; Acts 1905, p. 144.)

Art. 767. License issued by board to be filed for record.—Every person to whom license is issued by the Board of Examiners, shall, before beginning the practice of dentistry in this State, present the same to the County Clerk of the County in which he or she resides or expects to practice; who shall officially record said license in a book provided for that purpose, and said clerk shall receive a fee of fifty cents for each license so recorded. (Acts 1897, ch. 97, sec. 9; Acts 1905, p. 144; Acts 1919, ch. 31, sec. 9.)

Art. 767a. Revocation of license.—It shall be the duty of any member of the Board of Examiners under this Act, when it shall be made to appear to said member by satisfactory evidence from a creditable witness that any person who has been granted a license to practice dentistry or dental surgery in this State has been convicted of a felony, or has been guilty of any fraudulent or dishonorable conduct or malpractice, or any deception, or misrepresentation of facts for the purpose of soliciting or obtaining business, to report the same to the county or district attorney of said county, whose duty it shall be, if in his judgment the evidence is sufficient, to file a complaint in the District Court of said County, requiring the person so accused to appear before said court, at a regular term of said court, and upon the trial of said cause. if the defendant is found guilty of said charge, it shall be the duty of said District Court to revoke the license of said defendant, provided no one shall be required to stand trial, unless a copy of said charges shall have been furnished him or her at least ten days before said trial; and provided further that he shall be cited to appear under the same rules as govern other civil cases in said court. And if any person whose license has been revoked under this section shall practice or attempt to practice dentistry or dental surgery, after such a license has been revoked, he or she shall be punished as provided in Section 14 [Art. 768] of this Act. (Id. sec. 10.)

Art. 767b. Exhibition of license.—Any person authorized to practice dentistry or dental surgery, in this State, either under this Act or any previous Act of any legislature of Texas, shall place his or her license on exhibition in his or her office where said license shall be in plain view of patients, and any person who shall do any operation in the mouth of a patient, or treat any lesions of the mouth or teeth, without having said license exhibited in his or her office in plain view, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in Section 14 of this Act [Art. 768]; and each day so engaged shall constitute a separate offense; provided that nothing in this Act shall apply to students of a reputable dental college, who perform their operations without remuneration except for actual cost of materials, in the presence of, and under the direct personal supervision of a demonstrator or teacher, who has complied with the provisions of this Act, or has been legally authorized to practice dentistry in Texas under some other Act of the Legislature of Texas. Provided further that nothing in this Act shall apply to persons doing laboratory work on inert matter only. (Id. sec. 11.)

Art. 767c. Advertising for or soliciting business under assumed name.—Any person who has been granted a license to practice dentistry or dental surgery, in this State, who shall advertise or solicit business under any nom de plume, or corporation name, or any other than his or her proper and legal name, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in Section 14 of this Act [Art. 768]; and each day so engaged shall constitute a separate offense. Provided further that any person or persons now practicing dentistry or dental surgery under a nom de plume or corporate name, may use his or their personal name as successor to the name now used, for a period of two years from the time of the passage of this Act, at the expiration of which time, the use of all such nom de plume or corporate names shall be discontinued. (Id. sec. 12.)

Art. 767d. Compensation and expenses of board.—Each member of the Board of Examiners shall receive for his services $5.00 per day for each day actually engaged in the duties of his office, together with all legitimate expenses incurred in the performance of such duties. Provided that all ex-

penses of said Board shall be paid from money received by the Board from applicants, as provided for in this Act, and no money shall ever be paid to any member of the Board from any fund in the State Treasury. Provided further that any excess money remaining in the hands of the Board, after all expenses in the performance of their duty have been paid, shall be kept in the hands of the Secretary for the proper enforcement of this Act, and for other legitimate expenses of the Board. The Secretary shall be required to give bond payable to the Board in such sum as the Board may require for the faithful performance of his duty in the safe keeping of and proper delivery of said money. (Id. sec. 13.)

Art. 768. Penalty for violations of act.—Any person who shall violate any provision of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than ($5.00) five dollars nor more than one hundred ($100) dollars, or by confinement in the county jail of the county in which said conviction is had for any period of time, not to exceed six months, or by both such fine and imprisonment, for each offense; and it shall be the duty of the county or district attorney of any county of which any provision of this act may be violated to cause complaint to be filed against such person so offending, and to prosecute the same. (Acts 1897, ch. 97, secs. 12, 13; Acts 1905, p. 145; Acts 1919, ch. 31, sec. 14.)

Art. 768a. Disposition of fines collected.—All fines collected under the provisions of this Act shall be turned into the common school fund of the county in which said fine is collected, and no part of such fine shall be collected or used by the Board of Examiners. (Acts 1897, ch. 97, sec. 12; Acts 1905, p. 145; Acts 1919, ch. 31, sec. 15.)

Art. 769. [Superseded by Acts 1919, ch. 31, sec. 14, ante, art. 768.]

Art. 770. (454) Burden of proof upon whom.—On the trial of any person indicted under the provisions of this law, it shall be incumbent upon the defendant, in order to exempt him from the penalties of this law, to show that he has authority under the law to practice dentistry in this state. (O. C.)

Art. 770a. Partial invalidity of law.—Should any section, or any part of this Act, be declared unconstitutional, it shall not affect any other part of this Act. (Acts 1919, ch. 31, sec. 16.)

Section 17 of Acts 1919, ch. 31, repeals all conflicting laws.

CHAPTER EIGHT

PHARMACY—PRACTICE OF

Art. 771. Unlawful for any person not licensed to conduct pharmacy or drug store.—It shall be unlawful for any person, not licensed as a pharmacist, within the meaning of this law, to conduct or manage any pharmacy, drug or chemical store, apothecary shop or other place of business for the retailing, compounding or dispensing of any drug, chemical or poison, or for the compounding of physician's prescriptions, or to keep exposed for sale at retail, any drug, chemicals or poisons, except as hereinafter provided, or for any person, not licensed as a pharmacist or assistant pharmacist within the meaning of this law, to compound, dispense or sell at retail, any drug, chemical, poison, or pharmaceutical preparation, upon the prescription of a physician or otherwise, or to compound physicians' prescriptions, except as an aid to, or under the supervision of, a person licensed as a pharmacist under this law, And it shall be unlawful for any owner or manager of a pharmacy, or drug store, or other place of business, to cause or permit any other than a person licensed as a pharmacist or assistant pharmacist to compound, dispense or sell at retail, any medicine or poison, except as an aid to, or under the supervision of, a person licensed as a pharmacist. Provided, however, that nothing in this section shall be construed to prevent any person from engaging in the business herein described, as proprietors and owners thereof; provided such proprietors or owners shall have employed in his business, to conduct same, some one qualified under this act; nor to interfere with any legally registered practitioner of medicine or dentistry in the compounding of his prescriptions, or to prevent him from supplying his patients such medicine as he may deem proper; nor with exclusively wholesale business of any dealer who shall be licensed as a pharmacist, or who shall keep in his employ at least one person who is licensed as a pharmacist; nor with the selling at retail of non-poisonous domestic remedies; nor with the sale of patent or proprietary preparations, when sold in unbroken packages; nor with the sale of poisonous substances, which are sold exclusively for use in the arts, or for use as insecticides, when such substances are sold in unbroken packages bearing a label having plainly printed upon it the name of the contents, the word "poison" and the names of at least two readily obtainable antidotes. (Acts 1907, p. 349.)

Art. 772. Persons heretofore registered entitled to certificate.—All persons heretofore registered by district boards as pharmaceutical examiners shall, upon presenting proof of such registration in accordance with the law regulating the practice of pharmacy then in force, and the payment of one dollar, be entitled to a certificate of registration as licensed pharmacist, under the meaning of this law, from the state board of pharmacy, without examination. Such application shall be made to the state board of pharmacy within ninety days after the first meeting of said board. Proprietors and employés of such proprietors who are actively engaged in the preparation of physicians' prescriptions, and compounding and vending of medicines in towns of less than one thousand inhabitants in the State of Texas, and also proprietors and employés of such proprietors who shall become so engaged in such towns during the next five years after the passage of this law, shall be exempt from examination; provided, he or she will register as required in this law, and, upon paying said board of pharmacy one dollar, shall receive a certificate of registration which shall entitle such person to practice pharmacy in towns of one thousand inhabitants or under. Provided, that should such person fail to apply for registration within ninety days, from and after the first meeting of said

board, said party shall be required to pay the same fee as in original registration. Every person who shall hereafter desire to be licensed as a pharmacist shall file with the secretary of the board of pharmacy an application, upon blanks furnished by the board of pharmacy for that purpose, duly verified under oath, setting forth the name and age of the applicant, the place or places at which, and the time spent in the study of the science and art of pharmacy, the experience in the compounding of physicians' prescriptions which the applicant has had under the direction of a legally licensed pharmacist, and shall appear at a time and place designated by the board of pharmacy, and submit to an examination as to his or her qualifications for registration as a licensed pharmacist or assistant pharmacist; provided, however, if any applicant should fail to pass a satisfactory examination, he or she may, at any subsequent meeting of the board of pharmacy within six months, be permitted to be re-examined without cost. (Id. p. 350.)

Arts. 773-775. [Omitted.]

These articles are duplicated in the Civil Statutes, as arts. 6295-6297. Accordingly they are omitted here.

Art. 776. License and renewal conspicuously posted.—Every certificate of license to practice as pharmacist or assistant pharmacist, and every license to any proprietor or employé to conduct a drug store in towns of not more than one thousand inhabitants, as above provided, and every renewal of such license, shall be conspicuously exposed in the pharmacy, or drug store or place of business of which the pharmacist, or assistant pharmacist, or other person to whom it is issued, is the owner or manager, or in which he is employed. Every licensed pharmacist or assistant pharmacist who desires to continue in the practice of his profession shall, within thirty days next preceding the expiration of his license or permit, file with the board an application for the renewal thereof, which application shall be accompanied by the fee hereinafter prescribed. If the board shall find that the applicant has been legally licensed in this state, and is entitled to renewal of license, or to a renewal of such permit, it shall issue to him a certificate attesting the fact. If any pharmacist or assistant pharmacist shall fail, for a period of sixty days after the expiration of his license, to make application to the board for its renewal, his name shall be erased from the register of licensed pharmacist or assistant pharmacist; and such person, in order to become registered as a licensed pharmacist or assistant pharmacist, shall be required to pay the same fee as in the case of original registration. The name of the responsible manager of every pharmacy, drug store or apothecary shop, shall be conspicuously displayed outside of such place of business. (Acts 1907, p. 351.)

Arts. 777-780. [Omitted.]

These articles are duplicated in the Civil Statutes, as arts. 6289-6292. Accordingly they are omitted here.

Art. 781. Penalty for violating this law.—Whoever, not being licensed as a pharmacist, shall conduct or manage any drug store or other place of business for the compounding, dispensing or sale at retail of any drugs, medicine or poisons, or for the compounding of physicians' prescriptions contrary to the provisions of articles 771 and 772, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars, and each week such drug store or pharmacy or other place of business is so unlawfully conducted shall be held to constitute a separate and distinct offense. Whoever, not being licensed as a pharmacist or assistant pharmacist, shall compound, dispense or sell at retail, any drugs, medicine, poison or pharmaceutical preparation, even upon a physician's prescription or otherwise, and whoever, being the owner or manager of the drug store, pharmacy or other place of business, shall cause or permit any one not licensed as a pharmacist or assistant pharmacist, to dispense, sell at retail or compound any drug, medicine, poison or physician's prescription, contrary to the provisions of articles 771 and 772, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten dollars nor more than one hundred dollars. Any license or permit or renewal thereof, obtained through fraud, or by any false or fraudulent representations, shall be void and of no effect in law. Any person who shall make any false or fraudulent representations for the purpose of procuring a license or permit or renewal thereof, either for himself or for another, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars; and any person who shall wilfully make a false affidavit for the purpose of procuring a license or permit or renewal thereof, either for himself or for another, shall be deemed guilty of perjury, and, upon conviction thereof, shall be subject to like penalties as in other cases of perjury. Whoever, being the holder of any license or permit granted under this act, shall fail to expose such license or permit, or any renewal thereof, in a conspicuous position in the place of business to which such license or permit relates, or in which the holder thereof is employed, contrary to the provisions of article 776, shall, upon conviction thereof, be fined not less than five dollars nor more than twenty-five dollars: and each week that such license, permit or renewal shall not be exposed, shall be held to constitute a separate and distinct offense; and whoever, being the holder of any license or permit granted under this act, shall, after the expiration of such license or permit, and without renewing the same, continue to carry on the business for which such license or permit was granted, contrary to the provisions of article 776, shall, upon conviction thereof, be fined not less than five dollars nor more than twenty-five dollars. (Acts 1907, p. 354.)

CHAPTER NINE

NURSING AND EMBALMING

Art. 782. Nursing; persons entitled to registration; certificate of registration; practice without certificate.—That all nurses who are engaged in nursing at the time of the passage of this Act, and who shall show to the satisfaction of the said Board that they are of good moral char-

acter and were graduated prior to April, 1909, from a training school connected with a hospital or sanitarium giving two years general training, or prior to the year 1901, having given 18 months general training, and who maintains in other respects proper standards, shall be entitled to registration without examination, provided they register prior to January 1st, 1912. All persons who have heretofore received registration certificates in compliance with an Act of the Regular Session of the Thirty-first Legislature, being "An Act to define and regulate the practice of professional nursing, to create a Board of Nurse Examiners for the examination and licening [licensing] of nurses, and to prescribe their qualifications, to provide for their proper registration and for the revocation of certificates, and to fix suitable penalties for the violation of this Act," shall not be required to obtain new registration certificates, but such certificates heretofore secured under said Act of the Thirty-first Legislature shall be in all things valid and binding and of full force and effect. All persons who are in training in the wards of a general hospital or sanitarium in this State where a two-years' training with a systematic course of instruction is given at the time of the passage of this Act, and shall graduate hereafter, and possess the above qualifications, shall be entitled to registration without examination. Provided application for registration certificate shall be made to the Board herein provided for, who shall issue proper certificate of registration without examination, if the applicant be found entitled thereto under the provisions of this Act. All nurses who have served in the army or navy of the United States, and have been honorably discharged, shall be entitled to registration without examination. It shall be unlawful hereafter for any person to practice nursing as a registered nurse, without a certificate from the State Board of Nurse Examiners. A nurse who has received his or her certificate according to the provisions of this Act shall be styled and known as a "Registered Nurse." No other person shall assume such title or use the abbreviation "R. N." or any other letters to indicate that he or she is a registered nurse. The Board in each instance shall require a registration fee of five ($5.00) dollars. (Acts 1909, ch. 117, sec. 4, amended; Acts 1911, p. 166, ch. 89, sec. 1, superseding art. 782, revised Pen. Code.)

Art. 783. Penalty for.—Any person violating the provisions of this law, or who shall make any false representations to said board in applying for a certificate, shall be guilty of a misdemeanor, and, upon conviction, be punished by a fine of not more than three hundred dollars. (Acts 1909, p. 228.)

Art. 784. Embalming; persons engaged or desiring to engage in practice, what required of.—Every person engaged, or desiring to engage, in the practice of embalming, in connection with the care and disposition of dead human bodies, within the state of Texas, shall make a written application to the State board of embalming for a license, accompanying the same with a license fee of five dollars, whereupon the applicant, as aforesaid, shall present himself or herself before said board at a time and place to be fixed by said board; and if the board shall find upon examination that the applicant is of good moral character, possessed of the knowledge of the venous arterial system, the location of the heart, lungs, bladder, womb and other organs of the human body, and the location of abdominal, pleural and thoracic cavities, location of the carotid, bracharal, radial, ulnar, femoral and tibinal arteries, a knowledge of the science of embalming and the care and disposition of the dead, and has a reasonable knowledge of sanitation and the disinfection of bodies of diseased persons, and the apartment, clothing and bedding in case of death by infectious or contagious diseases, the board shall issue to said applicant a license as a duly licensed embalmer, authorizing him to practice the science of embalming. Such license shall be signed by a majority of the board and attested by its seal. All persons receiving license under the provisions of this law shall have said license registered in the county clerk's office in the county in the jurisdiction of which it is proposed to carry on said practice, and shall display said license in a conspicuous place of business of said person so licensed. (Acts 1903, p. 124.)

Art. 785. Shall annually obtain renewal license.—That every registered embalmer, who desires to continue the practice of his profession, shall annually thereafter, during the time he shall continue in such practice, on such date as said board may determine, pay to the secretary of said board a fee of two dollars for the renewal of said license. (Id., p. 125.)

Art. 786. Unlawful for persons not registered to practice.—It shall be unlawful for any person not a registered embalmer, to embalm or pretend to practice the science of embalming, in connection with the care and disposition of the dead, unless said person is a registered embalmer, within the meaning of this chapter. (Id., p. 125.)

Art. 787. Not to apply when and to whom.—That nothing in this law shall apply to, or in any manner interfere with, the duties of any municipal, county, and state officer, or state institution, nor shall this law apply to any person simply engaged in the furnishing of burial receptacles for the dead, but shall only apply to such person or persons engaged in the business of embalming, in connection with the care and disposition of the dead. (Id., p. 125.)

Art. 788. Penalty for violation.—That any person who shall embalm, or attempt to practice the science of embalming, in connection with the care and disposition of the dead, without having complied with the provisions of this law, shall be guilty of a misdemeanor, and, upon conviction thereof, before any court, shall be sentenced to pay a fine of not less than fifty dollars or not more than one hundred dollars for each and every offense. All fines collected for the violation of any of the provisions of this law shall be paid into the public school fund of the state. (Id., p. 125.)

CHAPTER TEN

VIOLATIONS OF QUARANTINE

Art. 789. (472) Vessel landing from infected port.—After the legal establishment of any quarantine station on the coast

of this state, if any vessel shall land or arrive at such station from any infected port without a bill of health from the proper officer of said port, or with a false bill of health, the master or commanding officer of such vessel shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than five hundred nor more than five thousand dollars. (Acts Aug. 13, 1870, p. 75; amended Acts 1901, p. 305.)

Art. 790. (473) Passing station without permission.—Any master or commanding officer of a vessel that passes or attempts to pass any quarantine station on the coast of this state, during the continuance of the quarantine, without having first obtained permission from the health officer of such station so to do, shall be punished by imprisonment in the penitentiary not less than two nor more than five years, or by fine not less than five hundred nor more than ten thousand dollars. (Acts Aug. 13, 1870, p. 75.

Art. 791. (474) Going ashore without permission.—Any person belonging to or on board of a vessel placed under quarantine, who shall go ashore without the written permission of the health officer of the station, shall be fined not less than fifty nor more than five hundred dollars. (Id.)

Art. 792. (475) Landing goods without permission.—Any master or officer of a vessel placed under quarantine, who shall land or permit to be landed from said vessel any goods, wares, merchandise or article whatsoever, while the same is under quarantine, without the written permission of the health officer of the quarantine station, shall be fined not less than fifty nor more than one thousand dollars for each article so landed. (Id.)

Art. 793. (476) Leaving quarantine station.—Any person detained at any quarantine station, who shall willfully absent himself without leave of the officer having charge thereof, shall be deemed guilty of a misdemeanor, and, on conviction thereof by any court of competent jurisdiction, shall be punished by a fine of not less than ten dollars nor more than one thousand dollars. (Acts April 12, 1883, p. 81.)

Art. 794. (477) Officer, etc., disobeying, etc., quarantine law.—Any health officer, guard or other employé, who shall knowingly and wilfully disobey or in any manner knowingly neglect or fail to perform any duty imposed upon him by the provisions of quarantine laws, rules and regulations of this state, or who shall disobey, knowingly, an order emanating from superior authority, shall be fined, upon conviction by a court of competent jurisdiction, in a sum not exceeding one thousand dollars; provided, that, in the meaning of this article, the governor and state health officer shall alone be deemed superior authority. (Id.; quarantine law, Acts 18th Leg., p. 17.)

Art. 795. (478) Evading quarantine guards, etc.—Any person coming from any port or district infected with yellow fever or any other infectious or contagious disease, who shall knowingly evade any guard or pass through any cordon of quarantine duly established, shall be deemed guilty of a misdemeanor, and, upon conviction by any court of competent jurisdiction, be punished by fine not exceeding one thousand dollars. (Acts April 11, 1883, p. 81.)

Art. 796. (478a) Violating quarantine regulations.—Any person, who shall knowingly and wilfully violate any regulation of quarantine established by the governor, the state health officer, or the health officer of any county or city of this state, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than twenty nor more than one thousand dollars. (Acts 1901, p. 305.)

Art. 797. (478b) Conductor or person in charge of train or steamboat.—If any conductor, or person in charge of any train, ship, steamboat or any other kind of common carriers, shall knowingly and wilfully bring into this state any person or thing contrary to the quarantine regulations as proclaimed by the governor, or state health officer, such conductor or person so knowingly and wilfully offending, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not to exceed five hundred dollars. (Id., p. 305.)

Art. 798. (478c) Merchant or person violating governor's proclamation.—Any merchant or other person who shall knowingly and willfully order the shipment, or knowingly and wilfully receive any merchandise, whose shipment into the state is prohibited by the governor's proclamation, or any person who knowingly and wilfully sells and proceeds to deliver such merchandise or other article as above, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding five hundred dollars. (Id., p. 305.)

Art. 799. (478d) Physician knowingly concealing case of contagious disease.—Any physician who shall knowingly conceal any case of contagious disease, or who shall fail to report to the county or city health officer any case of contagious disease of which he may have knowledge shall, upon conviction, be fined in any sum not less than twenty-five dollars nor more than one hundred dollars. (Id., p. 305.)

CHAPTER TEN A

VETERINARIANS

Arts. 799a-799g. [Repealed by Acts 1919, 2d C. S., ch. 58, sec. 24, ante, Civ. St. art. 7324u.]

Art. 799h. Penalty for issue of license to veterinarians in certain cases.—It shall be a misdemeanor punishable upon conviction by a fine of not less than $25.00 nor more than $200.00 and disqualify from office on the board, for the board or any member thereof to issue any certificates provided for herein to any person only as set forth herein, or to give any applicant prior to examination a list of questions to be propounded at any examination. (Acts 1919, 2d C. S., ch. 58, sec. 17.)

Section 24 of this act repeals Acts 1911, ch. 76. For secs. 1-16, 19-22, 24, and 25 of this act see ante, Civ. St., arts. 7324a-7324v.

Art. 799i. Power of grand jury, etc.—The grand jury of each county in this state is hereby given inquisitorial power over all offenses of violations of this Act, and the judge of the district courts of the state shall give the name of their charges to the grand

jury; and it shall be the duty of the board of veterinary examiners, or any member thereof, to report any violations of this Act to the proper authorities. (Id. sec. 18.)

Art. 799j. Unlawful practice of veterinary medicine, surgery or dentistry.—Any person who practices or attempts to practice veterinary medicine, surgery or dentistry in this State, without first having complied with the provisions of this Act, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than twenty-five dollars nor more than two hundred dollars; and each day of such practice or attempt to practice shall constitute a separate offense. (Id. sec. 23.)

CHAPTER ELEVEN

TEXAS STATE BOARD OF HEALTH

See, also, ante, Civ. St., Title 66, chapters 1 and 2.

Art. 800. Creating same.—The department of public health and vital statistics as now existing under the laws of this state is hereby abolished, and that there be created and established, in its stead, a state board of health, to be officially designated as Texas state board of health, which shall consist of seven members, who shall be legally qualified practicing physicians, who shall have had at least ten years' experience in actual practice of medicine within the state of Texas, of good professional standing, who shall be graduates of reputable medical colleges, to be appointed biennially by the governor as soon as practicable after the passage of this bill, and thereafter on or before the tenth day of March, following his inauguration. One member of said board, who shall be appointed by the governor and confirmed by the senate, shall be designated by the governor as state health officer, and who shall be president and executive officer of the board. The members of said board shall hold their office for a term of two years, and until their successors shall be appointed and qualified, unless sooner removed for cause. (Acts 1909, p. 340.)

Art. 801. Sanitary Code.—The following rules are hereby enacted as the "Sanitary Code for Texas," adopted for the promotion and protection of the public health and for the general amelioration of the sanitary and hygienic condition within this State, for the suppression and prevention of infectious and contagious diseases, and for the proper enforcement of quarantine, isolation and control of such diseases, to wit.

The provisions of this article (the Sanitary Code) are contained in the Civil Statutes, ante, art. 4533a. To avoid duplication the remainder of this article, except the penalty clause, is omitted here.

Rule 79. *Penalty.*—Any person who shall violate any of the rules, regulations or provisions of the Sanitary Code of Texas, as herein set forth, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than ten dollars and not more than one thousand dollars.

(Acts 1909, 1st S. S., p. 342, ch. 30, sec. 10, amended; Acts 1911, p. 173, ch. 95, sec. 1, superseding art. 801, revised Pen. Code.)

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 misdemeanor 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. (Acts 1917, ch. 129, sec. 12.)

The act referred to is set forth ante, Civ. St., arts. 4524a-4524g, 4553a (Rules 36a-36c, 37a, 38a, 38b, 50a).

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. sec. 13.)

Arts. 802-805. [Amended.]

See art. 801.

Art. 805a. Charbon districts.—That all of that portion of the State of Texas in which charbon or anthrax has heretofore been prevalent or any district of the State of Texas in which charbon or anthrax may become prevalent, shall be known as charbon districts and shall be subject to the provisions hereof. (Acts 1913, ch. 78, sec. 2 [10a].)

Art. 805b. Report of animals and persons suffering from charbon or anthrax.—That each person residing in a district where charbon or anthrax is prevalent or where the same is supposed to be prevalent shall report in writing to the county health officer, who in turn shall report in writing to the president of the State Board of Health at Austin, all cases where an animal or animals are suffering with charbon or anthrax or supposed to have such disease, and each physician practicing in the State of Texas shall report in writing to the president of the State Board of Health all persons suffering from charbon or anthrax or supposed to be suffering from same and in case of failure to do so any person so failing shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than $10.00 nor more than $25.00 and each case of which no report is made shall constitute a separate offense. (Id. sec. 2 [10b].)

Art. 805c. Destruction of carcasses of animals dying from charbon or anthrax.—That carcasses of stock which have died from charbon or anthrax shall be destroyed by burning by the owner or person in charge within 24 hours after death and any owner or person having charge of said animals who should fail to destroy said carcasses as herein provided shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than $25.00 nor more than $100.00 and each 24 hours after the first 24 hours that said carcass is permitted to remain undestroyed shall be considered a separate offense. (Id. sec. 2 [10e].)

Art. 805d. Quarantine of animals infected.—The county health officer shall be the exclusive judge of the necessity of isolation or quarantine of all animals infected therewith and when in the judgment of said county health officer there exists a necessity thereof [therefor] said county health officer shall issue a proclamation directing that all animals of certain classes which he

may specify in the infected district, in either the entire county or any political subdivision thereof, shall be placed and kept in an enclosure by the owners or keeper thereof, and any owner, or keeper of such animals for the owners, who shall fail or refuse to obey the requirement of such proclamation shall be fined in any sum not less than $10.00 nor more than $50.00 and where any owner or keeper for the owner shall have more than ten animals subject to the quarantine regulations herein provided the fine shall be doubled and each day that any owner or keeper for such owner shall fail to comply with the proclamation of said county health officer, shall constitute a separate offense and such quarantine shall continue and be in effect as long as in the judgment of such county health officer it may be necessary to prevent the spread of charbon or anthrax. (Id. sec. 2 [10f].)

Art. 805e. Proclamation of quarantine.—The proclamation of the county health officer provided for in Section 10f of this Act [art. 805d] shall be sufficient, if it name the kinds or classes of stock to which it shall apply and it shall be published in some newspaper published in the county if there be one; and if there be no newspaper it shall be posted in three public places in said county one of which shall be at the court house door of such county if the proclamation pertains to the whole county, but if only to a subdivision of the county, then in any three public places in such subdivision, and one insertion in a newspaper shall be sufficient, and such proclamation shall be effective three days after such notice is given. (Id. sec. 2 [10g].)

Art. 805f. Election for prevention of animals from running at large in county within charbon districts.—In all counties now affected with charbon or anthrax, or which may hereafter become affected, the qualified voters of such county or any political subdivision thereof may, in the manner hereinafter provided, prohibit the running at large of cattle, horses, sheep, goats and hogs or any of such animals within such county or subdivision thereof; provided that, upon the petition of ten per cent of the qualified voters of such county or subdivision, thereof presented to the commissioners' court of such county in open session, requesting such court to order an election to be held in such county or political subdivision thereof said petition to state the territory within which an election is requested and the kinds of animals to be effected and also for what portions of the year it is desired to prohibit such stock from running at large, or whether the entire year, it shall be the duty of said commissioners' court to order such election to be held within such territory as may be petitioned for, naming the kinds of animals to be affected thereby and as designated in the order for such election; and such commissioners' court shall also designate in said order of election the time within which such stock is to be prohibited from running at large, whether for the entire year or for portions thereof; which the said court is hereby authorized to do in accordance with the petition therefor. Such commissioners' court is hereby authorized and it is made its duty to provide for the holding of such elections and compensation of officers thereof, provided that the expense of such election shall be borne by the county wherein such election is ordered and held; and provided further that in any such election so to be held the ballots shall read as follows: "For the Running at Large of Domestic Animals," and "Against the Running at Large of Domestic Animals."

Returns of such election shall be made by the presiding officers of the precinct or precincts of the county where such election is held, to the county judge of such county, whose duty it shall be to forthwith call the commissioners' court together for the purpose of canvassing the returns; and if it shall be found by the commissioners' court, upon a canvass of such returns, that a majority of the qualified voters of the county or subdivision thereof wherein such election was held, is in, favor of prohibiting the running at large of such domestic animals as hereinbefore named, then it shall be the duty of the commissioners' court of such county to forthwith declare the result of said election and give public notice thereof by proclamation of such court to be issued and posted within three public places of the county or subdivision thereof in which such election has been held. (Id., sec. 2 [10h].)

Art. 805g. Same; permitting animals to run at large.—From and after the issuance and posting of the proclamation hereinabove provided for, it shall be unlawful for any owner or keeper of such animals hereinabove designated or any of them to permit such animals as have been voted upon to run at large within such county or subdivision thereof at any time within which the same has been prohibited; and in case of failure or refusal of any owner or keeper of such stock or any of them to comply with such proclamation he shall be deemed guilty of a misdemeanor and shall be fined in any sum not less than five dollars ($5.00) nor more than fifty dollars ($50.00) and each day that any owner or keeper for such owner shall fail to comply with the law as herein provided for, shall constitute a separate offense. The venue of such prosecution shall lie in the counties where the offense is committed. (Id. sec. 2 [10i].)

Art. 805h. Repeal.—This Act shall not be construed to repeal the laws of this State now in force affecting the public health, which is not clearly in conflict herewith but shall be construed to be cumulative to the said law but all laws in conflict herewith are hereby repealed. (Id. sec. 2 [10j].)

Art. 806. Members of board, inspectors and officers constituted peace officers.—Each member of the said Texas state board of health and each of its inspectors and officers, is hereby constituted a peace officer, and shall have power to arrest persons violating any of the provisions of the sanitary code [to be adopted by the board], of the violation of any public health, sanitary or quarantine law of the state; and such member, officer or inspector may so arrest such offenders without warrant when the offense is committed within the presence or sight of such member, officer or inspector, but otherwise only when in the execution of a warrant issued by a proper officer. (Acts 1909, p. 345.)

Words in brackets superseded by the New Sanitary Code, ante, art. 801.

Art. 807. Sheriff and other officers to do what.—It is hereby made the duty of all sheriffs and their deputies, and constables and their deputies, police officers, town marshals, state rangers, and all other peace officers, to assist in the apprehension and arrest of all persons violating any provisions, rules, ordinances or laws of the sanitary code for Texas, [as it may be adopted by said board,] or for violation of any public health, sanitary or quarantine laws of the sanitary code for Texas, [as it may be adopted by said inspectors and officers of said board,] to apprehend and arrest all persons who may commit any offense against the public health laws of this state, or the rules, regulations, ordinances and laws of the sanitary code for Texas [when adopted, published and promulgated by said board of health,] as provided in this law, when charged to execute a warrant of arrest issued by the proper officer for the apprehension and arrest of all persons charged with so offending. (Id., p. 346.)

Words in brackets superseded by new sanitary code, ante, art. 801.

Art. 808. When and by whom buildings and premises may be examined and inspected.—The members of the board of health and every person duly authorized by them, upon presentation of proper authority in writing, are hereby empowered, whenever they may deem it necessary in pursuance of their duties, to enter into, examine, investigate, inspect and view all grounds, public buildings, factories, slaughter houses, packing houses, abattoirs, dairies, bakeries, manufactories, hotels, restaurants and all other public places and public buildings where they may deem it proper to enter, for the discovery and suppression of disease, and for the enforcement of the rules, regulations and ordinances of the sanitary code for Texas [after it has been adopted, promulgated and published by the board] for the enforcement of any and all health laws, sanitary laws or quarantine regulations of this state. (Id., p. 346.)

Words in brackets superseded by new sanitary code, ante, art. 801.

Art. 809. Oaths may be administered, when and by whom.—The members of said board of health and its officers are hereby severally authorized and empowered to administer oaths and to summon witnesses and compel their attendance in all matters proper for the said board to investigate, such as the determination of nuisances, investigation of public water supplies, investigation of any sanitary conditions within the state, investigation of the existence of infection or the investigation of any and all matters requiring the exercise of the discretionary powers invested in said board and its officers and members, and in the general scope of its authority invested by this law. The several district judges and courts are hereby charged with the duty of aiding said board in its investigations and in compelling due observance of this law, and, in the event any witness summoned by said board or any of the officers or members of the same, shall prove disobedient or disrespectful to the lawful authority of such board, officer or member, such person shall be punished by the district court of the county in which such witness is summoned to appear as for contempt of said district court. (Id., p. 346.)

Art. 810. Witness testifying falsely guilty of perjury.—Any witness, when summoned to appear before said board, who shall falsely testify as to any matters proper for the determination of any question which the board may be investigating, shall be deemed guilty of perjury, and shall be punished as provided by law for the offense of perjury. (Id., p. 346.)

CHAPTER ELEVEN A

SALE OF GASOLINE, ETC.

Art. 810a. Sale of gasoline, benzine, naptha, etc., unlawful, when.—It shall hereafter be unlawful for any person, firm, association of person or corporation, to sell gasoline, benzine, naptha, or other similar product of petroleum, capable of being used for illuminating, heating or power purposes, under any other than the true name of said products; and such petroleum products shall be subject to inspection by the proper authorities as provided in this Act. (Acts 1919, ch. 125, sec. 1.)

Art. 810b. Marking packages.—It shall hereafter be unlawful for any person, firm, association of persons, corporation or carrier selling or transporting for hire any gasoline, benzine, naptha or other highly inflammable substance made from petroleum to fail to plainly mark the packages containing the same in accordance with the regulations of the Interstate Commerce Commission unless such regulations should conflict with the provisions of this Act. (Id. sec. 2.)

Art. 810c. Name of manufacturer to be shown.—It shall be unlawful for any person, firm, association of persons, corporation or carrier selling or transporting for hire any gasoline, benzine, naptha or other similar product of petroleum, to fail to truly label in large letters showing the name of the manufacturer and the place of manufacture of the products, any tank car, barrel, cask, tank wagon, receptacle or reservoir in which any petroleum product shall be shipped or stored within this State, or from which sales or delivery of the same are to be made. (Id. sec. 3.)

Art. 810d. Flashing temperature.—It shall hereafter be unlawful for any person, firm, association of persons or corporation to sell any product of petroleum to be used for illuminating purposes unless such petroleum product is such that it will not flash at a temperature less than 110 degrees Fahrenheit. (Id. sec. 4.)

Art. 810e. Standards.—It shall hereafter be unlawful for any person, firm, association of persons or corporation, to sell as gasoline any substance, liquid or product or petroleum which falls below the standard and definition of gasoline as provided in this Act. (Id. sec. 5.)

Art. 810f. Minimum requirements.—For the purpose of this Act the word GASOLINE whether used alone or in connection with other words shall apply only to the petroleum products complying with the following minimum requirements:

(a) Boiling point must not be higher than 60° C, (140° F).

(b) Twenty per cent of the sample must distill below 105° C, (221° F).

(c) Forty-five per cent must distill below 135° C, (275° F).

(d) Ninety per cent must distill below 180° C, (356° F).

(e) The end or dry point of distillation must not be higher than 220° C, (428° F).

(f) Not less than ninety-five percent of the liquid will be recovered from the distillation.

(g) Gasoline to be high grade, refined and free from water and all impurities, and shall have a vapor tension not greater than 10 pounds per square inch at 100 degrees Fahrenheit temperature. (Id. sec. 6.)

Art. 810g. Conduct of tests.—The apparatus and methods of conducting all tests and arriving at proper standards of gasoline and other products under this Act shall be those now or hereafter authorized and used by the U. S. Bureau of Mines. (Id. sec. 7.)

Art. 810h. Weights and measurements.—It shall hereafter be unlawful for any person, firm, association of persons, corporation or carrier, to use any scales, measure or measuring device in the handling or sale of petroleum products unless the same is true and accurate according to the standard of weights and measures under the laws of the State of Texas, and it shall be unlawful for any such person, firm, association of persons, corporation or carrier, to use any pumping device unless the same is correct according to such standard at three (3) speeds, fast, slow and medium. (Id. sec. 8.)

Art. 810i. Sealing inaccurate measuring devices.—It shall be the duty of the inspector to seal and forbid the use of any inaccurate measuring device until such time as the defeat is corrected. The breaking of said official seal shall be prima facie evidence of a violation of this Act and it shall be unlawful for any person, firm, association of persons, corporation or carrier, to refuse to permit the inspector provided for in this Act, to inspect and seal, if deemed necessary, any such measuring device, or to break the seal after being placed by such inspector. (Id. sec. 9.)

Art. 810j. Commencement of prosecutions.—The Food and Drug Commissioner, or his inspectors, or any person duly appointed by him for that purpose, shall make complaint and cause proceedings to be commenced against any person for the violation of any provision of this Act, and in such case he shall not be obliged to furnish security for costs. The Food and Drug Commissioner, or his inspectors, or any person by him duly appointed for that purpose shall have in the performance of their duties the power to inspect any factory, store, salesroom, car, warehouse, premises or place where he has reason to believe petroleum products are made, prepared, stored, sold, transported, or offered for sale or exchange, and take samples, and test measuring devices. (Id. sec. 10.)

Art. 810k. Hindering or obstructing Food and Drug Commissioner.—It shall be unlawful for any person to hinder or obstruct, or refuse to permit the Food and Drug Commissioner, or his inspectors or other person by him duly authorized to perform his or their duties in the exercise of the power conferred upon him by this Act. (Id. sec. 11.)

Art. 810l. Punishment for violations of act.—Any person who shall violate any of the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than Twenty-five ($25.00) dollars nor more than Two Hundred ($200.00) dollars, or be imprisoned in the County jail for not less than one month nor more than one year or punished both by such fine and imprisonment. (Id. sec. 12.)

TITLE 13

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

CHAPTER ONE

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

Art. 811. (479) Obstruction of navigable streams.—If any person shall obstruct the navigation of any stream which can be navigated by steam, keel or flat boats, by cutting and felling trees, or by building on or across the same any dike, mill-dam, bridge or other obstruction, he shall be fined not less than fifty nor more than five hundred dollars. (O. C. 428.)

See Gulf, C. & S. F. Ry. Co. v. Meadows, 120 S. W. 521.

Art. 812. (480) Of roads, streets, or bridges.—If any person shall wilfully obstruct or injure, or cause to be obstructed or injured in any manner whatsoever, any public road or highway, or any street or alley in any incorporated town or city, or any public bridge or causeway, he shall be fined in a sum not exceeding two hundred dollars. (O. C. 399d; Acts 1860, p. 97; Acts 1913, ch. 128, sec. 1; Acts 1913, ch. 147, sec. 4.)

See Dyrley v. S., 63 S. W. 631; Ship. Comp. & W. H. Co. v. Davidson, 80 S. W. 1032; Brown v. S., 166 S. W. 508.

See post, art. 823.

Art. 813. (481) Riding or driving over bridges.—If any person shall ride or drive over any bridge belonging to any county, or to any municipal or private corporation, faster than a walk, he shall be fined in any sum not exceeding one hundred dollars. (Acts 22d Leg. p. 131.)

Art. 813a. Entering on toll bridge with intent to avoid payment of toll.—If any person or persons in this State shall wilfully enter upon any toll bridge maintained wholly or partly within this State without the consent of those in charge of such bridge, with the intent to avoid the payment of the toll lawfully chargeable for crossing the same, such person or persons shall be deemed trespassers and 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. (Acts 1915, ch. 100, sec. 1.)

Art. 814. [Superseded by Acts 1917, ch. 207, sec. 4, post, art. 820aa.]

Arts. 815, 816. [Superseded by Acts 1917, ch. 207, secs. 20–22, post, arts. 820o–820q.]

Art. 817. [Superseded by Acts 1917, ch. 207, sec. 19, post, art. 820n.]

Art. 818. [Superseded by Acts 1917, ch. 207, sec. 16(i), post, art. 820k.]

Art. 819. Shall have attached suitable bell to give notice of approach.—Every driver or operator of an automobile or motor vehicle shall have attached thereto a suitable bell or other appliance for giving notice of its approach, so that, when such attachment is rung or otherwise operated it may be heard a distance of three hundred feet, and shall carry a lighted lamp between one hour after and one hour before sunrise. (Acts 1907, p. 193, sec. 6.)

Art. 820. Penalty for violation.—Every one who violates any of the six preceding articles shall be punished by a fine of not less than five dollars nor more than one hundred dollars. (Id. sec. 7.)

Acts 1917, ch. 207, sec. 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.

See note to art. 819, ante.

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. (Acts 1917, ch. 190, sec. 24.)

The printed session laws contain 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.

See, also, ante, Civil Statutes, arts. 7012½-7012¾f.

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. (Acts 1917, ch. 207, sec. 4.)

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

Art. 820aaa. Operating motor vehicle for hire without registration and license.—Any person or agent of any person, or any agent or officer of any firm or corporation who operates any commercial motor vehicle or interurban commercial motor vehicle in carrying passengers or freight for hire between any cities, towns or villages of this State when such vehicle has not been duly registered and licensed as required by the next preceding section of this Act shall be deemed guilty of a misdemeanor, and shall, on conviction, be fined in any sum not less than $25 and not exceeding $200; and each day such vehicle is so operated shall constitute a separate offense. (Acts 1919, ch. 113, sec. 3.)

Added to Acts 1917, ch. 190, as sec. 16b.

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. (Acts 1917, ch. 207, sec. 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. sec. 7.)

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. sec. 8.)

Art. 820d. Same; glaring lights prohibited.—It shall be unlawful for any person to operate an automobile, motorcycle or bicycle, upon the public highways of this State, at night time, whose front lamps shall project forward a light of such glare and brilliancy as to seriously interfere with the sight of, or temporarily blind the vision of the driver of a vehicle approaching from an opposite direction. (Acts 1917, ch. 207, sec. 9; Acts 1919, ch. 161, sec. 1a.)

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. (Acts 1917, ch. 207, sec. 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. sec. 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. sec. 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. sec. 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 to do so. (Id. sec. 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. sec. 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 op-

erating 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.

(l) Before attempting to pass any railroad train, interurban car or street car, stopped for the purpose of receiving of discharging passengers, every operator in charge of a motor vehicle or motorcycle approaching the same from the rear and proceeding in the same direction, shall bring the same to a full stop, and shall not start up or attempt to pass, until the said railroad train, interurban car or street car, has finished receiving and discharging its passengers.

(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. (Acts 1917, ch. 207, sec. 16; Acts 1919, ch. 161, sec. 2.)

Art. 820*l*. 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. (Acts 1917, ch. 207, sec. 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 immediately 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., sec. 18.)

Art. 820n. Racing prohibited.—No race or contest for speed shall be held upon any public highway in this State. (Id. sec. 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 40,000 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. sec. 20.)

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. sec. 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. sec. 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. sec. 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. sec. 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 possession 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. sec. 26.)

For the remainder of this section see, ante, Civil Statutes, art. 7012½o.

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. sec. 27.)

See post, art. 820v.

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. sec. 29.)

See ante, 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. sec. 30.)

Art. 820ww. Disposition of fines collected.—Fines collected for violations of any of the provisions of this Act shall be used by the municipality or the counties in which the same are assessed, and to whom the same are payable, in the construction and maintenance of roads, bridges and culverts in the City or County where such convictions are had, and for the enforcement of the Traffic Laws regulating the use of the public highways of this State by motor vehicles and motorcycles. (Acts 1917, ch. 207, sec. 37; Acts 1919, ch. 161, sec. 3.)

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. (Acts 1917, ch. 207, sec. 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. sec. 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. sec. 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. (Acts 1917, 1st C. S., ch. 31, sec. 45; Acts 1917, 3d C. S., ch. 13, sec. 45.)

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. Acts 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.

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. (Acts 1917, 1st C. S., ch. 31, sec. 1.)

Art. 821. (482) Destroy, injure or misplace bridge, culvert, ditch, signboard, etc.—Any person who shall knowingly or wilfully destroy, injure or misplace any bridge, culvert, drain, sewer, ditch, signboard, mile post, or tile, or anything of like character placed upon any road for the benefit of the same shall be guilty of a misdemeanor, and, upon conviction thereof, punished by fine of not more than five hundred dollars, and shall be liable to the county and any person injured for all damages caused thereby. (Acts 22d Leg., ch. 97, p. 149, sec. 22.)

Art. 822. (482a) Unlawful to carry over any public road or culvert any traction engine, when.—It shall be unlawful for any person to transport or carry over any public bridge or culvert, upon any public road or highway, or any street or alley in any incorporated town or city, any traction engine with lugs on the wheels thereof, and to carry or transport over any such public bridge or culvert any traction engine or separator, without having first provided and placed in position skids upon which the wheels of said traction engine or separator shall be run, which said skids shall be not less than three inches thick, twelve inches in width and sixteen feet in length; and any person violating the provisions of this article shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding five hundred dollars. (Acts 1907, p. 189.)

Art. 822a. Sale of vehicles with tires less than specified width prohibited.—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 vehicles with an intended carrying capacity of more than two thousand pounds and less than four thousand which shall have a rim

or tire on the wheels of same less than three inches in width; or any such wagon or other road vehicles with an intended carrying capacity of four thousand pounds or more which shall have a rim or tire on the wheels of same less than four inches in width. (Acts 1917, ch. 74, sec. 1; Acts 1919, ch. 154, sec. 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. (Acts 1917, ch. 74, sec. 2; Acts 1919, ch. 154, sec. 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 ($1,000.00) dollars for each offense, and each sale, or offer of sale in violation hereof shall constitute a separate offense. (Acts 1917, ch. 74, sec. 3; Acts 1919, ch. 154, sec. 3.)

Art. 822d. Same; when act takes effect.—This Act shall take effect and be in full force from and after January 1, 1920. (Acts 1917, ch. 74, sec. 4; Acts 1919, ch. 154, sec. 4.)

Art. 823. (483) Not applicable, when.—No person shall be punished, under article 812, who places obstructions in the streets or alleys of an incorporated city or town for purposes of building or improvement, under the sanction of the corporate authorities of such city or town.

Art. 824. (484) Commissioners may also regulate.—Nothing in this chapter contained shall be so construed as to prevent the commissioners' courts of the several counties, or the municipal authorities of towns or cities, from adopting such regulations as they may deem proper relative to the removal of obstructions from public roads, streets or bridges, and to enforce the same by due process of law. (O. C. 430.)

Art. 825. (485) Commissioners' court may control streets, etc., when.—In all cities and incorporated towns in the state of Texas in which, from any cause, there is not a de facto municipal government in the active discharge of their official duties, the commissioners' court of the county in which such city or incorporated town is situated shall assume and have control of the streets and alleys thereof, and shall have the same worked under the law and regulations for the working of public roads; and such streets and alleys, for the purposes of this law, shall be held and denominated public roads; provided, that all residents of any city or town having no de facto city government, not otherwise exempt from road duty, shall be liable to road service as in other cases. (Acts 1885, p. 25.)

See Stripling v. S., 80 S. W. 376.

Art. 826. (485a) Wilful obstruction of public ditch or diversion of water.—If any person shall wilfully obstruct any public ditch, or shall wilfully divert the water from its proper channel, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than five nor more than five hundred dollars, and shall also be liable for any and all damages accruing to any person or persons or corporation or county for any such act. (Acts 1895, p. 155; Acts 1897, p. 99, sec. 15.)

See post, art. 836, and note thereunder.

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. (Acts 1913, ch. 71, sec. 1; Acts 1917, ch. 207, sec. 32.)

CHAPTER TWO

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

Art. 827. (486) Refusal to serve as overseer.—If any person, subject to public road duty under the laws of this state, shall wilfully fail or refuse to serve as overseer of any road in his road district or precinct, when duly appointed as such overseer by the commissioners' court of his county, he shall be fined not less than ten nor more than fifty dollars. (Acts 1876, p. 67.)

See France v. S., 77 S. W. 452.

Art. 828. (487) Failure of duty as overseer.—If any overseer of a public road in this state shall wilfully fail, neglect or refuse to perform any duty imposed upon him by law, or shall so fail, neglect or refuse to keep the roads, bridges and causeways in his precinct or district clear of obstructions and in good order, or shall wilfully suffer such roads, bridges or causeways to remain uncleared and out of repair for twenty days at any one time, he shall be fined not less than ten nor more than twenty-five dollars. (Id. p. 68.)

Art. 829. (488) Same subject.—If any overseer of a public road in this state shall fail, within six months after his appointment as such, to measure the road or roads in his precinct or district and set up posts of lasting timber at the end of each mile leading from the court house, or some other noted place or town, and to mark on such posts in legible words and figures the distance in miles to such court house, or other noted place, or shall fail, when any such post is destroyed or removed, to replace the same with another marked as the original, or shall fail to affix or set up at the forks of all public roads in his district or precinct index boards with the directions pointing toward the most noted places to which they lead, he shall be fined in the sum of five dollars. (Id. p. 67.)

Art. 830. (489) Road commissioner failing to comply; penalty.—Any road commissioner who shall wilfully fail to comply with any duty required of him shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by fine of not less

than twenty-five nor more than two hundred dollars. (Acts 1889, ch. 111, sec. 5.)

See Marthall v. S., 36 S. W. 1062.

Art. 831. (490) Road superintendent failing to comply; penalty.—Any road superintendent who shall wilfully fail or refuse to comply with any provision of law or order of the commissioners' court shall be guilty of a misdemeanor, and, on conviction thereof, punished by fine of not less than twenty-five nor more than two hundred dollars for each offense. (Act 22d Leg., ch. 97, p. 149, sec. 21.)

See Cromeans v. S., 129 S. W. 1129.

The above article was omitted from the revised Penal Code of 1911; but is inserted here in view of the decision in Berry v. S., 156 S. W. 626.

Art. 831a. Age limitation of workers on public roads, etc.—No person in this state under the age of twenty-one years, or over the age of forty-five years, shall be required to work upon the public roads of this state or upon the streets and alleys of any city or town of this state. (Acts 1895, p. 160, ch. 102, sec. 1.)

Art. 832. (491) Failure to attend when summoned.—If any person, liable to work upon the public roads, after being legally summoned, shall fail or refuse to attend, either in person or by able and competent substitute, or fail or refuse to furnish his team or tools at the time and place designated by the person summoning him, or to pay to such road overseer the sum of one dollar for each day he may have been notified to work on the public roads, or to pay to such overseer the sum of one dollar and fifty cents for each day he may have been notified to furnish his team for road work, or, having attended, shall fail or refuse to perform good service or any other duty required of him by law, or the person under whom he may work, or, if any one shall fail to comply with any duty required of him as provided by law, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, fined in any sum not exceeding twenty-five dollars. (Acts 1876, p. 60; amended, Acts 1899, p. 14, and Acts 1901, p. 277, sec. 10.)

See Goodrich v. S., 118 S. W. 1042.

Art. 833. (493) Failure to open boundary lines.—Whenever the commissioners' court of any county in this state shall duly declare the boundary lines between the lands of different persons a public highway, in accordance with law, if any person or owner shall fail, neglect or refuse, for twelve months after legal notice thereof, to leave open his land, free from all obstructions, for ten feet on his side of the line designated, he shall be fined not more than twenty dollars for each month after the twelve months aforesaid in which he may so fail, neglect or refuse. (Acts 1876, p. 69.)

Art. 834. (494) Leaving gates open on third-class roads.—Any person or persons placing a gate on or across any third-class road, or on or across any road such as is designated in article 833 of the Penal Code, shall be required to keep said gate and the approaches to the same in good order; and the gate shall be ten feet wide and so constructed as to cause no unnecessary delay to the traveling public in opening and shutting the same, and provide a fastening to hold said gate open till the passengers go through; and such person or persons shall place a permanent hitching post and stile block on each side of, and within sixty feet of, such gate. Any person or persons who may hereafter place a gate on or across a third class road, or on or across any road such as is designated in article 493, who shall wilfully or negligently fail to comply with the requirements of this article shall be deemed guilty of a misdemeanor, and, on conviction, may be fined in any sum not less than five nor more than twenty dollars for each offense; and each week of said failure shall constitute a separate offense. Any person or persons who shall wilfully or negligently leave open any gate on or across any third class road, or on or across any road such as is designated in article 493, shall be deemed guilty of a misdemeanor, and, on conviction, may be fined in any sum as above provided for. (Amended by Acts 1874, S. S. p. 18.)

Art. 835. (495) Violation of irrigation laws.—If any person amenable to the laws governing irrigation shall fail or refuse to work on any ditch or aqueduct when summoned so to do by the proper authority, he shall be fined not less than one nor more than five dollars. (Acts 1861, p. 8.)

The above article seems to have been superseded by the new irrigation acts (Civ. St., arts. 4991 to 5107—105).

Art. 836. Persons obstructing ditch constructed under the drainage law.—If any person shall wilfully or negligently obstruct, or cause to be obstructed, any ditch constructed under the drainage law of this state, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than ten dollars nor more than one hundred dollars. (Acts 1899, p. 100.)

While the revisers of the Penal Code ascribed the above provision to Act 1899, p. 100, it may have been the design to construct a composite provision applicable to all the groups of the drainage law. Act 1899, p. 100, as originally enacted, has reference to the group placed under chapter 2 of Title 47, Rev. St. 1911. The corresponding penal provision for the group represented by chapter 2, Title 47, Rev. St. 1911, is found in Acts 1897, p. 99, sec. 15. This provision was carried into the Penal Code as art. 826. The group represented by chapter 4, Title 47, Rev. St. 1911, carried a penal provision (Acts 1907, p. 88, ch. 40, sec. 39), and this provision was inserted in the revision as art. 1253, post. Art. 1253 was superseded by Act 1911, ch. 118, sec. 40 (art. 1253, post).

Art. 836a. Destruction of works constructed by State Levee and Drainage Board.—Any person or persons who shall wilfully destroy or deface any corner, line, mark, bench mark or other object fixed or established in connection with the work herein authorized [Arts. 5529a–5529j, Civ. St.] shall be deemed guilty of a misdemeanor, and upon a conviction thereof, shall be fined in any sum not less than one hundred dollars nor more than one thousand dollars; or by imprisonment in the county jail for a period of not less than thirty days; or by both such fine and imprisonment. (Acts 1909, ch. 81; Acts 1911, ch. 88; Acts 1913, ch. 145, sec. 9.)

Art. 837. (496) Injuring irrigation canal, etc.—Any person who shall wilfully or through gross negligence injure any irrigating canal or its appurtenances, wells or reservoirs, or who shall waste the water thereof, or shall take the water therefrom without authority, shall be deemed guilty of a misdemeanor, and, for each offense, shall be liable to a fine not exceeding

two hundred dollars. (Acts 1889, p. 100, sec. 14; amended, Acts 1899, p. 301.)

Art. 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. (Acts 1895, p. 25; Acts 1913, ch. 171, sec. 39; Acts 1917, ch. 88, sec. 34.)

(Acts 1913, ch. 171, and Acts 1917, ch. 88, are acts providing an adequate system of irrigation. Acts 1917, ch. 88, repeals Acts 1913, p. 358.)

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 Acts 1917, ch. 88, sec. 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, 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 diversion or appropriation may be made, shall constitute a separate offence. (Acts 1913, ch. 171, sec. 52; Acts 1917, ch. 88, sec. 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. (Id. sec. 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. (Acts 1913, ch. 171, sec. 69; Acts 1917, ch. 88, sec. 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. (Acts 1913, ch. 171, sec. 70; Acts 1917, ch. 88, sec. 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. (Acts 1913, ch. 171, sec. 71; Acts 1917, ch. 88, sec. 70.)

See arts. 4991-5011½w, Civil Statutes.

Arts. 837g, 837h. [Repealed.]

See art. 5011½w, ante, Civil Statutes. Re-enacted by Acts 1917, ch. 88, secs. 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 Section 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. (Acts 1913, ch. 171, sec. 83; Acts 1917, ch. 88, sec. 82.)

Art. 837ii. Constructing levee, etc., without complying with law.—From and after the taking effect of this Act it shall be unlawful for any person, corporation or levee improvement district, without first obtaining the approval of plans for the same by the State Reclamation Engineer, to construct, attempt to construct, cause to be constructed, maintain or cause to be maintained, any levee or other such improvement on, along or near any stream of this State which is subject to floods, freshets or overflows, so as to control, regulate or otherwise change the flood waters of such stream; and any person, corporation or district violating this section of this Act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for a period of not more than one year, or by both such fine and imprisonment; and each day any such structure is maintained or caused to be maintained shall constitute a separate offense. * * * Provided, that the provisions of this section shall not apply to dams, canals or other improvements made or to be made by irrigation, water improvements or irrigation improvements made by individuals or corporations. (Acts 1918, 4th C. S., ch. 44, sec. 53.)

For the remainder of this act see, ante, Civ. St. arts. 5584½-5584½t.

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, waste-way 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 any one 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. (Acts 1913, ch. 171, sec. 90; Acts 1917, ch. 88, sec. 89.)

See arts. 4991-5011½w, Civ. St., ante.

Art. 837jj. Same; limitation of preceding article.—That Section 90 [art. 837j] of the Acts of the Thirty-Third Legislature of Texas, approved April 9, 1913, General Laws, Thirty-third Legislature, pages 358 et seq., relating to irrigation, shall have no application to cases of lands or ditches located in Tom Green, Sterling, Irion and Schleicher county, in which the land abutting upon the reservoir, ditch, flume, canal, wasteway or lateral owned and cultivated by the person, association of persons or corporations owning or operating such reservoir, ditch, flume, canal, wasteway or lateral. (Acts 1915, ch. 74, sec. 1.)

Arts. 837k-837m. [Repealed.]

See art. 5011½w, Civil Statutes. Re-enacted in part by Acts 1917, ch. 88, secs. 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, ch. 171, sec. 95; Acts 1917, ch. 88, sec. 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. (Id. sec. 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 exceed-

ing five hundred dollars, or shall be imprisoned in the county jail not more than ninety days, or by both such fine and imprisonment. (Id. sec. 101.)

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

Art. 837o. Oil wells.—Nothing in the preceding Sections numbered ninety-one to ninety-five [arts. 837k–837n, ante, and art. 5011h, Civ. St.] inclusive, shall be construed to apply to any oil well, and the status of such oil wells shall be unaffected by this Act. (Acts 1913, ch. 171, sec. 96.)

Art. 837p. Partial invalidity.—If any provision of this Act shall be held unconstitutional, it shall not be held to invalidate any other provision of this Act. (Id. sec. 99.)

CHAPTER TWO A

OFFENSES RELATING TO TOLL ROADS

Art. 837q. Toll road corporations may promulgate rules and regulations.—Every toll road corporation [Civil Stat. arts. 1278a–1278u] shall have the power to promulgate, by its board of directors, all necessary and reasonable rules and regulations relating to the manner in which traffic shall move over any toll road operated by it, and to refuse the use of such road to any person who shall fail or refuse to abide by such rules and regulations; and shall be empowered to fix and charge tolls for the use of such roads; provided, that such rules and regulations shall not be contrary to law, and provided that the rate to be charged for each class of vehicle shall be the same to all in each of such classes. (Acts 1913, ch. 77, sec. 22.)

Art. 837r. May not refuse reasonable use of road.—No such corporation shall have the right arbitrarily to refuse the use of such road to any person who shall offer to pay the regular toll therefor, except that such corporation shall be authorized to refuse to permit such road to be used by any vehicle which shall render the same unduly hazardous to the patrons of said road or damaging to the surface thereof, or to any person who shall fail or refuse to abide by the reasonable and necessary traffic regulations promulgated by such corporation. (Id. sec. 23.)

Art. 837s. Trespass on property of toll road corporation.—It shall be unlawful for any person to trespass or enter upon the property or right of way of any such corporation without its consent except as to crossings provided by law, and any person so trespassing or unlawfully entering thereupon shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than $25.00 nor more than $100.00. (Id. sec. 24.)

Art. 837t. Obstruction of toll road.—It shall be unlawful for any person to in any manner obstruct any such toll road, or to place thereon any thing or substance which would be reasonably calculated to result in injury to any patron of such road, or damage to any vehicle which might be run over the same; and any person so placing any such obstruction or thing or substance on any such road shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum not less than $50.00 nor more than $200.00. (Id. sec. 25.)

CHAPTER THREE

OFFENSES RELATING TO FERRIES

Art. 838. (497) Keeping ferry without license.—If any person or firm shall keep any ferry over any water course, navigable stream, lake or bay in this state, and shall charge or receive any money, property, or other valuable thing, for crossing passengers or property at such ferry, without first obtaining license, as is now or as may hereafter be required by law, such person or firm shall be punished by fine not less than fifty nor more than two hundred dollars. (Acts 1860, p. 98.)

Art. 839. (498) Failure to keep good boats.—If the owner of any licensed ferry in this state shall fail to keep, at all times, good, safe and substantial boats, sufficient in number for the ready accommodation of the public, or shall fail to keep the banks on each side of the ferry in good repair, and so graded that the ascent shall not exceed one foot in every seven feet from the water's edge to the top of the bank, or shall fail to give ready attendance on all passengers desiring to cross with their animals, wagons, or other property, or shall charge higher rates of ferriage than those fixed by the proper authority, he shall be fined not less than ten nor more than one hundred dollars. (Acts 1875, pp. 58, 59.)

CHAPTER FOUR

OFFENSES RELATING TO PUBLIC GROUNDS AND BUILDINGS

Art. 840. (499) Injuring or defacing a public building.—If any person shall wilfully injure or deface any public building, or the furniture therein in this state, he shall be fined not less than five nor more than five hundred dollars. The word "deface" in this chapter shall be held to apply to writing, carving or scratching on the walls or plastering or furniture of said building, or staining the same with paint or any other article which will produce a discoloration of the same. (Acts May 14, 1888, p. 5, sec. 5.)

Art. 841. (500) "Public building" defined.—The term "public building" as used in the preceding article means the capitol and all other buildings in the capitol grounds at the seat of government, including the general land office and the executive mansion, the various state asylums and all buildings belonging to either, all college or university buildings erected by the state, all court houses and jails and all other buildings held for public use by any department or branch of government, state, county or municipal; and the specific enumeration of the above shall not exclude other buildings not named, properly coming within the meaning and description of a public building.

Art. 842. (501) All officers to report violations.—It is the especial duty of all executive officers of the state and the county officers of the various counties to aid in the execution of the two preceding articles, and to report all violations thereof to the proper authorities for immediate prosecution. (Acts Jan. 4, 1862, p. 51.)

Art. 843. (502) Driving in capitol grounds.—If any person shall drive, ride or lead, or cause to be driven, ridden or led, any

horse or other animal to the capitol grounds at the seat of government, or into the inclosure of the state cemetery, without the consent of the keeper or superintendent of said grounds or cemetery, he shall be fined not exceeding twenty-five dollars. (Acts April 29, 1874, p. 165.)

Art. 844. Injuring roadway, public grounds or property of state prohibited.—It shall be unlawful for any person or persons to drive, or cause to be driven, over or along any roadway in any of the public grounds of this state, any heavy vehicle, or vehicle for carrying merchandise, or vehicle heavily loaded, or otherwise reasonably calculated to injure or deface such roadways, or to make their maintenance more expensive; or to drive, or cause to be driven, any vehicle or conveyance of any kind, or to drive, or cause to be ridden, any animal of any kind, over, across, or along any of the footpaths or walks in such grounds, or on the turf of such grounds, or at any place therein, except on and along the roadways and at the hitching places provided therefor; or to hitch any horse or team in any of said public grounds, or to the fences surrounding the same, unless at some place especially provided therefor, or to cause or permit any horse, not being driven to some vehicle or ridden, or any cow, sheep, goat, hog, or other animal reasonably calculated to injure said grounds, or anything pertaining thereto, or go into or remain in any portion of said grounds; or to cut, pull, break, bruise, remove, or in any wise injure any tree, or shrub or vegetation of any kind growing thereon; or disturbing any birds' nests or eggs; or to in any wise injure, deface or in any way interfere with any chair, bench, seat, hydrant, frame, fence, gate, erection or structure of any kind therein or thereon or connected therewith; or to fish or wash or bathe in or any way pollute the waters of any lake or pond, or stream, therein, or to obscenely or indecently expose any part of his or her person, or to do any indecent act thereon. Any person violating any of the several provisions of this law shall be guilty of a misdemeanor, and shall be fined in any sum not less than five nor more than one hundred dollars. (Acts 1903, p. 187.)

Art. 845. Not to apply, when.—This law shall not apply to anything done by the lawful custodian of the public grounds on which said act is performed, or under his authority and direction, and which is done in the reasonable discharge of his duties as such custodian, or in the use of such grounds for the purpose to which they are dedicated by the state. (Id., p. 187.)

Art. 846. "Public grounds" defined.—The term "public grounds," as used in this law, includes all grounds owned by the state, and used and maintained by it in connection with any public building or institution, whether for governmental, educational, eleemosynary or other purpose, and all state cemeteries and all parks maintained at the expense of the state. (Id., p. 187.)

Art. 847. (503) Hitching in capitol grounds.—If any person shall hitch any animal to any tree or shrub in the capitol grounds or state cemetery, he shall be punished as prescribed in the preceding article. (Acts April 29, 1874, p. 165.)

Art. 848. (503a) Pass-keys to state capitol.—It shall not be lawful for any person to make or have made, or to keep in his possession, a pass or master key to the rooms and apartments in the state capitol, unless authorized to do so by the superintendent of public buildings and grounds; and any person violating the provisions of this article shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in any sum not exceeding one hundred dollars. (Acts of 1895, p. 79.)

Art. 849. (504) Taking property from public grounds.—If any person shall take, remove, injure or destroy any species of public property pertaining to public building, as defined in article 841, or to the grounds belonging to such building, he shall be fined not less than twenty-five nor more than one hundred dollars.

Art. 850. (505) Unlawful fencing, using, etc., public lands.—It shall be unlawful for any person to fence, use, occupy or appropriate, by herding or line-riding, any portion of the public lands of the state, or of the lands belonging to any particular fund specified in this act, without having first obtained a lease of such lands in accordance with the provisions of this act. Any person, whether owner of stock, manager, agent, employé or servant, who shall fence, use, occupy or appropriate, by herding or line-riding, any portion of such lands without a lease thereof, shall be deemed guilty of a misdemeanor and shall, upon conviction, be fined not less than one hundred nor more than one thousand dollars, and in addition thereto, shall be imprisoned in the county jail for a period of not less than three months nor more than two years. Each day of such fencing, using, occupying or appropriating, by herding or line-riding, shall be deemed a separate offense; and any person so offending may be prosecuted, by indictment or information, in the proper court of the county where any portion of the land lies or to which it may be attached for judicial purposes, or in the county of Travis; and jurisdiction of such offenses is hereby vested in said courts; and, in case any indictment or information is preferred or filed against a non-resident of this state for a violation of this article, it shall be the duty of the governor to demand the extradition of the defendant from the proper officer of any state or territory where he may be found, in order that he may be brought to trial. "Fencing," within the meaning of this article, is the erection of any structure of wood, wire, or both, or any other material intended to prevent the passage of cattle, horses, mules, asses, sheep, goats or hogs, whether the same shall inclose lands on all sides or be erected on one or more sides. Any appropriation of land belonging to any particular fund specified in this act, or of the public lands of this state, without having first obtained a lease thereof, by fencing of any kind, or by inclosures consisting partly of fencing and partly of natural obstacles, or impediments to the passage of live stock, shall be deemed an unlawful appropriation, punishable as provided in this article for appropriating such lands; and each day said land is so appro-

priated shall be deemed a separate offense. (Acts April 1, 1887, p. 89, sec. 18.)

At the time this article was placed in the revised Penal Code the act from which it was derived (Act 1887, p. 89, sec. 18) had been superseded by Act 1895, p. 74. The latter act, however, was carried into the revised Penal Code as art. 860, post. The later act was substantially the same as the earlier one, except that the proviso (art. 851) of the early act was omitted from the act of 1895. The result would seem to be that the revisers of 1911 inadvertently restored a proviso, which the legislature, in 1895, intended to strike out.

Art. 851. (506) Not applicable, when.—The provisions of this act, as set forth in the preceding article, shall not apply to persons who are moving or gathering or holding for shipment any stock mentioned in said article; provided, the said persons have not erected any fence on such lands or continue on said lands longer than one week. (Id. sec. 19.)

Art. 852. (507) Turning loose too many stock on leasehold land.—No purchaser or other person than the lessee of public free school, asylum and public lands shall be permitted to turn loose within such leasehold more than one head of horses or mules or cattle for any ten acres of land purchased, owned or controlled by him and uninclosed, or in lieu thereof, four head of sheep or goats to every ten acres so purchased, owned or controlled and uninclosed. Each violation of this provision of this article, which restricts the number of stock that may be turned loose on lands leased from the state, shall be an offense; and the owner, on conviction, shall be punished by a fine not less than one dollar for each head of stock he may so turn loose; and each thirty days' violation of the provisions of this article shall constitute a separate offense. (Acts April 1, 1887, p. 88, sec. 15; amended by Acts April 28, 1891, p. 181; Acts 1895, p. 71, § 18; Acts 1897, c. 129; Acts 1901, c. 125, § 5.)

Art. 852a. (422d, 508) Construction of fences without gates.—It shall be unlawful for any person or corporation who may have used any of the lands, by joining fences or otherwise, to build or maintain more than three miles, lineal measure, of fence running in the same general direction without a gateway in the same, which gateway must be at least ten feet wide, and shall not be locked or kept closed so as to obstruct free ingress and egress; provided, that all persons who have fences already constructed in violation of the provisions of this law shall have two months from the time this act takes effect within which to conform with the provisions thereof; provided further, that if any person or persons shall build or maintain more than three miles, lineal measure, running in the same direction without providing such gateway he shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than two hundred nor more than one thousand dollars, and each day that such fence remains without such gateway shall constitute and be punished as a separate offense; provided further, that the construction of gates as provided for in this article shall apply only to pasture lands; provided further, that when herds of cattle, horses, sheep or goats are driven through this state from one place to another place in this state, and it becomes necessary for such stock to pass through any inclosed pasture of any person who has leased any of the aforesaid lands, such lessees of such inclosure shall permit such stock to pass through such pasture; provided, that the owner of such stock so driven through any such inclosure shall move the same as expeditiously and with as little delay as practicable through such inclosure. (Acts April 1, 1887, p. 90, sec. 21.)

The above provision was carried into the revised Penal Code of 1895 as art. 508, but it was omitted from the revision of 1911. In view of the decision in Bugby-Coleman Land & Cattle Co. v. Matador Land & Cattle Co., 63 S. W. 914, recognizing the constitutionality and continued existence of the statute, it is included in this compilation.

Art. 853. (509) Other statutes relating to public lands.—Each and every person who shall have inclosed, by fencing or otherwise, any of the public free school lands belonging to the state, and shall use the same to the exclusion of the public, shall pay an annual rental value therefor of the sum of twenty-five dollars for each section so inclosed.

And it shall be the duty of the surveyor of each county to make a report to the county commissioners' court on the first Monday in June each year of the number of sections of public school lands in his county inclosed during the past year, and the names of the person or persons controlling such inclosed lands, and the number of sections controlled by him or them, respectively.

And the said court, at the first regular term thereafter, shall make a list of the names of the persons controlling such public free school lands, the number of sections so controlled by each person, and the aggregate amount due from each person, at the rate of twenty-five dollars for each section so inclosed and controlled, which list shall be recorded by the clerk of said court, and a certified copy thereof forwarded by him to the comptroller of public accounts, and a like copy delivered to the collector of taxes for said county.

The collector of taxes, on receipt of such list, shall proceed to collect the same under the same provisions and penalties as is imposed by law for the collection of taxes.

All moneys collected under the provisions of this act shall be paid by the collector into the state treasury and constitute a part of the available school fund; provided, that the state may resume control of said land at any time.

Any person who shall control inclosed lands belonging to the public free schools, and fail to pay the rental value as specified under the provisions of this act, upon the demand of the collector, shall be subject to prosecution upon complaint, information or indictment, and fined in the sum of one hundred dollars for each section so inclosed. (Acts April 17, 1879, pp. 101-2.)

It would seem that this article was superseded, in part at least, by the act of April 1, 1887, p. 89, sec. 18 (art. 850, ante).

Art. 854. Permitting fence to remain standing around land of another, etc.—If any person or corporation shall knowingly make or permit to remain standing any fence on or around the land of another, or the public, public school, university or asylum lands of this state, without the written consent of the owner thereof duly acknowledged, or a duly executed lease of such land from the proper authority in a case of

public, public school, university or asylum lands, as the case may be, duly recorded in the county where the land lies or to which it is attached for judicial purposes, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, fined in any sum not less than fifty cents nor more than one dollar per acre per month for each month so inclosed, or fined and imprisoned in the county jail for any period not over two years. Within the meaning of person, as used in this act, is included every man managing or controlling for a corporation, firm or joint stock company, and any and every individual or person who shall aid, assist or direct in the violation of this act. Half of all fines collected under the provisions of this act shall be paid to the person or persons informing on the person or corporation who shall unlawfully inclose any land; provided, that each three months said land is so inclosed shall constitute a separate offense. A fence, within the meaning of this act, is any structure of wood, wire, or both, or any other material intended to prevent the passage of cattle, horses, mules, asses, sheep, goats or hogs. Where persons or corporations have unlawfully fenced land belonging to the state, or public school, university or asylum lands, it shall be the duty of the attorney general, either in person or by proxy, to institute proceedings in the name of the state against any person or incorporation so unlawfully inclosing said lands; and the expense incurred in employing counsel to prosecute such cases shall be deducted from the fine or fines collected from any person or corporation violating the provisions of this act, the balance to be paid to the fund to which it belongs. (Acts Feb. 7, 1884, pp. 68–69.)

Art. 855. Articles that apply to prosecutions.—In all prosecutions under this chapter, the provisions of articles 1290 and 1291 of the Penal Code of the State of Texas shall apply. (Id.)

Art. 856. When the law does not apply.—This chapter shall not apply to persons who have heretofore settled upon lands not their own, where the inclosure is two hundred acres or less, and where the principal pursuit of such person upon the land and is that of agriculture. (Id.)

Art. 857. Unlawful to herd horses, etc.—It shall be unlawful for any person, firm or corporation to herd, or aid in herding, or cause to be herded, loose-herded or detained for grazing by line-riding, any cattle, horses, mules, asses, sheep or goats on any vacant public domain, school, university or asylum lands within this state, unless the same shall have been leased from the proper authority; provided, that this section of this act shall not apply to persons herding such stock, in gathering for or carrying to and from market, or in moving the same from one section of the country to another. (Id.)

When the above provision was carried into the revised Penal Code it had been superseded by the Act of April 1, 1887 (art. 850, ante) and by Act 1895, p. 74 (art. 860, post). See note under art. 850.

Art. 858. Penalty.—Any person who shall knowingly violate any of the provisions of article 857 shall be guilty of a misdemeanor, and upon conviction, shall be fined one hundred dollars for each year or part of a year, for each section or part of a section (meaning six hundred and forty acres of land or less, whether surveyed in sections or not), which shall be used contrary to the provisions of said article. (Id.)

Art. 859. (509a) Turning loose excess of stock on leased lands.—Each violation of the provisions of article 852 of this Code, which restricts the number of stock that may be turned loose on lands leased from the state, shall be an offense; and the offender, on conviction, shall be punished by fine of one dollar for each head of stock he may so turn loose; and each thirty days' violation of the provisions of said article shall constitute a separate offense. (Acts 1895, p. 71.)

Art. 860. (509b) Illegal fencing, etc., of public lands.—It shall be unlawful for any person to fence, use, occupy or appropriate by herding or line-riding any portion of the public lands of the state, or of the lands belonging to the public free schools or asylums, without having first obtained a lease of such lands. Any person, whether owner of stock, manager, agent, employé or servant, who shall fence, use, occupy or appropriate by herding or line-riding any portion of such lands without a lease thereof, shall be deemed guilty of a misdemeanor, and shall, upon conviction, be fined not less than one hundred nor more than one thousand dollars, and, in addition thereto, shall be imprisoned in the county jail for a period of not less than three months nor more than two years. Each day of such fencing, occupying, using or appropriating by herding or line-riding shall be deemed a separate offense; and any person so offending may be prosecuted by indictment or information in the proper court of the county where any portion of the land lies, or to which it may be attached for judicial purposes, or in the county of Travis; and jurisdiction of such offenses is hereby vested in said courts; and in case any indictment or information is preferred or filed against a nonresident of this state for a violation of this article, it shall be the duty of the governor to demand the extradition of the defendant from the proper officer of any state or territory where he may be found, in order that he may be brought to trial. "Fencing," within the meaning of this article, is the erection of any structure of wood, wire, or both, or any other material intended to prevent the passage of cattle, horses, mules, asses, sheep, goats or hogs, whether the same shall inclose lands on all sides or be erected on one or more sides. Any appropriation of land belonging to any particular fund specified in said act or of the public lands of this state, without having first obtained a lease thereof, by fencing of any kind, or by inclosures consisting partly of fencing and partly of natural obstacles or impediments to the passage of live stock, shall be deemed an unlawful appropriation, punishable as provided in this article for appropriating such lands, and each day said land is appropriated shall be deemed a separate offense. (Id., p. 74.)

Art. 860a. Suits to be brought.—When said agents [state land agents; Vernon's

Sayles' Civ. St. 1914, art. 5460 et seq.] shall have reported that any public free school, asylum, or other public lands is or has been used or occupied or inclosed without authority of law, or that any timbered land belonging to any of said fund has been or is being destroyed, or depredated upon to the injury of such land, or the detriment of such fund, the governor shall investigate same, and in his discretion direct that suit be instituted for the recovery of such sums as may appear to be proper under this act, and article 5467 [Rev. St. 1911] or he may transmit such documents as he may deem proper to the proper officer or court for the purpose of criminal proceeding, as provided for in articles 850, 851, 852, 853, 859, 860 of the Penal Code and neither of said remedies shall be exclusive of the other, but the one shall be cumulative of the other, and the state may use either or both remedies; provided, that this shall not repeal any pre-existing criminal law. (Acts 1899, p. 176, ch. 104, sec. 2; Rev. Civ. St. 1911, art. 5464.)

The above article was omitted from the revised Penal Code; but is included in this compilation in view of the decision in Berry v. S., 156 S. W. 626.

CHAPTER FIVE

PUBLIC OR QUASI PUBLIC BUILDINGS —FIRE PROTECTION

Arts. 861-867d. [Repealed by Acts 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. (Acts 1917, ch. 140, sec. 6.)

CHAPTER FIVE A

LIBRARIES, MUSEUMS, ETC.

Art. 867e. Detaining books, etc.—That whoever wilfully detains any book, newspaper, magazine, pamphlet, manuscript, or other property belonging to any public or incorporated library, reading room, museum, or other educational institution for thirty days after notice in writing to return the same, given after the expiration of the time which by the rules of such institution such articles or other property may be kept, shall be punished by a fine of not less than $1.00 nor more than $25.00, and the said notice shall bear on its face a copy of this Section. (Acts 1913, ch. 140, sec. 1.)

Art. 867f. Wilfully injuring, defacing, etc., books, etc.—That whoever wilfully injures or defaces any book, newspaper, magazine, pamphlet, manuscript, or other property belonging to any public library, reading room, museum, or other educational institution, by writing, marking, tearing, breaking, or otherwise mutilating, shall be punished by a fine not greater than the replacement value of the property injured, and that a copy of this article shall be posted in a conspicuous place in such library, reading room, museum, or other educational institution. (Acts 1919, 2d C. S., ch. 60, sec. 1 [Civ. St. art. 5609b]).

CHAPTER SIX

OFFENSES RELATING TO THE PROTECTION OF FISH, BIRDS AND GAME

See ante, Civ. St., arts. 3974-4042.

Art. 868. [Repealed.]

The subject-matter of this article was dealt with in Acts 1897, ch. 153; Acts 1903, ch. 119; Acts 1905, ch. 61; Acts 1907, chs. 75, 78. Acts 1911, ch. 110, re-enacts the article, and expressly repeals Acts 1907, ch. 75. Acts 1913, ch. 135, sec. 2, expressly repealed art. 868, Penal Code. This would seem to supersede Acts 1911, ch. 110, especially in view of art. 907, Pen. Code, as amended by the repealing act of 1913, above referred to.

Acts 1919, ch. 157, relating to the protection of game, and Acts 1919, 2d C. S., ch. 73, relating to the protection of fish, supersede and supply most of the provisions of this chapter of the Penal Code, and of Title 63 of Revised Civil Statutes. Of Acts 1919, ch. 157, section 1 is set forth ante, Civ. St., art. 4022, and post, this Code, art. 900½; section 2 is set forth ante, Civ. St., art. 4022a, and post, this Code, art. 900½a; sections 3-33 are set forth post, this Code, arts. 900½aa-900½qq; sections 34 and 35 are set forth ante, Civ. St., arts. 4039a, 4039b; sections 36-39 are set forth post, this Code, arts. 900½r-900½ss; sections 40 and 41 are set forth ante, Civ. St., arts. 4035a, 4035; and sections 42-47 are set forth post, this Code, arts. 900½t-900½vv. Of Acts 1919, 2d C. S., ch. 73, articles 1-10 are set forth ante, Civ. St., arts. 3974-3983; article 11 is set forth ante, Civ. St., art. 4018a; articles 12 and 13 are set forth post, this Code, arts. 923j, 923jj; articles 14 and 15 are set forth ante, Civ. St., arts. 3984, 3986; article 16 is set forth ante, Civ. St., art. 3987, and post, this Code, art. 917; articles 17-25 are set forth ante, Civ. St., articles 3990-3993, 3995-3999; article 26 is set forth post, this Code, art. 920; article 27 is set forth ante, Civ. St., art. 3999a, and post, this Code, art. 908; articles 28-49 are set forth post, this Code, arts. 908a, 905, 906, 923*o*, 923*oo*, 923m, 870, 907, 903, 872, 901, 911, 923gg, 923ggg, 923gggg, 923nn, 918, 914, 921, 922, 922jjj, 923b; article 50 is set forth ante, Civ. St., art. 4019c; articles 51-66 are set forth post, this Code, arts. 923e, 871, 909a, 913, 914a, 914b, 923qq, 923r, 923rr, 923s, 923ss, 923t, 923ff, 923fff, 923ffff, 923p, 912a, 923pp, 923q, 872cc, 923tt; articles 67-74 are set forth ante, Civ. St., arts. 4016, 4018b, 4002, 4003, 4010, 4001, 4004, 4005, 4006, 4007, 4008, 4009; article 75 is set forth post, this Code, art. 923u; and articles 76, 76a and 77 are set forth ante, Civ. St., arts. 4018c-4018e.

Art. 869. Unlawful to use nets; certain counties exempted.—If any person shall at any time during the year take, catch, ensnare or entrap any fish, except minnows for bait by means of nets or in any other manner than with ordinary hooks and line or trot line, except as specified in Section One, Chapter 78, of the General Laws of the Regular Session of the Thirtieth Legislature, [art. 868] such person shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five nor more than one hundred dollars; provided that the following counties are hereby exempt from the provisions of this section: Anderson, Angelina, Archer, Baylor, Bosque, Brazos, Brown, Burnet, Brazoria, Bowie, Camp, Caldwell, Chambers, Cherokee, Cass, Clay, Galveston, Comanche, Collin, Delta, De Witt, Eastland, Fannin, Freestone, Fayette,

Gillespie, Goliad, Grimes, Hamilton, Hardin, Hopkins, Hill, Hood, Houston, Hunt, Jack, Jefferson, Johnson, Jones, Kaufman, Knox, Lamar, Limestone, Liberty, Llano, Mason, Matagorda, Mitchell, Morris, Nacogdoches, Newton, Orange, Panola, Polk, Rains, Rockwall, Red River, San Augustine, Sabine, Stephens, Shackelford, San Jacinto, Shelby, Smith, Throckmorton, Trinity, Tyler, Titus; Upshur, Van Zandt, Webb, Walker, Wharton, Wood and Young; provided that the Counties of Gregg, Harrison and Rusk shall be exempt from the provisions of this Section as to the waters of Sabine River but no further, and that Harrison County shall be exempt from the provisions of this Section in so far as it applies to the waters of Big Cypress above Tuscombie Bridge and Little Cypress; provided that in the County of McLennan it shall not be unlawful for any person to take or catch fish by means of net or seine from any stream in said county from May 15 to October 1st of each year and that it shall not be unlawful for any person or persons to take or catch fish by net or seine in Palo Pinto County from June 15th to October 1st of each year; provided that Clay county shall be exempt from the provisions of this Section along the waters of the Wichita and Red Rivers; also Jack County along the waters of Trinity River, provided that the counties of Austin, Washington, and Palo Pinto shall be exempt from the provisions of this Section along the waters of Brazos river, provided further that in the county of Falls it shall not be unlawful for any person or persons to take or catch fish by means of net or seine from any stream in said county from June 15th to September 1st of each year. Provided further that it shall be unlawful for any person or persons to build any trap in or across any stream or lake in Wood County, Texas, for the purpose of catching or taking fish from any such stream or lake, and any person violating this provision shall be punished as provided by this Act. (Acts 1897, ch. 153; Acts 1899, chs. 55, 69; Acts 1901, ch. 18; Acts 1901, 1st S. S., ch. 17; Acts 1903, ch. 119; Acts 1905, ch. 61; Acts 1907, chs. 75, 78; Acts 1909, p. 95; Acts 1911, ch. 110, sec. 4; Acts 1911, ch. 113, sec. 1; Acts 1911, 1st S. S., ch. 17, sec. 1; Acts 1913, ch. 41, sec. 1; Acts 1913, ch. 96, sec. 1, amended; Acts 1915, ch. 10, sec. 1.)

Act 1913, ch. 135, sec. 2 repealed art. 869, Penal Code, but as the Act of 1915 re-enacts its subject-matter, the new act is given the old code number Act 1915, ch. 10, sec. 1, amends "section 2, chapter 96, of the General Laws of the Regular Session of the Thirty-Third Legislature, relating to the taking of fish, as amended by chapter 96 of the General Laws of the Regular Session of the Thirty-Third Legislature" so as to read as above. It was probably the intent to amend section 2, chapter 49 of the acts of the 31st Legislature, as amended, etc. The misdescription of the act amended is probably immaterial in view of the clear intent as shown by the subject-matter of the act.

See post, arts. 901-923u.

Art. 870. Taking fish by means of nets, etc., without consent of owner.—Any person who shall take, catch, ensnare or trap any fish by means of nets or seines or by poisoning, polluting or by use of any explosives, or by muddying, ditching or draining in any lake, pool or pond in any county within this State without the consent of the owner of such lake, pool or pond, shall be deemed guilty of a misdemeanor and on conviction shall be fined in a sum of not less than ten and no more than one hundred dollars, and, in all prosecutions under this law, the burden of proof of such consent of the owner shall devolve and be upon the defendant. (Act 1907, ch. 78, sec. 2; Act 1909, p. 96, repealed; Act 1911, ch. 110, sec. 5, superseded; art. 870, revised Pen. Code, superseded; Act 1911, ch. 113, sec. 3[2]; Acts 1919, 2d C. S., ch. 73, art. [sec.] 34.)

See post, arts. 901-923u.

Art. 871. Witnesses; immunity.—Any court, office or tribunal having jurisdiction of the offense set forth in this chapter, or any district or county attorney may subpœna persons and compel their attendance as witnesses to testify as to violations of any of the provisions of this law; and any person so summoned and examined shall not be liable to prosecution for any of the violations of this law about which he may testify; and a conviction of said offense may be had upon the unsupported evidence of an accomplice or participant. (O. C.; Acts 1919, 2d C. S., ch. 73, art. [sec.] 52.)

See post, arts. 901-923u.

Art. 872. (513) Duty of person erecting dams or other obstructions.—It shall be the duty of every person, firm or corporation, municipal or private, who has heretofore erected, or who may hereafter erect any dam, water weir, or other obstruction, on any regular flowing stream within this State, on the written order of the Court of County Commissioners in the county in which such dam, weir or other obstruction has been erected or constructed, to build, construct and keep in repair fish ways, or fish ladders, at such dam, water weir, or obstruction, at the discretion of the Game, Fish and Oyster Commissioner so that at all seasons of the year fish may ascend above such dam, weir or obstruction, to deposit their spawn. Any person, firm or corporation, whether private or municipal, who shall erect such dam, weir or obstruction, or any firm, person or corporation, whether private or municipal, who shall own or maintain any such dam, obstruction or weir, who shall fail or refuse to build, construct and keep in repair such fish way, or fish ladder, within 90 days after having been notified by the Game, Fish and Oyster Commissioner of this State to do so, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than $25.00 nor more than $500.00; provided, that each week after the expiration of 90 days after receiving notice, as herein provided that such persons, firm or corporation, municipal or private, shall fail or refuse to build, construct and keep in repair, such fish ladder, shall constitute a separate offense. (O. C.; Act April 17, 1879, p. 100, sec. 1; Acts 1915, ch. 67, sec. 1, amending art. 872, revised Pen. Code; Acts 1919, 2d C. S., ch. 73, art. [sec.] 37.)

See post, arts. 901-923u.

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. (Acts 1917, 3d C. S., ch. 12, sec. 3; Acts 1918, 4th C. S., ch. 87, sec. 3.)

Art. 872b. Length of 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 or artificial public stream or pond of water within this State by use of any means whatsoever any bass of less than eight 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. (Acts 1917, 3d C. S., ch. 12, sec. 4; Acts 1918, 4th C. S., ch. 87, sec. 4.)

See post, art. 872cc.

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. (Acts 1917, 3d C. S., ch. 12, sec. 5; Acts 1918, 4th C. S., ch. 87, sec. 5.)

Art. 872cc. Length of bass, white perch and crappies.—Any person who shall take or catch from the public waters of this State or have in his possession any bass of less length than eleven inches or any white perch or crappie of less length than seven inches, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in a sum of not less than ten nor more than one hundred dollars. (Acts 1919, 2d C. S., ch. 73, art. [sec.] 65.)

See ante, art. 872b.

Art. 873. Limiting fish that may be taken and sold.—It shall be, and is unlawful for any person to take, in any way, more than fifty pounds of any fresh water fish, for sale or barter for money or anything of value whatsoever; provided, that any one person shall be allowed to take and sell as much as fifty pounds of fish in one week, and no more than fifty pounds of fish in any one week of seven days; provided, the counties of Wharton and Nueces shall be exempt from the provisions of this law. (Act 1905, p. 222.)

This article is probably superseded by Acts 1919, 2d C. S., ch. 73. See post, arts. 901-923u.

Art. 874. Number of squirrels that may be taken and sold.—It shall be, and is unlawful, for any person to kill more than ten squirrels in any one day of twenty-four hours; and it is not lawful for any person to sell more than five squirrels in any one week of seven days. (Id., p. 222.)

Art. 875. Not to apply to certain counties.—If any person shall violate any provision of the two preceding articles, said person shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than five dollars, with confinement in the county jail not less than one day nor more than ten days. Provided, the said provisions shall not apply to any county situated in the ninth and twelfth and thirty-first and fifth and eighteenth and twenty-first and seventeenth and tenth and second and twenty-fourth and fifteenth and fourteenth senatorial districts of Texas. (Id., p. 222.)

Art. 876. Sale of squirrels prohibited in county of Montgomery.—It shall be unlawful for any person to sell, or offer for sale, or ship for sale, in the county of Montgomery, any squirrels; and any person violating the provisions of this article, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars. (Acts 1907, ch. 63, sec. 2; Acts 1909, p. 117.)

Art. 876a. Shipping squirrels.—It shall be unlawful for any person to ship or cause to be shipped, or for any express company, railroad company or other common carrier or the officers, agents, servants or employés of the same, to receive for the purpose of transportation, or to transport, carry or take beyond the limits of the county of Liberty in the State of Texas any wild squirrels. Any person violating the provisions of this Section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than ten nor more than one hundred dollars; and each such shipment shall constitute a separate offense. (Acts 1911, p. 98, ch. 56, sec. 1.)

Art. 877. (513a) Catching of fish, etc., in counties of Montgomery and Newton.—It shall be unlawful for any person in the counties of Montgomery and Newton in the state of Texas, at any time during the year, to take, catch, ensnare or entrap any fish by means of nets, traps, poison or dynamite, or in other manner than with the ordinary hook and line or trot line, in any of the fresh waters, lakes or streams of this state in said counties; and any person violating the provisions of this article shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars and not more than one hundred dollars; provided, that this article shall not be construed to prevent the catching of fish by nets in any of the lakes in said county, except Grand Lake. (Acts 1907, ch. 63, sec. 1; Acts 1909, p. 133.)

This article is probably superseded by Acts 1919, 2d C. S., ch. 73. See post, arts. 901-923u.

Art. 877a. Fishing in valley of Medina river; bass; perch, crappie, and sunfish.—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 pos-

session, 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. (Acts 1915, ch. 84, sec. 1; Acts 1917, ch. 81, sec. 2.)

See ante, art. 877, and note thereunder.

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. (Acts 1915, ch. 84, sec. 2; Acts 1917, ch. 81, sec. 3.)

See ante, art. 877, and note thereunder.

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. (Acts 1915, ch. 84, sec. 3; Acts 1917, ch. 81, sec. 4.)

See ante, art. 877, and note thereunder.

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. (Acts 1915, ch. 84, sec. 4; Acts 1917, ch. 81, sec. 5.)

See ante, art. 877, and note thereunder.

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. (Acts 1915, ch. 84, sec. 5; Acts 1917, ch. 81, sec. 6.)

Art. 878. [Superseded.]

See ante, art. 877, and note thereunder.

This article is superseded by Acts 1919, ch. 157, sec. 1, post, art. 900½.

Art. 879. Unlawful to kill or have in possession any wild bird but game bird as defined.—It shall be unlawful for any person in the state of Texas to kill, catch or have in his or her possession, living or dead, any wild bird, other than a game bird, or to purchase, to offer or expose for sale, transport or ship within or without the state, any such wild bird after it has been killed or caught, except as permitted by this law; and no part of the plumage, skin or body of any bird protected by this article shall be sold or had in possession for sale. For the purposes of this article, the following only, shall be considered game birds: Wild turkey, wild ducks, wild geese, wild grouse, wild prairie chicken (pinnated grouse), wild Mongolian or English pheasants, wild quail or partridges, wild doves, wild pigeons, wild plover, wild snipe, wild jacksnipe, wild curlews, wild robins and wild Mexican pheasants or chachalaca. (Acts 1903, ch. 137; Acts 1907, p. 278.)

The enumeration in this article of what shall be considered game birds is superseded by Acts 1919, ch. 157, sec. 2, post, art. 900½a.

Art. 880. Unlawful to destroy nest or eggs of wild birds.—It shall be unlawful for any person in the state of Texas to take or needlessly destroy the nest or eggs of any wild bird, or have such nest or eggs in his or her possession, except as permitted by this law. (Acts 1903, ch. 137; Acts 1907, p. 279.)

See Acts 1919, ch. 157, secs. 17, 25, post, arts. 900½hh, 900½*ll*.

Art. 881. Penalty for violating two preceding articles.—Any person violating any of the provisions of Sections 2 and 3 of this Act [arts. 879, 880] shall be deemed guilty of a misdemeanor and shall upon conviction be fined not less than ten nor more than one hundred dollars for each bird, living or dead, or a part of a bird, nest or set of eggs or part thereof, possessed in violation of this Act. (Acts 1903, ch. 137; Acts 1907, p. 279, sec. 4, amended; Acts 1911, p. 101, ch. 60, sec. 1, superseding art. 881, revised Pen. Code.)

Art. 882. Selling or purchasing game.—Whoever shall sell or offer for sale, have in his or her possession for the purpose of sale, or whoever shall purchase or have in his possession after purchase any wild deer, wild antelope or wild Rocky Mountain sheep, killed in this State, or the carcass thereof, or the hide thereof, or the antlers thereof, or whoever shall sell or offer for sale, or have in his possession for the purpose of sale, or whoever shall purchase or have in his possession after purchase any of the game or game birds mentioned in Section 1 of this Act [art. 878] killed or taken within this State shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than ten nor more than one hundred dollars. (Acts 1897, ch. 149, sec. 2; Acts 1903, ch. 137; Acts 1907, p. 279, sec. 5, amended; Acts 1911, p. 101, ch. 60, sec. 1, superseding art. 882, revised Pen. Code.)

This article is superseded in part by Acts 1919, ch. 157, sec. 3, post, art. 900½aa, and probably as to the remainder by Acts 1919, ch. 157, secs. 29, 31a, 33, post, arts. 900½nn, 900½p, 900½qq.

Art. 883. [Superseded.]

This article is superseded by Acts 1919, ch. 157, sec. 18, post, art. 900½f.

Art. 884. [Superseded.]

This article is superseded by Acts 1919, ch. 157, sec. 15, post, art. 900½gg.

Art. 884a. [Superseded.]

This article is superseded by Acts 1919, ch. 157, sec. 5, post, art. 900½bb.

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, Nacagdoches, 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. (Acts 1917, 3d C. S., ch. 8, sec. 2.)

Art. 884c. [Repealed.]

This article is repealed by Acts 1919, ch. 157, sec. 47, post, art. 900½vv.

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 deemd guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding fifty ($50.00) Dollars. (Acts 1917, 3d C. S., ch. 8, sec. 4.)

Section 1 of Acts 1917, 3d C. S., ch. 8, referred to in above paragraph, is superseded by Acts 1919, ch. 157, sec. 5, post, art. 900½bb. Section 2 is set forth ante as art. 884b. Section 3 of said Acts 1917, 3d C. S., ch. 8, is repealed by Acts 1919, ch. 157, sec. 47, post, art. 900½vv.

Art. 885. [Superseded.]

This article is superseded by Acts 1919, ch. 157, sec. 16, post, art. 900½h.

Art. 886. [Superseded.]

This article is superseded by Acts 1919, ch. 157, secs. 12, 33, post, arts. 900½f, 900½qq.

Art. 887. (518) Killing certain harmless birds prohibited.—If any person shall wilfully kill, or in any manner injure, any mocking bird, whippoorwill, night hawk, blue bird, red bird, finch, thrush, linnet, wren, martin, swallow, bobolink, cat bird, nonpareil, scissortail, he shall be deemed guilty of a misdemeanor, and, upon conviction before a justice of the peace or other court of competent jurisdiction, he shall be fined a sum of not less than five nor more than fifteen dollars. (Act March 15, 1881, p. 30.)

This article is probably superseded by Acts 1919, ch. 157, sec. 27, post, art. 900½mm.

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. (Acts 1917, ch. 65, sec. 1.)

Art. 888. (519) Killing of certain other birds or fowls prohibited.—If any person shall wilfully kill any seagull, tern, shear-water, egret, heron or pelican, or shall wilfully take from their nests, or in any manner destroy, any egg or eggs of any seagull, tern, shear-water, egret, heron or pelican, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than five nor more than twenty-five dollars; provided, that the killing of any of the birds above enumerated, or taking of their eggs with intent to preserve the same for scientific purposes, shall not be construed to be a violation of this act. (O. C.)

Art. 889. [Superseded.]

This article is superseded by Acts 1919, ch. 157, post, arts. 900½-900½vv.

Art. 889a. [Superseded.]

This article is superseded by Acts 1919, ch. 157, sec. 32, post, art. 900½q.

Art. 889b. Open season for doves.—From and after the passage it shall be unlawful for any person to kill any dove during the period of time embraced between the first day of February and the first day of December of any year; provided, however, that in those counties in this State lying north of a line marking the northern boundaries of the counties of Shelby, Nacogdoches, Angelina, Houston, Leon, Roberson, Falls, Bell, Lampasas, San Saba, McCullough, Concho, Tom Green, Irion, Reagan, Upton, Ward, Loving, Culberson, Hudspeth, and El Paso, it shall be unlawful for any person to kill any dove during the period of time embraced between the first day of November and the thirty-first day of August of any year. (Acts 1915, 1st C. S., ch. 22, sec. 2, amending Acts 1915, ch. 123, sec. 1; Acts 1918, 4th C. S., ch. 72, sec. 1.)

The enacting clause of this section reads as follows:

"That Article 889a of Chapter six, Title 13 of the Penal Code of the State of Texas, of 1911, as amended by Chapter 123 of the General Laws passed by the 34th Legislature at its regular session, be amended so as to hereafter read as follows:"

Acts 1915, ch. 123 and the amendatory act (Acts 1915, 1st C. S., ch. 22), in their titles, amended ch. 6, Title 13, of the Penal Code, by inserting therein articles 889a and 889b. As the legislature at the same session enacted another provision to be designated as article 889a, the two articles in question are here designated as articles 889b and 889c.

This article is probably superseded by Acts 1919, ch. 157, sec. 7, post, art. 900½cc.

Art. 889c. Open season for bob-whites, quail, or partridges.—From and after the passage of this Act it shall be unlawful for any person in this State to kill, entrap, ensnare or in any way destroy any bob-whites, quail or patridges in this State, between the first day of February and the first day of December of any year; provided, it shall be unlawful for any person at any time to kill or destroy in one day more than fifteen of the birds or fowls mentioned in this Act or in Article 878 of this chapter. (Acts 1915, 1st C. S., ch. 22, sec. 3, amending Acts 1915, ch. 123, sec. 1.)

Art. 889d. Penalty for violation of two preceding articles.—Any person violating the provisions of this law shall be deemed guilty of a misdemeanor and on conviction shall be punished by a fine of not less than ten ($10.00) dollars nor more than one hundred ($100.00) dollars, or by imprisonment in the county jail for not less than five nor more than thirty days, or by both such fine and imprisonment. (Acts 1915, 1st C. S., ch. 22, sec. 4.)

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.) (Acts 1897, ch. 149, sec. 7; Acts 1903, ch. 137; Acts 1907, p. 280, sec. 10; Acts 1911, p. 103, ch. 60, sec. 1; Acts 1917, 1st C. S., ch. 7, sec. 1.)

The proviso to this article is superseded by Acts 1919, ch. 157, sec. 20, post, art. 900½j.

Art. 891. [Superseded.]

This article is superseded by Acts 1919, ch. 157, secs. 21, 22, post, arts. 900½jj, 900½k.

Art. 892. What birds not protected.—The English or European house sparrows, hawks, crows, buzzards, black birds, rice birds and owls are not included among the birds protected by this chapter. Nothing herein contained shall be construed to prevent any person or persons from killing birds that are at the time destroying his growing crop. (Acts 1903, ch. 137; Acts 1907, p. 282.)

Art. 893. Domestic birds excepted.—Nothing in this chapter shall prevent the keeping of any bird in a cage as a domestic pet; provided, that such bird shall not be sold or exchanged or offered for sale or exchange, or transported out of the state; provided that nothing herein contained shall be construed to prohibit the sale or shipment of canary birds or parrots. (Acts 1903, ch. 137; Acts 1907, p. 282.)

Art. 894. [Superseded.]

This article is superseded by Acts 1919, ch. 157, sec. 13, post, art. 900½ff.

Art. 895. [Superseded.]

This article is superseded by Acts 1919, ch. 157, sec. 38, post, art. 900½s.

Art. 896. Game, fish and oyster commissioner to enforce law.—It is hereby made a special duty of the game, fish and oyster commissioner to enforce the statutes of this state for the protection and preservation of wild game and wild birds, and to bring or cause to be brought actions and proceedings in the name of the state of Texas to recover any and all fines and penalties provided for in the laws now in force or that may hereafter be enacted relating to wild game and wild birds. Said game, fish and oyster commissioner may make complaint and cause proceedings to be commenced against any person for violation of any of the laws for the protection and propagation of game or birds without the sanction of the county attorney in which such proceedings are commenced, and in such case he shall not be required to furnish security for costs. Said commissioner shall at any and all times seize and take possession of all birds and animals that have been caught, taken or killed, or had in possession or under control, or have been shipped contrary to any of the laws of this state; and such seizure may be made without a warrant. All birds or animals, seized by the commissioner, shall be disposed of in such manner as may be directed by any court having competent jurisdiction to hear and determine cases for violation of the game and bird laws of this state. (Acts 1907, p. 254.)

This article is superseded in part by Acts 1919, ch. 157, sec. 26, post, art. 900½m.

See ante, Civ. St., arts. 4029, 4030.

Art. 897. Has power of sheriff, may arrest without warrant.—Said game, fish and oyster commissioner shall have the same power and authority to serve criminal process as sheriffs, and shall have the same power as sheriffs to require aid in executing such process.

Said commissioner may arrest without warrant any person found by him in the act of violating any of the laws for the protection or propagation of game or wild birds, and take such person forthwith before a magistrate having jurisdiction. Such arrests may be made on Sunday, and in which case the person arrested shall be taken before a magistrate having jurisdiction, and proceeded against as soon as may be, on a week day following the arrest. (Id., p. 255.)

Art. 898. Penalty for violation.—Any person violating the provisions of this law shall be punished, upon conviction, by fine not exceeding one hundred dollars and the cost of prosecution, or imprisonment in the county jail not exceeding thirty days, or both such fine and imprisonment, in the discretion of the court.

And the court shall sentence the offender to be confined in the county jail, until such fine is paid, for any period not exceeding one hundred days; and, in all cases where a fine and imprisonment is imposed, the sentence shall provide that, if the fine and costs are not paid at the time of the expiration of such imprisonment, the person serving such sentence shall be further detained in jail until such fine and costs are paid, for any period stated; provided, that the whole term of imprisonment shall not exceed six months. (Id., p. 257.)

Art. 899. [Superseded.]

This article is superseded by Acts 1919, ch. 157, secs. 42-44, post, arts. 900½t-900½u.

Art. 900. [Superseded.]

This article is superseded by Acts 1919, ch. 157, sec. 42, post, art. 900½t.

Art. 900½. Wild animals, wild birds, and wild fowl property of people.—All the wild animals, wild birds, wild fowl within the borders of this State are hereby declared to be the property of the people of the State. (Acts 1919, ch. 157, sec. 1.)

See ante, notes to art. 868.

Art. 900½a. Game birds enumerated.—Wild turkeys, wild ducks, wild geese, wild grouse, wild brant, wild sandhill cranes, wild prairie chickens or pinnated grouse, wild pheasants, wild partridges, and wild quail of all varieties, wild doves of all varieties, wild pigeons of all varieties, wild snipe of all varieties, wild shore birds, wild robins and wild Mexican pheasants, known as "chacalaca," and wild plover are hereby declared to be the game birds, within the meaning of this Act. (Id. sec. 2.)

See ante, art. 879.

Art. 900½aa. Sale or purchase of game birds prohibited; penalty.—Any person who shall sell, or any person who shall buy or any person who shall have in his or her possession for purpose of sale, or any person who shall have in his possession after purchase has been made either by himself or others, any of the birds or fowl enumerated and set forth in Section 2 of this Act [art. 900½a], shall be deemed guilty of a misdemeanor and shall be fined in a sum of not less than Ten ($10.00) nor more than One Hundred ($100.00) Dollars, and the sale or purchase, or the possession of each bird after a purchase and sale shall be a separate offense. (Acts 1903, ch. 137; Acts 1907, p. 278; Acts 1919, ch. 157, sec. 3.)

See ante, art. 882.

Art. 900½b. Number of game birds permitted to be possessed; penalty.—It is hereby declared to be unlawful for any person or agent, representative or manager for any firm or corporation, to have in his pos-

session as the property of any one person, or as the property of himself or the property of such firm or corporation represented by him, more than seventy-five fowl or birds enumerated in Section 2 of this Act [art. 900½a], and any person having such birds or fowl in possession as interdicted or set forth shall be deemed guilty of a misdemeanor and on conviction shall be fined in a sum of not less than fifty dollars ($50.00) nor more than two hundred dollars ($200.00), and the possession of each bird or fowl over the number of seventy-five shall be a separate offense. (Id. sec. 4.)

Art. 900½bb. Open season for wild turkey; hens may not be killed; bag limit of gobblers.—The open season for killing wild turkeys shall be during the months of March and April; provided that it shall be unlawful for any person to kill wild turkey hen, or to kill more than three wild turkey gobblers during any one year and any person violating the provisions of this section of the law shall on conviction be fined not less than ten dollars ($10.00) and not more than one hundred dollars ($100.00) and each wild turkey gobbler killed above the prescribed number of three shall be a separate offense. (Id. sec. 5.)

Art. 900½c. Open season for quail and Mexican pheasant; bag limit.—The open season for killing quail and Mexican pheasants, known as chacalaca, shall be during the months of December and January of each year, provided, that it shall be unlawful to kill more than the bag limit of fifteen of these game birds in one day, each variety of these shall be considered in making up the limit. (Id. sec. 6.)

Art. 900½cc. Open season for wild doves; bag limit.—The open season for killing wild doves shall be the months of September, October, November and until the 15th day of December of each year; provided, it shall be unlawful for any person to kill more than the bag limit of fifteen wild doves in any one day. (Id. sec. 7.)

See ante, art. 889b.

Art. 900½d. Open season for wild duck, brant, geese, sandhill crane, plover, curlew, snipe, and shore birds; bag limit.—The open season for killing wild ducks of any kind, wild brant, wild geese, wild sandhill cranes, wild plovers, wild curlew, wild snipe of all kinds and wild shore birds shall be between October 16th and January 31st, both days inclusive; provided, that it shall be unlawful to kill more than the bag limit of twenty-five in any one day of wild ducks of all kinds, wild plovers, wild curlew, wild snipe of all kinds, and wild shore birds, or the bag limit of eight in any one day of each of the species of wild geese, wild brant, and wild sand hill cranes; provided, further, that the aggregate of twenty-five of all the above species of birds shall be the bag limit for any one day. Provided further, that it shall be unlawful to kill any wild wood duck, for a period of five years from the date of the enactment of this law. (Id. sec. 8.)

Art. 900½dd. Taking game birds out of season; penalty.—It shall be unlawful to kill or take any of the birds or fowls enumerated in Section 2 of this Act [art. 900½a], except during the open season as fixed by this Act for each kind of bird or fowl, and if any person shall kill, take or have in his possession, any of the birds or fowl enumerated and named in Section 2 of this Act, at any time of the year, except during the open season as provided for in this Act, he shall be deemed guilty of a misdemeanor and on conviction he shall be fined in a sum not less than ten dollars ($10.00) nor more than one hundred dollars ($100.00) (Id. sec. 9.)

Art. 900½e. Taking, etc., more than bag limit; penalty.—If any person shall kill or have in his possession any more than the bag limit as set out in this Act, except as hereinafter provided for shipping purposes, he shall be deemed guilty of a misdemeanor and on conviction shall be fined not less than ten dollars ($10.00) nor more than one hundred dollars ($100.00). (Id. sec. 10.)

Art. 900½ee. "Closed season," "open season" and "bag limit" defined.—The term "closed season" shall mean the period of time in which it is unlawful to kill or take any of the game, animals, birds and fowl enumerated in this Act; and the term "open season" shall mean the period of time in which it is lawful to take and kill such game, animals, birds and fowl, and the term "bag limit" shall mean the number of wild animals, birds and fowl permitted to be killed in one day during the open season for such game, birds, animals and fowl. (Id. sec. 11.)

Art. 900½f. Closed season for woodcock, wood-duck, prairie chicken, and pheasant; penalty.—It shall be unlawful for any person to kill, take or have in his possession within the period of five years from the passage of this Act any wild woodcock, wild wood-duck, or wild prairie chicken or wild pheasant (except chalcalca) or pinnated grouse, and any person so killing or having in his possession any wild woodcock or wild wood duck or wild prairie chicken or wild pheasant (except chalcalaca) or pinnated grouse, shall be deemed guilty of a misdemeanor and on conviction shall be fined not less than ten dollars ($10.00) nor more than one hundred dollars ($100.00). (Id. sec. 12.)

Art. 900½ff. Possession, etc., during protected season prima facie evidence of guilt.—The possession, or the sale, or the purchase, or the possession after a sale, or the possession for the purpose of sale, of any fowl or bird or game quadruped as interdicted by this Act, shall apply to any bird or quadruped coming from without the State, and in prosecutions for violations of this Act, it shall be no defense that such bird or quadruped was not taken or killed within this State. (Id. sec. 13.)

Art. 900½g. Bringing into state prohibited game birds, fowl or animals during closed season; penalty.—It shall be unlawful to bring into this State for any purpose whatever, during the closed season, either alive or dead, any kind of wild game birds or fowl, or quadrupeds enumerated in this Act, or to bring into this State for sale or exchange or barter or shipment for sale any such birds or quadrupeds or fowl during the open season as set out in this Act, except as provided in Section 39 of this Act [Art. 900½ss]. Any person bringing such game, birds or fowls or quadrupeds into the State during the closed season or bringing such

game birds or fowl or other quadruped for sale or barter or shipment for sale during the open season, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in a sum of not less than ten dollars (10.00) nor more than two hundred dollars ($200.00.) The bringing in of such game bird or fowl or animal or quadruped herein interdicted is hereby declared to be a separate offense. (Acts 1919, ch. 157, sec. 14; Acts 1919, 2d C. S., ch. 72, sec. 1.)

Art. 900½gg. Manner of killing or taking duck, etc.—It shall be unlawful to kill wild ducks, geese, brant, or sandhill cranes by any means other than the ordinary gun, capable of being held to and shot from the shoulder, and any person taking ducks or geese, or brant or sandhill cranes by snares, deadfalls, pens, or other trap devices, or who shall kill ducks or geese or brant or sandhill crane by means other than that of the ordinary gun capable of being held to the shoulder, shall be deemed guilty of a misdemeanor, on conviction shall be fined not less than ten dollars ($10.00), nor more than one hundred dollars ($100.00), and the killing or taking of each duck or goose shall be deemed a separate offense. (Acts 1919, ch. 157, sec. 15.)

Art. 900½h. Hours for killing duck, etc.—It shall be unlawful to kill or to shoot at any duck or geese or brant or sandhill cranes between sunset and one-half hour before sunrise in any county of the State, and any person shooting at or killing any duck or geese or brant or sandhill cranes between sunset and one-half hour before sunrise in any county shall be deemed guilty of a misdemeanor and on conviction shall be fined not less than ten dollars ($10.00) nor more than one hundred dollars ($100.00). (Id. sec. 16.)

Art. 900½hh. Destroying or taking eggs of protected birds; penalty.—It shall be unlawful for any person to destroy or take the eggs of any bird which is protected against being killed or taken by this statute, except as provided in Section 39 of this Act [Art. 900½ss], and any person destroying or taking such eggs shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than ten dollars ($10.00) nor more than one hundred dollars ($100.00). (Acts 1919, ch. 157, sec. 17; Acts 1919, 2d C. S., ch. 72, sec. 1.)

See ante, art. 880.

Art. 900½i. Netting, trapping, etc., game birds without permit; penalty.—It shall be unlawful, without first obtaining from the Game, Fish and Oyster Commissioner in writing, for any person to net, trap, ensnare or otherwise take any bird mentioned in Section 2 of this Act [Art. 900½a] and any person who sets a net or traps or other device for taking such birds, or snares or takes by such devices such birds mentioned, shall be deemed guilty of a misdemeanor and on conviction shall be fined in a sum of not less than ten dollars ($10.00) nor more than one hundred dollars ($100.00). (Acts 1919, ch. 157, sec. 18.)

Art. 900½ii. Hiring persons to hunt; penalty.—It shall be unlawful for any person to hire or employ any other person by the payment of money or any other thing of value or by promise of the payment of money or any other thing of value, or to receive money or any other thing of value to hunt for any other person. And any person so hiring or employing any other person to hunt any wild birds mentioned in Section 2 [Art. 900½a], and wild animal mentioned in Section 29 of this Act [Art. 900½nn], for himself, or any person receiving any money or any other thing of value or the promise of money or other thing of value to hunt shall be deemed guilty of a misdemeanor and on conviction shall be fined in a sum of not less than fifty dollars ($50.00) nor more than one hundred dollars ($100.00). Provided that if any person who has received money or other thing of value to hunt or a promise of money or other thing of value to hunt, shall testify against the person or persons employing him by the payment or the promise of payment of money or other thing of value to hunt, all prosecutions against him in the case in which he testified shall be dismissed. (Acts 1919, ch. 157, sec. 19; Acts 1919, 2d C. S., ch. 72, sec. 1.)

Art. 900½j. Shipping animals, etc., to and from taxidermist for mounting.—Any person shall have the right to ship or carry to and from a taxidermist for mounting purposes any specimen or part of specimen of any quadruped or wild animal or wild game bird or fowl killed by him or any bird, or fowl or animal protected by the laws of the State. But before such shipment to or from such taxidermist is made, he must furnish the Agent of the transportation company an affidavit which must be approved by the Game, Fish and Oyster Commissioner or by some one of his deputies, in which he shall declare that he killed such specimen, and that he sends it to a taxidermist, naming him and his place of business, and that he is not preserving such specimen for sale. And any person shipping such specimen without making such affidavit and furnishing it to the agent of the transportation company, and any agent of a transportation company receiving such specimen without such affidavit, shall be deemed guilty of a misdemeanor and on conviction shall be fined in a sum of not less than ten nor more than one hundred dollars. (Acts 1919, ch. 157, sec. 20.)

See ante, art. 890.

Art. 900½jj. Transportation of animals, etc., lawfully killed; affidavit.—Nothing in this Act shall be construed to prohibit the carrying, transportation or shipment of any of the game, birds, or wild fowl mentioned in Section 1 of this Act [Art. 900½], when lawfully taken or killed, from the place of shipment to the home of the person who killed the same; provided further, that the person desiring to ship or transport said game, birds, or fowl shall first make the following affidavit in writing before some officers authorized by law to administer oaths and deliver same to said railroad, or common carrier, or to the agent of said railroad or common carrier at the point of shipment, and upon filing the affidavit, such party shall be permitted to transport or transmit to his home any wild game, birds, when such number is permitted to be killed of the kind offered for shipment.

State of Texas,)
County of ———)

Before me, the undersigned authority personally appeared ——— who, after being duly sworn, upon oath says:

I live at ——— in the county of ——— in the State of ———; that I have personally killed ——— which I desire to ship from ——— in ——— County, to my home, which game I killed for my own use and not for sale and same shall not be bartered or sold; that I have not killed more than the bag limit as provided by law of any wild game or wild birds, during the present hunting season.

Sworn to and subscribed to before me this ——— day of ——— 19—

(Acts 1919, ch. 157, sec. 21; Acts 1919, 2d C. S., ch. 72, sec. 1.)

Art. 900½k. Same subject; unlawful shipment; penalty; shipments from Mexico.—The list thus prepared by the affiant shall be attached to the shipment, and shall not be removed during the period of transportation. If such game shipped is carried by the person killing it, it shall not be necessary to attach the list as herein before provided. Any person who so ships any game from the County in which it is killed without making the foregoing affidavit, or any agent of transportation line or agent of any express company, who receives such shipment without it is accompanied by such affidavit and list attached, or any auditor or conductor or other person in charge of any railroad train or transportation line, who knowingly permits any person to carry any game, birds or game fowl or game wild animals or quadrupeds, without such affidavit is made, as hereinbefore provided, shall be punished by a fine of not less than ten dollars ($10.00) nor more than one hundred dollars. And all express agents and all conductors and auditors of trains and all captains of boats licensed under Section 28 of this Act [Art. 900½n], are hereby empowered to administer oaths necessary to the shipment of game, and for administering such oaths, they are hereby authorized to collect twenty-five cents from the persons making such oaths. It shall not be unlawful to ship or bring any wild game animals or wild birds from the Republic of Mexico to the State at any season and in any quantities, provided that the party bringing the same into the State shall procure from the Game, Fish and Oyster Commissioner or one of his deputies a permit to bring same into the State and shall procure from the U. S. Custom Officer at the port of entry a certificate showing that such game was taken or killed in the Republic of Mexico. (Acts 1919, ch. 157, sec. 22; Acts 1919, 2d C. S., ch. 72, sec. 1.)

Art. 900½kk. Using hunting license of another; penalty.—Any person who shall hunt under the license issued to any other person, or any person who shall permit any other person to hunt under a license issued to him shall be deemed guilty of a misdemeanor and on conviction shall be fined in a sum of not less than ten dollars nor more than one hundred dollars. (Acts 1919, ch. 157, sec. 23.)

Art. 900½*l*. Permits to kill animals, birds, etc.; destroying crops.—Whenever any wild birds, or fowl, or wild animals or quadrupeds are destroying crops, the Game, Fish and Oyster Commissioner is hereby authorized to permit the killing of such wild birds, or fowl, or wild animals or quadrupeds without reference to the open or closed season and bag limit, or without reference to night shooting, but before such permission shall be granted, the Commissioner aforesaid shall be furnished a statement of facts sworn to by the party seeking such permit, with the endorsement of the county judge, to the fact that such crops are being destroyed and can only be preserved by the grant of such permit to kill such wild birds, wild fowl, wild animals or wild quadrupeds. Such permit when issued, shall distinctly state the time for which it is granted. (Id. sec. 24.)

Art. 900½*ll*. Taking or destroying nests or eggs of birds or fowl; penalty.—It shall be unlawful to take or destroy any nest or eggs of any wild bird or fowl mentioned in this Act as a game wild bird or wild fowl except as provided for in Section 39 of this Act [Art. 900½ss], and any person taking or destroying a nest of eggs of such wild birds shall be deemed guilty of a misdemeanor and on conviction shall be fined in a sum of not less than ten nor more than one hundred dollars. (Acts 1919, ch. 157, sec. 25; Acts 1919, 2d C. S., ch. 72, sec. 1.)

See ante, art. 880.

Art. 900½m. Seizure of birds, fowl, animals, etc., unlawfully taken or possessed.—All wild birds, wild fowl, wild animals or wild quadrupeds which have been killed or taken in any way or shipped, or which have been held in storage or have been found in restaurants contrary to the laws of this State, shall be seized without warning by the Game, Fish and Oyster Commissioner, or his deputy, and disposed of by the order of the Game, Fish and Oyster Commissioner or by his deputy by donating same to charitable institutions or to needy widows and orphans, if such birds, fowl, and animals mentioned are required to be placed in cold storage, such birds or animals shall be placed in a bill of cost against the defendant, or person from whom they were taken on his conviction. And the Game, Fish and Oyster Commissioner or any of his deputies shall have the right to search the game bag or any other receptacle of any kind whenever such Commissioner or his deputy has reason to suspect that such game bag, or other receptacle or any buggy, wagon, automobile or other vehicle may contain game unlawfully killed or taken, and any person who refuses to stop such vehicle, when requested to do so by the Commissioner or his deputy, shall be deemed guilty of a misdemeanor and on conviction shall be fined not less than ten dollars, nor more than one hundred dollars. (Acts 1919, ch. 157, sec. 26.)

See ante, art. 896.

Art. 900½mm. Killing, injuring, or taking or destroying nests or eggs of certain non-game wild birds; penalty.—If any person shall wilfully kill or injure, or if any person shall take or destroy the nests or eggs of any mocking bird, nighthawk (known as the bull bat), blue bird, red-bird, finch, thrush, linnet, wren, martin, robbin swallow, cat-bird, nonpariel or scissortail, white or brown heron or sparrow hawk, he shall be deemed guilty of a misdemeanor and on con-

viction he shall be fined not less than ten (10.00) dollars nor more than one hundred (100.00) dollars. (Id. sec. 27.)

See ante, art. 887.

Art. 900½n. License to owners of sail or power boats to carry hunting parties.—It is hereby declared unlawful for any person owning or navigating any sail or power boat to receive on board of such boat for pay or hire any persons engaged in hunting, before such persons navigating or owning such boat shall have applied for and received a license from the Game, Fish and Oyster Commissioner granting him the right to receive and carry parties engaged in hunting for one year. Before such license is issued, the person applying for it shall pay to the Commissioner two ($2.00) dollars and shall file with such Commissioner the name of his vessel, her motive power, the power of her engine or motors, her accommodations, for passengers, the number of her crew, the price to be charged per diem for the hire of such boat and shall file with the Game, Fish and Oyster Commissioner an affidavit that he will not violate any of the provisions of this Act. And will endeavor to prevent any one whom he carried on his boat from violating any of the provisions of this Act, and that he will not carry on his boat any hunter without his hunting license, and that on his return from carrying out any hunting party he will file with said Commissioner a statement embracing the names of those he carried out, their residences, the number of game killed by each of them on each day, and the disposition of such game. It shall be the duty of the Game, Fish and Oyster Commissioner if he grants the license, to furnish the person licensed with a condensed statement of birds or fowl, or animals which can be killed, together with the statement of the open and closed seasons, which the owner of such license shall post in the cabin of his boat, or in or on some other prominent part of his boat for the whole time of his license. The Game, Fish and Oyster Commissioner is empowered to enforce the provisions of this Section by the cancellation of the license without a refund or return of the license tax paid, and no license shall be renewed or issued him thereafter whenever any boat owner or navigator refuses or fails to comply with the provisions of this Section. Any person who carries out any hunting parties for reward or hire of any kind without procuring his license as provided for in this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than ten ($10.00) dollars not more than two hundred ($200.00) dollars. (Acts 1919, ch. 157, sec. 28; Acts 1919, 2d C. S., ch. 72, sec. 1.)

Art. 900½nn. Wild deer, antelope, Rocky Mountain sheep, and squirrel property of people; open season for deer; penalty.—All the wild deer, wild antelope, wild Rocky Mountain Sheep and wild squirrel, of this State are hereby declared the property of the people of the State. It shall be unlawful for any person to hunt or kill any wild deer, except in the months of November and December and any person hunting or killing a deer at any other time of the year shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than ten ($10.00) dollars nor more than one hundred ($100.00) dollars. (Acts 1919, ch. 157, sec. 29.)

See ante, art. 882.

Art. 900½o. Hours for hunting deer; penalty.—Any persons who shall hunt or kill any deer between sunset and one-half hour before sun-rise, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum of not less than ten dollars, nor more than two hundred dollars. (Id. sec. 30.)

Art. 900½oo. Hunting with lamps or lanterns; penalty.—It shall further be unlawful for any person at any time of the year to hunt deer or other game mentioned in this Act by the aid of what is commonly known as Hunting Lamps, or Lanterns or any other light used for the purpose of hunting at night and any person violating any provision of this Article shall be deemed guilty of an misdemeanor and upon conviction shall be fined in a sum not less than fifty ($50.00) dollars nor more than two hundred ($200.00) dollars, or by imprisonment of not less than thirty nor more than ninety days or both by fine and imprisonment. (Id. sec. 31.)

Art. 900½p. Bag limit of deer; female deer and fawn not to be taken; penalty.—It shall be unlawful for any person to kill more than three buck deer in any one season, said season being November and December of each year, and any person killing more than that number shall be deemed guilty of a misdemeanor and on conviction shall be fined not less than ten ($10.00) dollars nor more than one hundred ($100.00) Dollars. It shall be unlawful for any person at any season of the year to kill, take, trap or ensnare any wild female deer, or spotted fawn within this State, and any person violating the provisions of this Article shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than ten ($10.00) dollars nor more than one hundred ($100.00) Dollars. (Acts 1919, 2d C. S., ch. 72, sec. 1.)

Added to Acts 1919, ch. 157, as sec. 31a thereof, by Acts 1919, 2d C. S., ch. 72, sec. 1.

See ante, art. 882.

Art. 900½pp. Transportation of deer; penalty.—It shall be unlawful to ship any deer or any part thereof by common carrier without the person shipping it shall make the affidavit prescribed in Section 21 of this Act [Art. 900½jj], and any person shipping or receiving for shipment as the agent of any transportation company, any deer or any part thereof, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum of not less than ten ($10.00) dollars nor more than one hundred ($100.00) dollars, and any transportation company carrying such deer or any part thereof without the affidavit set forth in Section 21, or the owner of any boat or vessel or the corporation owning any such vessel, or boat transporting such deer or any part thereof, shall on conviction be fined not less than one hundred ($100.00) dollars, nor more than eight hundred ($800.00) dollars. And to recover this penalty the Game, Fish and Oyster Commissioner is required, through any County or District Attorney or the Attorney General to bring suit against such transportation company, owner of the boat, or the incorporation or firm owning such boat for the recovery of

same. And the venue for the trial shall be either in any county of this State in which the transportation company operated or in Travis county, Texas. (Acts 1919, 2d C. S., ch. 72, sec. 1.)

Added to Acts 1919, ch. 157, as sec. 31b thereof, by Acts 1919, 2d C. S., ch. 72, sec. 1.

Art. 900½q. Hunting deer with calls or decoys.—It shall further be unlawful for any person, at any time of the year, within this State to use a deer call, whistle, decoy, call pipe, reed, or other device, mechanical or natural, for the purpose of calling or attracting the attention of any deer except by rattling of deer horns and any person hunting deer by such means or attempting to use any such means in hunting deer, as herein provided, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred ($100.00) dollars nor more than five hundred ($500.00) dollars or by imprisonment of not less than twenty nor more than ninety days, or both by said fine and imprisonment and each and every unlawful act shall constitute a separate offense. (Acts 1919, ch. 157, sec. 32.)

Art. 900½qq. Closed season for antelope and Rocky Mountain sheep; penalty.—Any person who shall kill or take or have in his possession any wild antelope, or Rocky Mountain sheep within five years from the passage of this Act shall be deemed guilty of a misdemeanor and on conviction shall be fined in a sum of not less than fifty ($50.00) dollars, nor more than five hundred ($500.00) dollars. (Id. sec. 33.)

See ante, art. 882.

Art. 900½r. Enforcement of laws by deputy Game Commissioners; penalty for violations of laws by.—All Deputy Game Commissioners are hereby required to enforce the Game, Fish and Oyster Laws of this State, and any such Deputy who violates such laws shall be deemed guilty of a misdemeanor and on conviction shall be fined in a sum of not less than one hundred ($100.00) dollars nor more than two hundred ($200.00) dollars. (Id. sec. 36.)

Art. 900½rr. Purchase of game birds or animals for evidentiary purposes.—Any person who shall buy any game bird or animal, the sale of which is prohibited by this Act, for the purpose of establishing testimony, shall not be prosecuted for such purpose. (Id. sec. 37.)

Art. 900½s. Possession of prohibited birds or animals prima facie evidence of guilt.—The possession of any wild game bird or any wild game fowl, or any wild game animal mentioned in this Act, during the time when killing or taking it is prohibited, either dead or alive, shall be prima facie evidence of the guilt of the person in possession, charged with having killed or taken such bird or animal during the time when killing or taking is prohibited by law. (Id. sec. 38.)

Art. 900½ss. Taking of wild birds, fowl, or animals for zoological gardens, parks, or propagation; taking eggs of wild birds, etc., for scientific purposes; procedure; penalty.—Provided, nothing in the law shall prevent the capture of wild birds or wild fowl or wild animals or wild quadrupeds for zoological gardens or parks or for propogation purposes, or taking of eggs of wild birds, and wild fowl for Scientific purposes, or public museums, but before any birds, fowl, animals, quadrupeds or eggs are taken, permission from the Game, Fish and Oyster Commissioner must be secured by the person desiring to secure them, making an application for the same with an affidavit, setting forth what birds, fowl, eggs, animals and quadrupeds and the number that he desires, and the purpose for which he desires them. And if any person desires to bring into this State any wild birds or wild animals, he shall apply to the Game, Fish and Oyster Commissioner for permission to do so attaching to such application an affidavit of the number and kind of birds or animals desired to be introduced and the Game, Fish and Oyster Commissioner can refuse the application in either case if in his judgment such application is not satisfactory. And if any person shall violate any provision of this Act, he shall be deemed guilty of a misdemeanor and on conviction shall be punished by a fine of not less than ten (10.00) dollars, nor more than one hundred (100.00) dollars. The Game, Fish and Oyster Commissioner shall at all times have the power to take, keep and transport to and within the State any of the wild birds, wild fowl, eggs thereof, and wild animals for the purpose of propogation, investigation and distribution. (Id. sec. 39.)

Art. 900½t. Hunting license for residents hunting outside county of residence; refusal to show license; penalty.—It shall be unlawful for any citizen of this State to hunt outside of the county of his residence with a gun without first having procured from the Game, Fish and Oyster Commissioner or one of his deputies or from the County Clerk of the County in which he resides a license to hunt, and for which he shall pay to the officer from whom he secures such license the sum of two ($2.00) dollars; fifteen cents of which amount shall be retained by said officer as his fee for collecting. Any person hunting any game or birds protected by the laws of the State, and who shall refuse to show his license herein provided for to any sheriff, Deputy Sheriff, Constable, Game Commissioner, or Deputy Game Commissioner on demand shall be deemed guilty of a violation of the provisions of this law, and any person violating any of the provisions of this Section shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum of not less than ten (10.00) dollars nor more than one hundred (100.00) dollars. (Id. sec. 42.)

Art. 900½tt. Hunting license for non-residents; penalty.—It shall be unlawful for any non-resident of this State or alien to hunt in this State without first having secured from the Game, Fish and Oyster Commissioner, or his deputy, or County Clerk a license to hunt for which he shall pay the sum of fifteen (15.00) dollars; three dollars of which amount shall be retained by said officer as his fee for collecting, and if any non-resident of this State or alien shall hunt in this State without securing a license as provided he shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum of not less than ten (10.00) dollars nor more than one hundred (100.00) dollars. (Id. sec. 43.)

Art. 900½u. Contents of hunting license; duration of.—All hunting licenses

issued shall have printed on their backs the bag limit set forth in this Act; they shall have printed across their face the year for which they are issued; they shall bear the name and residence of the person to whom they are issued and shall give the probable weight, height, age color of hair and eyes of such person, and shall have printed on them a statement to be subscribed in ink by the person to whom it is issued, that he will not exceed in any one day the bag limit as set forth in the license. Such license shall be dated on the day of issuance, and shall remain in effect, until the first day of September thereafter and shall entitle the holder thereof to the right to hunt in any county in this State. (Id. sec. 44.)

Art. 900½uu. Unlawful storage of game birds and animals; penalty.—All game birds, ducks, geese, brant and other water fowl and all animals named in this Act, as subjects to its provisions, may be possessed during the open season prescribed therefor, and for an additional ten days after such open season is closed, and it shall be unlawful after such ten days to place in storage or to keep in storage any wild game birds or wild animals or parts thereof, named in this Act, and any person owning or claiming such birds or animals or parts thereof after such ten days, or any person storing such birds or animals for such claimant or owner, shall be guilty of a misdemeanor and upon conviction shall be fined in a sum of not less than ten (10.00) dollars nor more than one hundred (100.00) dollars for each game bird, duck, goose, or brant or for such game animal or part of such game animal as has been so stored. (Id. sec. 45.)

Art. 900½v. Jurisdiction of prosecutions.—In the prosecution for violation of the game laws any justice court or county court of a county in which a violation occurs shall have jurisdiction for trial of such prosecution. (Id. sec. 46.)

Art. 900½vv. Repeal.—That all laws and parts of laws in conflict herewith be and the same are hereby repealed and Section 3, of Chapter 8, of the General Laws of the State of Texas passed by the Third Called Session of the Thirty-fifth Legislature, be, and the same is hereby repealed. (Id. sec. 47.)

Art. 901. (525) Oysters culled from public beds, etc.; penalty; cancellation of license.—It shall be unlawful for any person to fail or refuse to scatter the culls of such oysters as he may take from the oyster reefs as directed by the Game, Fish and Oyster Commissioner, and any person so failing or refusing to scatter such culls, as directed by the Commissioner, shall be deemed guilty of a misdemeanor and on conviction he shall be fined in a sum not less than ten nor more than one hundred dollars. And on such conviction the Game, Fish and Oyster Commissioner may cancel the license of the captain of the boat on which such person is employed or for which he is gathering oysters, and he shall also cancel the license to gather oysters of such person offending, and no new license shall be issued to such captain or to such person convicted for a period of three years. (Acts 1891, p. 155, sec. 2; Acts 1897, ch. 98, sec. 1; Acts 1913, ch. 135, sec. 1; amending art. 901, revised Pen. Code; Acts 1919, 2d C. S., ch. 73, art. [sec.] 38.)

Acts 1891, p. 155, sec. 2, from which art. 901 was constructed, seems to have been superseded, prior to the revision, by Acts 1897, p. 127, ch. 98, sec. 1, which reads as follows: "When oysters are gathered as prescribed in article 529s of this act, from the public beds or reefs, except for planting, they must be culled, and the young oysters and dead shells must be returned to the original reef or bed while the young oysters are yet alive, and not to exceed ten hours from the time of taking from the water bed or reef. Any person offending against this article shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than two hundred and fifty dollars for each and every offense."

See ante, note to art. 868.

Art. 902. (526) Planting prohibited, when.—It shall be unlawful for any person to plant or purchase oysters for planting, bedding or depositing, or for marketing, or for any other purpose whatever, from the first day of May to the first day of September in any year, except by permission of the Game, Fish and Oyster Commissioner, and, if any person shall violate the provisions of this Article, he shall be deemed guilty of a misdemeanor, and, on conviction shall be fined for each offense not less than ten nor more than one hundred dollars. (Acts 1891, p. 155, sec. 6; Acts 1913, ch. 135, sec. 1, amending art. 902, revised Pen. Code.)

Art. 903. (526a) Unlawful to receive for shipment, when.—It shall be unlawful for any transportation company operating within this State, its officers, agents or employees, to receive for shipment, or to ship, within the boundaries of this State, from the first day of May to the first day of September of any year, any oysters from any public bed or reef, for depositing or for marketing; provided that nothing in this chapter shall be construed as to prohibit any such transportation company, its officers, agents or employees, from shipping, or receiving for shipment, any oysters taken from a private bed located under the laws of this State, offered for shipment by the owner or owners, locator or locators, of such bed; such fact to be established by the written affidavit of the person or persons offering such oysters for shipment, made before an officer authorized to take oaths. Any officer, agent or employee of such transportation company violating the provisions of this Section shall be deemed guilty of a misdemeanor and upon conviction shall be fined for each offense not less than ten nor more than one hundred dollars. (Acts 1907, p. 233; Acts 1913, ch. 135, sec. 1, amending art. 903, revised Pen. Code; Acts 1919, 2d C. S., ch. 73, art. [sec.] 36.)

Art. 904. (528) Unlawful to rake, dredge, etc.; penalty.—It shall be unlawful for any person or persons to rake, dredge or excavate with machinery any public oyster bed or oyster reefs in the waters of this State without first having obtained permission of the Game, Fish and Oyster Commissioner to so dredge or excavate with machinery. Any person or persons who shall violate the provisions of this Article shall, on conviction, be fined in any sum not less than five hundred nor more than one thousand dollars. Each day's violation of any of the provisions of this Article shall constitute a

separate offense. (Acts 1907, p. 233, sec. 8; Acts 1913, ch. 135, sec. 1, amending art. 904, revised Pen. Code.)

Art. 905. (529) Unlawful to destroy or deface buoy.—Any person who shall deface, injure, or destroy or remove any buoy, markers or fence or any parts thereof, used to designate or enclose a private oyster bed or a location where oysters have been deposited to be prepared for market, without the consent of the owner thereof, any buoy, marker or sign placed or used by the Game, Fish and Oyster Commissioner for the purpose of designating any waters closed against fishing or oyster taking, without the consent of the Game, Fish and Oyster Commissioner, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than fifty nor more than two hundred dollars. (Acts 1899, ch. 56; Acts 1901, p. 302; Acts 1913, ch. 135, sec. 1, amending art. 905, revised Pen. Code; Acts 1919, 2d. C. S., ch. 73, art. [sec.] 29.)

Art. 906. (529b) Unlawful to catch fish, green turtle, etc.; how and when.—It shall be unlawful for any person to catch or attempt to catch any fish, green turtle, loggerhead, terrapin or shrimp in any of the bays or navigable waters of this State, within the limits or within one mile of the limits of any city or town in this State, with seines, drags, fykes, set nets, trammel nets, traps, dams or weirs. A town or city in the meaning of this Act shall be a collection of one hundred families within an area of one square mile. Any one violating any of the provisions of this Act shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than twenty-five nor more than two hundred dollars. In all prosecutions under the provisions of this Act, the identification of the boat from which such violation or violations occur shall be prima facie evidence against the owner, lessee, person in charge or master of such boat. It shall be the duty of such town to establish and maintain the buoys stakes or other marks designating the limits of the one mile within which such seines shall be hauled and such nets set. (Acts 1897, p. 213; Acts 1913, p. 269, ch. 135, sec. 1, amending art. 906, revised Pen. Code; Acts 1919, 2d C. S., ch. 73, art. [sec.] 30.)

Art. 907. (529c) Catching fish, etc., by use of explosives or poison.—The catching, taking or killing of fish, green turtle or terrapin in any of the salt waters or fresh waters, lakes or streams in the State by poison, lime, dynamite, nitroglycerine, giant powder or other explosives, or by the use of any drugs, substances or thing deleterious to fish life, is hereby prohibited; and any person offending against this article shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars nor more than two hundred dollars, and by confinement in the county jail not less than thirty nor more than ninety days. (O. C.; amended Acts 1897, p. 125; Acts 1913, ch. 135, sec. 1, amending art. 907, revised Pen. Code; Acts 1919, 2d C. S., ch. 73, art. [sec.] 35.)

Art. 908. Fishing for oysters, fish, etc., for sale without license; penalty.—Any person who fishes in the public waters of this State for oysters, fish, shrimp, turtle, terrapin, crabs, clams and other marine life for market or sell such product of such waters, without first procuring a license to do so shall be deemed guilty of a misdemeanor and on conviction shall be fined in a sum of not less than ten and not more than fifty dollars. (Acts 1897, p. 125; Acts 1913, ch. 135, sec. 1, amending art. 908, revised Pen. Code; Acts 1919, 2d C. S., ch. 73, art. [sec.] 27.)

This is a part of Acts 1919, 2d C. S., ch. 73, art. 27. For the remainder of said art. 27 see ante, Civ. St., art. 3999a.

Art. 908a. Refusal to show license; penalty.—It shall be the duty of any person fishing for market or for the sale of the marine life set forth in Article 27, in the waters of this State to carry with him the license to do so as issued him as provided in said Section 27, and shall show it to the Game, Fish and Oyster Commissioner when requested to do so. Any person having such license and refusing to show it to the Commissioner or his deputy as aforesaid, when requested to do so, shall on conviction, be fined in a sum of not less than five nor more than twenty-five dollars. (Acts 1919, 2d C. S., ch. 73, art. [sec.] 28.)

For art. 27 of this act, see ante, art. 908; and, ante, Civ. St. art. 3999a.

Art. 909. (529e) Sale of certain fish of certain weight prohibited.—It shall be unlawful for any person to have in his or her possession or to sell or ship any red fish more than twelve pounds in weight or less than one and one-half pounds in weight; any trout of less than three-fourths of one pound in weight; sheepshead, flounder, Spanish mackerel or pompano of less than one-half pound in weight. It shall also be unlawful for any person to place or stretch in or across any water any seine or net for the purpose of catching or holding fish for a longer period of time than ten hours. Any person offending against this Article shall, upon conviction, be fined in any sum not less than ten nor more than two hundred dollars. (Acts 1899, ch. 56; Acts 1907, p. 238, ch. 126; Acts 1909, p. 329; Acts 1913, ch. 135, sec. 1, amending art. 909, revised Pen. Code.)

This article is superseded in part by art. 909a, post.

Art. 909a. Same subject; penalty; venue of prosecution; sale of fish without head attached; penalty.—It shall be unlawful for any person to sell or offer for sale or to have in his possession for sale, or to have in any mercantile business establishment, or in any market where merchandise is disposed of, any red fish or channel bas of greater length than twenty-seven inches or less than fourteen inches; any salt water or speckled sea trout of less length than twelve inches; any sheep head of less than nine inches in length; any flounder of less than twelve inches in length; any pompano of less than nine inches in length; any mackeral of less than thirteen inches in length; any Spanish mackerel of less than fourteen inches in length; and any person violating any of the provisions of the above part of this Article shall be deemed guilty of a misdemeanor and on conviction shall be fined in a sum of not less than ten dollars nor more than fifty dollars. The place of sale or offering for sale shall for the purposes of this act to establish venue be either the place from which

such fish are shipped or where the fish are found or offered for sale; and it shall be unlawful in selling or offering for sale any fish mentioned in this Act, to sever the head from the body, except the gaff-topsail and June fish, and all fish marketed or sold must be weighed and sold with the head attached, except the gaff-topsail and June fish, and any person selling any fish hereinbefore mentioned, except the gaff-topsail and June fish without its head being attached to the body, shall be deemed guilty of a misdemeanor and on conviction shall be fined in a sum of not less than twenty-five dollars and no more than one hundred dollars. (Acts 1919, 2d C. S., ch. 73, art. [sec.] 53.)

See ante, art. 909.

Art. 910. (529f) Sale of turtle and terrapin of certain weight prohibited.—It shall be unlawful for any person to sell or ship any green turtle of less than twelve pounds in weight or terrapin of less than six inches in length of under shell, or to catch or sell any terrapin from the first day of May to the first day of August. Any person offending against this Article shall, upon conviction, be fined in any sum not less than ten nor more than two hundred dollars. (O. C.; Acts 1913, ch. 135, sec. 1, amending art. 910, revised Pen. Code.)

This article is superseded in part by art. 914b.

Art. 911. (529g) Catching fish or terrapin with drag seine during breeding season.—It shall be unlawful for any person to catch any fish in the tidal or coastal waters of the State during the months of June, July and August of each year by the use or employment of any drag seine or net, or to drag any seine or net or other device, except a minnow seine for catching bait of not more than twenty feet in length or a shrimp seine as hereinafter provided in Article 50 of this Act, in such coastal and tidal waters; and it shall be unlawful for any person at any time to place or set or drag any net or seine or use any other device or method for taking fish, other than with the ordinary pole and line or cast net, or minnow seine for catching bait of not more than twenty feet in length, within the waters of San Luis Pass, which leads from Matagorda Bay to the Gulf of Mexico; Brown's Cedars Pass, which leads from Matagorda Bay to the Gulf of Mexico; Pass Cavallo, which leads from Matagorda Bay to the Gulf of Mexico, between the town of Matagorda and the mouth of Caney Creek; Cedar Bayou which leads from Mesquite Bay to the Gulf of Mexico; Aransas Pass which leads from Aransas Bay to the Gulf of Mexico; Corpus Christi Pass which leads from Corpus Christi Bay to the Gulf of Mexico; and all other passes connecting the bays and tidal waters of the State with the Gulf of Mexico, or within one mile of such passes, or within the waters of any pass, stream or canal leading from one body of Texas Bay or coastal waters into another body of such water. And the Game, Fish and Oyster Commissioner, whenever he has reason to believe it is best for the protection and conservation and increase of fish life, or to prevent their destruction in the bays or part thereof, or such tidal waters of the State, to close such bays or parts thereof, or such tidal waters against all forms and kinds of seining or netting or using gigs, spears and lights, he is hereby authorized to close such waters against fishing with any seine, net, spears, gigs, lights or other devices, except with a hook and line or cast net or minnow seine of not more than twenty feet in length. But before such closing of bays or parts thereof, or of other tidal waters against such seining and netting, and the using of gigs, spears and lights, the Game, Fish and Oyster Commissioner shall give notice of his intention to close such bays, or parts thereof or such tidal waters for two weeks prior to such closing by posting notices near such waters and after the date set for such closing and which shall appear in such notices of the proposed closing of such waters, it shall be unlawful to drag a seine, or set a net or use a gig, spear or lights in taking fish in such bays and parts of bays and such tidal waters for that period of time that the said Commissioner shall, in such notices, declare they shall be closed. Any person who shall drag any seine or set any net or use any gig or spear or light to take fish in such closed waters, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in a sum of not less than twenty-five nor more than two hundred dollars, and shall be confined in the county jail for a term of not less than thirty nor more than ninety days, and any net, seine or boat used or employed in the violation of this Act shall be and is hereby declared a nuisance and the Game, Fish and Oyster Commissioner or his deputy shall abate and destroy the same and no suit shall be maintained in the courts against him for such abatement and destruction. (Acts 1897, ch. 98; Acts 1899, ch. 56; Acts 1909, p. 329; Acts 1913, ch. 135, sec. 1; Acts 1913, 1st C. S., ch. 23, sec. 1; Acts 1919, 2d C. S., ch. 73, art. [sec.] 39.)

Art. 912. (529h) Person fishing with drag seine to return fish of certain size to water.—Any person fishing with a drag seine or set net, for sale or market, shall return all fish, green turtle or terrapin of the sizes and weights, specified in Articles 909 and 910 of the Penal Code, to the water, while they are yet alive, except sharks, gars, rays, catfish and sawfish; and the size of the meshes of the fish seines shall not be less than one and one-half inches square, not including the bag nor shall any seine exceed twelve hundred feet in length; and any person offending against this Article shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than ten dollars nor more than two hundred dollars. (Acts 1897, ch. 98; Acts 1909, p. 331; Acts 1913, ch. 135, sec. 1, amending art. 912, revised Pen. Code.)

This article is superseded, at least in part, by art. 912a, post.

Art. 912a. Same subject.—Any person dragging a seine or engaging in taking fish in a set net shall return to the water all fish under and above size according to the measure or weight herein established, and all other fish except sharks, gars, rays turtle and terrapin, saw fish and cat fish, except the gulf-topsail cat, which may be retained, and any person not returning such fish to the water as required by this article, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in a sum of not less than fifty and no more than one hundred dollars. (Acts 1919, 2d C. S., ch. 73, art. [sec.] 62.)

See ante, art. 912.

Art. 913. (529i) Coast survey charts as evidence.—All United States Coastal Survey Charts covering the coast of Texas shall be admissible as evidence in all prosecutions under this act. (O. C.; Acts 1913, ch. 135, sec. 1, amending art. 913, revised Pen. Code; Acts 1919, 2d C. S., ch. 73, art. [sec.] 54.)

Art. 914. (529j) Closed season for oysters.—It shall be unlawful for any person to take or catch oysters from any public beds, or reefs, for sale or for market, from the first day of April to the first day of September of each year. Any person offending against this article shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than ten dollars nor more than two hundred dollars, and each day shall constitute a separate offense; provided, that part of the Laguna Madre, south and west of Baffin's Bay be excepted and exempted from the operation of this article. (Acts 1907, ch. 126; Acts 1909, p. 331; Acts 1913, ch. 135, sec. 1, amending art. 914, revised Pen. Code; Acts 1919, 2d C. S., ch. 73, art. [sec.] 45.)

Art. 914a. Closed season for Green turtle; taking eggs of such turtle.—It shall be unlawful for any person to take or kill or have in his possession at any time within five years from the passage of this Act, any sea turtle, known as the Green turtle, and it shall be unlawful to destroy or take the eggs of such turtle and any person who shall take, kill or have in his possession within such five years, or who shall destroy or take the eggs of such turtle shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum of not less than fifty nor more than one hundred dollars. (Id. art. [sec.] 55.)

Art. 914b. Closed season for salt water terrapin.—It shall be unlawful for any person to take, kill, or have in his possession any salt water terrapin except during the months of November, December, January and February, and any person killing taking or having in his possession any salt water terrapin at any time except during the months of November, December, January and February, shall be guilty of a misdemeanor, and on conviction shall be fined in a sum of not less than fifty nor more than one hundred dollars. (Id. art. [sec.] 56.)

See ante, art. 910.

Art. 915. (529j½) Use of screens on taking water from public waters.—It shall be the duty of every person, firm or corporation using pumps for the purpose of taking water from the public waters of the State, when directed to do so by the Game, Fish and Oyster Commissioner to place screens over the mouth of the intake pipe for the purpose or preventing fish from entering said pipe. The size of and regulations for placing such screens shall be designated by the Game, Fish and Oyster Commission. Any person, firm or corporation failing to comply with this Article, after notification by the Game, Fish and Oyster Commissioner so to do shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than fifty dollars nor more than two hundred dollars; and each day shall constitute a separate offense. (Acts 1909, p. 331; Acts 1913, ch. 135, sec. 1, amending art. 915, revised Pen. Code.)

Art. 916. (529*l*) Taking fish, turtle, terrapin, or oysters, with seine without license.—It shall be unlawful for any person to catch any fish, green turtle or terrapin, with seine or set net for market, in any of the bays or coast waters of this State, or gather any oysters with tongs or otherwise, for market or planting, from any of the public reefs or beds in this State, without having a license from the Game, Fish and Oyster Commissioner, or his deputy. Any person offending against this Article shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined not less than ten dollars nor more than two hundred dollars; and each day shall constitute a separate offense. (Acts 1897, ch. 98; Acts 1899, p. 77; Acts 1913, ch. 135, sec. 1.)

Art. 917. Engaging in business of wholesale dealer in fish and oysters without license and payment of tax.—And any person, firm or corporation or association of persons or any officer, agent or employee of any company, corporation or association of persons, who shall engage in the business of a wholesale dealer in fish and oysters or either, without procuring a license to follow said business or without paying the tax and fee required by this article shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than two hundred dollars; and each day such business may be engaged in, in violation of this article, shall constitute a separate offense, and upon conviction for pursuing said occupation without payment of the tax and fee required by law or for any other violation of the game, fish and oyster law, the license of such dealer shall be forfeited. (Acts 1909, p. 327; Acts 1913, ch. 135, sec. 1, superseding art. 917, revised Pen. Code; Acts 1919, 2d C. S., ch. 73, art. [sec.] 16.)

This article is a part of article 16 of Acts 1919, 2d C. S., ch. 73. For the remainder of said article 16, see ante, Civ. St., art. 3987.

Art. 918. (529n) Selling unculled oysters; penalty.—Any person offering for sale, or who shall sell, any cargo of oysters which shall contain more than five per cent young oysters, shall be deemed guilty of a misdemeanor and upon conviction, shall be fined not less than ten dollars, nor more than two hundred dollars. Any oyster that measures less than three and one half inches from hinge to mouth shall be deemed a young oyster for the purpose of this and the preceding article. The Game, Fish and Oyster Commissioner is authorized to permit the taking of oysters from any reef he may designate, of less size than three and one-half inches, but it shall be unlawful to take oysters from reefs other than those designated by such commissioner, and any one taking such oysters smaller in measurement than three and one-half inches from hinge to mouth from other than such reefs as designated by such commissioner, shall be deemed guilty of a misdemeanor and upon conviction, shall be fined in a sum of not less than twenty-five nor more than two hundred dollars. (Acts 1897, ch. 98; Acts 1909, p. 327; Acts 1913, ch. 135, sec. 1, amending art. 918,

revised Penal Code; Acts 1919, 2d C. S., ch. 73, art. [sec.] 44.)

Art. 919. (529o) Duty of Game, Fish and Oyster Commissioner.—It shall be the duty of the Game, Fish and Oyster Commissioner or his deputy, when he thinks that any cargo of oysters offered for sale, contains more than five per cent of young oysters, to take as many as he may deem necessary from such cargo, cull them and measure the young oysters, or those that measure less than three and one-half inches from the hinge to the mouth, and ascertain to the best of his ability, the proportion of the young oysters by number to the marketable oysters; and, if the young oysters be in greater proportion than five per cent, the cargo shall be deemed unculled, and the owner shall be deemed guilty of the offense prescribed in Article 918 of the Penal Code. (Acts 1907, ch. 126; Acts 1909, p. 327; Acts 1913, ch. 135, sec. 1, amending art. 919, revised Pen. Code.)

Art. 920. (529p) Theft from private oyster bed.—Any person taking the oysters placed on private reefs or any person taking oysters from beds or deposits made for the purpose of preparing them for market, without the consent of the owner of the private reef or of the owner of the oysters who has deposited them to prepare them for market, under the provisions of the foregoing article 25, shall be deemed guilty of theft and on conviction shall be punished by confinement in the penitentiary for a term of not less than one and not more than two years. (O. C.; Acts 1913, ch. 135, sec. 1, amending art. 920, revised Penal Code; Acts 1919, 2d C. S., ch. 73, art. [sec.] 26.)

For article 25 of Acts 1919, 2d C. S., ch. 73, see ante, Civ. St., art. 3999.

Art. 921. (529t) Selling oysters gathered for planting.—It shall be unlawful for any person gathering oysters for planting or depositing for preparations for market, on locations obtained from the State or on private property, to sell, market or in any way dispose of oysters so gathered at the time of gathering, for any other purpose than planting, or preparing for market, provided, this shall not be considered as meaning the right to dispose of a location or oyster bed. Any person offending against this article shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than fifty nor more than two hundred dollars. (Acts 1897, ch. 98; Acts 1907, p. 238; Acts 1913, ch. 135, sec. 1, amending art. 921, revised Penal Code; Acts 1919, 2d C. S., ch. 73, art. [sec.] 46.)

Art. 922. (529u) Gathering seed oysters without license.—It shall be unlawful for any person, firm, corporation or joint stock company to gather seed oysters for planting without having first obtained a permit or license to do so from the Game, Fish and Oyster Commissioner, or his deputy, said permit or license to designate the reef or beds from which the applicant is allowed to gather seed oysters, or oyster to be prepared for market as provided in Article 25 of this Act and any person, agent, employee or officer of a firm, corporation or joint stock company gathering or having gathered oysters for planting or oysters to be prepared for market, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not less than fifty dollars, nor more than two hundred dollars. (Acts 1899, p. 77; Acts 1913, ch. 135, sec. 1, amending art. 922, revised Pen. Code; Acts 1919, 2d C. S., ch. 73, art. [sec.] 47.)

For article 25 of Acts 1919, 2d C. S., ch. 73, see ante, Civ. St., art. 3999.

Art. 923. Penalty for selling fish, turtle, oysters, etc., without license.—Any person who shall market or offer to market any fish, turtle, terrapin, shrimp or oysters taken from salt waters of this State, or any fish taken from any fresh water lakes or streams, in any quantity greater than fifty pounds, shall pay the tax and obtain the permit, as prescribed by law, before disposing of any part of said product, and if he or any other person shall sell or shall dispose of any part of said product for shipment or storage before obtaining said permit, the person so selling or disposing of said product, or any part thereof, shall be deemed guilty of a misdemeanor and, upon a conviction, shall be fined not less than ten nor more than two hundred dollars. In prosecutions in this and other similar cases, the fact of the fish, turtle, terrapin, shrimp and oysters being of the varieties that are found in the waters of this State shall be prima facie evidence that said fish, turtle, terrapin, shrimp or oysters were taken from the waters of this State. (Acts 1905, p. 134; Acts 1913, ch. 135, sec. 1, amending art. 923, revised Pen. Code.)

Art. 923a. [Omitted.]

For this article, which contains no penal provision, see ante, Civ. St., art. 4019c.

Art. 923b. Closing overworked reef; notice; penalty.—Whenever the Game, Fish and Oyster commissioner believes that any public reef is being overworked or damaged in any way, or where such reef has been worked under his supervision, he may close such reef against any one taking oysters from it, but before he closes such reef he shall give two weeks' notice of such closing by posting notices in such fish houses as are in two towns nearest such reefs. In such notices he shall state the date of closing and the time for which such reefs shall be closed, and any person taking oysters from such reefs within the time closed by such Commissioner he shall be deemed guilty of a misdemeanor, and on conviction shall be fined in a sum of not less than twenty-five nor more than two hundred dollars. (Acts 1913, ch. 135, sec. 1; Acts 1919, 2d C. S., ch. 73, art. [sec.] 49.)

Art. 923c. Seizure of unlawful fishing devices and instrumentalities.—Nets, seines, boats or other devices for catching, fish, unlawfully used in the waters of this State, or boats, dredges, barges and tongs unlawfully used in violating the oyster laws of this State, are hereby declared public nuisances and may be summarily seized, destroyed and abated by the Game, Fish and Oyster Commissioner, or his deputies and no action for damages shall be maintained against such Commissioner or his deputies

for such seizure, destruction and abatement. (Acts 1913, ch. 135, sec. 1.)

Art. 923d. [Superseded by art. 923b.]

Art. 923e. Complaint before justice of the peace.—Complaints against any person for the violation of the game, fish and oyster law of this State may be made before any justice of the peace of the county in which the offense is charged to have been committed, and he shall have jurisdiction to try and dispose of the case; provided the penalties prescribed for such offenses are within the jurisdiction of justices of the peace. (Acts 1913, ch. 135, sec. 1; Acts 1919, 2d C. S., ch. 73, art. [sec.] 51.)

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. (Acts 1913, ch. 135, sec. 1; Acts 1917, ch. 187, sec. 1.)

This article is superseded, at least in part, by art. 923ff, post; and probably as to the remainder by art. 923p, post.

Art. 923ff. Same subject.—It shall be unlawful for any person to take or catch fish in the public fresh water rivers, creeks, lakes, bayous, pools, lagoons or tanks of this State, by any other means than by the ordinary hook and line or trot line, or by a set or drag net or seine, the meshes of which are three inches square or trammel net the meshes of any part of which are less than three inches square, or by a minnow seine of more than twenty feet in length, and it shall be unlawful for any person to place in the public fresh water rivers, 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 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. (Acts 1919, 2d C. S., ch. 73, art. [sec.] 60.)

See ante, art. 923f.

Art. 923fff. Use of metallic nets.—It shall be unlawful for any person to set or drag in any of the public waters of this State, any net or seines made of wire or other metallic substance and any one so setting or dragging any net or seines made of wire or other metallic material, shall be declared guilty of a misdemeanor, and on conviction shall be fined in a sum of not less than fifty and no more than one hundred dollars. And the Game, Fish, and Oyster Commissioner shall destroy such nets and seines as nuisances where found. (Id.)

Art. 923ffff. Closing certain waters to use of nets; penalty.—Provided, that the Game, Fish and Oyster Commissioner is authorized to close any of the waters mentioned in this Section against the use of nets or seines or any particular kind of such nets and seines whenever he thinks that such closing is necessary or best to protect and conserve the fish in such waters. But before closing such waters against the use of seines or nets or any particular kind of seine or net, he shall give notice by posting his intentions for two weeks, at not less than three stores or other places in proximity to such waters.

Any person who shall fish with a net or seine in such closed waters or who shall use such particular kind of net or seine, as forbidden in such waters, after the notice given as above required, shall be deemed guilty of a misdemeanor and on conviction shall be fined in a sum of not less than twenty-five and no more than one hundred dollars. (Id.)

See ante, art. 923ff.

Art. 923g. Having in possession or carrying seine or drag net into prohibited waters.—It shall be unlawful for any person to carry into or have in his possession in any waters where seining is prohibited, any seine or drag net, and any such person who shall carry into or have in his possession any such seine or drag net shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined in a sum of not less than ten nor more than one hundred dollars, and any seine or drag net so carried into or found in such waters shall be deemed a nuisance, and the Game, Fish and Oyster Commissioner or his deputy are required to abate such nuisance by the destruction of such nets, as provided in this Act. Provided, that this Act shall not apply to the closed waters within one mile of any town. (Acts 1913, ch. 135, sec. 1.)

See post, art. 923gg.

Art. 923gg. Having in possession or carrying on, over or into certain waters certain nets; penalty; destruction of boat or vehicle.—Any person who shall carry on, or over, or into the waters of such passes leading from the inland bays or tidal waters of this State to the Gulf of Mexico, any seine or net except a cast net used for catching bait, or a minnow net not exceeding twenty feet in length, or shall carry by vehicle or in any other way, any seine or net except a cast net used for catching bait or a minnow seine not exceeding twenty feet in length, to any point or place within one mile of such passes, or shall have in his

possession within one mile of such passes any net or seine except a cast net for catching bait, or a minnow seine not exceeding twenty feet in length, shall be deemed guilty of a misdemeanor, and on conviction, shall be fined in a sum not less than twenty-five dollars and no more than two hundred dollars, and shall be confined in the county jail for not less than thirty nor more than ninety days. And any boat or vehicle used in carrying any seine or net, except a cast net used for catching bait, or a minnow seine more than twenty feet in length, into or on or over waters of such passes, and any seine or net carried into or found within one mile of such passes, or found in the possession of any one within one mile of such passes, shall be and is hereby declared a nuisance, and it shall be the duty of the Game, Fish and Oyster Commissioner or his deputies, to abate and destroy the same and no suit shall be maintained in the courts against them for such abatement and destruction. Provided nothing in this law shall apply to the carrying of nets and seines over closed waters within one mile of any town. (Acts 1919, 2d C. S., ch. 73, art. [sec.] 40.)

See ante, art. 923g.

Art. 923ggg. Same subject; exceptions.—Nothing in the foregoing articles [Arts. 911, 923gg] shall apply to vessels engaged in carrying freight or passengers, and engaged as sea-going vessels in coast and foreign trade, and licensed and recognized as such by the Federal Government. And provided further, that the Game, Fish and Oyster Commissioner may grant permits to persons desiring to fish, to carry their boats, nets and seines, and vehicles into, over and on such passes or closed waters or on land to within the mile limits of such passes, and at what time such boats, vehicles, nets and seines shall be taken away from such mile limit and such passes. (Id. art. [sec.] 41.)

Art. 923gggg. Same subject; prima facie evidence of guilt.—In all prosecutions under Article 39 and 40 of this Act [Arts. 911, 923gg], the identification of the boat or vehicle or the seine or net by which or from which the violation of the law occurred, shall be prima facie evidence against the owner or party last in charge of such boat or against the owner of the vehicle or seines or net. (Id. art. [sec.] 42.)

Art. 923h. [Superseded.]

See ante, art. 917.

Art. 923i. Obstruction or diversion of waters.—It shall be unlawful for any person to wilfully obstruct the natural flow of waters into any of the public waters of this State or two [to] wilfully divert the water from any of the public lakes, streams or ponds of this State, except for domestic or other necessary uses or for irrigation purposes, and any person so offending shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in a sum of not less than fifty nor more than one hundred dollars. (Acts 1913, ch. 135, sec. 1.)

Art. 923j. Using unlawful measurements for oysters.—Any person who shall use any measurement other than that established in Article 10 of this Act for the measurement of oysters in the purchase and sale of oysters, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined in a sum of not less than ten and not more than twenty-five dollars, and any person who shall fill the measuring box, as adopted in Article 10 of this Act, in the buying and selling of oysters, higher than two and one-half inches in the center of such measuring box, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in a sum of not less than ten nor more than twenty-five dollars. (Acts 1913, ch. 135, sec. 1; Acts 1919, 2d C. S., ch. 73, art. [sec.] 12.)

For article 10 of this act see ante, Civ. St., art. 3983.

Art. 923jj. Refusal to pay special tax on fish, shrimp and oysters.—Any person who shall not pay, or who shall refuse to pay the tax imposed on the purchase and sale of fish, oysters, turtle, terrapin and shrimp, as imposed in Article 10 of this Act, or who shall not pay or shall refuse to pay the taxes established and fixed by the Game, Fish and Oyster Commissioner in Article 10 of this Act, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in a sum of not less than fifty nor more than one hundred dollars, and if such person shall be a licensed fish dealer or fisherman or oysterman his license as a fish dealer or fisherman shall be canceled and not reissued for a period of three years. (Id. art. [sec.] 13.)

For article 10 of this act see ante, Civ. St., art. 3983.

Art. 923jjj. Refusal to pay tax on fish, oysters, shrimp, turtle, terrapin, clams, crabs, etc.—If any person shall refuse to pay any tax provided in this Act on any fish, oysters, shrimp, turtle, terrapin, clams, crabs or other marine life which he has sold, he shall be deemed guilty of a misdemeanor, and, upon conviction shall be fined in a sum of not less than ten nor more than one hundred dollars. (Id. art. [sec.] 48.)

Art. 923k. Taking boat, etc., into prohibited waters.—Any person who shall wilfully and with intent to injure the owner take any boat, seine or net or other device for fishing into prohibited waters, or shall use said articles for the unlawful taking or catching of fish, so as to cause the destruction of same shall be guilty of a misdemeanor, and punished by a fine of not less than ten nor more than two hundred dollars, and by confinement in the county jail not less than thirty nor more than ninety days. (Acts 1913, ch. 135, sec. 1.)

Art. 923l. Seining for gars, turtle, etc., not prohibited; seining by county authorities.—The provisions of this Act relative to use of seines in fresh water streams shall not prevent the seining for gars, turtle and other natural enemies of fish, under the supervision of the Game, Fish and Oyster Commissioner or a deputy; and the commissioners' court of any county is hereby authorized to have any stream, creek or lake in said county seined for the purpose of destroying any gar, turtle or other natural enemies of the fish which may be caught from such waters, said seining to be done under the supervision of and in the presence of the Game, Fish and Oyster Commissioner or a deputy. The expenses of said seining to be borne by the said county, or by the citizens

thereof; all good or edible fish which may be caught or taken in said seine to be returned to the waters. (Id.)

Art. 923m. Seining for drum fish; permit; superintendence.—Any person leasing an oyster claim or oyster reef in waters where seining is prohibited may apply to the Game, Fish and Oyster Commissioner for permission to seine for drum fish in such waters. In his application he shall make oath that the drum fish are seriously damaging his oysters, and that if he is permitted to seine for such drum fish in such waters, he will not take or destroy any other food fish, but will throw them back into the water. If the Commissioner is satisfied that such damage is being done he may grant such permission to the person applying for it, specifying in such permit the length of time in which it is to be used, and the claim or reef on which it is to be used. And such Commissioner shall assign a deputy fish and oyster commissioner to superintend such seining and no seine shall be dragged except in his presence, and for which a person obtaining the permission to seine, as set forth above, shall pay to the Game, Fish and Oyster Commissioner $2.50 per day, to be placed in the special fish and oyster fund, for such services. The person granted such permission shall board the deputy fish and oyster commissioner during his superintendence of such seining. If the person obtaining the permission shall violate any of the provisions of this Act, he shall be prosecuted and punished under the criminal laws of this State applicable in such cases. (Act 1913, ch. 146, sec. 1, amending art. 4018, Rev. St. 1911; Acts 1919, 2d C. S., ch. 73, art. [sec.] 33.)

Art. 923n. Taking away, disturbing, fishing or operating, etc., without permit; punishment.—If any person, association of persons, corporate or otherwise, shall, for himself or itself, or for or on behalf of or under the direction of another person, association of persons, corporate or otherwise, take or carry away, any marl, sand or shells or mudshell or gravel included in this Act, or shall disturb any of said marl, sand, shells or mudshell or gravel or oyster beds or fishing waters or shall operate in or upon any of said places for any purpose other than that necessary or incident to navigation or dredging under State or Federal authority, without first having obtained a written permit from the Game, Fish and Oyster Commissioner for the territory in which such operation is carried on, such person, association of persons, corporate or otherwise, shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined in a sum of money not less than ten dollars nor more than two hundred dollars; and each days operation shall constitute a separate offense. (Acts 1911, p. 120, ch. 68, sec. 9; Acts 1913. ch. 154, sec. 1; Acts 1919, 2d C. S., ch. 74, sec. 8.)

For the proviso to this article, as originally enacted, see ante, Civ. St., art. 4021k. For the remainder of Acts 1919, 2d C. S., ch. 74, see ante, Civ. St., arts. 4021b-4021i.

Art. 923nn. Catching shrimp; permit; penalty.—The Game, Fish and Oyster Commissioner is hereby authorized to permit the use of, any shrimp seine or other device for catching shrimp in the tidal waters of this State. Any person desiring to use such seine shall apply to the Game, Fish and Oyster Commissioner, or his deputy, for a permit to use such seine, net or other contrivance for catching shrimp and such commissioner or his deputy shall fix and establish the mesh, construction, depth and length of such seine or net or other contrivance so that it shall not be used for other purposes than in taking shrimp, and he shall tag seine officially and issue such permit he shall state in what waters and localities such seines or nets shall be used. And any person using such shrimp seine or other contrivance for catching shrimp in the tidal waters of this State without the permit herein provided for, or who shall use any seine or contrivance or net in any waters or locality, other than that stated in such permit, shall be guilty of a misdemeanor and on conviction shall be fined in a sum of not less than twenty-five nor more than two hundred dollars and such nets and seines or contrivances thus used in violation of this article shall be and is hereby declared a nuisance and the Game, Fish and Oyster Commissioner or his deputy shall abate and destroy the same and no suit shall be maintained in the courts for such abatement and destruction. (Acts 1919, 2d C. S., ch. 73, art. [sec.] 43.)

Art. 923o. Mesh of seines for taking fish in salt waters; penalty.—The mesh of all seines and nets used for taking fish in the salt waters of this State, not including the bag, shall not be less than one and one-half inch square mesh. The mesh of the bags and for fifty feet on each side of the bags, shall not be larger than a one inch square mesh. No seine of over fifteen hundred feet shall be dragged or pulled in the salt waters of this State, and any person dragging such seine or dragging two seines which are connected or tied together to secure a longer haul than fifteen hundred feet, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in a sum of not less than twenty-five, nor more than one hundred dollars. And the Game, Fish and Oyster Commissioner shall destroy such seines of illegal length or tied together or connected for unlawful use, as a nuisance and no suit shall be maintained against him therefor. (Acts 1913, ch. 146, sec. 1; Acts 1919, 2d C. S., ch. 73, art. [sec.] 31.)

Art. 923oo. Examination, etc., of seines for use in salt waters; tagging same; penalty.—All seines and nets used in the salt waters of this State shall be examined by the Game, Fish and Oyster Commissioner or one of his deputies to see that they conform to the requirements of this law as to length and size of mesh, and if they are found to conform to such requirements, the Game, Fish and Oyster Commissioner shall tag such seines or nets with a metal tag on which shall be indented the number of such seine and net; the cost of such tag, twenty-five cents, to be paid by the owner of such seine or net. The Game, Fish and Oyster Commissioner shall then issue, to the owner of it, a permit to use such seine or net for one year from the date of such permit. And such permit shall state the name of the owner of such net, the date on which it was issued, the size of the mesh and the length and kind of such net. The Game, Fish and Oyster

Commissioner shall keep a record book in which the date of the issuance of such permit, the name of the owner, the number of the tag, the size of the mesh and the length of such seine or net shall be kept. It shall be the duty of the owner of the seine or net to keep the tag attached to such seine or net on such seine or net, and where a seine or net is used without such tag being attached, it shall be prima facie evidence that such net is an unlawful seine or net and is hereby declared to be a nuisance and the Game, Fish and Oyster Commissioner shall abate and destroy the same and no suit for damages for such destruction shall be brought against him therefor. Any person who shall drag, haul or set any net in the salt waters of this State without first having such net examined by the Commissioner aforesaid, and tagged and a permit as provided for in this Article issued by the Game, Fish and Oyster Commissioner or his deputy, shall be deemed guilty of a misdemeanor, and on conviction he shall be fined in a sum of not less than twenty dollars and not more than one hundred dollars, and the seine or net shall be destroyed as herein provided as a nuisance. (Id. art. [sec.] 32.)

Art. 923p. Fresh water streams and rivers, what are; unlawful use of nets in.—All fresh water rivers and streams in this State and all lakes, lagoons and bodies of rivers, except tidal bays or coastal waters, such as bays and gulfs, shall be and are hereby declared to be fresh water streams and rivers to their mouths, for the purpose of this Act, and it shall be unlawful to set nets or drag seines or fish in other ways in such streams, rivers and their connecting lakes, lagoons and bodies of water mentioned, except in conformity with the laws herein enacted to govern, apply and control in fresh water fishing. (Id. art. [sec.] 61.)

Art. 923pp. Gill or strike nets.—Whenever a net described or mentioned in this law as a trammel, strike, gill, hoop, pound, purse or other kind of a net, the standard net of such variety or kind or the usual or ordinary kind of such net as manufactured and sold as in or to the trade is meant. No strike or gill net shall be licensed or permitted in the tidal coastal or fresh waters of this State with a lead line of over three-sixteenths of an inch in diameter. And any person using or having in his possession any gill or strike net which has on it a lead line of more than three-sixteenths of an inch in diameter, shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than twenty-five and no more than one hundred dollars. (Id. art. [sec.] 63.)

Art. 923q. Time when nets may not be used; artificial bait.—It shall be unlawful for any person to catch any fish in the public fresh waters of this State with any seine or net other than a minnow seine, not exceeding twenty feet in length, or to drag any seine, except such specified minnow seine, or to set any net, in the public fresh waters of this State during the months of March and April, or to fish with any artificial bait or line of any kind in the fresh public waters of this State during the months of March and April. And any person who shall catch any fish with a seine or net in the public fresh waters of this State or who shall drag or set any net for the purpose of catching fish in the fresh public waters of this State, or shall use an artificial bait or line in fishing in such public fresh waters in this State during the months of March and April, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in a sum of not less than twenty-five dollars, and not more than one hundred dollars. Provided, that where a city, town or other municipality owns any reservoir, lake or other pool of water, it shall exercise all control over it in regard to the taking of fish from it and this Article shall not apply to such waters as mentioned. (Id. art. [sec.] 64.)

Art. 923qq. Unlawful entry into or trespass upon State fish hatchery or game preserve.—It shall be unlawful to enter or trespass on any State fish hatchery or reservation set apart for the propagation or keeping of birds, fowls and animals of the State, and any person so entering and trespassing on the grounds of such hatcheries or on the grounds set apart by the State for the propagation and keeping of birds and animals, without the permission of the Game, Fish and Oyster Commissioner, or Deputy Game, Fish and Oyster Commissioner in charge of such reservation, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in the sum of not less than ten nor more than twenty-five dollars, and such trespasser as mentioned may be summarily ejected from such hatcheries, or grounds. (Id. art. [sec.] 57.)

Art. 923r. Taking, killing fish, birds or animals in hatchery or reservation.—Any person who shall take, injure or kill any fish kept by the State in its hatcheries, or any bird or animal kept by the State on its reservation grounds or elsewhere for propagation or exhibition purposes, shall be guilty of a misdemeanor, and on conviction shall be fined in a sum of not less than fifty nor more than two hundred dollars. (Id.)

Art. 923rr. Bringing birds or animals into hatchery or reservation which may injure fish, etc., kept therein.—It shall be unlawful to bring into or keep on any fish hatchery or reservation for the propagation or exhibition of any birds, fowls or animals, any cat, dog, or other animal calculated to kill or injure any fish, bird or animal, and any cat, dog, or other predacious animal found on the grounds of such hatcheries or reservations as mentioned, is hereby declared to have become nuisances by their presence on the grounds of such hatcheries and reservations as mentioned, and the Game, Fish and Oyster Commissioner or his Deputy in charge as aforesaid shall abate and destroy them as nuisances and no suit for damages shall be maintained against such officials therefor. (Id.)

Art. 923s. Sale, etc., of oysters taken from insanitary or polluted reefs.—It shall be unlawful for any person, firm or corporation to ship, sell or have in his possession for the purpose of sale any oysters or other fish taken from insanitary or polluted oyster reefs or beds. For the purpose of this Act, any reef or bed of oysters which have been declared by the Food and Drug Commissioner of this State as insanitary or polluted, shall be within the meaning of this

Act insanitary and polluted. Any person or firm or corporation, who or which shall sell or have in his possession for the purpose of sale, oysters from such insanitary and polluted reefs shall be deemed guilty of a misdemeanor, and on conviction shall be fined in a sum of not less than twenty-five and not more than two hundred dollars. (Id. art. [sec.] 58.)

Art. 923ss. Insanitary oyster containers.—Any container or receptacle for oysters which has not been thoroughly cleaned before oysters are placed in it, is hereby declared to be insanitary, and any such persons selling oysters from such receptacle or shipping oysters in such receptacle, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in a sum of not less than twenty-five nor more than one hundred dollars. (Id. art. [sec.] 59.)

Art. 923t. "Floating," "drinking" or bloating oysters.—It shall be unlawful for any person, firm or corporation to ship into or in this State, sell or have in his possession for the purpose of sale, any oyster or other shell fish in which any formaldehyde or other preservative has been placed, or any oysters or other shell fish which have been subjected to "floating," "drinking," or "bloating" in water containing less salt than in which they are grown, or oysters or other shell fish to which water has been added either directly or indirectly or in the form of melted ice. Provided that unpolluted salt cold or ice water may be used in washing shucked or shelled oysters or other shell fish, if the washing does not continue any longer than the minimum time necessary for chilling and any person who engages in "floating," "drinking" or "bloating" oysters in this State, or who ships into or in this State such oysters or who has in his possession, sells or offers to sell any such oyster is guilty of a misdemeanor, and on conviction shall be fined in the sum of not less than twenty and no more than two hundred dollars. (Id.)

Art. 923tt. Venue of prosecutions for sale of fish of unlawful size.—In all prosecutions for the sale of fish of unlawful size, the place of such sale is hereby established for the purpose of venue to be either at the place of such shipment or at the place of the receipt of such shipment or in any County through which such shipment may pass at the discretion of the State. (Id. art. [sec.] 66.)

Art. 923u. License to take mussels, clams or naiad or shells thereof; penalty.—It shall be unlawful for any person, firm or corporation to take from the public waters of this State for sale, any mussels, clams or naiad or shells thereof without first obtaining a license from the Game, Fish and Oyster Commissioner; said license shall be in such form as may be determined by the said Commissioner but shall state the water in which the licensee may operate. The applicant shall pay to the said Commissioner, as a license fee, the sum of ten dollars and in addition thereto the sum of twenty-five dollars for permission to use a dredge. Said license shall expire one year from the date of issuance. Any person violating any of the provisions of this Article shall, upon conviction, be fined not less than ten dollars nor more than one hundred dollars. (Id. art. [sec.] 75.)

TITLE 14

OF OFFENSES AGAINST TRADE, COMMERCE AND THE CURRENT COIN

CHAPTER ONE

OF FORGERY AND OTHER OFFENSES AFFECTING WRITTEN INSTRUMENTS

Art. 924. (530) "Forgery" defined.—He is guilty of forgery who, without lawful authority, and with intent to injure or defraud, shall make a false instrument in writing, purporting to be the act of another, in such manner that the false instrument so made would (if the same were true) have created, increased, diminished, discharged or defeated any pecuniary obligation, or would have transferred, or in any manner have affected any property whatever. (O. C. 431.)

See Womble v. S., 44 S. W. 827; Cagle v. S., 44 S. W. 1097; Sawyers v. S., 46 S. W. 814; Webb v. S., 47 S. W. 357; Beasley v. S., 47 S. W. 991; Huckaby v. S., 78 S. W. 942; Fischl v. S., 111 S. W. 410; Wheeler v. S., 137 S. W. 124; Howard v. S., 143 S. W. 178; Dreeben v. S., 162 S. W. 501; Ritter v. S., 176 S. W. 727; Carrell v. S., 184 S. W. 217; Ferguson v. S., 187 S. W. 476; Crouch v. S., 206 S. W. 525.

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 de facto 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. (Acts 1914, 2d C. S., ch. 4, sec. 1.)

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.)

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.)

Art. 925. (531) Alteration also forgery.—He is also guilty of forgery who, without lawful authority, and with intent to injure or defraud, shall alter an instrument in writing, then already in existence, by whomsoever made, in such manner that the alteration would (if it had been legally made) have created, increased, diminished, discharged or defeated any pecuniary obligation, or would have transferred, or in any manner have affected any property whatever. (O. C. 432.)

Art. 926. (532) Intent to injure, etc., necessary.—The false making or alteration, to constitute forgery, must be done with intent to injure or defraud; and the injury must be such as affects one pecuniarily, or in relation to his property. (O. C. 442.)

White v. S., 135 S. W. 562; Carrell v. S., 184 S. W. 217.

Art. 927. (533) "Instrument in writing" defined.—The words "instrument in writing," as used in articles 924 and 925, and elsewhere in this chapter, include every writing, purporting to make known or declare the will or intention of the party whose act it purports to be, whether the same be of record or under seal or private signature, or whatever other form it may have. It must be upon paper or parchment, or some substance made to resemble either of them. The words may be written, printed, stamped or made in any other way, or by any other device. And the words, "in writing," "write," "written," include all these modes of making. An instrument, partly printed or stamped, and partly written, is an instrument in writing. In order to come within the definition of forgery, the signature, when made otherwise than by writing, must be made to resemble manuscript. (O. C. 434.)

Heath v. S., 89 S. W. 1063.

Art. 928. (534) "Alter" defined.—The word "alter," in the definition of forgery, means to erase or obliterate any word, letter or figure, to extract the writing altogether, or to substitute other words, letters or figures for those erased, obliterated or extracted, to add any other word, letter or figure to the original instrument, or to make any other change whatever which shall have the effect to create, increase, diminish, discharge or defeat a pecuniary obligation, or to transfer, or in any other way affect, any property whatever.

Art. 929. (535) "Another" includes, what.—The instrument must purport to be the act of "another;" and, within the meaning of this word, as used in defining forgery, are included this state, the United States, or either of the states or territories of the Union; all the several branches of the government of either of them; all public or private bodies, politic and corporate; all courts; all officers, public or private, in their official capacity; all partnerships in professions or trades; and all other persons, whether real or fictitious, except the person engaged in the forgery. (O. C. 439.)

Art. 930. (536) "Pecuniary obligation" defined.—"Pecuniary obligation" means every instrument having money for its object, and every obligation for the breach of which a civil action for damages may be lawfully brought. (O. C. 440.)

See Huckaby v. S., 78 S. W. 942; Dreeben v. S., 162 S. W. 501.

Art. 931. (537) "Transferred or in any manner have affected" defined.—By an instrument which would "have transferred or in any manner have affected" property, is meant every species of conveyance, or undertaking in writing, which supposes a right in the person purporting to execute it, to dispose of or change the character of property of every kind, and which can have such effect when genuine. (O. C. 441.)

See Huckaby v. S., 78 S. W. 942; Bagley v. S., 141 S. W. 107; Dreeben v. S., 162 S. W. 501; Carrell v. S., 184 S. W. 217.

Art. 932. (538) All participants guilty.—He is guilty of making or altering, as the case may be, under articles 924 and 925, who, knowing the illegal purpose intended, shall write, or cause to be written, the signature, or the whole or any part, of a forged instrument. All persons engaged in the illegal act are deemed guilty of forgery. (O. C. 435.)

Art. 933. (539) Filling up over signature.—It is forgery to make, with intent to defraud or injure, a written instrument, by filling up over a genuine signature, or by writing on the opposite side of a paper so as to make the signature appear as an indorsement. (O. C. 436.)

Wheeler v. S., 137 S. W. 124; Dreeben v. S., 162 S. W. 501; Carrell v. S., 184 S. W. 217.

Art. 934. (540) Person not guilty, when.—When the person making or altering an instrument in writing acts under an authority which he has good reason to believe, and actually does believe, to be sufficient, he is not guilty of forgery, though the authority be in fact insufficient and void. (O. C. 437.)

White v. S., 135 S. W. 562.

Art. 935. (540a) Altering teacher's certificate is forgery.—Any person who shall unlawfully and wilfully raise, change, or alter, any teacher's certificate or diploma or other instrument having the force of a teacher's certificate, shall be deemed guilty of forgery, and, upon conviction thereof, shall be punished by confinement in the penitentiary for a term of not less than two nor more than seven years. (Acts 1893, p. 205.)

Dudley v. S., 58 S. W. 111; Brooks v. S., 75 S. W. 507.

Art. 936. (541) Penalty.—If any person be guilty of forgery he shall be punished by confinement in the penitentiary not less than two nor more than seven years. (O. C. 433.)

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, 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. (Acts 1917, 1st C. S., ch. 41, sec. 44.)

Art. 937. (542) Passing forged instrument.—If any person shall knowingly pass as true, or attempt to pass as true, any such forged instrument in writing as is men-

tioned and defined in the preceding articles of this chapter, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years. (O. C. 443.)

See Brooks v. S., 75 S. W. 507; Smith v. S., 197 S. W. 589.

Art. 938. (543) Preparing implements for forgery.—Whoever shall prepare in this state any implements or materials, or engrave any plate for the purpose of being used in forging the notes of any bank, whether within this state or out of it, and whether the same be incorporated or not, or who shall have in his possession in this state any such implements, materials or engraved plate, with intent to be used for the purpose above mentioned, shall be imprisoned in the penitentiary not less than two nor more than five years. (O. C. 444.)

Art. 939. (544) Possession of forged instrument with intent to pass.—If any person shall knowingly have in his possession any instrument of writing, the making of which is by law an offense, with intent to use or pass the same as true, he shall be punished by confinement in the penitentiary not less than two nor more than five years. (O. C. 445; Acts 1858, p. 169.)

See O'Connor v. S., 39 S. W. 368; Martin v. S., 194 S. W. 1105.

Art. 940. (545) Evidence in case of bank bills.—Upon the trial of any indictment for the forgery of any bank bill, or for passing, or attempting to pass, any such bill as true, or for knowingly having in possession any such forged bank bill, evidence that bills or notes, purporting to be issued by any bank, are commonly received as currency, or proof of the existence of such bank by parol testimony, shall be deemed sufficient to show its legal establishment and existence. (O. C. 446.)

Nesbitt v. S., 144 S. W. 944.

Art. 941. (546) Falsely reading instrument.—If any one, with intent to defraud, shall, either by falsely reading or falsely interpreting, any pecuniary obligation or instrument in writing, which would in any manner affect property, or by misrepresenting its contents, induce any one to sign such instrument as his act, or give assent to it in such manner as would make it his act, if not done under mistake, the person, so offending, shall be imprisoned in the penitentiary not less than two nor more than five years. (O. C. 447.)

See Lewis v. S., 86 S. W. 1027.

Art. 942. (547) Substituting one instrument for another.—If any person, with intent to defraud, shall substitute one instrument of writing for another, and, by this means, induce any person to sign an instrument materially different from that which he intended to sign, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years. (O. C. 448.)

Art. 943. Mutilate, destroy, deface any book, record or other document kept by officer of this state, punishment for.—If any person, without authority of law, shall wilfully and maliciously change, alter, mutilate, destroy, deface or injure any book, papers, record or any other document, required or permitted by law to be kept by any officer within this state, he shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by a fine not exceeding five thousand dollars, or by imprisonment in the penitentiary not less than one nor more than five years. (Acts 1899, p. 301.)

Art. 944. (548) Falsely personating another.—If one shall falsely personate another, whether bearing the same name or not, and, in such assumed character, shall give authority to any person to sign such assumed name to any instrument in writing which, if genuine, would create, increase, diminish or discharge any pecuniary obligation, or would transfer, or in any way affect any property, he shall be imprisoned in the penitentiary not less than two nor more than seven years. (O. C. 449.)

Art. 945. (549) Same in acknowledgments.—If any person shall falsely personate another, whether bearing the same name or not, and in such assumed character shall, before any officer authorized by law to authenticate instruments of writing for registration, acknowledge the execution of an instrument of writing purporting to convey, or in any manner affect, an interest in property, such instrument purporting to be the act of the person whose name is so assumed, and the acknowledgment thereof being such as would entitle the instrument to be registered, he shall be punished by confinement in the penitentiary not less than two nor more than ten years. (O. C. 450.)

Art. 946. (549a) Prosecutions under one bill of indictment.—A conviction for any of the offenses, mentioned in articles 924, 937 and 939 of this Code, shall be a bar to any other prosecution under said articles, based upon the same transaction or same forged instrument of writing; provided, that one or more of said several offenses may be charged by separate counts in the same bill of indictment, and prosecuted together to final judgment, without election by the state as to which it relies upon for conviction; and provided, further, a judgment of conviction shall specify which offense or under which count the defendant is found guilty, and shall assess but one penalty not exceeding the greatest punishment fixed by law to the highest grade of offense of which defendant is convicted; and it is hereby declared unlawful for any county or district attorney, or any person acting as such, to wilfully or knowingly demand or receive fees for more than one prosecution that could have been combined or prosecuted in one bill of indictment, and subject to the penalties prescribed by law for the punishment of extortion of illegal fees. (Acts 1895, p. 106.)

See Green v. S., 35 S. W. 971; Preston v. S., 53 S. W. 127; Jacobs v. S., 59 S. W. 1111.

Art. 946a. Forgery of will.—It shall be unlawful for any person to execute what purports to be the Last Will and Testament of another, without the consent of such other person, and any person so offending shall be guilty of forgery and shall be punished by confinement in the State Penitentiary for a term of not less than two years, nor more than seven years. (Acts 1919, ch. 72, sec. 1.)

Art. 946b. Same subject; limitation of prosecutions.—Prosecutions under this Act may be begun at any time after the commission of said offense and within five years

after the death of said purported testator but not thereafter. (Id. sec. 2.)

CHAPTER TWO

FORGERY OF LAND TITLES, ETC.

Art. 947. (550) "Forgery of patents," etc., defined.—Every person who falsely makes, alters, forges or counterfeits, or causes or procures to be falsely made, altered, forged or counterfeited, or in any way aids, assists, advises or encourages the false making, altering, forging or counterfeiting of any certificate, field notes, returns, survey, map, plat, report, order, decree, record, patent, deed, power of attorney, transfer, assignment, release, conveyance or title paper, or acknowledgment, or proof of record, or certificate of record belonging or pertaining to any instrument or paper, or any seal, official or private stamp, scroll, mark, date, signature, or any paper, or any evidence of any right, title, or claim of any character, or any instrument in writing, document, paper or memorandum, or file of any character whatsoever, in relation to or affecting lands, or any interest in lands in this state, with the intent to make money or other valuable thing thereby, or with intent to set up a claim or title, or aid or assist any one else in setting up a claim or title, to lands or any interest in lands, or to prosecute or defend a suit, or aid or assist any one else in prosecuting or defending a suit with respect to lands, or to cast a cloud upon the title, or in any way injure, obtain the advantage of, or prejudice the rights or interest of, the true owners of lands, or with any fraudulent intent whatever, shall be deemed guilty of forgery, and be punished by imprisonment in the state penitentiary at hard labor not less than five nor more than twenty years. (Acts 1876, p. 59.)

Wheeler v. S., 137 S. W. 124; Thompson v. S., 152 S. W. 893; Dillard v. S., 177 S. W. 99; Weber v. S., 180 S. W. 1082.

Art. 948. (551) False certificate by officers forgery.—If any person authorized by law to take the proof or acknowledgment of any instrument, document or paper whatsoever, affecting or relating to the title of lands in this state, wilfully and falsely certify that such proof or acknowledgment was duly made, or if any person fraudulently affixes a fictitious or pretended signature purporting to be that of an officer or any other person, though such person never was an officer or never existed, he shall be deemed guilty of forgery and punished as provided in article 947 of this chapter. (Id.)

Art. 949. (552) Knowingly uttering forged instruments.—Every person who knowingly utters, publishes, passes or uses, or who in any way aids, assists in or advises the uttering, publishing, passing or using as true and genuine any false, forged, altered or counterfeited certificate, field-notes, returns, survey, map, plat, report, order, decree, record, patent, deed, power of attorney, transfer, assignment, release, conveyance, title papers, acknowledgment or proof for record or certificate of record belonging or pertaining to any instrument or paper, or any evidence of any right, title or claim of any character whatsoever, or any instrument in writing, document, paper, memorandum or file, or any official or private seal, or any scroll, mark, date or signature in any way relating to, or having any connection with, land, or any interest in land in this state, with the intent mentioned in article 947 of this chapter, or with any other fraudulent intent whatsoever, shall be deemed guilty and be punished in like manner as is provided in article 947 of this chapter. And the filing or causing or directing to be filed, or causing or directing to be recorded, in the general land office of the state, or in any office of record or in any court in this state, or the sending through the mails or by express, or in any other way, for the purpose of filing or record of any such false, altered, forged or counterfeited matter, documents, conveyances, papers or things, knowing the same to be false, altered, forged or counterfeited, shall be an uttering, publishing and using within the meaning of this article. (Id.)

Art. 950. (553) Non-residents may commit, venue.—Persons out of the state may commit and be liable to indictment and conviction for committing any of the offenses enumerated in this chapter, which do not in their commission necessarily require a personal presence in this state—the object of this chapter being to reach and punish all persons offending against its provisions, whether within or without the state. An indictment, under this chapter, may be presented by the grand jury of Travis county, in this state, or in the county where the offense was committed, or in the county where the land lies about which the offenses named in this chapter were committed. (Id.)

See Grooms v. S., 50 S. W. 370.

Art. 951. (554) Proof and allegations necessary in indictments; proof of intent to defraud the United States, etc.—Upon indictment under this chapter, to warrant a conviction, it shall only be necessary to prove that the person charged took any one step, or did any one act or thing in the commission of the offense, if from such step, act or thing any of the intentions hereinbefore mentioned, or any other fraudulent intention, may be reasonably inferred; nor shall it be any defense to a prosecution under this chapter that the matter, act, deed, instrument or thing was in law, either as to substance or form, void, or that the same was not in fact used for the purpose for which it was made or designed; and it shall only be necessary in an indictment under this chapter to state with reasonable certainty the act constituting the offense, and charge, in connection therewith, in general terms, the intention to defraud, without naming the person or persons it was intended to defraud; and, on trial of such indictment, it shall be sufficient and shall not be deemed a variance if there appears to be an intent to defraud the United States, or any state, territory, county, city, town or village, or any body corporate, or any public officer in his official capacity, or any copartnership or member thereof, or any particular person. (Id.)

Art. 952. (555) Venue.—Indictments under this chapter may be presented and the offenses prosecuted in any of the counties prescribed in title 4, chapter 2, of the Code of Criminal Procedure. (Id.)

Art. 953. (556) Rules in forgery applicable.—The rules prescribed in chapter 1 of this title, relative to the offense of forgery, so far as the same are applicable, shall apply to the various offenses enumerated in this chapter. (Id.)

CHAPTER THREE

OF COUNTERFEITING AND DIMINISHING VALUE OF CURRENT COIN

Art. 954. (557) "Counterfeiting" defined.—He is guilty of counterfeiting who makes, in the semblance of true gold or silver coin, any coin of whatever denomination, having in its composition a less proportion of the precious metal of which the true coin intended to be imitated is composed than is contained in such true coin, with intent that the same should be passed in this state or elsewhere. (O. C. 451.)

See Glass v. S., 78 S. W. 1068.

Art. 955. (558) "Altering" also counterfeiting.—He is also guilty of counterfeiting who, with like intent, alters any coin of lower value so as to make it resemble coin of higher value. (O. C. 452.)

Art. 956. (559) Resemblance need not be perfect.—The resemblance between the true and the false coin need not be perfect to constitute the offense of counterfeiting. (O. C. 453.)

Art. 957. (560) Punishment.—Any person who shall counterfeit any gold or silver coin shall be punished by imprisonment in the penitentiary not less than five nor more than ten years. (O. C. 454.)

See Glass v. S., 78 S. W. 1068.

Art. 958. (561) Passing counterfeit coin.—If any person, with intent to defraud, shall pass, or offer to pass as true, or bring into this state, or have in his possession, with intent to pass as true, any counterfeit coin, knowing the same to be counterfeit, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years. (O. C. 455.)

See Glass v. S., 78 S. W. 1068.

Art. 959. (562) Making dies, etc., and having them in possession.—If any person, with the intention of committing the offense of counterfeiting or of aiding therein, shall make or repair, or shall have in his possession any die, mould or other instrument whatever, designed or adapted, or usually employed for making coin, or shall prepare, or have in his possession, any base metal prepared for coinage, with intent that the same may be used for the purpose of counterfeiting, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years. (O. C. 456.)

Art. 960. (563) Passing coin of diminished value.—If any person shall, with intent to profit thereby, diminish the weight of any gold or silver coin, and shall afterward pass it for the value it would have had before it was so diminished, or send it to any place, whether in the state or out of it, with the intent that the same may be passed, he shall be punished by imprisonment in the penitentiary not less than two nor more than five year. (O. C. 457; Acts 1858, p. 169.)

Art. 961. (564) "Gold and silver coin" defined.—By the gold or silver coin mentioned in this chapter is meant any piece of gold or silver of which one of these metals is the principal component part, and which passes as money in the United States, either by law or usage, whether the same be of the coinage of the United States or of any foreign country. (O. C. 458.)

Art. 962. (565) What sufficient to constitute passing.—It is sufficient to constitute the offense of passing, or attempting to pass, under the provisions of this chapter, if the counterfeit coin be delivered or offered to another, with the intention of defrauding, or enabling such other person to defraud, although such counterfeit coin be not delivered or offered at the full value which it would bear if genuine. (O. C. 459.)

CHAPTER FOUR

OF OFFENSES WHICH AFFECT FOREIGN COMMERCE

Art. 963. (566) Shipping articles without inspection.—If any person shall export from this state, or ship for the purpose of exportation to any one of the United States or to any foreign port, any article of commerce which, by any law of the state, may be required to be inspected by a public inspector, without having caused such inspection to be made according to law, he shall be fined not exceeding one hundred dollars.

Art. 964. (567) Altering marks, etc.—If any person shall counterfeit or alter the mark, brand or stamp directed by any law of the state to be put on any article of commerce, or on the box, cask or package containing the same, he shall be punished by fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year.

Art. 965. (568) False packing.—If any person shall, with intent to defraud, put into any hogshead, barrel, cask or keg, or into any bale, box or package containing merchandise or other commodity usually sold by weight, any article whatever of less value than the merchandise with which such bale, box, package, hogshead, barrel, cask or keg is apparently filled, or, with intent to defraud, shall sell or barter, give in payment, or expose to sale, or ship for exportation, any such hogshead, barrel, cask, keg, box, bale or package of merchandise, or other commodity with any such article of inferior value concealed therein, he shall be punished by confinement in the county jail not exceeding one year, or by fine not exceeding one thousand dollars.

Art. 966. (569) Same subject.—If any person shall, with intent to deceive and defraud, conceal within any hogshead, cask, barrel, box, bale, keg or package, containing merchandise or other commodity, any merchandise or commodity of a quality inferior to that which such hogshead, cask, barrel, bale, keg or package is filled, or any substance of less value, he shall be fined not exceeding five hundred dollars. (Act Feb. 12, 1858, p. 170.)

Art. 967. (570) Fraudulent insurance.—If any person shall cause insurance to be made in this state upon any merchandise or other commodity represented to be already shipped, or about to be shipped, at any place,

whether within this state or out of it, and shall, with the intent to defraud the insurer, ship articles of value less than one-half the represented value of those insured, or of a different kind from those insured, he shall be punished by fine in a sum not exceeding the amount for which such merchandise or commodity may be insured.

Art. 968. (571) Harboring deserting seamen.—The municipal authorities of incorporated towns and cities, being shipping ports, may make such regulations as are deemed proper for the punishment of keepers of boarding houses and others who knowingly lodge, entertain or conceal seamen who have deserted from any merchant vessel in their respective ports; but they shall not affix a higher penalty for such offense than a fine of fifty dollars, or imprisonment in jail for thirty days.

CHAPTER FIVE

PUBLIC WAREHOUSEMEN AND WAREHOUSES

Art. 969. "Public warehousemen" and "warehouses" defined.—All persons, firms, companies or corporations who shall receive cotton, tobacco, wheat, rye, oats, rice, oil, or any kind of produce, wares, merchandise, or any description or personal property in store for hire, under the provisions of this Act, shall be deemed and taken to be public warehousemen; and all warehouses which shall be owned or controlled, conducted and managed in accordance with the provisions of this Act, shall be deemed and taken to be public warehouses, provided that a public warehouse for the storage of cotton may, within the meaning of this Act, include a lot or parcel of land inclosed with a lawful fence, the gates or entrances to which shall be kept securely locked at night. (Acts 1901, p. 251; Acts 1913, 1st C. S., p. 93, ch. 37, sec. 2, amending art. 969, revised Pen. Code.)

Art. 970. Owner or operator shall obtain certificate and file bond.—The owner, proprietor, lessee or manager of any public warehouse, whether an individual, firm or corporation, before transacting any business in such public warehouse shall procure from the county clerk of the county in which the warehouse or warehouses are situated, a certificate that he is transacting business as a public warehouseman under the laws of the State of Texas, which certificate shall be issued by said clerk upon a written application, setting forth the location and name of such warehouse or warehouses, and the name of each person, individual, or a member of the firm, interested as owner or principal in the management of the same, or, if the warehouse is owned or managed by a corporation, the names of the president, secretary and treasurer of such corporation shall be stated, which application shall be received and filed by such clerk and preserved in his office, and the said certificate shall give authority to carry on and conduct the business of a public warehouse within the meaning of this Act, and shall be revocable only by the district court of the county in which the warehouse or warehouses are situated, upon a proceeding before the court, on complaint by written petition of any person, setting forth the particular violation of the law, and upon process, procedure and proof, as in other civil cases. The person receiving a certificate, as herein provided for, shall file with the county clerk granting same, a bond payable to the State of Texas, with good and sufficient surety, to be approved by said clerk, in the penal sum of five thousand dollars, conditioned for the faithful performance of his duty as a public warehouseman, —which said bond shall be filed and preserved in the office of such clerk. (Acts 1901, p. 251; Acts 1913, 1st C. S., p. 93, ch. 37, sec. 3, amending art. 970, revised Pen. Code.)

Art. 971. Warehouse receipts for property stored; form; duplicates.—On application of the owner or depositor of the property stored in a public warehouse, the warehouseman shall issue, over his own signature, or that of his duly authorized agent, a public warehouse receipt therefor, to the order of the person entitled thereto; which receipt shall purport to be issued by a public warehouse, shall bear date of the day of its issue, and shall state upon its face the name of the warehouse and its location, the description, quantity, number and marks of the property stored, where such receipt is for cotton it shall state the class and weight, and the date on which it was originally received in warehouse, and that it is deliverable upon the return of the receipt, properly indorsed by the person to whose order it was issued, and on payment of all charges for storage, and insurance, which charges shall be stated on the face of the receipt. All such receipts shall be numbered consecutively, in the order of their issue; and when such receipt is for cotton, the receipt shall state whether the cotton therein described is exposed to the weather or is under shelter; and a correct record of such receipts shall be kept in a well-bound book, which shall be, at all reasonable hours, open to examination by any interested person; and no two receipts bearing the same number shall be issued from the same warehouse during the same year, nor shall any duplicate receipts be issued, except in the case of a lost or destroyed receipt, in which case the new receipt shall bear the same date and number as the original, and shall be plainly marked on its face, "duplicate" and provided, that no such duplicate receipt shall be issued by the public warehouseman until adequate security acceptable to the warehouseman be deposited with or to the order of said warehouseman, to protect the party or parties who may finally hold the original receipt in good faith and for a valuable consideration. (Acts 1901, p. 251; Acts 1913, 1st C. S., p. 94, ch. 37, sec. 4, amending art. 971, revised Pen. Code.)

Art. 971a. Supervision of warehouses by Commissioner of Insurance and Banking; examinations.—The supervision of public warehouses shall be under the control of the Commissioner of Insurance and Banking, whose duty it shall be to prescribe all forms of receipts, certificates, and records of whatsoever description necessary in the conduct of the business of public warehouses; and in providing forms for handling those products which are of general commercial character, the said commissioner shall prescribe forms answering to all usual requirements of negotiable receipts of certificates. The Commis-

sioner of Insurance and Banking is hereby empowered and directed to make not less than one examination each year of all such public warehouses, the necessary expense of such examination or examinations to be paid by the warehouse. (Acts 1913, 1st C. S., p. 95, ch. 37, sec. 5.)

The duties imposed by this article, and art. 971b 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, secs. 1, 43), set forth as arts. 7827a and 7827u of the Civil Statutes.

Art. 971b. Form for cotton warehouse receipts.—The Commissioner of Insurance and Banking shall provide a uniform public warehouse receipt for cotton which shall be used by all public warehouses coming under the provisions of this Act, which said receipt shall conform in all respects to the provisions herein set out. In addition to the other provisions such receipt shall have a blank form on the back thereof, to be filled in and signed by the owner of the cotton showing whether or not such cotton is free from encumbrance or liens of any kind. (Id. sec. 6.)

See note under art. 971a, ante.

Art. 971c. Liens on cotton to be stated in receipt; non-negotiable receipts.—If there is any encumbrance or liens of any kind on said cotton at the time of its storage the nature and amount of same shall be clearly set out and it is hereby made the duty of the public warehouseman or his authorized agent issuing the receipt, to have said blank filled in and signed by the owner of the cotton before issuing a negotiable receipt against same; provided, however, such statement need not be made if a non-negotiable receipt is desired, but in such cases the public warehouseman issuing said receipt shall write or stamp across the face thereof the words "not negotiable." (Id. sec. 7.)

Art. 971d. Exchange of non-negotiable for negotiable receipt.—If a person holding a non-negotiable receipt for cotton as is herein provided for, shall desire to obtain a negotiable receipt in lieu thereof, he shall return said non-negotiable receipt to the public warehouse issuing same and thereupon shall comply in every respect with the provisions of this chapter relating to negotiable receipts, and upon compliance therewith a negotiable receipt shall be issued to him in lieu of said non-negotiable receipt, and said non-negotiable receipt thereupon shall be cancelled, and the word "cancelled" plainly marked in ink across the face thereof. (Id. sec. 8.)

Art. 971e. False statement or concealment concerning liens.—Any person making a false statement concerning liens, mortgages, encumbrances or indebtedness or whatsoever nature against the cotton, or who shall in any particular conceal the existence of liens, mortgages, encumbrances or indebtedness of any kind that may exist against such cotton, or who shall fail to truthfully make the statements provided for by this Act, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine of one thousand dollars, or imprisonment in the penitentiary for one year, or by both such fine and imprisonment. (Id. sec. 9.)

Art. 972. Unlawful to issue receipt unless goods are deposited.—No public warehouse receipt shall be issued except upon the actual previous delivery of the goods in the public warehouse or on the premises, and under the control of the public warehouseman by whom it purports to be issued; and the name of the warehouse shall invariably be specified in such receipt. (Acts 1901, p. 252; Acts 1913, 1st C. S., p. 95, ch. 37, sec. 10, amending art. 972, revised Pen. Code.)

Art. 973. When and to whom property stored shall be delivered; liability; cancellation of receipt.—On the presentation and return to the warehouseman of any public warehouse receipt issued by him and properly indorsed, and the tender of all proper warehouse charges upon the property represented by it, such property shall be delivered immediately to the holder of such receipt; but no public warehouseman who shall issue a receipt for goods shall, under any circumstances or upon any order or guarantee whatsoever, deliver the property for which receipts have been issued, until the said receipt shall have been surrendered and cancelled, except in case of lost receipts, as provided for in Section 4 [Art. 971]; and, in default of the strict compliance with the provisions of this article, he shall be held liable to the legal holder of the receipt for the full value of the property therein described, as it appeared on the day of the default, and shall, furthermore, be liable to the special penalty herein provided. Upon delivery of the goods from the warehouse, upon any receipt, such receipt shall be plainly marked in ink across its face with the words "cancelled," with the name of the person cancelling the same, and shall thereafter be void, and shall not again be put in circulation. (Acts 1901, p. 252; Acts 1913, 1st C. S., p. 96, ch. 37, sec. 11, amending art. 973, revised Pen. Code.)

Art. 974. Shall not limit liability.—No public warehouseman shall insert in the public warehouse receipt issued by him any language limiting or modifying his liabilities or responsibilities as imposed by the laws of this State, excepting, "not accountable for leakage or depreciation," or words of like import and meaning. (Acts 1901, p. 252; Acts 1913, 1st C. S., p. 96, ch. 37, sec. 12, amending art. 974, revised Pen. Code.)

Art. 975. Warehouse receipt negotiable unless otherwise stamped; warehouseman not to issue receipt for his own property; proviso.—The receipt issued against property stored in public warehouses, as herein provided for shall be negotiable and transferable by endorsement in blank or by special endorsement, and delivery in the same manner and to the same extent as bills of exchange and promissory notes now are, without other formality; and the transferee or holder of such public warehouse receipt shall be considered and held as the actual and exclusive owner, to all intents and purposes, of the property therein described, subject only to the lien and privilege of the public warehouseman for storage and other warehouse charges; provided, however, that all such public warehouse receipts as shall have the words "not negotiable" plainly written or stamped on the face thereof, shall be exempt from the provisions of this article; and provided, further, that no public warehouseman shall issue warehouse receipts against his own property in his own warehouse; but, upon sale of such property in

good faith may issue to the purchaser his public warehouse receipt in form and manner as herein provided, which issue and delivery of the receipt shall be deemed to complete the sale, and shall constitute the purchaser full owner, as aforesaid, of the property therein described. Nothing in this last clause shall be construed to exempt the issuer of said receipt for his own goods in his own public warehouse, from complying with and being subject in all respects, to all other articles of this chapter. (Acts 1901, p. 252; Acts 1913, 1st C. S., p. 96, ch. 37, sec. 13, amending art. 975, revised Pen. Code.)

Art. 976. Penalty for violation of law.—Any public warehouseman who violates any of the provisions of this law shall be deemed guilty of criminal offense, and, upon indictment and conviction thereof, shall be punished by fine in any sum not exceeding five thousand dollars, or imprisonment in the State penitentiary not exceeding two years, or by both such fine and imprisonment. (Acts 1901, p. 252; Acts 1913, 1st C. S., p. 96, ch. 37, sec. 14, amending art. 976, revised Pen. Code.)

Art. 976a. Civil liability in addition to criminal.—Any, every and all persons, aggrieved by the violations aforesaid, shall have the right to maintain an action against the person or persons, corporation or corporations, so violating any of the provisions of this law, for the recovery of damages which he or they may have sustained by reason of such violation aforesaid, before any court of competent jurisdiction, whether such person or persons so violating shall have been convicted of criminal offense under this law or not. (Acts 1901, p. 252; Acts 1913, 1st C. S., p. 96, ch. 37, sec. 15, amending art. 976, revised Pen. Code.)

Art. 977. Not applicable to private warehousemen or private warehouse receipts.—Nothing in this law shall be construed to apply to private warehouses or to the issue of receipts by their owners or managers under existing laws, or to prohibit public warehousemen from issuing such receipts as are now issued by private warehousemen under existing laws; provided, that such private warehouse receipts issued by public warehousemen shall never be written on a form or blank indicating that it is issued from a public warehouse, but shall, on the contrary, bear on its face, in large characters, the words, "not a public warehouse receipt." (Acts 1901, p. 252; Acts 1913, 1st C. S., p. 97, ch. 37, sec. 16, amending art. 977, revised Pen. Code.)

Art. 977a. Cotton and grain receipts may be issued to farmers under supervision of Board of Supervisors of Warehouses; blanks for such receipts.—That each and every person, partnership or joint stock association hereafter engaged in agricultural farming shall have the right to deposit his, her or their cotton or grain by weight or in bushels of the standard weight of the United States in any bonded warehouse or elevators under the supervision and control of the Board of Supervisors of Warehouses under the laws of the State of Texas, which said cotton and grain, upon the deposit thereof in said bonded warehouse, shall be properly classed or classified by the keeper of said bonded warehouse and a certificate containing the weight, numbers of bales or packages of grain, and the classification thereof shall be written in said certificates, which said certificates shall be printed or lithographed by and under the supervision and direction of the Commissioner of Insurance and Banking of the State of Texas, and blanks thereof furnished to the keepers of said bonded warehouse to be furnished by him under his official signature to the depositors of cotton and grain of any kind in said bonded warehouse. (Acts 1915, p. 226, ch. 145, sec. 1.)

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.

Art. 977b. Same; owners may issue promissory notes on deposit of warehouse receipts in state banks; negotiability of notes.—And be it further enacted, that blank promissory notes of the face value of one, two, three, five, ten and twenty dollars each, made payable to bearer, shall be prepared in due form, properly lithographed, and be furnished by the Commissioner of Insurance and Banking to banks chartered under the laws of the State of Texas for the use of the depositors of said cotton and grain aforesaid, whereby the said depositors shall have the right to take their said certificates of their said cotton or grain to the said State bank or banks chartered by the State of Texas and deposit said certificates with said bank or banks, and they shall furnish said depositor with blank promissory notes of the face value aforesaid, or so much thereof as shall be equal to two-thirds of the value of each bale of cotton according to its classification, or to each parcel of grain, according to its classification in said certificates, which said promissory notes, when signed up by the depositors of said certificates, shall become negotiable paper as other promissory notes, and shall be a lien upon said cotton to the extent of their face value, for the purpose of aiding and securing their redemption by said bank as hereinafter provided. (Id. sec. 2.)

Art. 977c. Same; penalty for unlawful issuance of receipts or notes.—And be it further enacted, that any person other than the keeper and manager of the bonded warehouse herein provided for, and any person other than the owner of said certificates, who shall sign said certificates or any of said promissory notes herein provided for and put the same in circulation, shall be guilty of a felony, and shall be punished on conviction for said offense for a term of years not less than two nor more than ten years in the penitentiary of the State of Texas. (Id. sec. 7.)

Art. 977d. Same; contract with state banks as to compensation.—And be it further enacted, that the owners of said cotton and grain certificates shall have the right under this Act by private contract to arrange and have any State bank or banks aiding and assisting in the execution and putting in circulation said promissory notes as commercial paper and keeping a record of said certificates deposited with said bank, and the said notes issued aforesaid, such compensation as may be agreed to by the

depositors of said certificates and the makers of said notes. (Id. sec. 8.)

Art. 977e. Same; landlord's lien not to be impaired; penalty.—And be it further enacted, that no person holding such cotton or grain certificates issued by the keepers of the bonded warehouse under this Act shall place said certificate or offer to place said certificate in any State bank or banks in this State for the purpose of obtaining the benefits of this Act in any instance where there is a prior landlord's lien or mortgage, and any person violating this provision of this Act shall be deemed guilty of swindling, and shall be punished as provided in our penal code defining swindling. (Id. sec. 9.)

WAREHOUSES AND MARKETING

Art. 977f. Engaging in business of cotton classer 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. (Acts 1917, 1st C. S., ch. 41, sec. 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, Civ. St., 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. sec. 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, Civ. St., ante], without having first obtained such license, shall be guilty of a misdemeanor, and on conviction thereof shall be punished as hereinafter provided. (Id. sec. 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, Civ. St., 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. sec. 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. sec. 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, Civ. St., 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. sec. 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, Civ. St., 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. sec. 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. sec. 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, Civ. St., 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. sec. 48.)

VIOLATIONS OF UNIFORM WAREHOUSE RECEIPTS ACT

Art. 977o. Issue of warehouse receipt when goods have not been received.—A warehouseman, or any officer, agent, or servant of a warehouseman, 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 warehouseman, or are not under the actual control at the time of issuing such receipt, shall be guilty of a crime, and upon conviction shall be punished for such offense by imprisonment not exceeding five years, or by a fine

not exceeding five thousand dollars, or by both. (Acts 1919, ch. 126, sec. 50.)

This article, and the five articles next following, constitute part IV of the Uniform Warehouse Receipts Act (Acts 1919, ch. 126, p. 215). For the remainder of this act, see ante, Civ. St. arts. 7827a-7827½zzz.

Art. 977p. Issue of receipt containing false statements.—A warehouseman, or any officer, agent, or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. (Id. sec. 51.)

Art. 977q. Issue of duplicate receipt without marking same.—A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncancelled, without plainly placing upon the face thereof the word "Duplicate," except in the case of a lost or destroyed receipt after proceedings as provided for in Section 14 [Civ. St. Art. 7827½g], shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years or by a fine not exceeding five thousand dollars, or by both. (Id. sec. 52.)

Art. 977r. Issue of receipt not stating ownership in certain cases.—Where there are deposited with or held by a warehouseman goods of which he is owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents, or servants who, knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. (Id. sec. 53.)

Art. 977s. Delivery of goods without obtaining receipt.—A warehouseman, or any officer, agent or servant of a warehouseman who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncancelled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except in the cases provided for in Sections 14 and 36 [Civ. St. Arts. 7827½g, 7827½r], be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. (Id. sec. 54.)

Art. 977t. Deposit of goods without title, etc., and obtaining receipt therefor not stating lack of title, etc.—Any person who deposits goods to which he has no title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. (Id. sec. 55.)

CHAPTER SIX

BUREAU OF COTTON STATISTICS

Art. 978. "Public ginner" defined, certificate required, form of.—All custom ginners of seed cotton in this state are hereby declared to be public ginners. Any person or persons, firm or corporation in this state, before engaging in the business of public ginners, shall obtain from the county clerk of the county in which gin is located a certificate after the following form:

Number ———

This is to certify that ——— of ——— county, Texas, has this day filed affidavit required by law, of all public ginners in this state.

(Seal.) ———

County clerk of ——— county, Texas.

(Acts 1907, p. 313.)

Art. 979. Form of affidavit to be made.—The form of affidavit to be made to and filed with the county clerk shall be as follows:

I, ——— of ——— county, Texas, do solemnly swear that I will, so long as I may operate a public gin, make and forward a true and correct report of the number of bales of cotton ginned by me to the commissioner of agriculture at Austin, as required by law. (Id., p. 313.)

Art. 980. County clerk to issue and number each certificate.—The county clerk shall number each certificate issued by him consecutively, beginning at number one; and shall immediately forward to the commissioner of agriculture the name and postoffice address to whom certificate was issued. The clerk shall issue certificates to all ginners, and shall take the affidavits as herein required without cost to ginners. (Id., p. 313.)

Art. 981. Duty of commissioner of agriculture.—The commissioner of agriculture, upon receipt of information of the issuance of a ginner's certificate from any county clerk in this state, shall immediately forward all necessary blanks to the public ginner for making official cotton report, which shall consist of the following:

Envelopes addressed to the commissioner of agriculture, Austin, Texas; and there shall be printed upon the upper left hand corner the words, "official cotton report of ——— county," also blanks, to wit:

Official Cotton Report

Certificate No. ———

———, 190—

Commissioner of Agriculture,
Austin, Texas.

Sir: This is to certify that I have ginned ——— bales of cotton from the ——— day of ——— 190—, to the ——— day of ——— 190—

(Signed) ———

(Id., p. 313.)

Art. 982. Public ginner to forward report to commissioner of agriculture.—All public ginners shall make and forward reports to the commissioner of agriculture, on

the blanks furnished them, by the third of each month, stating the exact number of bales ginned by them the preceding calendar month. This report must be made by all ginners, unless they have ceased to operate, the notice of which must be forwarded to the commissioner of agriculture. These reports must be securely sealed by ginners. (Id., p. 314.)

Art. 983. Shall open same and give out information, when.—The commissioner of agriculture shall open, on the eighth of each month, and tabulate the official cotton reports of the various counties, in the presence of three creditable witnesses, who shall be appointed by the governor. The complete report, showing total number of bales of cotton ginned, shall be given out to the public including the press, at eleven o'clock a. m., on the ninth of each month. (Id., p. 314.)

Art. 984. Giving out information before time specified, penalty.—If the commissioner of agriculture, his assistants, or any one else connected with the opening and tabulating of these official cotton reports, or any other person, shall give out any information, as to the number of bales of cotton ginned, before the time specified by this act, shall, upon conviction, be confined in the penitentiary not less than one year nor more than three years. (Id., p. 314.)

Art. 985. County clerk or public ginner violating any provisions hereof, penalty.—All county clerks and public ginners who violate any of the provisions of this act are guilty of a misdemeanor, and, upon conviction, shall be fined not less than twenty-five nor more than two hundred dollars. (Id., p. 314.)

Art. 986. Person, owner, etc., of public gin shall keep record.—Hereafter, every person, firm, corporation or association of persons owning, controlling or operating a public cotton gin in this state, shall keep, or cause to be kept, a public record of all cotton brought to them for ginning and packing. Such record shall correctly show the amount of cotton received, date of its receipt, by whom brought to the gin and the name or names of the party or parties claiming to own the same. (Acts 1901, p. 263.)

Art. 987. Each bale of cotton shall be marked and same put upon record.—Said ginner, after ginning and packing said cotton, shall place, or cause to be placed, on each bale of cotton, the initials of the party or parties claiming to own said cotton, under which he shall place some private ginner's mark, all of which shall be put upon record in the book before mentioned. (Id.)

Acts 1917, ch. 41 (1st C. S. 35th Leg.) sec. 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."

Art. 988. Buyers of cotton shall not alter or deface marks.—Hereafter, every person, firm, corporation or association of persons who shall buy cotton in this state, shall not change, alter or deface the marks and brands on such cotton. (Id.)

Art. 989. Person, firm, corporation, etc., failing, refusing, etc., to comply with any provisions hereof, penalty.—Any person, firm corporation or association of persons failing, neglecting or refusing to comply with any of the provisions of this act shall be punished by a fine in any sum not more than twenty-five dollars. (Id.)

CHAPTER SEVEN

FALSE WEIGHTS AND MEASURES

Art. 990. (572) Penalty for using.—If any person shall use a false balance, weight or measure in weighing or measuring anything whatever, purchased or sold by himself, or bartered, shipped or delivered by him for sale, or bartered or pledged, or given in payment, knowing the same to be false, and with intent to defraud, he shall be punished by fine not exceeding three hundred dollars. (O. C. 466.)

Art. 991. (573) Definition.—A false weight or measure is such as is not in conformity with the standard which is or may be established by a law of this state. (O. C. 467.)

Art. 992. (574) Destruction of, on conviction.—When a warrant of arrest is issued in case of offenses under this chapter, the magistrate shall direct the false balances, weights or measures to be seized and kept by the sheriff until the trial of defendant; and, in case of conviction, the same shall be destroyed. (O. C. 468.)

Art. 992a. Paying public weigher to weigh falsely.—Any person, firm or corporation who shall request a public weigher, deputy public weigher or any person employed by him, or pay to him any money, or give him anything to weigh any produce, commodity or article, falsely or incorrectly, or who shall request a false or incorrect certificate of weights or measures, or weight sheet, shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than Twenty-five ($25.00) Dollars, nor more than Two Hundred and Fifty ($250.00) Dollars, and in addition thereto may be imprisoned in the county jail for a term of not less than thirty days, nor more than six months, at the option of the jury trying him. (Acts 1919, ch. 76, sec. 12.)

For the remainder of this Act see ante, Civ. St., arts. 7833a-7833o.

Art. 992b. Shipping falsely weighed commodities.—It shall be unlawful for any person, firm or corporation, association of persons, or partnership, to ship to any one in this State any commodity, produce or thing, on which the weight is necessary to be given, at any other than the true weight of such commodity. Anyone who shall ship any commodity at other than the true weight properly certified to, shall be guilty of a misdemeanor, and may be fined in any sum not less than One Hundred (100) Dollars, nor more than Five Hundred (500) Dollars, and may be imprisoned in the county jail for any term not more than twelve months, or both such fine and imprisonment, at the option of the jury trying him. (Id. sec. 14.)

Art. 992c. Buying or selling commodities with greater or less number of pounds per bushel than fixed by standards.—Whoever in buying any of the articles of property mentioned in Section 5 of this Act, or mentioned in the Governor's proclamation defining what constitutes a unit in conformity with the provisions of Sections 5 and 6 of this Act, shall take any greater number of

pounds thereof to the bushel, barrel or cubic yard, or divisible merchantable quantity of bushel, barrel, cubic yard or lineal yard, or in selling any of said articles, shall give any less number of pounds thereof to the bushel, barrel, cubic or lineal yard, or divisible merchantable quantity of a bushel, barrel, cubic or lineal yard than is allowed by this State, with intent to gain an advantage thereby, except where expressly authorized so to do by special contract or agreement to that effect, shall be liable to the party injured in double the amount of the property wrongfully taken, or not given, and in addition thereto, shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than Twenty Dollars ($20.00), nor more than Two Hundred Dollars ($200.00). (Acts 1919, ch. 130, sec. 7.)

For sections 1-6 of this act see ante, Civ. St., arts. 7846¼-7846¼f.

Art. 992d. Sale of commodities unmarked as to quantity.—All articles of food stuff, feed or other commodity which are sold in packages shall in all instances contain the net weight of the produce or commodity other than drugs so sold in such packages or containers, and shall not include the weight of the package or container. No person shall sell or offer for sale food, feed or other commodity in package form unless the quantity of the contents be plainly and conspicuously marked on the outside of the package or container giving the weight, measure or numerical count of the contents thereof. Provided, however, that reasonable variations may be permitted and tolerances and exemptions allowed under such rules and regulations as may be made from time to time by the Commissioners of Markets and Warehouses. Anyone selling any article or commodity in violation of this Section shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than $25.00, nor more than Two Hundred Dollars, ($200.00), and each and every package so sold shall constitute a separate offense. An offense defined in this Section shall apply to all parties selling same within this State, and to parties outside of this State that sell merchandise in violation of this Act within this State. No penalty, fine, imprisonment or confiscation shall be enforced against any person for the violation of the provisions of this section as to stocks of goods now on hand, but shall apply to all new stocks purchased after the taking effect of this Act. (Id. sec. 8.)

Art. 992dd. Violations of act relating to weights and measures.—Any person violating such standards or tolerances shall be guilty of a misdemeanor and punished by a fine, or a fine and imprisonment, as hereinafter provided and set forth. (Acts 1919, ch. 131, sec. 5.)

For sections 1-22, 24, 30 of this act, see ante, Civ. St. arts. 7846¼, 7846¼g-7846¼zzz.

Art. 992e. Use, etc., of false weights and measures.—Any person, who, by himself, or his employé, or agent, or as the employé or agent of another, shall use, in the buying or selling of any commodity, or retain in his possession a false weight or measure, or weighing or measuring instrument or shall offer or expose for sale, or sell, except as hereinbefore specifically allowed in this Act, or use or retain in his possession any weight or measure or weighing or measuring instrument which has not been sealed by a sealer within one year, or who shall dispose of any condemned weight or measure, or weighing or measuring instrument contrary to law, or any person, who, by himself, or his employé or agent, or as the employé or agent of another, shall sell or offer or expose for sale, or use or have in his possession for the purpose of selling or using, any device or instrument to be used to, or calculated to falsify, any weight or measure, and any person, who, by himself, or his employé, or agent, or as the employé or agent of another, shall sell or offer or expose for sale, any commodity, produce, article or thing in a less quantity than the true net weight, or true net measure thereof, or in a less quantity than he represents it to be or contain, shall be guilty of a misdemeanor. Possession of such false weights or measures or weighing or measuring instruments shall be prima facie evidence of the fact that they were intended to be used in the violation of law. (Id. sec. 23.)

Art. 992f. Violations of act relating to weights and measures.—Any one violating any of the provisions of this Act, wherein the same has been denominated as a misdemeanor, upon conviction, shall be fined not less than Ten Dollars ($10.00), nor more than Two Hundred Dollars ($200.), and every day such misdemeanor is committed, shall constitute a separate offense. (Id. sec. 29.)

Art. 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.

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. (Acts 1905, p. 205; Acts 1917, 3d C. S., ch. 35, secs. 1, 2.)

CHAPTER SEVEN A

WEIGHT OF COTTON BALES

Art. 993a. Cotton ginners to stamp weights upon bales.—That the owners, lessees, operators or receivers of all cotton gins, in this State, shall stamp or write, upon each and every bale of cotton ginned by them, in plain figures, the weight of the bagging and ties in which the cotton is wrapped, said figures to be written or stamped with indelible ink, and shall be not less than four inches in height and three inches in width, and shall be preceded by the word, "tare," written or stamped upon the bale with indelible ink, the letters composing said word to be not less than four inches in height and three inches in width. Any person wilfully violating the provision of this section shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than ten, nor more than one hundred dollars. (Acts 1911, p. 47, ch. 34, sec. 1.)

See concluding sentence in Acts 1917, ch. 41, sec. 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."

Art. 993b. Cotton compressers to see that marks are not defaced.—That the owners, lessees, operators or receivers of all cotton compresses in this State, shall write or stamp upon each and every bale of cotton compressed by them, the word and figures placed upon such bale or bales of cotton by the ginner ginning the same, in compliance with Section 1 of this Act [Art. 993a], in the same manner as provided for ginners in said Section 1, should such word and figures be defaced or hidden during the process of compression. Any person wilfully violating the provisions of this section, shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than ten ($10.00) dollars, nor more than one hundred ($100.00) dollars. (Id. sec. 2.)

Art. 993c. Separate offenses.—Each bale of cotton ginned and each bale of cotton compressed without having placed thereon the word and figures as provided in Sections 1 and 2, respectively, of this Act [Arts. 993a, 993b], shall constitute a separate offense. (Id. sec. 3.)

Art. 993d. Unlawful to make greater deduction for tare than shown by marks.—It shall be unlawful for any person, firm, corporation, cotton exchange or board of trade, to make a greater deduction for tare, either from the gross weight of any bale of cotton or the price of same than is shown by the figures placed upon the bale in compliance with Section 1 [Art. 993a] of this Act. (Id. sec. 4.)

Art. 993e. Same; penalty.—Any person, firm, corporation, cotton exchange, or board of trade, or any agent of any person, firm, corporation, cotton exchange, or board of trade who violates the provisions of Section 4 of this Act [Art. 993d], shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by a fine, of not less than ten nor more than one hundred dollars. (Id. sec. 5.)

Art. 993f. Same; separate offenses.—Each bale of cotton from which a greater deduction for tare is made, than is shown by the figures written or stamped upon same, shall constitute a separate offense. (Id. sec. 6.)

CHAPTER SEVEN B

CONTAINERS, GRADES AND PACKS

Art. 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 of this Act [Art. 7846c, Civ. St.], 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. (Acts 1917, ch. 181, sec. 7.)

For sections 1-6 of this act, as amended, see ante, Civ. St., arts. 7846a-7846f.

Art. 993½a. Violation of regulations as to grade and pack of fruits and vegetables.—Any grower, shipper, packer, shipper's agent, common carrier, or transportation company, agent, receiver or representative of such company, who shall violate any of the provisions of this Act relating to standards of grade and pack, or who shall refuse to conform to the standards of grade and pack as herein above 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 a misdemeanor and upon conviction shall be fined in any sum not more than one hundred ($100.00) dollars. (Acts 1917, ch. 181, sec. 8; Acts 1917, 3d C. S., ch. 6, sec. 1; Acts 1918, 4th C. S., ch. 63, sec. 1.)

CHAPTER EIGHT

OF OFFENSES BY PUBLIC WEIGHERS

Art. 994. (575) Using false balances.—If any person is elected or appointed public weigher under the laws of this state, or, if any person whomsoever who is engaged in the business of weighing for the public, and who holds himself out to weigh for the public, shall fraudulently use any false balances, scales or instruments for weighing, or shall, in the exercise of his duty as such public weigher, or as such weigher for the public, fraudulently give the wrong weight of any article whatever weighed by him, he shall be punished by fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail not to exceed one year. (O. C. 469; Acts 1901, p. 257.)

Art. 995. (576) Giving false certificate.—If any public weigher in this state or his deputy, or if any person whomsoever who is engaged in the business of weighing for the public, or who holds himself out to weigh for the public, shall wilfully or fraudulently certify to or sign any false weight of cotton, sugar, wool, hides, or other commodity, he shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. (Acts 1875, p. 164; amended, Acts 1901, p. 257.)

Art. 995a. False certificates of weights and measures; false weight sheets.—All certificates of weights and measures or weight sheets as provided for in this Act shall contain the accurate and correct weight of any and all commodities weighed when issued by public weighers. Any public weigher, or deputy public weigher, who shall issue any certificate of weights and measures or weight sheet giving false weights or measures of any article, or commodity weighed or measured by him, or his representative or deputy, to any person, firm or corporation, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than Twenty-five ($25) Dollars, nor more than two Hundred and Fifty ($250) Dollars, and may be imprisoned in the county jail for a term of not less than thirty days nor more than six months, and in addition thereto, he shall be suspended from office, and not permitted to continue the business of public weighing any longer. (Acts 1919, ch. 76, sec. 11.)

Art. 995b. Violations of act by public weighers.—Any person, firm, or corporation, or agent or representative of such corporation, who shall engage in the business of weighing for the public, or shall grant or issue a certificate or weight sheet, upon which a purchase or sale is made, without complying with the terms of this Act, shall be guilty of a misdemeanor, and shall be fined in any sum not less than Twenty-five ($25.00) Dollars, nor more than Two Hundred ($200.00) Dollars, and each and every certificate so granted by him, or weight sheet issued by him, shall constitute a separate offense. (Id. sec. 13.)

Art. 995c. Same subject.—Any sealer, deputy sealer, inspector or local sealer appointed under the provisions of this Act, or discharging any of the duties of a sealer of weights and measures in this State, who shall seal any weight, measure, balance or apparatus before testing and making the same conform with the standards of the State or who shall condemn any weight, measure, balance or apparatus without first testing the same, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than Twenty-five Dollars ($25.00), nor more than Two Hundred Dollars ($200.), and shall be immediately suspended from office. (Acts 1919, ch. 131, sec. 28.)

Art. 996. (577) Other than public weigher shall not weigh.—It shall not be lawful for any person other than a regularly appointed weigher, or his deputy, to weigh any cotton, wool, sugar or hides required to be weighed, sold or offered for sale in any city having a public weigher duly qualified. Any person or persons so offending shall be deemed guilty of a misdemeanor, and, upon conviction before any court of competent jurisdiction, shall suffer a fine of five dollars for each and every bale of cotton, bale or sack of wool, hogshead or barrel of sugar, bale or loose hide, so weighed. (Acts 1879, p. 116, sec. 7.)

Art. 997. (578) Factor, etc., shall not employ private weigher.—It shall not be lawful for any factor, commission merchant, or any other person or persons, to employ any one other than a regularly appointed and qualified public weigher, or his deputy, to weigh any cotton, wool, sugar or hides required to be weighed, sold or offered for sale in any city having a public weigher duly qualified; and any person or persons violating this provision shall be liable, at the suit of the public weigher of such city, or either of such public weighers, to damages in any sum not less than five dollars for each bale of cotton, bale or sack of wool, hogshead or barrel of sugar, or bale of hides, so unlawfully weighed, to be recovered in any court of such county having jurisdiction thereof; provided, any owner shipping any produce named in this article to any town or city having a public weigher may, by written instructions, authorize his factor, commission merchant or agent to have such produce weighed by private weighers, if he prefers so to do; and, in all such cases, the prohibitions and penalties embraced in this article and in the preceding article shall not apply. (Id. sec. 8.)

Art. 998. (579) Person may weigh his own produce.—Nothing in this law shall prevent any person, firm or corporation from weighing his own cotton, wool, sugar, hay, grain or pecans in person; providing that in places where there are no public weighers appointed or elected, that any person who shall weigh cotton, wool, sugar, grain, hay or pecans for compensation shall be required, before weighing such produce, to enter into a bond, with at least two good and sufficient sureties, in the sum of twenty-five hundred dollars, approved and payable as in the case of public weighers referred to in this chapter, and conditioned that he will faithfully perform the duties of his office, and turn over all property weighed by him on demand of the owner; provided, that this article shall not apply to merchant flouring mills. (Id. sec. 10; amended, Acts 1905, p. 117.)

Art. 999. Weighing or offering to weigh for public without complying with

this law, penalty.—Any person who shall weigh or offer to weigh any cotton, wool, sugar or hides for compensation for the public, without complying with all of the provisions of this law, shall be guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding two hundred dollars. (Acts 1905, p. 117.)

CHAPTER EIGHT A
COMMERCIAL FERTILIZERS

Arts. 999a-999b. [Omitted.]

These articles are contained in the Civil Statutes, ante, arts. 14a, 14aa, 14b, 14bb. To avoid duplication they are omitted here.

Art. 999bb. Duties and powers of state chemist; penalty for interference; analyses and samples; certificate of state chemist; evidence; bulletins, information, etc.—The State Chemist shall cause one analysis or more to be made annually of such commercial fertilizer sold or offered for sale under the provisions of this Act as may be sampled under his direction. The State Chemist, in person or by deputy, shall have power to enter into any car, warehouse, store, building, boat, vessel, steamboat, or place, supposed to contain fertilizers for the purpose of inspection or sampling, and shall have the power to take a sample for analysis, not exceeding two pounds, from any package or lot of fertilizer found within the State. Any person who opposes the entrance of said chemist or deputy, or in any way interferes with the discharge of his duty, shall be liable to a fine of not less than fifty dollars and not more than five hundred dollars. Said sample shall be drawn by means of a sampling tube of uniform diameter and at least eighteen inches long, placed in a jar or can, sealed and labeled by the inspector. Said sample shall be taken from not less than five bags, but in lots of 100 and over, from not less than 5 per cent of the entire number. All analyses shall be made by the official methods of the Association of Official Agricultural Chemists of North America. In the trial of any suit or action wherein is called in question the value or composition of any fertilizer, a certificate signed by the State Chemist and attested with his seal, setting forth the analysis made by the State Chemist, or under his direction, of the sample of said fertilizer analyzed by him under the provisions of this chapter, shall be prima facie proof that the fertilizer was of the value and consistency shown by his said analysis. And the said certificate of the State Chemist shall be admissible to evidence to the same extent as if it were his deposition taken in said action in the manner prescribed by law for the taking of depositions. The State Chemist shall issue at least one bulletin annually, setting forth the analyses of fertilizers made under the provisions of this chapter, the operations of the law, and such other information concerning violations or operations of this chapter, or otherwise pertaining to the sale of fertilizers as may be considered necessary. The State Chemist shall also investigate the composition, properties and agricultural values of fertilizers or of fertilizer materials or ingredients of fertilizers sold or offered for sale within the State of Texas, and shall publish his results as he may find. (Acts 1911, p. 218, ch. 109, sec. 5.)

Art. 999bbb. Selling fertilizer which is below guaranteed value a misdemeanor.—Any person, firm, or corporation who shall intentionally or knowingly sell or offer for sale any commercial fertilizer for use within this State which is materially below the guaranteed value in plant food, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than fifty dollars nor more than two hundred dollars for the first offense, and not less than two hundred dollars nor more than five hundred dollars for each subsequent offense, and shall refund to all purchasers of said commercial fertilizer twice the value of the deficiency in plant food. (Id. sec. 6.)

The omitted portion of this article is set forth ante, Civ. St., art. 14cc.

Arts. 999c-999d. [Omitted.]

These articles are contained in the Civil Statutes, ante, arts. 14d, 14dd, 14e, 14ee. To avoid duplication they are omitted here.

Art. 999dd. Selling, etc., offering in certain cases misdemeanor; duties of attorney general and county attorneys, injunction.—Every firm, corporation or person who shall sell or offer for sale any commercial fertilizer without having attached thereto such labels, stamps and tags as are required by law, or who shall use the required tag a second time to avoid the payment of the tonnage charge, or who shall sell adulterated or misbranded fertilizer within the meaning of this Act, shall be guilty of a misdemeanor and upon conviction shall be fined not less than fifty nor more than two hundred dollars for each offense. It shall be the duty of the Attorney General and of the several county attorneys, when requested by the State Chemist, to institute suit to enjoin any person, firm, or corporation, resident or non-resident, from manufacturing, or selling or soliciting orders for the sale of fertilizers in this State or selling fertilizers for use in this State without complying with all the provisions of this chapter, which injunction may issue without bond or advanced cost. (Id. sec. 11.)

Art. 999ddd. [Omitted.]

This article is contained in the Civil Statutes, ante, art. 14ff. To avoid duplication it is omitted here.

Art. 999e. Penalty for selling, etc., adulterated or misbranded fertilizer; when deemed misbranded or adulterated.—Any person, firm or corporation manufacturing, selling or offering for sale any adulterated or misbranded commercial fertilizer for use within this State shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars or not more than two hundred dollars. A fertilizer shall be deemed to be misbranded if it carries any false or misleading statement upon or attached to the package, or if false or misleading statements concerning its agricultural value are made on the package or in any printed advertising matter issued by the corporation, firm or individual that registered said fertilizer, or if the number of net pounds set forth upon the package is not substantially correct. A fertilizer is adulterated if it contains any substance or substances injurious to the crop or to the soil, or if the guaranteed

valuation exceeds the valuation of the plant food found on analysis ten per cent or more, or if any of the plant food constituents falls twenty per cent or more below the guaranteed composition. (Id. sec. 13.)

Art. 999ee. [Omitted.]

This article is contained in the Civil Statutes, ante, art. 14gg. To avoid duplication it is omitted here.

Art. 999eee. Penalty for deceiving, counterfeiting, etc.—Any person, party or manufacturer who uses the fertilizer tags, bags or labels of some other person, party or manufacturer, in such a way as to deceive or tend to deceive, or who counterfeits, or uses a counterfeit, of the tax tag prescribed in this chapter, shall be subject to a fine of not less than one hundred dollars, and not more than five hundred dollars. (Id. sec. 15.)

Arts. 999f, 999ff. [Omitted.]

These articles are contained in the Civil Statutes, ante, arts. 14hh, 14i. To avoid duplication they are omitted here.

Art. 999fff. Penalty for violation of act.—Any person, corporation or firm violating any provision of this chapter for which a penalty is not otherwise provided herein, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than fifty dollars nor more than two hundred dollars. (Id. sec. 18.)

Section 19 of Acts 1911, p. 25, ch. 109, repeals ch. 46, Acts 1899, and other conflicting laws, and thus supersedes arts. 741-746, revised Penal Code.

CHAPTER EIGHT B

LIVE STOCK COMMISSION MERCHANTS

Art. 999g. Livestock commission merchants defined.—That any person, firm or corporation pursuing or who shall pursue the business of selling livestock, cattle, cows, calves, bulls, steers, hogs, sheep, mules, horses, jacks and jennets, or any of them upon consignment for a commission or other charges, or who shall solicit consignments of live stock as a commission merchant or who shall advertise or hold himself out to be such, shall be deemed and held to be a livestock commission merchant within the meaning of this Act. (Acts 1913, p. 93, ch. 49, sec. 1.)

Art. 999gg. Bond of.—That all livestock commission merchants be and they are hereby required to make bond each in the sum of $10,000.00 entered into with two or more good and sufficient sureties, who are residents of this State, or some surety company duly and legally authorized to do business in this State, payable to the county judge of the county in which such livestock commission merchant resides or has his principal office, and to his successors in office, as trustees for all persons who may become entitled to the benefits of this Act, such bond to be filed in the county where such commission merchant has his principal office or place of business, in which county suits may be maintained on such bond and such bond shall be conditioned that such livestock commission merchant will faithfully and truly perform all agreements entered into with consignors with respects to receiving, handling, selling and making remittances and payments made to him, which bond shall be approved by the county clerk of the county in which such livestock commission merchant resides, or has principal office and by him, be filed and recorded. (Id. sec. 2.)

Art. 999ggg. Suits on bond.—That the bond provided for by the preceding section may be sued upon and recovery had thereon by any person claiming to have been damaged by a breach of its conditions; provided, that said bond shall not become void upon the first recovery thereon, but may be sued upon until the amount thereof is exhausted. That upon the exhaustion of said bond by recoveries thereon, said livestock commission merchant shall be required to make and file a new bond conditioned as provided in Section 2 [Art. 999gg] hereof. (Id. sec. 3.)

Art. 999h. New bond required, when.—That if it shall come to the knowledge of the said county judge or the county clerk that either or all of the sureties on said bond are, or may become insolvent, then it shall be the duty of said county judge or said county clerk to require said live stock commission merchant to enter into, execute and deliver a new bond, as herein provided for. (Id. sec. 3a.)

Art. 999hh. Penalty for violation of law.—That any person who shall advertise or solicit business as a livestock commission merchant, or who shall pursue in any way the occupation of a livestock commission merchant, without having made the bond or bonds as required by this Act, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not more than five thousand dollars ($5,000), or by imprisonment in the county jail for not less than one month and not more than twelve months, or by both such fine and imprisonment. (Id. sec. 4.)

Art. 999hhh. Bond filed, where; fees.—The bond herein mentioned shall be filed and kept by the county clerk of the county where filed, who shall receive the sum of fifty cents for each such bond, same to be paid by such commission merchant. (Id. sec. 5.)

Art. 999i. Laws not repealed.—It is expressly declared that none of the provisions of Title 57 of the Revised Civil Statutes of 1911, are affected or in anywise modified or repealed by the provisions of this Act. (Id. sec. 6.)

CHAPTER EIGHT C

COMMISSION MERCHANTS

Art. 999ii. Bond of.—Every commission merchant is hereby required to make bond in the sum of three thousand dollars, entered into with two or more good and sufficient sureties, who are residents of this State, and who shall make affidavit before some officer authorized to administer oaths, that they in their own right, over an above all exemptions, are worth the full amount of the bond they sign as sureties, payable to the county judge of each county in which such commission merchant maintains an office, and to the successors in office of such county judge as trustees for all persons who may become entitled to the benefits of this Act; conditioned that such commission merchant will faithfully and truly perform all agreements and contracts entered into with consignors for said produce, goods, wares or merchandise,

that said commission merchant will promptly receive and sell such produce, goods, wares or merchandise, and will on receipt of such produce, goods, wares or merchandise class the same, and if such class as made by such commission merchant is not as high as that made and sent to him by the consignor, he (the commission merchant), will immediately notify the consignor of such fact and of the class made by him; and, as soon as sold will send to the consignor a full and complete account of sales of same, giving an itemized account thereof, and the price received, the dates of sales, and shall, within five days after said produce, goods, wares or merchandise are sold, send to the consignor the full amount received for the same, less the commission due said commission merchant under the contract of consignment, which bond shall be approved by the county judge of the county in which said commission merchant maintains an office, and by said county judge filed for record in the county clerk's office as chattel mortgages are now authorized to be filed by law; provided, that any commission merchant may be bonded under the provisions of this Act by a solvent surety company, doing business in this State, to be approved by the county judge under the provisions of this Article. (Acts 1907, p. 61, sec. 2; Acts 1913, p. 178, ch. 94, sec. 1, amending art. 3827, Rev. St. 1911.)

Art. 999iii. Bond made where; suit in same county.—Such bond shall be made and filed for record in each county in which such commission merchant maintains an office, and in which county suits may be maintained upon such bond by any person claiming to have been damaged by a breach of its condition; provided, that said bond shall not become void upon the first recovery thereon, but may be sued upon until the amount thereof is exhausted; provided, however, that when said bond by suits of recovery has been reduced to the sum of fifteen hundred dollars, that said commission merchant shall be required to enter into a new bond in the sum of three thousand dollars as required in the first instance under the provisions of this Chapter; which said new bond shall be liable for all future contracts, agreements or consignments thereafter entered into by said commission merchant and consignor of such produce, cotton, sugar, goods, wares or merchandise, and upon failure of said commission merchant to give said new bond, as above required, he shall cease doing business in this State; provided any commission merchant, as herein defined, who shall engage in business as such commission merchant, without first making and filing the bond provided for in Articles 3827 and 3828, [Rev. Civ. St. 1911] shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars. (Acts 1907, p. 61, sec. 2; Acts 1913, p. 178, ch. 94, sec. 1, amending art. 3828, Rev. St. 1911.)

CHAPTER EIGHT D

LOAN BROKERS

Art. 999j. "Loan broker" defined.—A "loan broker" is a person, firm or corporation who pursues the business of lending money upon interest and taking as security for the payment of such loan and interest an assignment of wages, or an assignment of wages with power of attorney to collect the same or other order for unpaid chattel mortgage or bill of sale upon household or kitchen furniture. (Acts 1915, p. 48, ch. 28, sec. 1.)

Art. 999jj. Bond required.—No person, firm or corporation shall pursue the business of a loan broker without first having given bond with at least two good and sufficient sureties or the guaranty of some solvent bonding company authorized to do business in this State, in the sum of five thousand ($5000) dollars, payable to the State of Texas, approved by and filed with the clerk of the County Court of the county in which such person, firm or corporation proposes to pursue said business, conditioned that such person, firm or corporation shall faithfully comply with each and every requirement of the law governing such business, and will pay to any person dealing with such loan broker any judgment that may be obtained against him. (Id. sec. 2.)

Art. 999jjj. Registration of bond.—The bond required by the preceding article shall be recorded and safely kept in the office of the clerk of the County Court of the county in which such loan broker pursues such business, the recording fees thereof to be paid by such loan broker, and a new bond shall be given, filed and recorded in the same manner as the first one, every twelve months during the continuance of such business. (Id. sec. 3.)

Art. 999k. Separate offices.—A bond shall be required and given by each loan broker for each and every separate office or place of business which he may conduct. (Id. sec. 4.)

Art. 999kk. Broker to keep register of loans.—Each loan broker shall keep a well-bound book in which he shall register all his transactions as a broker at the time same occurs; such registry shall show (1) the articles of property securing the loan, if the same be secured by chattel mortgage or bill of sale on household or kitchen furniture; (2) the assignment of wages, or the assignment of wages with power of attorney to collect the same, or other order for unpaid wages given as security, giving the name of the person receiving the money, and the person by whom such person is employed, or by whom it is expected that he will be employed, and in whose service it is expected that he shall earn the salary or wages; (3) the amount of money received by the borrower; (4) the amount to be received back by the loan broker, and the time in which he is to receive back such payment; (5) the rate of interest or discount agreed upon. (Id. sec. 5.)

Art. 999kkk. Public inspection of register.—Such books shall be kept open for inspection, and that the broker shall give to the party borrowing, a ticket showing the amount of cash actually received, and showing the amount paid back by the borrower to the loan broker on each payment, such tickets to correspond with the entry on the book of the register. (Id. sec. 6.)

Art. 999l. Loan broker to file power of attorney to receive service of process.—

Each loan broker as defined in Section 1 of this Act [Art. 999j] engaged in doing or desiring to do business in this State shall file with the County Clerk of the county in which he or it is engaged in doing such business or desires to do such business an irrevocable power of attorney duly executed, constituting and appointing the County Judge of the county in which he or it is engaged in doing business or in which he or it desires to do business, and to his successors in office, his or its duly authorized agent and attorney in fact, for the purpose of accepting service for him or it, or being served with citation in any suit brought against him or it in any court of this State by any person, firm, company or corporation, and consenting that the service of any civil process upon such County Judge as his or its attorney for such purpose, in any suit or proceeding, shall be taken and held to be valid, waiving all claim and right to object to such service or to any error by reason of such service and such appointment, agency and power of attorney, shall by its terms and recitals provide that it shall continue and remain in force and effect so long as such loan broker continues to do business in this State and so long as it shall have outstanding any claim of any character held by any citizen, firm, company or corporation of this State or by the State of Texas against him or it, and until all claims of every character, so held by any citizen, firm, company or corporation or by the State of Texas, shall have been settled. Said power of attorney shall be signed in person by any individual loan broker and by each member of any firm, partnership or association engaged in business as a loan broker, and if such loan broker is a corporation it shall be signed by the president or vice-president and by the secretary of such corporation, and shall be attested by the seal of such corporation. Each such power of attorney shall be acknowledged before some officer authorized by the laws of this State to take acknowledgments. (Id. sec. 7.)

Art. 999*ll*. Payment of judgments.—If any judgment upon any bond given by any loan broker shall remain unpaid for sixty days after final judgment and execution thereon, it shall be unlawful for such loan broker to continue to run such business, and the same shall be punished by fine of not less than $50.00 nor more than $250.00, and each and every day in which such loan broker conducts such business shall be a new and separate offense. Each and every person employed by and engaged in the conduct of such business shall be guilty of unlawfully conducting the same, if the same be conducted without a bond or after the forfeiture of such bond as above described. (Id. sec. 8.)

Art. 999*lll*. Penalty for violation of law.—If any loan broker, or person doing business as such shall make any loan upon chattel mortgages or bill of sale upon household or kitchen furniture, or shall make any loan taking as security for the payment thereof an assignment of wages or an assignment of wages with power of attorney to collect the same, whether the same be called a loan or purchase without complying with the laws regulating loan brokers in this State, he shall be punished by a fine of not less than $50.00 nor more than $250.00 for each. (Id. sec. 10.)

Art. 999m. Consent of wife to security for loan.—Each assignment, mortgage, power of attorney to collect or other transfer of the salary or wages of a married man, and each bill of sale or chattel mortgage upon the household and kitchen furniture of a married man shall be void unless the same be made and given with the consent of the wife, and such consent shall be evidenced by the wife joining in the assignment, mortgage, power of attorney to collect or other transfer of salary or wages, and the signing of her name thereto and by her separate acknowledgment thereof, taken and certified to by a proper officer, substantially in the mode provided by law for the acknowledgment by the wife of a conveyance of the homestead. (Id. sec. 11.)

Art. 999mm. Annual tax.—Every loan broker shall pay an annual tax of one hundred and fifty dollars to the State of Texas for each and every place of business. (Id. sec. 12.)

CHAPTER EIGHT E
EMPLOYMENT AGENCIES

Art. 999mmm. License and bond; action on bond.—No person, firm or corporation in this state shall open, operate or maintain a private employment agency for hire, or where a fee is charged to either applicant for employment or for help, without first obtaining a license for the same from the Commissioner of Labor Statistics, and such license fee shall be $25.00 (twenty-five dollars). Such license shall be of force for one year, but may be renewed from year to year upon the payment of a fee of $25.00 (twenty-five dollars) for each renewal. Every license shall contain a designation of the city, street and number of the building in which the licensed party conducts said employment agencies. The license, together with a copy of this Act, shall be posted in a conspicuous place in each and every employment agency. The Commissioner of Labor Statistics shall require with each application for a license a good and sufficient bond in the penal sum of five hundred ($500.00) dollars, to be approved by said commissioner, and conditioned that the obligor will not violate any of the duties, terms, conditions, provisions, or requirements of this Act. The said Commissioner of Labor Statistics is authorized to cause an action to be brought on said bond in name of the State for any violation of any of its conditions, and may revoke, upon a full hearing, any license whenever, in his judgment, the party licensed shall have violated any of the provisions of this Act. (Acts 1915, p. 163, ch. 108, sec. 1.)

Art. 999n. Shall keep register of transactions; charges for service.—It shall be the duty of every licensed agency to keep a register in a substantial book, in the form prescribed by the Commissioner of Labor Statistics, in which shall be entered the age, sex, nativity, trade or occupation, name and address of every applicant. Such licensed agency shall also enter in a register the name and address of every person who shall make application for help or servants,

and the name and nature of the employment for which such help shall be wanted. Such register shall, at all reasonable hours, be open to the inspection and examination of the Commissioner of Labor Statistics or his deputies or inspectors. Where a registration fee is charged for filing or receiving application for employment or help, said fee shall in no case exceed the sum of two ($2.00) dollars, for which a receipt shall be given, in which shall be stated the name of the applicant, the amount of the fee, the date, the name or character of the work or the situation to be secured. In case the said applicant shall not obtain a situation or employment through such licensed agency within one month after registration as aforesaid, then said licensed agency shall forthwith repay and return to such applicant, upon demand being made therefor, the full amount of the fee paid or delivered by said applicant to said licensed agency; provided, that such demand be made within thirty (30) days after the expiration of the period aforesaid. (Id. sec. 2.)

Art. 999nn. Immoral occupations; false promises; inducing employés to leave service.—No agency shall send or cause to be sent any female help or servants to any place of bad repute, house of ill fame or assignation house, or any house or place kept for immoral purposes. No such licensed agency shall publish, or cause to be published, any false information, or to make any false promise concerning or relating to work or employment to anyone who shall register for employment, and no such licensed agency shall make any false entries in the register to be kept as herein provided, and all entries in such registers shall be made in ink. Any licensed person or agency shall not by himself or itself, agent or otherwise, induce, or attempt to induce, any employé to leave his employment with a view to obtaining other employment through such agency. (Id. sec. 3.)

Art. 999nnn. Penalty for violation of act; duty of commissioner of Labor Statistics.—It shall be the duty of the Commissioner of Labor Statistics to enforce this Act, and when informed of any violation thereof, it shall be his duty to institute criminal proceedings for enforcement of its penalties before any court of competent jurisdiction. He may make such rules and regulations for the enforcement of this Act not inconsistent therewith, as he may deem proper. Any person convicted of a violation of any of the provisions of Sections 1, 2 and 3 [Arts. 999mmm-999nn] shall be guilty of a misdemeanor, and upon conviction in any court of competent jurisdiction shall be fined not less than fifty ($50.00) dollars nor more than two hundred ($200.00) dollars for each offense; provided, that any person or persons who shall send any female help or servants to any place of bad repute, house of ill fame or assignation house or any house or place kept for immoral purposes, shall be deemed guilty of a felony, and upon conviction in any court of competent jurisdiction shall be punished by a fine of not less than one thousand ($1,000.00) dollars nor more than five thousand ($5,000.00) dollars, or by imprisonment in the penitentiary not less than two (2) years nor more than ten (10) years, or by both such fine and imprisonment. (Id. sec. 4.)

Art. 999o. "Private agency for hire" defined.—A private agency for hire is defined and interpreted to mean any person, firm or corporation engaging in the occupation of furnishing employment or help, or giving information as to where employment or help may be secured, or displaying any employment sign or bulletin, or, through the medium of any card, circular or pamphlet, offering to secure employment or help; provided, that charitable organizations not charging a fee shall not be included in said term. (Id. sec. 5.)

Art. 999oo. Fees and fines to be paid into state treasury; special fund.—The Commissioner of Labor Statistics shall, at the end of each month, make an itemized account of all moneys received by him from fees and fines, under the provisions of this Act, and pay the same into the State Treasury, to be held in a separate fund known as the employment agency fund, and to be used for expenses incurred in inspecting, regulating and printing blanks and books to be furnished such employment agencies by the Commissioner of Labor Statistics. The unexpended moneys remaining in the State Treasury at the end of the fiscal year shall be transferred into the school fund. (Id. sec. 6.)

Art. 999ooo. Disposition of fines assessed by courts.—All fines assessed by the courts for violation of Sections 1 and 2 of this Act [Arts. 999mmm, 999n] shall be paid by said court to the Commissioner of Labor Statics or his duly authorized agents. (Id. sec. 7.)

Art. 999p. Blank books.—The Commissioner of Labor Statistics shall furnish to each licensed employment agency blank books upon which their record shall be kept, as provided for in this Act, together with forms for receipts, etc., and all necessary blanks upon which reports shall be made to the Commissioner of Labor Statistics. (Id. sec. 8.)

CHAPTER EIGHT F

CONTRACTING STEVEDORES

Art. 999pp. Contracting stevedore and stevedore defined.—A contracting stevedore, within the meaning of this Act, is any person, firm, association of persons, or corporation that contracts with any ship, agent, owners, masters, managers or captains of vessels, or with any other person or corporation, for the purpose of loading or unloading, or of having loaded or unloaded any vessel, ship or water craft; a stevedore within the meaning of this Act is any laborer who performs any of the actual labor in loading and unloading any ship, vessel or water craft whatsoever while in the service or employ of a contracting stevedore as above mentioned. (Acts 1913, p. 153, ch. 82, sec. 1.)

Art. 999ppp. License and bond; penalty.—It shall hereafter be unlawful for any contracting stevedore to engage in the business or pursue the occupation of loading and unloading or having loaded or unloaded by the employment of labor therefor any ship, vessel or water craft in this State without first obtaining the license and executing the

bond as hereinafter provided, and any such person who pursues said occupation without first qualifying as provided by this Act shall be guilty of a misdemeanor, and on conviction shall be fined in any sum not less than one hundred nor more than five hundred dollars for each day he shall pursue such occupation or business without thus qualifying and any member of a firm or association or any manager of a corporation who come within the meaning of a contracting stevedore who shall thus offend shall be amendable [amenable] to prosecution hereunder. (Id. sec. 2.)

Art. 999q. Bond.—Each contracting stevedore as contemplated by this Act is hereby required to make bond in the sum of five thousand dollars entered into with two or more good and sufficient sureties, who are residents of this State, or with any good and sufficient surety bonding Co. authorized to transact business in this State, payable to the county judge of the county in which such stevedore pursues his occupation and to his successor in office, as trustee for all persons who may become entitled to the benefits of this Act, said bond to be conditioned that said contracting stevedore will promptly on Saturday of each week pay each laborer his wages for labor performed in loading and unloading any such ship, vessel or water craft according to the scale of wages agreed upon, and that all agreements entered into with said laborers and each of them in respect to the loading and unloading of said water craft, as above mentioned, will be faithfully and truly performed, which bond shall be approved by the county clerk of the county in which said contracting stevedore is pursuing said business or occupation and by him shall be filed and recorded. (Id. sec. 3.)

Art. 999qq. Bond and license in each county, etc.; suits on bond.—The bond and license hereinafter provided for shall be made in each county in which said contracting stevedore pursues said occupation, in which county suits may be maintained upon such bond by any person to whom wages are due and unpaid for such labor as is hereinbefore mentioned; provided, that the same shall not become free upon the first recovery, but may be sued upon until the full amount thereof is exhausted, or suits sufficient to exhaust the bond or [are] pending, and when so exhausted said contracting stevedore shall make and file a new bond in amount and conditioned as provided for the first, and his failure so to do shall render him amendable [amenable] to prosecution as if no bond had ever been given in the first instance. (Id. sec. 4.)

Art. 999qqq. License, how granted.—Said contracting stevedore shall, before beginning business as before stated, file his application in writing for a license to pursue the occupation of a contracting stevedore for the county mentioned, and on approval of the bond hereinbefore provided for by the county clerk and payment of a license fee of five dollars the clerk shall grant to him a license to pursue said occupation upon such form as the county commissioners court may designate, the said license fee to be paid into the general fund of the county. (Id. sec. 5.)

Art. 999r. New bonds and licenses; time within which to qualify.—Said contracting stevedore shall be and he is hereby required to execute a new bond and to obtain the issuance of a new license at the expiration of each year from the former, every two years from the issuance of the former license, and all contracting stevedores who may be engaged in the occupation herein defined at any port, sub-port or other place where ships, vessels or water crafts are loaded or unloaded, at the time this law becomes effective, shall have thirty days from and after the going into effect of this law to qualify thereunder by executing the bond and obtaining the license as required herein. (Id. sec. 6.)

CHAPTER EIGHT G

PUBLIC ACCOUNTANTS

Art. 999rr. State Board of Public Accountancy created.—There is hereby created a board to be known as the State Board of Public Accountancy, to be composed of five members, who shall be public accountants of good moral character and qualified citizens of the State of Texas, each of whom shall have had at least three years practical experience as a public accountant on his own account immediately preceding his appointment, during the last three years of which he shall have been so engaged in the State of Texas; the members of said board to be selected and appointed as hereinafter provided. (Acts 1915, p. 184, ch. 122, sec. 1.)

Art. 999rrr. Appointment and tenure of members of board.—Within thirty days after this Act shall go into effect the Governor of the State of Texas shall appoint five persons qualified as provided in Section 1 of this Act [Art. 999rr], who shall constitute the State Board of Public Accountancy.

The members of the first State Board of Public Accountancy provided for herein shall be appointed for and shall serve for the term ending on the third Tuesday of January, 1917, or until their successors are appointed and qualified. On and after the third Tuesday in January, 1917, and regularly every two years thereafter, the Governor of the State of Texas shall appoint five members as successors on said board, and each and every member who may be appointed to succeed any member of the first State Board of Public Accountancy shall be a certified Public Accountant, holding a certificate as such under the provisions of this Act, and resident of Texas for at least three years preceding said appointment.

Five members of the First State Board of Public Accountancy provided for herein shall confer upon themselves the title "Certified Public Accountant," provided that each member of said board shall have filed an application for such certificate with four remaining members of said board, and, provided further, that said applicant shall meet the requirements as provided in Section 8 [Art. 999ttt]. All vacancies in said board caused by death, resignation, removal from the State, or otherwise, shall be filled by appointment of the Governor, and each special appointment shall be from the roster of certified public accountants created under this Act, and said appointee shall continue only until the expiration of the regular term for which the prede-

cessor of such appointee would have held office. The revocation of the certificate of any member of this board shall terminate his membership thereon, and the Governor shall fill the vacancy so caused as herein above provided. (Id. sec. 2.)

Art. 999s. Organization of board; rules and regulations; powers.—The members of said board shall, within thirty days after their appointment, qualify by taking the oath of office before a notary public or other officer empowered to administer oaths in the county in which each shall reside, and shall file same with the Secretary of State and receive their certificate of appointment as members of the "State Board of Public Accountancy." At the first meeting after each biennial appointment, the board shall elect from among its members a chairman and secretary-treasurer. The board may prescribe rules, regulations and by-laws in harmony with the provisions of this law and not inconsistent with the laws of the State of Texas for its own proceedings and government and for the examination of applicants for certificates as certified public accountants; which rule shall provide that when a division on any motion occurs, at least three affirmative votes shall be necessary to the final adoption thereof. It is further provided that three members of said board shall constitute a quorum for the transaction of the business of the board.

All rules, regulations and by-laws adopted by the said board shall be filed with the office of the Secretary of State. Said board, or any member thereof, shall have the power to administer oaths for all purposes required in the discharge of its duties, and said board shall adopt a seal to be affixed to all of its official documents. (Id. sec. 3.)

Art. 999ss. Meetings of board; examinations.—The board shall meet within sixty days after its appointment and at least once in each year for the purpose of examining applicants for certificates as provided herein, and may meet as many times during the year as may be in its discretion advisable. Notice of all meetings shall be given at least thirty days prior to the dates selected for same by publication three consecutive times in three daily newspapers published in the three most populous cities in the State, such notice giving the time and place of meeting and stating the purpose to be for the examination of applicants for certificates as certified public accountants; provided, that the board may hold any number of meetings, and at any time, without giving notice by publication of such meetings, if a meeting be called for any other purpose than the examination of applicants for certificates. It is further provided that any applicant who has successfully passed an examination before said board upon three of the subjects required may have a re-examination upon the unsuccessful subject under the supervision of said board. Examinations by the board shall be on the following subjects: "Theory of Accounts," "Practical Accounting," "Auditing," and "Commercial Law as Affecting Accountancy," and each applicant shall be required to make a general average of at least seventy-five per cent. on all subjects, and to each person passing such examination, if he has otherwise qualified, shall be issued by the State Board of Public Accountancy a certificate as a "Certified public accountant of the State of Texas," and the State Board of Public Accountancy shall have the power to revoke or recall any certificate issued under this Act as hereinafter provided. (Id. sec. 4.)

Art. 999sss. Records of board; transmission to Secretary of State.—The State Board of Public Accountancy shall preserve a record of its proceedings in a book kept for that purpose, showing the name, age and duration of residence of each applicant, the time spent by the applicant in practice as a public accountant, or in employment in the office of the public accountant, and the year and school, if any, from which degrees were granted or in which the course of study was successfully completed by the applicant as required by law. Said register will show, also, whether applicants were rejected or licensed, and shall be prima facie evidence of all matters contained therein. The secretary of the board shall, on December 31 of each year, transmit an official copy of said register to the Secretary of State for permanent record, certified copy of which, under the hand and seal of the secretary of said board or Secretary of State, shall be admitted in evidence in any court or proceeding. (Id. sec. 5.)

Art. 999t. Qualifications of applicants for certificates.—No person shall be permitted to take an examination unless he be twenty-one years of age, of good moral character, a qualified citizen of the United States, and unless he shall have had one year's study and practice in accountancy or accounting work. (Id. sec. 6.)

Art. 999tt. Certificate without examination.—The board may, in its discretion, waive the examination and issue a certificate to any person who has received and holds a valid and unrevoked certificate as a certified public accountant issued by or under the authority of any state or territory of the United States, the District of Columbia, or who holds the equivalent of such certificate by and under the expressed legal authority of any foreign nation, providing, however, that such certificate or degree shall, in the opinion of the board, have been issued under a standard fully equivalent to that of the requirements of said board, and issued by such state or territory as may extend the same privilege to certified public accountants holding certificates from this State; provided, further, that such applicant shall have qualified as provided in Section 6 [Art. 999t]. (Id. sec. 7.)

Art. 999ttt. Same.—The State Board of Public Accountancy shall, upon written application therefor, waive examination of any applicant, provided said applicant shall be qualified as provided by Section 6 hereof [Art. 999t], and shall have been practicing on his own account as a public accountant, or on the behalf of another public accountant, as a senior public accountant for not less than three years, two years of which practice shall have been within the State of Texas immediately preceding said application; pro-

vided, further, that such application is filed prior to January 1, 1916. (Id. sec. 8.)

Art. 999u. Examination fee; annual fee.—Each applicant for a certificate as certified public accountant shall, at the time of making application, pay to the treasurer of said board a fee of twenty-five dollars, and no application shall be considered by said board until said fee of twenty-five dollars shall have been paid. In case of failure on the part of any applicant to pass a satisfactory examination, said applicant may have the privilege of appearing at any subsequent examination conducted by said board for reexamination, upon the payment of an additional fee of ten dollars.

The holder of each certificate issued hereunder shall pay an annual fee of $1.00 into the treasury of the State Board of Public Accountancy. The failure on the part of the holder of any certificate issued under this Act to pay this fee shall automatically cancel the privilege of using the title "Certified Public Accountant," but reinstatement may be had at any time within two years, or before the expiration of sixty days after the two years shall have elapsed, by the payment of the fee and application in such form as may be provided by the board and the payment further of a penalty of $2.50 for each year elapsed. (Id. sec. 9.)

Art. 999uu. Revocation of certificate.—The State Board of Public Accountancy shall revoke and recall any certificate issued under this Act if the holder thereof: (1) shall be convicted of a felony; (2) shall be declared by any court to have committed any fraud; or (3) shall be declared by any court or commission to be insane or otherwise incompetent; or (4) shall be held by this board to be guilty of any act or default discreditable to the profession; provided, that written notice of the cause of such contemplated action and the date of the hearing thereof by this board shall have been served upon the holder of such certificate at least fifteen days prior to such hearing, or provided that such notice of such contemplated action and the date of the hearing thereof by this board shall have been mailed to the last known address of such holder of such certificate at least twenty days prior to such hearing; and at such hearing the Attorney General of this State, or any one of his assistants, or any district attorney designated by him, may sit with the board as legal counsellor and advisor, and to prepare for any legal action that may be determined upon by the State Board of Public Accountancy. (Id. sec. 11.)

Art. 999uuu. Penalty for violation of act.—If any person represents himself to the public as having received a certificate as provided for in this Act, or advertises as a "Certified Public Accountant," or uses the initials "C. P. A.," or otherwise falsely holds himself out as being qualified under this Act, while practicing in this State, without having actually received such certificate, or it has been recalled or revoked, and he shall continue to use the initials "C. P. A.," or shall refuse to surrender such certificate after revocation thereof, or shall otherwise violate any provisions of this Act, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined any sum not to exceed $200.00. No audit company, incorporated or unincorporated, shall use the title "Certified Public Accountants" or the initials "C. P. A.," and no firm or partnership shall use this title, or these initials, unless each member of said firm or partnership is a legal holder of a certificate issued under the provisions of this Act, and any violation of these provisions shall be punished by a fine not to exceed the sum of $200.00.

The use by any person, firm or corporation of the abbreviated title "Certified Accountant," or of the initials "C. A.," shall be construed a violation of this Act, and shall subject such person, firm or corporation to a fine not to exceed the sum of $200.00. (Id. sec. 12.)

Art. 999v. Misconduct by practicing public accountant.—If any person practicing in the state of Texas as a Certified Public Accountant under this Act shall wilfully falsify any report or statement bearing upon any examination, investigation or report made by him or under his direction as such Certified Public Accountant, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than $100.00 or more than $1,000.00; provided, further, than any person convicted under this section shall forfeit and surrender the certificate of Certified Public Accountant held by him to the State Board of Public Accountancy. (Id. sec. 13.)

Art. 999vv. Purpose and scope of law.—Nothing herein contained shall be construed to prevent any person from being employed as an accountant in this State in either public or private practice. The purpose of this law is to provide for the examination and the issuance of a certificate, or degree, granting the privilege of the use of the title "Certified Public Accountant," and the use of the initials "C. P. A.," as indicative of the holder's fitness to serve the public as a competent and properly qualified accountant in public practice, and to prevent those who have no such certificate or degree from using such title or initials; provided, however, the use of the initials "C. P. A." or "C. A." to designate any business other than the practice of accountants or auditors is not prohibited by this Act. (Id. sec. 14.)

CHAPTER EIGHT H

SALE OF CORPORATE STOCK

Arts. 999vvv-999xxx. [Omitted.]

These articles, and arts. 999y-999z, are set forth ante, in the Civil Statutes, arts. 1174a-1174p.

Art. 999xxxx. Penalty for violation of law.—It shall hereafter be unlawful for any officer, agent or employé or trustee, or holding company, or sales agents, or person or association of persons in this State to sell, or offer to sell, or contract to sell, directly or indirectly, for such concern, any stock of any corporation or proposed corporation, subject to this act, which has been, proposed to be, is now being, or may hereafter be organized for profit, without first complying with the provisions of this act, and any person so offending shall be guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars nor more than two thousand dollars, and in addition thereto may

be imprisoned in the county jail for any period not more than one year, or by both such fine and imprisonment. (Acts 1913, 1st C. S., p. 66, ch. 32, sec. 12.)

Arts. 999y-999z. [Omitted.]

See ante, note under arts. 999vvv-999xxx.

CHAPTER EIGHT I

SALE OF PATENT RIGHTS

Art. 999zz. Notes to state consideration.—That all notes and liens given for a patent right consideration or patent right territory shall state on their face that the same were given for a patent right. (Acts 1915, p. 128, ch. 76, sec. 1.)

Art. 999zzz. Effect of statement in notes or liens.—The aforesaid statement on the face of said notes or liens shall be notice to all subsequent purchasers of said notes or liens of all equities existing between the parties to the original transaction, and the same shall be subject to all defenses against subsequent owners and holders, that they would, if the same had remained in the hands of the original owner. (Id. sec. 2.)

Art. 999zzzz. Penalty for violation of act.—If anyone selling a patent or patent right territory shall take a note or lien for the purchase price of the same, contrary to the provisions of this Act, he shall be deemed guilty of a misdemeanor, and on conviction fined any sum not less than twenty-five nor more than two hundred dollars. (Id. sec. 3.)

CHAPTER EIGHT J

EMIGRANT AGENTS

Art. 999½. 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., Civ. St., 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. (Acts 1917, 3d C. S., ch. 36, sec. 6.)

CHAPTER NINE

MISCELLANEOUS OFFENSES

Art. 1000. (580) False certificate by notary public.—If any notary public shall make any false certificate as to the proof or acknowledgment of any instrument of writing relating to commerce or navigation to which, by law, he is authorized to certify, or shall make any false certificates as to the proof or acknowledgment of any letter of attorney, or other instrument of writing relating to commerce or navigation, to which he may by law certify, he shall be punished by confinement in the penitentiary not less than two nor more than five years. (O. C. 470.)

Art. 1001. (581) False declaration or protest by.—If any notary public shall make any false declaration or protest respecting any matter or thing relating to commerce or navigation, or to commercial instruments, where, by law, he is authorized to make such declaration or protest, he shall be punished as prescribed in the preceding article. (O. C. 471.)

Art. 1002. (582) Preceding articles embrace, what.—The provisions of the two preceding articles are intended to embrace all acts of a notary public, done in his official capacity within the proper sphere of his duties, and which arise out of transactions respecting navigation or commerce. (O. C. 472.)

Art. 1003. (583) False declaration by master of vessel.—If any master or other officer of a vessel, with intent to defraud, shall make a false declaration or protest as to the loss or damage of any vessel or cargo, he shall be punished by confinement in the penitentiary not less than two nor more than five years. (O. C. 473.)

Art. 1004. (584) Throwing ballast into the sea near bar, etc.—From and after the passage of this act, it shall be unlawful to throw into the sea any part of the ballast of any vessel within six miles of any bar or harbor in this state. (Acts 1879, p. 153, secs. 1, 2.)

Art. 1005. (585) Penalty.—If any ballast shall be thrown into the sea within the limits forbidden by this law, from any vessel, the master or officer in charge thereof at the time shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than two hundred dollars. (Id. sec. 2.)

Art. 1006. (586) False entry in book of account.—If any person, with intent to defraud, shall make, or cause to be made, any false entry in any book kept as a book of accounts, or shall, with like intent, alter, or cause to be altered, any item of an account kept or entered in such book, he shall be fined not less than one hundred nor more than one thousand dollars, or be punished by confinement in the penitentiary not less than two nor more than five years.

Art. 1007. [Superseded.]

See arts. 999ii and 999iii, ante.

Art. 1007a. Violations of act relating to agricultural seeds.—Whoever offers or exposes for sale within this State any agricultural seed, defined in Section one of this Act [Civ. Stat. art. 14¾], without complying with the requirements of Sections two and three of this Act [Civ. Stat. arts. 14¾a, 14¾b], or whoever falsely marks or labels any agricultural seeds under Section two of this Act, or "mixture" under Section three of this Act, or whoever shall prevent the Commissioner of Agriculture, or his duly authorized agents from inspecting said seeds and collecting samples as provided in Section seven of this Act [Civ. Stat. art. 14¾f], shall be guilty of a misdemeanor and upon conviction shall be fined not more than One Hundred Dollars; provided, however, that no prosecution for violation of this Act shall be instituted except in the manner following:

When the Commissioner of Agriculture believes, or has reason to believe, that any person has violated any of the provisions of Section two, three and eight of this Act, he shall cause notice of such fact together with full specification of this Act or omission constituting the violation, to be given to said person, who either in person or by agent or

attorney, shall have the right under such reasonable rules and regulations as may be prescribed by said Commissioner of Agriculture to appear before said Commissioner of Agriculture and introduce evidence, and said hearing shall be private. If, after said hearing or without such hearing, in case said person fails or refuses to appear, said Commissioner shall decide and decree that any, or all of said specifications have been proven to his satisfaction, he may in his discretion so certify to the proper prosecuting law officer for violation of this Act, transmitting with said certificate a copy of the specifications and such other evidence as he shall deem necessary and proper, whereupon said prosecuting attorney shall prosecute said person according to law. (Acts 1919, 2d C. S., ch. 62, sec. 8.)

For the remainder of this act see ante, Civ. St., arts. 14¾-14¾j.

Art. 1007b. Violations of act relating to corporations dealing in bills of lading, etc.—Every officer, director, employé and agent of any corporation chartered under this Act who shall knowingly violate any provision of this Act, or shall knowingly cause such corporation to violate same, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $200.00 nor more than $1,000.00, or by confinement in the County jail not less than three months nor more than one year or by both such fine and imprisonment. (Acts 1919, 2d C. S., ch. 4, sec. 2.)

TITLE 15

OF OFFENSES AGAINST THE PERSON

CHAPTER ONE

ASSAULT AND ASSAULT AND BATTERY

Art. 1008. (587) "Assault and battery" defined.—The use of any unlawful violence upon the person of another with intent to injure him, whatever be the means or the degree of violence used, is an assault and battery. Any attempt to commit a battery, or any threatening gesture showing, in itself or by words accompanying it, an immediate intention, coupled with an ability to commit a battery, is an assault. (O. C. 475.)

See McCray v. S., 44 S. W. 170; Hardin v. S., 46 S. W. 803; Jay v. S., 55 S. W. 336; Nelson v. S., 57 S. W. 646; Gage v. S., 151 S. W. 565; Ward v. S., 151 S. W. 1073; Vivian v. S., 152 S. W. 895; Perkins Bros. Co. v. Anderson, 155 S. W. 556; Robey v. S., 163 S. W. 713; McGraw v. S., 163 S. W. 967; Western Union Telegraph Co. v. Bowdoin, 168 S. W. 1.

Art. 1009. (588) Intent presumed, and "injury" defined.—When an injury is caused by violence to the person, the intent to injure is presumed; and it rests with the person inflicting the injury to show the accident or innocent intention. The injury intended may be either bodily pain, constraint, a sense of shame or other disagreeable emotion of the mind. (O. C. 476.)

Griffin v. S., 53 S. W. 848; Brown v. S., 60 S. W. 549; Stripling v. S., 80 S. W. 377; Lee v. S., 85 S. W. 798; Thompson v. S., 89 S. W. 1081; Tubbs v. S., 95 S. W. 112; Acrey v. S., 10 S. W. 954; Ward v. S., 151 S. W. 1073; Yates v. S., 152 S. W. 1064; Robey v. S., 163 S. W. 713.

Art. 1010. (589) May be committed on person not intended.—An assault, or an assault and battery, may be committed, though the person actually injured thereby was not the person intended to be injured. (O. C. 477.)

Art. 1011. (590) How it may be committed.—An assault, or assault and battery, may be committed by the use of any part of the body of the person committing the offense, as of the hand, foot, head, or by the use of any inanimate object, as a stick, knife, or anything else capable of inflicting the slightest injury, or by the use of any animate object, as by throwing one person against another, or driving a horse or other animal against the person. (O. C. 478.)

Art. 1012. (591) Any means capable of injury sufficient.—Any means used by the person assaulting, as by spitting in the face or otherwise, which is capable of inflicting an injury, comes within the definition of an assault, or an assault and battery, as the case may be. (O. C. 479.)

Art. 1013. (592) "Coupled with ability to commit" defined.—By the terms, "coupled with an ability to commit," as used in article 1008 is meant—

1. That the person making the assault must be in such a position that, if not prevented, he may inflict a battery upon the person assailed.

2. That he must be within such distance of the person so assailed as to make it within his power to commit the battery by the use of the means with which he attempts it.

3. It follows that one who is, at the time of making an attempt to commit a battery, under such restraint as to deprive him of the power to act, or who is at so great a distance from the person assailed as that he can not reach his person by the use of the means with which he makes the attempt, is not guilty of an assault. But the use of any dangerous weapon, or the semblance thereof, in an angry or threatening manner, with intent to alarm another, and under circumstances calculated to effect that object, comes within the meaning of an assault. (O. C. 482; Revision.)

See Gann v. S., 40 S. W. 726; Pearce v. S., 40 S. W. 806; Riddick v. S., 47 S. W. 994; Nelson v. S., 57 S. W. 645; Smith v. S., 57 S. W. 949; Bedford v. S., 69 S. W. 158; Barnes v. S., 72 S. W. 168; Trimble v. S., 125 S. W. 40; Oliver v. S., 131 S. W. 215; King v. S., 135 S. W. 136; Smith v. S., 136 S. W. 1063; Perkins Bros. Co. v Anderson, 155 S. W. 556; Myers v. S., 163 S. W. 432; Yelton v. S., 170 S. W. 318; Borders v. S., 193 S. W. 148; Clayton v. S., 197 S. W. 591; Teague v. S., 206 S. W. 193.

Art. 1014. (593) When violence does not amount to.—Violence used to the person does not amount to an assault or battery in the following cases:

1. In the exercise of the right of moderate restraint or correction given by law to the parent over the child, the guardian over the ward, the master over his apprentice, the teacher over the scholar.

2. For the preservation of order in a meeting for religious, political or other lawful purposes.

3. The preservation of the peace, or to prevent the commission of offenses.

4. In preventing or interrupting an intrusion upon the lawful possession of property. (O. C. 483.)

5. In making a lawful arrest and detaining

the party arrested, in obedience to the lawful order of a magistrate or court, and in overcoming resistance to such lawful order.

6. In self-defense or in defense of another against unlawful violence offered to his person or property.

Vaun v. S., 64 S. W. 243; Stephens v. S., 68 S. W. 281; Gold v. Campbell, 117 S. W. 463; Ely v. S., 152 S. W. 631; S. H. Kress & Co. v. Lawrence, 162 S. W. 448; Prendergast v. Masterson, 196 S. W. 246; Harris v. S., 203 S. W. 1089; Harper v. S., 207 S. W. 96.

Art. 1015. (594) Degree of force permissible.—In all the cases mentioned in the preceding article, where violence is permitted to effect a lawful purpose, only that degree of force must be used which is necessary to effect such purpose. (O. C. 484.)

Art. 1016. (595) Verbal provocation no justification.—No verbal provocation justifies an assault and battery, but insulting and abusive words may be given in evidence in mitigation of the punishment affixed to the offense. (O. C. 485.)

See Parham v. Langford, 93 S. W. 525; Eitel v. S., 182 S. W. 318; Hudley v. S., 194 S. W. 160.

Art. 1017. (596) "Battery," how used.—The word "battery" is used in this Code in the same sense as "assault and battery." (O. C. 486.)

Art. 1018. (597) Degrees of assault.—An assault is either a simple assault, an aggravated assault, or an assault with intent to commit some other offense. (O. C. 480.)

Art. 1019. (598) Punishment for simple assault.—The punishment for a simple assault, or for assault and battery, unattended with circumstances of aggravation, shall be a fine of not less than five nor more than twenty-five dollars. (O. C. 487.)

Art. 1020. (599) Abusive language an offense.—If any person shall, in the presence or hearing of another, curse or abuse such person, or use any violently abusive language to such person, concerning him or any of his female relatives, under circumstances reasonably calculated to provoke a breach of the peace, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not less than five nor more than one hundred dollars. (Acts 1887, pp. 13, 14.)

Wilborne v. S., 66 S. W. 559; Trezevant v. S., 84 S. W. 828; Deaton v. S., 110 S. W. 69.

Art. 1021. (600) Intimidation of another.—Any person who shall, by threatening words, or by acts of violence or intimidation, prevent or attempt to prevent another from engaging or remaining in or from performing the duties of any lawful employment, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by fine of not less than twenty-five nor more than five hundred dollars, or by confinement not less than one nor more than six months in the county jail. (Id. p. 13.)

See Nelson v. S., 57 S. W. 645; Franklin v. S., 134 S. W. 702.

CHAPTER TWO

AGGRAVATED ASSAULT AND BATTERY

Art. 1022. (601) Definition.—An assault or battery becomes aggravated when committed under any of the following circumstances:

1. When committed upon an officer in the lawful discharge of the duties of his office, if it was known or declared to the offender that the person assaulted was an officer discharging an official duty.

2. When committed in a court of justice, or in any place of religious worship, or in any place where persons are assembled for the purpose of innocent amusement.

3. When the person committing the offense goes into the house of a private family and is there guilty of an assault and battery.

4. When committed by a person of robust health or strength upon one who is aged or decrepit.

5. When committed by an adult male upon the person of a female or child, or by an adult female upon the person of a child.

6. When the instrument or means used is such as inflicts disgrace upon the person assaulted, as an assault or battery with a whip or cowhide.

7. When a serious bodily injury is inflicted upon the person assaulted.

8. When committed with deadly weapons under circumstances not amounting to an intent to murder or maim.

9. When committed with premeditated design, and by the use of means calculated to inflict great bodily injury.

10. When committed by any person or persons in disguise. (O. C. 488; Acts 1871, p. 20.)

See Pearce v. S., 40 S. W. 806; Timon v. S., 40 S. W. 808; Slawson v. S., 45 S. W. 575; Eilers v. S., 55 S. W. 813; Lee v. S., 55 S. W. 814; Brown v. S., 60 S. W. 548; Jeanes v. S., 132 S. W. 352; Little v. S., 135 S. W. 119; Dilliard v. S., 137 S. W. 356; Kinslow v. S., 147 S. W. 249; Ward v. S., 151 S. W. 1073; Ely v. S., 152 S. W. 631; Bussey v. S., 160 S. W. 697; Myers v. S., 163 S. W. 432; McGraw v. S., 163 S. W. 967; Hodges v. S., 166 S. W. 512; Hyde v. S., 168 S. W. 535; Cirul v. S., 200 S. W. 1088.

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. (Acts 1917, ch. 207, sec. 35.)

Art. 1023. (602) Aggravation may be of different degrees.—The circumstances of aggravation, mentioned in the preceding article, are of different degrees, and the jury are to consider these circumstances in forming their verdict and assessing the punishment. (Act Nov. 6, 1871; O. C. 489.)

Art. 1024. (603) Punishment.—The punishment for an aggravated assault or battery shall be a fine not less than twenty-five nor more than one thousand dollars, or imprisonment in the county jail not less than one month nor more than two years, or by both such fine and imprisonment. (O. C. 491.)

CHAPTER TWO A

ASSAULT WITH PROHIBITED WEAPON

Art. 1024a. The offense defined.—That if any person shall wilfully commit an assault or an assault and battery upon another with a pistol, dirk, dagger, slung shot, sword cane, spear or knuckles made of any metal or made of any hard substance, bowie knife, or any knife manufactured or sold for the

purpose of offense or defense, while the same is being carried unlawfully by the person committing said assault, he shall be deemed guilty of an assault with a prohibited weapon and upon conviction shall be punished by a fine not to exceed two thousand dollars or by imprisonment in the county jail not to exceed two years, or by confinement in the penitentiary for not more than five years. (Acts 1913, p. 237, ch. 114, sec. 1.)

Art. 1024b. Purpose and scope of act.—The above shall not be construed to in any manner affect Article 475 of the Revised Penal Code of 1911 relating to unlawfully carrying arms, but shall be cumulative thereof and is intended to create the offense of assault with prohibited weapons and prescribing penalty thereof. (Id. sec. 2.)

CHAPTER THREE

OF ASSAULTS WITH INTENT TO COMMIT SOME OTHER OFFENSE

Art. 1025. (604) Assault with intent to maim.—If any person shall assault another with intent to commit the offense of maiming, disfiguring or castration, he shall be punished by fine not exceeding one thousand dollars, or by imprisonment in the penitentiary not less than two nor more than five years; and, if such assault be made by a person or persons in disguise, the penalty shall be double. (O. C. 492; Acts 1871, p. 20.)

Art. 1026. (605) With intent to murder.—If any person shall assault another with intent to murder, he shall be punished by confinement in the penitentiary not less than two nor more than fifteen years; if the assault be made with a bowie knife or dagger, or in disguise, or by laying in wait, or by shooting into a private residence, the punishment shall be double. (O. C. 493; Acts 1871, p. 20; amended, Acts 1903, p. 160.)

See Barnes v. S., 45 S. W. 495; Foster v. S., 46 S. W. 231; Hamilton v. S., 56 S. W. 927; Brown v. S., 53 S. W. 640; Leal v. S., 81 S. W. 961; Hare v. S., 185 S. W. 47.

Art. 1027. (606) "Bowie-knife" and "dagger" defined.—A "bowie-knife" or "dagger," as the terms are here and elsewhere used, means any knife intended to be worn upon the person, which is capable of inflicting death and not commonly known as a pocket-knife. (O. C. 611.)

Art. 1028. (607) Test on trial.—Whenever it appears, upon a trial for assault with intent to murder, that the offense would have been murder had death resulted therefrom, the person committing such assault is deemed to have done the same with that intent. (O. C. 497.)

See Meyer v. S., 41 S. W. 632.

Art. 1029. (608) With intent to rape.—If any person shall assault a woman with intent to commit the offense of rape, he shall be punished by confinement in the penitentiary for any term of years not less than two. (O. C. 494; amended, Acts 1895, p. 104.)

See post, art. 1068; Croomes v. S., 51 S. W. 924; Clark v. S., 51 S. W. 1120; Draper v. S., 57 S. W. 655; Blair v. S., 60 S. W. 880; Cromeans v. S., 129 S. W. 1129; Fowler v. S., 148 S. W. 576; Shockley v. S., 160 S. W. 452.

Art. 1030. (609) With intent to rob.—If any person shall assault another with the intent to commit the offense of robbery, he shall be punished by confinement in the penitentiary not less than two nor more than ten years. (O. C. 495; Acts 1858, p. 495.)

Art. 1031. (610) In attempt at burglary.—If any person, in attempting to commit burglary, shall assault another, he shall be punished by confinement in the penitentiary not less than two nor more than five years. (O. C. 496; Acts 1858, p. 171.)

See Malone v. S., 132 S. W. 769.

Art. 1032. (611) Ingredients of the offense.—An assault with intent to commit any other offense is constituted by the existence of the facts which bring the offense within the definition of an assault, coupled with an intention to commit such other offense, as of maiming, murder, rape or robbery. (O. C. 499.)

See Walters v. S., 118 S. W. 543; Cromeans v. S., 129 S. W. 1129.

CHAPTER FOUR

OF MAIMING, DISFIGURING AND CASTRATION

Art. 1033. (612) "Maiming" defined.—To maim is to wilfully and maliciously cut off or otherwise deprive a person of the hand, arm, finger, toe, foot, leg, nose or ear; to put out an eye or in any way to deprive a person of any other member of his body. (O. C. 500.)

Art. 1034. (613) Punishment.—If any person shall commit the offense of maiming, he shall be punished by confinement in the penitentiary not less than two nor more than ten years. (O. C. 504; Acts 1858, p. 171.)

Art. 1035. (614) "Disfiguring" defined.—To disfigure is to wilfully and maliciously place any mark, by means of a knife or other instrument, upon the face or other part of the person. (O. C. 501.)

Art. 1036. (615) Punishment.—If any person shall disfigure another, he shall be punished by confinement in the penitentiary not less than two nor more than five years, or by fine not exceeding two thousand dollars. (O. C. 504; Acts 1858, p. 171.)

Art. 1037. (616) (511) "Castration" defined.—To castrate is to wilfully and maliciously deprive any person of either or both, or any part of either or both of the testicles.

Art. 1038. (617) Punishment.—If any person shall commit the offense of castration, he shall be punished by confinement in the penitentiary not less than five nor more than fifteen years. (O. C. 505.)

CHAPTER FOUR A

HAZING

Art. 1038a. Offense defined.—That it shall be unlawful for any student of the University of Texas, of the A. & M. College of Texas, of any normal school of Texas, or of any other State educational institution of this State, to engage in what is commonly known and recognized as hazing, or to encourage, aid or assist any other person thus offending.

For the purpose of making plain what is meant herein by "hazing," same is defined as follows:

(a) Any willful act by any one student alone or acting with others, directed against any other student of such educational in-

stitution, done for the purpose of submitting such student made the subject of the attack committed, to indignity or humiliation, without his consent.

(b) Any willful act of any one student alone, or acting with others, directed against any other student of such educational institution, done for the purpose of intimidating such student attacked by threatening such student with social or other ostracism, or of submitting such student to ignominy, shame, or disgrace among his fellow students, and acts calculated to produce such results.

(c) Any willful act of any one student alone, or acting with others, directed against any other student of such educational institution, done for the purpose of humbling, or that is reasonably calculated to humble the pride, stifle the ambition, or blight the courage of such student attacked, or to discourage any such student from longer remaining in such educational institution or to reasonably cause him to leave such institution rather than submit to such acts.

(d) Any willful act by any one student alone, or acting with others, in striking, beating, bruising or maiming; or seriously offering, threatening, or attempting to strike, beat, bruise, or maim, or to do or seriously offer, threaten, or attempt to do physical violence to any student of any such educational institution, or any assault upon any such students made for the purpose of committing any of the acts, or producing any of the results to such student as defined in subdivisions (a), (b), or (c) of this Section. (Acts 1913, p. 239, ch. 117, sec. 1.)

Art. 1038b. Teachers and school officers shall not encourage or permit hazing.—It shall be unlawful for any teacher, instructor, member of any faculty, or any officer or director, or a member of any governing board of any of such educational institutions to knowingly permit, encourage, aid, or assist any student in committing the offense of hazing, or to willfully acquiesce in the commission of such offense, or to fail to promptly report his knowledge or any reasonable information within his knowledge of the presence and practice of having [hazing] in the institution in which he may be serving, to the executive head or governing board of such institution, and any act of omission or commission shall be deemed "hazing" under the provisions of this Act. (Id. sec. 2.)

Art. 1038c. Penalty imposed on students.—Any student of any of the said State educational institutions of this State who shall commit the offense of hazing, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by fine of not less than twenty-five dollars nor more than two hundred and fifty dollars, or shall be confined in the county jail for not less than ten days nor more than three months, or by both such fine and imprisonment. (Id. sec. 3.)

Art. 1038d. Penalty imposed on teachers and school officers.—Any teacher, instructor, or member of any faculty, or officer or director of any such educational institution who shall commit the offense of hazing shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars or not more than five hundred dollars, or shall be imprisoned in the county jail for a period of not less than thirty days or not more than six months or by both such fine and imprisonment, and in addition thereto, shall be immediately discharged and removed from his then position or office in such institution, and shall thereafter be ineligible to reinstatement or re-employment as teacher, instructor, member of faculty, officer, or director in any such State Educational institution for a period of three years. (Id. sec. 4.)

Art. 1038e. Other laws not affected.—It is especially provided in this Act that nothing herein shall be construed as in any manner affecting or repealing any of the laws of this State respecting homicide, or murder of any degree, manslaughter, assault with intent to murder, or aggravated assault. (Id. sec. 5.)

Art. 1038f. Repeal.—That all laws and parts of laws in conflict herewith, as hereinafter [hereinbefore] especially provided, be and the same are hereby in all things repealed. (Id. sec. 6.)

CHAPTER FIVE

FALSE IMPRISONMENT

Art. 1039. (618) "False imprisonment" defined.—False imprisonment is the willful detention of another against his consent, and where it is not expressly authorized by law, whether such detention be effected by an assault, by actual violence to the person, by threats or by any other means which restrains the party so detained from removing from one place to another as he may see proper. (O. C. 508.)

Gold v. Campbell, 117 S. W. 463.

Art. 1040. (619) Assault of violence same as in assault and battery.—The assault of violence may be such as is spoken of in defining the offense of assault and battery. (O. C. 509.)

Art. 1041. (620) What impediment necessary.—The impediment must be such as is in its nature calculated to detain the person and from which he can not by ordinary means relieve himself. (O. C. 510.)

Art. 1042. (621) Threat, effect of.—The threat must be such as is calculated to operate upon the person threatened and inspire a just fear of some injury to his person, reputation or property, or to the person, reputation or property of another; and the jury are to consider the age, sex, condition, disposition or health of the person threatened in determining whether the threat was sufficient to intimidate and prevent such person from moving beyond the bounds in which he was detained. (O. C. 511.)

Art. 1043. (622) What detention is not.—It is not an offense to detain a person in the cases and for the object mentioned in article 1014 as justifying the use of force, but, whenever it is assumed as a justification that such circumstances existed, it must be shown also that the detention was necessary to effect any of the objects set forth in said article. (O. C. 512.)

Art. 1044. (623) Punishment.—Any person who shall be guilty of the offense of false imprisonment shall be fined not exceed-

ing five hundred dollars, and may be confined in the county jail not exceeding one year. (O. C. 513.)

Art. 1045. (624) Detention after discharge on habeas corpus.—If any officer or other person shall hold or detain in any manner any one who has been ordered to be discharged by any court or judge, upon the hearing of a writ of habeas corpus, he shall suffer double the punishment prescribed in the preceding article. (O. C. 514.)

Art. 1046. (625) Refusal to allow consultation with counsel.—If any officer or other person having the custody of a prisoner in this state shall wilfully prevent such prisoner from consulting or communicating with counsel, or from obtaining the advice or services of counsel in the protection or prosecution of his legal rights, he shall be punished by imprisonment in the county jail not less than sixty days nor more than six months, and by fine not exceeding one thousand dollars. (Acts 1864, p. 15.)

CHAPTER SIX

OFFENSES AGAINST MINORS

Art. 1047. (625a) Enticing minors from legal custody.—Any person in this state who shall knowingly entice or decoy any minor in the state away from the custody of his parent or guardian, or person standing in the stead of such parent or guardian, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by fine not less than twenty-five nor more than two hundred dollars. In all cases where charitable and benevolent institutions have established homes for dependent orphans of their deceased members, and the person legally entitled to the guardianship of such orphans surrenders them to such homes for support, maintenance and education, such institutions, under their agencies, rules and regulations, shall have and exercise over such orphans all the rights of natural guardians, as standing in the place of their parents. (Acts 1893, p. 114.)

See Cummings v. S., 37 S. W. 435; Cockrell v. S., 160 S. W. 343, 48 L. R. A. (N. S.) 1001.

Art. 1048. Sell, etc., pistol, dirk, etc., to minor.—If any person in this state shall knowingly sell, give or barter, or cause to be sold, given or bartered, to any minor, any pistol, dirk, dagger, slungshot, sword-cane, spear or knuckles made of any metal or hard substance, bowie knife or any other knife manufactured or sold for the purpose of offense or defense, without the written consent of the parent or guardian of such minor, or of some one standing in lieu thereof, he shall be punished by fine of not less than twenty-five dollars nor more than two hundred dollars, or by imprisonment in the county jail not less than ten nor more than thirty days, or by both such fine and imprisonment. And during the time of such imprisonment such offender may be put to work upon any public work in the county in which such offense is committed. (Acts 1897, p. 221.)

Art. 1049. Sell, etc., cigarette or tobacco to minor.—Any person who shall sell, give or barter, or cause to be sold, given or bartered, to any person under the age of sixteen years, or knowingly sell to any other person for delivering to such minor, without the written consent of the parent or guardian of such minor, any cigarette or tobacco in any of its forms, shall be fined not less than ten nor more than one hundred dollars. (Acts 1899, p. 237.)

Arts. 1050-1050d. [Superseded by Acts 1917, ch. 59, set forth post as arts. 1050e–1050*l*.]

Art. 1050d repealed ch. 28 of the Regular Session of the 28th Legislature.

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 service 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. (Acts 1903, p. 40, ch. 28; Acts 1911, p. 75, ch. 46, sec. 1; Acts 1917, ch. 59, sec. 1.)

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. (Id. sec. 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. sec. 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. sec. 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 invalid 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. sec. 5.)

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. sec. 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. sec. 6a.)

Art. 1050*l*. 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. sec. 7a.)

Arts. 1051, 1052. [Repealed.]

See arts. 1050-1050d.

Art. 1053. Permitting minor to remain in pool room, etc.—If any owner, lessee or manager of any billiard hall, pool hall, ten pin alley or bowling alley, or any employé therein, whether intoxicating liquors are sold in such place or not, shall permit any person under the age of twenty-one years to enter such place of business and remain therein for any length of time, without the consent of the parent of such minor, or some one standing in their place and stead, or shall permit any person under twenty-one years of age to play billiards or pool, or roll on any ten pin or bowling alley in such place of business without the consent of the parent of such minor, or some one standing in their place and stead, shall be guilty of a misde-

meanor, and, on conviction thereof, shall be fined in any sum not less than twenty dollars nor more than one hundred dollars. (Acts 1897, p. 221; amended, Acts 1905, p. 105.)

See Rainbolt v. S., 93 S. W. 737.

Art. 1054. Selling or giving intoxicating liquor to minor.—Any person who shall knowingly sell or give or deliver, or cause to be sold, given or delivered, or be in any way interested in the sale, gift or delivery of any spirituous, vinous, malt or intoxicating liquors to any person under the age of twenty-one years without the written consent of the parent or guardian of such person who is under the age of twenty-one years, shall be guilty of a misdemeanor, and shall be fined therefor not less than twenty-five nor more than one hundred dollars; and any person who is agent for or employed by any express company or other common carrier, or who, as agent for or employé of any other person, firm or corporation, delivers or causes to be delivered any spirituous, vinous or intoxicating liquors to any other person under the age of twenty-one years, whether consigned to such person or some other person, without the written consent of the parent or guardian of such minor or person under the age of twenty-one years, shall be guilty of a misdemeanor, and shall be punished, upon conviction therefor, by a fine of not less than twenty-five nor more than one hundred dollars. (Acts 1909, p. 119.)

See Williams v. S., 145 S. W. 612; Talley v. S., 147 S. W. 255; Hogan v. S., 147 S. W. 601; Andrada v. S., 152 S. W. 910.

The revisers of the Penal Code, when they inserted Acts 1909, p. 119, and expanded the language so as to include "sales" in addition to "gifts" and "deliveries" of liquor, seem to have overlooked the later act passed at the first extra session of the 1909 legislature (Acts 1909, p. 307, sec. 19). This later act affixes a different penalty to the act of a retail liquor dealer in selling, giving, or delivering intoxicating liquor to a minor. The later act was included in the revision as art. 622, ante. The revisers again carried Acts 1909, p. 119, into the Penal Code as art. 593, but in its original form.

Art. 1055. Encouraging, contributing, etc., to the delinquency or dependency of child.—In all cases where any child shall be a "delinquent child" or a "neglected or dependent child," as defined in the statutes of this state, the parent or parents, legal guardian or persons having the custody of such child, or any person responsible for, or who, by any act, encourages, causes or contributes to the delinquency or dependency of such child, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not to exceed one thousand dollars, or by imprisonment in the county jail for any period not exceeding one year, or by both such fine and imprisonment. The court may impose conditions on any person found guilty under this law, and, so long as such person shall comply therewith to the satisfaction of the court, the judgment imposed may be suspended. (Acts 1907, p. 209.)

Art. 1055a. Causing, etc., delinquency of minor.—If any person shall in any manner cause, encourage or contribute to the delinquency of any minor who is under the age of seventeen years, he shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine in any sum not exceeding five hundred dollars, or by imprisonment in the County Jail no exceeding one year, or by both such fine and imprisonment. By the term "Delinquency" as used in this article is meant the using of tobacco in any form, the drinking of intoxicating liquor, the taking of such minor into a house or place where prostitutes or lewd women are permitted to resort or reside, or knowingly permitting any such minor to remain in any such house or at any such place, the forming of the habit of using any harmful or injurious drug, or any act which tends to debase or injure the morals, health or welfare of such minor. In all prosecutions under this clause of the statute, the general reputation of the women who resort or reside or who may be found at any such place for chastity, may be admitted in evidence. (Acts 1918, 4th C. S., ch. 52, sec. 1.)

CHAPTER SEVEN

OF KIDNAPING AND ABDUCTION

Art. 1056. (626) "Kidnaping" defined.—When any person is falsely imprisoned for the purpose of being removed from the state, or if a minor under the age of seventeen years, for the purpose of being concealed or taken from the lawful possession of a parent or guardian, such false imprisonment is "kidnaping." If the person kidnaped be under the age of fifteen years, it is not necessary that there should be force in order to constitute the offense of kidnaping. (O. C. 515; Acts 1858, p. 171.)

Art. 1057. (627) Punishment.—The punishment for kidnaping shall be imprisonment in the penitentiary not less than two nor more than five years, or fine not exceeding two thousand dollars. (O. C. 516.)

Art. 1058. (628) If person kidnaped be actually removed.—If the person so falsely imprisoned be actually removed out of the state, the punishment shall be imprisonment in the penitentiary not less than two nor more than ten years. (O. C. 517.)

Art. 1059. (629) "Abduction" defined.—"Abduction" is the false imprisonment of a woman with intent to force her into a marriage or for the purpose of prostitution.. (O. C. 518.)

Art. 1060. (630) Of female under fourteen.—If a female under the age of fourteen be taken for the purpose of marriage or prostitution from her parent, guardian or other person having the legal charge of her, it is abduction, whether she consent or not, and although a marriage afterward take place between the parties. (O. C. 519.)

Art. 1061. (631) Offense complete, when.—The offense of abduction is complete if the female be detained as long as twelve hours, though she may afterwards be relieved from such detention without marriage or prostitution. (O. C. 520.)

Art. 1062. (632) Punishment.—Any person who shall be guilty of abduction shall be punished by fine not exceeding two thousand dollars. If, by reason of such abduction, a woman be forced into marriage, the punishment shall be confinement in the penitentiary not less than two nor more than five years; and, if by reason of such abduction, a woman be prostituted, the punishment shall be confinement in the penitentiary not less than three nor more than twenty years. (O. C. 521; Acts 1858, p. 172.)

CHAPTER EIGHT

RAPE

Art. 1063. (633) (528) "Rape" defined.—Rape is the carnal knowledge of a woman without her consent, obtained by force threats or fraud, or the carnal knowledge of a woman other than the wife of the person having such carnal knowledge with or without consent, and with or without the use of force, threats or fraud, such woman being so mentally diseased at the time as to have no will to oppose the act of carnal knowledge, the person having carnal knowledge of her knowing her to be so mentally diseased; or the carnal knowledge of a female under the age of eighteen years, other than the wife of the person, with or without her consent, and with or without the use of force threats or fraud. Provided, that if the woman is fifteen years of age or over, the defendant may show in consent cases, she was not of previous chaste character as a defense. (O. C. 523; Acts 1891, p. 96; Acts 1895, p. 79; Acts 1918, 4th C. S., ch. 50, sec. 1.)

Edwards v. S., 39 S. W. 568; Croomes v. S., 51 S. W. 924; Batchelor v. S., 55 S. W. 491; Segrist v. S., 57 S. W. 845; Danley v. S., 71 S. W. 958; Lee v. S., 72 S. W. 1005; Smith v. S., 74 S. W. 556; Collins v. S., 107 S. W. 852; Cromeans v. S., 129 S. W. 1129; Gage v. S., 151 S. W. 565; Kearse v. S., 151 S. W. 827; Calyon v. S., 174 S. W. 591; Nolan v. S., 206 S. W. 92.

Art. 1064. (634) Definition of "force."—The definition of "force," as applicable to assault and battery, applies also to the crime of rape, and it must have been such as might reasonably be supposed sufficient to overcome resistance, taking into consideration the relative strength of the parties, and other circumstances of the case. (O. C. 524.)

See McCullough v. S., 47 S. W. 990; Croomes v. S., 51 S. W. 924; Waire v. S., 64 S. W. 1061; Cotton v. S., 105 S. W. 185; Collins v. S., 107 S. W. 852; Holloway v. S., 113 S. W. 928; Cromeans v. S., 129 S. W. 1129; Conger v. S., 140 S. W. 1112; Fowler v. S., 148 S. W. 576; Montoya v. S., 185 S. W. 6; Woods v. S., 203 S. W. 54.

Art. 1065. (635) What "threat" sufficient.—The "threat" must be such as might reasonably create a just fear of death, or great bodily harm, in view of the relative condition of the parties as to health, strength and all other circumstances of the case. (O. C. 525.)

See Fowler v. S., 148 S. W. 576; Calyon v. S., 174 S. W. 591; Montoya v. S., 185 S. W. 6; Woods v. S., 203 S. W. 54.

Art. 1066. (636) "Fraud" defined.—The "fraud" must consist in the use of some stratagem by which the woman is induced to believe the offender is her husband, or in administering, without her knowledge or consent, some substance producing unnatural sexual desire or such stupor as prevents or weakens resistance, and committing the offense while she is under the influence of such substance. It is a presumption of law, which can not be rebutted by testimony, that no consent was given under the circumstances mentioned in this article. (O. C. 526.)

Ford v. S., 53 S. W. 846; Waire v. S., 64 S. W. 1061; Lee v. S., 72 S. W. 1008; Fowler v. S., 148 S. W. 576; Montoya v. S., 185 S. W. 6.

Art. 1067. (637) Penetration only need be proved.—Penetration only is necessary to be proved upon a trial for rape. (O. C. 627.)

Art. 1068. (638) Defendant must be over fourteen.—No person under the age of fourteen, at the time the offense is charged to have been committed, can be convicted of rape, or assault with intent to commit the offense. (O. C. 528.)

Art. 1069. (639) Punishment.—Whoever shall be guilty of rape shall be punished by death or by confinement in the penitentiary for life, or for any term of years not less than five, in the discretion of the jury. (O. C. 529; Acts 1886, p. 161.)

Art. 1070. (640) Conviction may be had for "attempt."—If it appear, on the trial of an indictment for rape, that the offense, though not committed, was attempted by the use of any of the means spoken of in articles 1064, 1065 and 1066, but not such as to bring the offense within the definition of an assault with intent to commit rape, the jury may find the defendant guilty of an attempt to commit the offense, and affix the punishment prescribed in article 1029. (O. C. 530.)

See Warren v. S., 41 S. W. 635; Waire v. S., 64 S. W. 1061; Taylor v. S., 69 S. W. 149; Holloway v. S., 113 S. W. 928; Fowler v. S., 148 S. W. 576; Shockley v. S., 160 S. W. 452.

CHAPTER NINE

OF ABORTION

Art. 1071. (641) Definition and punishment.—If any person shall designedly administer to a pregnant woman, or knowingly procure to be administered, with her consent, any drug or medicine, or shall use toward her any violence, or means whatever, externally or internally applied, and shall thereby procure an abortion, he shall be punished by confinement in the penitentiary not less than two nor more than five years; if it be done without her consent, the punishment shall be doubled.

By the term "abortion" is meant that the life of the fetus or embryo shall be destroyed in the woman's womb, or that a premature birth thereof be caused. (O. C. 531; amended, Acts 1907, p. 55.)

See Moore v. S., 40 S. W. 288; Miller v. S., 40 S. W. 313; Jackson v. S., 115 S. W. 262, 131 Am. St. Rep. 792; Fondren v. S., 169 S. W. 411; Gray v. S., 178 S. W. 337.

Art. 1072. (642) Furnishing the means; an accomplice.—Any person who furnishes the means for procuring an abortion, knowing the purpose intended, is guilty as an accomplice. (O. C. 532.)

See Moore v. S., 40 S. W. 288; Fondren v. S., 169 S. W. 411.

Art. 1073. (643) Attempt at.—If the means used shall fail to produce an abortion, the offender is nevertheless guilty of an attempt to produce abortion; provided, it be shown that such means were calculated to produce that result, and shall be punished by fine not less than one hundred nor more than one thousand dollars. (O. C. 533; Acts 1858, p. 172.)

Jackson v. S., 115 S. W. 262, 131 Am. St. Rep. 792; Hunter v. S., 196 S. W. 820.

Art. 1074. (644) In case of death, murder.—If the death of the mother is occasioned by an abortion so produced, or by an attempt to effect the same, it is murder. (O. C. 534.)

See Jackson v. S., 115 S. W. 262, 131 Am. St. Rep. 792.

Art. 1075. (645) Destroying unborn child.—If any person shall, during parturition of the mother, destroy the vitality or life in a child, in a state of being born, and before actual birth, which child would otherwise have been born alive, he shall be punished by confinement in the penitentiary for life, or any period not less than five years, at the discretion of the jury. (O. C. 535.)

See Hatcher v. Range, 81 S. W. 289; Hardin v. S., 106 S. W. 352.

Art. 1076. (646) Not punishable when procured by medical advice.—Nothing contained in this chapter shall be deemed to apply to the case of an abortion procured or attempted to be procured by medical advice for the purpose of saving the life of the mother. (O. C. 536.)

See Jackson v. S., 115 S. W. 262, 131 Am. St. Rep. 792.

CHAPTER TEN

ADMINISTERING POISONOUS AND INJURIOUS POTIONS

Art. 1077. (647) Poisoning food, well, etc.—If any person shall mingle or cause to be mingled any other noxious potion or substance with any drink, food or medicine, with intent to kill or injure any other person, or shall wilfully poison or cause to be poisoned any spring, well, cistern or reservoir of water with such intent, he shall be punished by imprisonment in the penitentiary not less than two nor more than ten years. (O. C. 537.)

See Brooks v. S., 60 S. W. 53; Rupe v. S., 61 S. W. 929; Runnels v. S., 77 S. W. 459; Sanders v. S., 112 S. W. 68, 22 L. R. A. [N. S.] 243.

Art. 1078. (648) Causing another to inhale injurious substances.—If any person shall, with intent to injure, cause another person to inhale or swallow any substance injurious to health or any of the functions of the body, or, if such substance was administered with intent to kill, he shall be punished by confinement in the penitentiary not less than two nor more than five years. (O. C. 538; Acts 1858, p. 172.)

See Sanders v. S., 112 S. W. 68, 22 L. R. A. [N. S.] 243.

Art. 1079. (649) Death within a year, murder.—If by reason of the commission of the offenses named in the two preceding articles, the death of a person be caused within one year, the offender shall be deemed guilty of murder and be punished accordingly. (O. C. 539.)

See Brooks v. S., 60 S. W. 53; Rupe v. S., 61 S. W. 929; Sanders v. S., 112 S. W. 68, 22 L. R. A. [N. S.] 243.

Art. 1080. (650) Malpractice punishable.—If any person engaged in the practice of medicine and claiming to be a physician, shall, by the use of any noxious substance, administered in a grossly ignorant manner, produce death, or other great bodily injury, he shall be punished for the offense as any other person would be who had given such substance, knowing it to be injurious and intending to kill or injure. (O. C. 540.)

CHAPTER ELEVEN

OF HOMICIDE

Art. 1081. (651) Definition.—"Homicide" is the destruction of the life of one human being by the act, agency, procurement or culpable omission of another. (O. C. 541.)

See Armsworthy v. S., 88 S. W. 215; Outley v. S., 99 S. W. 95; Noble v. S., 113 S. W. 281, 22 L. R. A. [N. S.] 841.

Art. 1082. (652) Destruction of life must be complete.—The destruction of life must be complete by such act, agency, procurement or omission; but, although the injury which caused death might not under other circumstances have proved fatal, yet, if such injury be the cause of death, without its appearing that there has been any gross neglect or manifestly improper treatment of the person injured, it is homicide. (O. C. 542.)

See Franklin v. S., 51 S. W. 951; Johnson v. S., 65 S. W. 92; Gardner v. S., 72 S. W. 13; Armsworthy v. S., 88 S. W. 215; Lahue v. S., 101 S. W. 1008; Noble v. S., 113 S. W. 281, 22 L. R. A. [N. S.] 841.

Art. 1083. (653) Gross negligence, etc., refers to acts of others.—The foregoing article, in what is said of gross neglect or improper treatment, has reference to the acts of some person other than him who inflicts the first injury, as of the physician, nurse or other attendant. If the person inflicting the injury, which makes it necessary to call aid in preserving the life of the person injured, shall wilfully fail or neglect to call such aid, he shall be deemed equally guilty, as if the injury were one which would inevitably lead to death. (O. C. 543.)

See Franklin v. S., 51 S. W. 951; Taylor v. S., 51 S. W. 1106; Williams v. S., 65 S. W. 1060; Lee v. S., 72 S. W. 195.

Art. 1084. (654) Body of deceased must be found.—No person shall be convicted of any grade of homicide, unless the body of the deceased, or portions of it, are found and sufficiently identified to establish the fact of the death of the person charged to have been killed. (Acts 1887, p. 4; O. C. 544.)

See Gay v. S., 49 S. W. 613; Id. 60 S. W. 771; Southern v. S., 132 S. W. 778; McCue v. S., 170 S. W. 280, Ann. Cas. 1918C, 674; Wilganowski v. S., 180 S. W. 692; Johnson v. S., 203 S. W. 903.

Art. 1085. (655) Person killed must be in existence.—The person upon whom the homicide is alleged to have been committed must be in existence by actual birth. It is homicide, however, to destroy human life actually in existence, however frail such existence may be, or however near extinction from other causes. (O. C. 545.)

Art. 1086. (656) Produced by words.—Although it is necessary to constitute homicide that it shall result from some act of the party accused, yet, if words be used which are reasonably calculated to produce and do produce an act which is the immediate cause of death, it is homicide; as, for example, if a blind man, a stranger, a child, or a person of unsound mind, be directed by words to a precipice or other dangerous place where he falls and is killed; or if one be directed to take any article of medicine, food or drink, known to be poisonous and which does produce a fatal effect; in these and like cases, the person so operating upon the mind or conduct of the person injured shall be deemed guilty of homicide. (O. C. 546.)

CHAPTER TWELVE

OF JUSTIFIABLE HOMICIDE

Art. 1087. (657) When justifiable.—Homicide is justifiable in the cases enumerat-

ed in the succeeding articles of this chapter. (O. C. 547.)

1. OF A PUBLIC ENEMY

Art. 1088. (658) Killing a public enemy.—It is lawful to kill a public enemy, not only in the prosecution of war, but when he may be in the act of hostile invasion or occupation of any part of the state. A public enemy is any person acting under the authority or enlisted in the service of any government at war with this state or with the United States. Persons belonging to hostile tribes of Indians, who habitually commit depradations upon the lives or property of inhabitants of this state, and all persons acting with such tribes are public enemies, and this whether found in the act of committing such depredations or under circumstances which sufficiently show an intention so to do. (O. C. 548.)

Art. 1089. (659) But not by poison.—Homicide of a public enemy by poison or the use of poisoned weapons is not justifiable. (O. C. 549.)

Art. 1090. (660) Nor a deserter, prisoner, etc.—Homicide of a public enemy who is a deserter or prisoner of war, or the bearer of a flag of truce, is not justifiable. (O. C. 550.)

2. OF A CONVICT

Art. 1091. (661) Execution of a convict.—The execution of a convict for a capital offense, by a legally qualified officer, under the warrant of a court of competent jurisdiction, is justifiable when the same takes place in the manner authorized by law and directed by warrant. (O. C. 551.)

3. BY OFFICERS IN THE PERFORMANCE OF A DUTY AND BY OTHER PERSONS UNDER CERTAIN CIRCUMSTANCES

Art. 1092. (662) By officer in execution of lawful order.—Homicide by an officer in the execution of the lawful orders of magistrates and courts is justifiable when he is violently resisted and has just ground to fear danger to his own life in executing the order. (O. C. 552.)

See Williams v. S., 54 S. W. 759.

Art. 1093. (663) Even though it is erroneous.—The officer is justifiable, though there may have been an error of judgment on the part of the magistrate or court, if the order emanated from a proper authority. (O. C. 553.)

Art. 1094. (664) Qualification of the foregoing.—The rule set forth in the two preceding articles is subject to the following restrictions:

1. The order must be that of a magistrate or a court having lawful authority to issue it.

2. It must have such form as the law requires to give it validity.

3. The person executing the order must be some officer duly authorized by law to execute the order, or some person specially appointed in accordance with law for the performance of the duty.

4. If the person executing the order be an officer, and performing a duty which no other person can by law perform, he must have taken the oath of office and given bond, where such is required by law.

5. The order must be executed in the manner directed by law, and the person executing the same must make known his purpose and the capacity in which he acts.

6. If the order be a written one, and the person against whom it issues, before resistance offered, wishes to see the same, or hear it read, the person charged with its execution shall produce the order and show it or read it.

7. In making an arrest under a written order, the person acting under such order shall, in all cases, declare to the party against whom it is directed the offense of which he is accused, and state the nature of the warrant, unless prevented therefrom by the act of the party to be arrested.

8. The officer or other person executing an order of arrest is required to use such force as may be necessary to prevent an escape when it is attempted, but he shall not in any case kill one who attempts to escape, unless in making or attempting such escape the life of the officer is endangered, or he is threatened with great bodily injury.

9. In overcoming a resistance to the execution of an order, the officer or person executing the same may oppose such force as is necessary to overcome the resistance, but he shall not take the life of the person resisting, unless he has just ground to fear that his own life will be taken, or that he will suffer great bodily injury in the execution of the order.

10. A prisoner under sentence of death, or of imprisonment in the penitentiary, or attempting to escape from the penitentiary, may be killed by the officer having legal custody of him, if his escape can in no other manner be prevented. (O. C. 554.)

See Williams v. S., 54 S. W. 759; Ex parte Russell, 160 S. W. 75.

Art. 1095. (665) Order may be written or verbal.—The order referred to in this chapter may be either written or verbal, where a verbal order is allowed for the arrest of a person. (O. C. 555.)

Art. 1096. (666) Written order includes, what.—Under written orders are included all process in a criminal or civil action which directs the seizure of the person or of property. (O. C. 556.)

Art. 1097. (667) Verbal order justifies only in felony.—No officer or other person ordered verbally to arrest another is justified in killing, except the arrest be in a case of felony, or for the prevention of a felony. (O. C. 557.)

Art. 1098. (668) Persons aiding officer justified.—Persons called in aid of an officer, in the performance of a duty, are justified in the same manner as the officer himself. (O. C. 558.)

Art. 1099. (669) Persons aiding escape may be killed.—All persons opposing the execution of the order, or aiding in an escape, may be treated in the same manner as the person against whom the order is directed, or who is attempting to escape. (O. C. 559.)

Art. 1100. (670) Federal officers included.—Officers acting under the authority of the laws or courts of the United States have the rights and are liable to the rules prescribed in this chapter. (O. C. 560.)

Art. 1101. (671) In suppressing riots.—Homicide is justifiable when necessary to suppress a riot, when the same is attempted

to be suppressed in the manner pointed out in the Code of Criminal Procedure, and can in no way be suppressed except by taking life. (O. C. 561.)

Art. 1102. (672) In adultery.—Homicide is justifiable when committed by the husband upon the person of any one taken in the act of adultery with the wife; provided, the killing take place before the parties to the act of adultery have separated. (O. C. 562.)

See Morrison v. S., 47 S. W. 369; Giles v. S., 67 S. W. 411; Dewberry v. S., 74 S. W. 307; Gregory v. S., 94 S. W. 1041; Williams v. S., 165 S. W. 583.

Art. 1103. (673) But not in case of connivance.—Homicide cannot be justified by reason of the existence of the circumstances spoken of in the preceding article, where it appears that there has been, on the part of the husband, any connivance in or assent to the adulterous connection. (O. C. 563.)

4. DEFENSE OF PERSON OR PROPERTY

Art. 1104. (674) In defense of person and property.—Homicide is permitted in the necessary defense of person or property, under the circumstances and subject to the rules herein set forth. (O. C. 567.)

See Koller v. S., 38 S. W. 44; Winters v. S., 40 S. W. 303; Slack v. S., 149 S. W. 107.

Art. 1105. (675) In preventing other felonies.—Homicide is permitted by law when inflicted for the purpose of preventing the offense of murder, rape, robbery, maiming, disfiguring, castration, arson, burglary and theft at night, or when inflicted upon a person or persons who are found armed with deadly weapons and in disguise in the night time on premises not his or their own whether the homicide be committed by the party about to be injured or by some person in his behalf, when the killing takes place under the following circumstances:

1. It must reasonably appear by the acts or by words, coupled with the acts of the person killed, that it was the purpose and intent of such person to commit one of the offenses above named.

2. The killing must take place while the person killed was in the act of committing the offense, or after some act done by him showing evidently an intent to commit such offense.

3. It must take place before the offense committed by the party killed is actually completed; except that, in case of rape, the ravisher may be killed at any time before he has escaped from the presence of his victim, and except, also, in the cases hereinafter enumerated.

4. Where the killing takes place to prevent the murder of some other person, it shall not be deemed that the murder is completed so long as the offender is still inflicting violence, though the mortal wound may have been given.

5. If homicide takes place in preventing a robbery, it shall be justifiable if done while the robber is in the presence of the person robbed, or is flying with the money or other article taken by him.

6. In cases of maiming, disfiguring or castration, the homicide may take place at any time while the offender is mistreating with violence the person injured, though he may have completed the offense.

7. In case of arson, the homicide may be inflicted while the offender is in or at the building or other property burnt, or flying from the place before the destruction of the same.

8. In cases of burglary and theft by night, the homicide is justifiable at any time while the offender is in the building, or at the place where the theft is committed, or is within reach of gunshot from such place or building.

9. When the party slain in disguise is engaged in any attempt, by word, gesture or otherwise, to alarm some other person or persons and put them in bodily fear. (O. C. 568; Acts 1871, pp. 20, 21.)

See Bryant v. S., 47 S. W. 373; Monson v. S., 63 S. W. 647; Grant v. Haas, 75 S. W. 342; Welch v. S., 122 S. W. 880; Newman v. S., 126 S. W. 578, 21 Ann. Cas. 718; Slack v. S., 149 S. W. 107; Sanchez v. S., 149 S. W. 124; Blalock v. S., 176 S. W. 725; Jackson v. S., 180 S. W. 259; Smith v. S., 185 S. W. 576; Davis v. S., 196 S. W. 520.

Art. 1106. (676) Presumption from the use of weapons.—When the homicide takes place to prevent murder, maiming, disfiguring or castration, if the weapons or means used by the party attempting or committing such murder, maiming, disfiguring or castration are such as would have been calculated to produce that result, it is to be presumed that the person so using them designed to inflict the injury. (O. C. 569.)

See Hall v. S., 66 S. W. 783; Scott v. S., 81 S. W. 950; Cooper v. S., 85 S. W. 1059; Yardley v. S., 100 S. W. 399; Renow v. S., 120 S. W. 174; Clark v. S., 120 S. W. 179; Duke v. S., 120 S. W. 894; Deneaner v. S., 127 S. W. 201; Pratt v. S., 127 S. W. 827; Spencer v. S., 128 S. W. 118; Hudson v. S., 129 S. W. 1125, Ann. Cas. 1912A, 1324; Polk v. S., 132 S. W. 767; Best v. S., 135 S. W. 581; Alexander v. S., 138 S. W. 721; Foster v. S., 148 S. W. 583; Johnson v. S., 149 S. W. 165; Bankston v. S., 175 S. W. 1068; Lozano v. S., 202 S. W. 510.

Art. 1107. (677) In protecting person or property from attacks.—Homicide is justifiable also in the protection of the person or property against any other unlawful and violent attack besides those mentioned in the preceding article, and, in such cases, all other means must be resorted to for the prevention of the injury, and the killing must take place while the person killed is in the very act of making such unlawful and violent attack; and any person interfering in such case in behalf of the party about to be injured is not justifiable in killing the aggressor, unless the life or person of the injured party is in peril by reason of such attack upon his property. (O. C. 570.)

See Bryant v. S., 47 S. W. 373; McGlothlin v. S., 53 S. W. 870; McCandless v. S., 57 S. W. 672; Allen v. S., 66 S. W. 671; Hill v. S., 67 S. W. 506; Patterson v. S., 95 S. W. 129; Bryant v. S., 100 S. W. 371; French v. S., 117 S. W. 848; Williams v. S., 129 S. W. 838; Anderson v. S., 131 S. W. 1124; Walker v. S., 156 S. W. 206; Smith v. S., 185 S. W. 576; Hassell v. S., 188 S. W. 991; Edwards v. S., 191 S. W. 542.

Art. 1108. (678) Retreat not necessary.—The party whose person or property is so unlawfully attacked is not bound to retreat in order to avoid the necessity of killing his assailant. (O. C. 571.)

See Montgomery v. S., 77 S. W. 788.

Art. 1109. (679) Requisites of the attack.—The attack upon the person of an individual, in order to justify homicide, must be such as produces a reasonable expectation or fear of death, or some serious bodily injury. (O. C. 572.)

See Bruce v. S., 51 S. W. 954; Griffin v. S., 53 S. W. 848; Walker v. S., 156 S. W. 206.

Art. 1110. (680) Circumstances justifying in defense of property.—When, un-

der article 1107, a homicide is committed in the protection of property, it must be done under the following circumstances:

1. The possession must be of corporeal property, and not of a mere right, and the possession must be actual and not merely constructive.

2. The possession must be legal, though the right of the property may not be in the possessor.

3. If possession be once lost, it is not lawful to regain it by such means as result in homicide.

4. Every other effort in his power must have been made by the possessor to repel the aggression before he will be justified in killing. (O. C. 573.)

See Sims v. S., 36 S. W. 256; Hopkins v. S., 53 S. W. 620; McGlothlin v. S., 53 S. W. 870; Howell v. S., 57 S. W. 835; Hill v. S., 67 S. W. 506; Lockland v. S., 73 S. W. 1054; Dean v. S., 83 S. W. 816; Gay v. S., 125 S. W. 896; Hartfield v. S., 134 S. W. 1180; Walker v. S., 156 S. W. 206.

CHAPTER THIRTEEN
OF EXCUSABLE HOMICIDE

Art. 1111. (681) Definition.—Homicide is excusable when the death of a human being happens by accident or misfortune, though caused by the act of another, who is in the prosecution of a lawful object by lawful means. (O. C. 575.)

See Wheatley v. S., 39 S. W. 672; Hartsel v. S., 68 S. W. 285; Miller v. S., 105 S. W. 502.

Art. 1112. (682) The lawful act must be done by lawful means.—The lawful act causing the death of another must be done by lawful means and used in a lawful degree. Though lawful for the parent, guardian, schoolmaster or master to chastise the child, ward, scholar or apprentice, yet, if this be done with an instrument likely to produce death, or, if with a proper instrument the chastisement be cruelly inflicted and death result, it is murder. (O. C. 576.)

See Miller v. S., 105 S. W. 502.

CHAPTER FOURTEEN
HOMICIDE BY NEGLIGENCE

Art. 1113. (683) Of two kinds.—Homicide by negligence is of two kinds:

1. Such as happens in the performance of a lawful act; and 2. That which occurs in the performance of an unlawful act. (O. C. 577.)

See Talbot v. S., 125 S. W. 906.

Generally under this chapter see Chant v. S., 166 S. W. 513.

1. IN THE PERFORMANCE OF A LAWFUL ACT

Art. 1114. (684) In the performance of a lawful act.—If any person in the performance of a lawful act shall, by negligence and carelessness, cause the death of another, he is guilty of negligent homicide of the first degree. (O. C. 578.)

See Gorden v. S., 90 S. W. 636; Talbot v. S., 125 S. W. 906.

Art. 1115. (685) "Lawful act" defined.—A "lawful act" is one not forbidden by the penal law, and which would give no just occasion for a civil action. (O. C. 579.)

See Talbot v. S., 125 S. W. 906.

Art. 1116. (686) Must be an apparent danger of causing death.—To constitute this offense, there must be an apparent danger of causing the death of the person killed, or some other. (O. C. 580.)

See Gorden v. S., 90 S. W. 636; Talbot v. S., 125 S. W. 906.

Art. 1117. (687) How distinguished from excusable homicide.—The want of proper care and caution distinguishes this offense from excusable homicide. The degree of care and caution is such as a man of ordinary prudence would use under like circumstances. (O. C. 581.)

See Talbot v. S., 125 S. W. 906.

Art. 1118. (688) Examples.—Throwing timbers by a workman from the roof or upper part of a house in a public street or highway, or where a number of persons are known to be around the house, or discharging firearms on or near a public highway, other than a street in a town or city, in such manner as would be likely to injure persons who might be passing, are examples of negligent homicide of the first degree, in case of death resulting therefrom. If death is caused by the careless discharge of firearms in a public street of a town or city, the offense will be of a higher degree. (O. C. 582.)

See Talbot v. S., 125 S. W. 906.

Art. 1119. (689) Must be no apparent intention to kill.—To bring the offense within the definition of homicide by negligence, either of the first or second degree, there must be no apparent intention to kill. (O. C. 584.)

See Talbot v. S., 125 S. W. 906.

Art. 1120. (690) Homicide must be consequence of the act.—The homicide must be consequence of the act done or attempted to be done. (O. C. 585.)

Art. 1121. (691) Punishment.—Negligent homicide of the first degree shall be punished by confinement in the county jail not exceeding one year, or by fine not exceeding one thousand dollars. (O. C. 586.)

2. IN THE PERFORMANCE OF AN UNLAWFUL ACT

Art. 1122. (692) "Of second degree" defined, etc.—The definitions, rules and provisions of the preceding articles of this chapter, with respect to negligent homicide of the first degree, apply also to the offense of negligent homicide of the second degree, or such as is committed in the prosecution of an unlawful act, except when contrary to the following provisions: (O. C. 587.)

See Brittain v. S., 37 S. W. 758.

Art. 1123. (693) Can only be committed, when.—Negligent homicide of the second degree can only be committed when the person guilty thereof is in the act of committing or attempting the commission of an unlawful act. (O. C. 588.)

See Talbot v. S., 125 S. W. 906.

Art. 1124. (694) "Unlawful act" includes what.—Within the meaning of an "unlawful act" as used in this chapter are included—

1. Such acts as by the penal law are called misdemeanors; and, 2. Such acts, not being penal offenses, as would give just occasion for a civil action. (O. C. 589.)

See Talbot v. S., 125 S. W. 906.

Art. 1125. (695) Homicide in an attempt at felony not negligent.—When

one, in the execution of or in attempting to execute an act made a felony by the penal law, shall kill another, though without an apparent intention to kill, the offense does not come within the definition of negligent homicide. (O. C. 590.)

Art. 1126. (696) In an attempt at misdemeanor, punished, how.—When the unlawful act attempted or executed is known as a misdemeanor, the punishment of negligent homicide committed in the execution of such unlawful act shall be imprisonment in the county jail not exceeding three years, or by fine not exceeding three thousand dollars. (O. C. 591.)

Art. 1127. (697) In a trespass, etc., how punished.—If the act intended is one for which an action would lie, but not an offense against the penal law, the homicide resulting therefrom is a misdemeanor, and may be punished by fine not exceeding one thousand dollars, and by imprisonment in the county jail not exceeding one year. (O. C. 592.)

CHAPTER FIFTEEN

OF MANSLAUGHTER

Art. 1128. (698) Definition of.—Manslaughter is voluntary homicide committed under the immediate influence of sudden passion arising from an adequate cause, but neither justified nor excused by law. (O. C. 594.)

See Gardner v. S., 48 S. W. 170; Williams v. S., 54 S. W. 759; Follett v. S., 55 S. W. 575; Thomas v. S., 56 S. W. 91; Burns v. S., 145 S. W. 356; Johnson v. S., 149 S. W. 165; Witty v. S., 171 S. W. 229; Rose v. S., 186 S. W. 202; Marshbanks v. S., 192 S. W. 246.

Art. 1129. (699) "Under the influence of sudden passion" explained.—By the expression "under the immediate influence of sudden passion" is meant—

1. That the provocation must arise at the time of the commission of the offense, and that the passion is not the result of a former provocation.

2. The act must be directly caused by the passion arising out of the provocation. It is not enough that the mind is merely agitated by passion arising from some other provocation, or a provocation given by some person other than the party killed.

3. The passion intended is either of the emotions of the mind, known as anger, rage, sudden resentment, or terror, rendering it incapable of cool reflection. (O. C. 596.)

See Stanton v. S., 59 S. W. 272; Burns v. S., 145 S. W. 356; Smith v. S., 147 S. W. 240; Thompson v. S., 177 S. W. 503.

Art. 1130. (700) "Adequate cause" explained.—By the expression "adequate cause" is meant such as would commonly produce a degree of anger, rage, resentment or terror in a person of ordinary temper sufficient to render the mind incapable of cool reflection. (O. C. 597.)

See Hurst v. S., 46 S. W. 635; Gardner v. S., 48 S. W. 170; Thomas v. S., 56 S. W. 72; Adams v. S., 60 S. W. 48; Witty v. S., 171 S. W. 229.

Art. 1131. (701) What are not adequate causes.—Insulting words or gestures, or an assault and battery, so slight as to show no intention to inflict pain or injury, or an injury to property, unaccompanied by violence, are not adequate causes. (O. C. 598.)

See Charba v. S., 87 S. W. 829; Wilson v. S., 160 S. W. 83; McGregor v. S., 160 S. W. 711; Johnson v. S., 167 S. W. 733; Bolden v. S., 178 S. W. 533; Rose v. S., 186 S. W. 202.

Art. 1132. (702) What are.—The following are deemed adequate causes:

1. An assault and battery by the deceased, causing pain or bloodshed.

2. A serious personal conflict, in which great injury is inflicted by the person killed, by means of weapons, or other instruments of violence, or by means of great superiority of personal strength, although the person guilty of the homicide was the aggressor; provided, such aggression was not made with intent to bring on a conflict and for the purpose of killing.

3. Adultery of the person killed with the wife of the person guilty of the homicide; provided, the killing occurs as soon as the fact of an illicit connection is discovered.

4. Insulting words or conduct of the person killed towards a female relation of the party guilty of the homicide. (O. C. 599.)

See Wright v. S., 107 S. W. 822; Hernandez v. S., 110 S. W. 753; Lee v. S., 113 S. W. 301; Wheeler v. S., 125 S. W. 29; Lofton v. S., 128 S. W. 384; McGregor v. S., 160 S. W. 711.

Art. 1133. (703) For insult to female, killing must be immediate.—When it is sought to reduce the homicide to the grade of manslaughter, by reason of the existence of the circumstances specified in the fourth subdivision or article 1132 of the Penal Code, it must appear that the killing took place immediately upon the happening of the insulting conduct, or the uttering of the insulting words, or so soon thereafter as the party killing may meet with the party killed, after having been informed of such insults. (O. C. 599a; Acts 1858, pp. 172, 173.)

See Lynch v. S., 57 S. W. 1132; Maxwell v. S., 56 S. W. 62; Thompson v. S., 163 S. W. 973.

Art. 1134. (704) General character of female in issue.—In every case where the defense spoken of in the preceding article is relied on, it shall be competent to prove the general character of the female insulted, in order to ascertain the extent of the provocation. (O. C. 599b; Acts 1858, p. 173.)

See Griffin v. S., 54 S. W. 586; Jones v. S., 101 S. W. 998.

Art. 1135. (705) Discretion of jury in such cases.—The jury shall be at liberty to determine in every case whether, under all the circumstances, the insulting words or gestures were the real cause which provoked the killing. (O. C. 599c; Acts 1858, p. 173.)

Art. 1136. (706) "Relation" includes whom.—Any female under the permanent or temporary protection of the accused, at the time of the killing, shall also be included within the meaning of the term "relation." (O. C. 599d; Acts 1858, p. 173.)

Art. 1137. (707) "Adequate cause" must produce the passion.—In order to reduce a voluntary homicide to the grade of manslaughter, it is necessary not only that adequate cause existed to produce the state of mind referred to in the third subdivision of article 1129, but also that such state of mind did actually exist at the time of the commission of the offense. (O. C. 600.)

See Ray v. S., 64 S. W. 1057; Shaw v. S., 160 S. W. 103; Marshbanks v. S., 192 S. W. 246.

Art. 1138. (708) Provoking contest with intent to kill, not manslaughter.—Though a homicide may take place under circumstances showing no deliberation, yet, if the person guilty thereof provoked a contest with the apparent intention of killing, or doing serious bodily injury to the deceased, the

offense does not come within the definition of manslaughter. (O. C. 603.)

See McCandless v. S., 57 S. W. 672; Berry v. S., 188 S. W. 997.

Art. 1139. (709) Punishment.—Manslaughter is of various degrees of culpability, according to the circumstances under which it was committed. It shall be punished by imprisonment in the penitentiary not less than two nor more than five years. (O. C. 602; Acts 1885, p. 173.)

CHAPTER SIXTEEN

OF MURDER

Art. 1140. (710) "Murder" defined.—Every person with sound memory and discretion who, with malice aforethought shall unlawfully kill any person within this State shall be guilty of murder. Murder is distinguishable from every other species of homicide by the absence of circumstances which reduce the offense to negligent homicide, or manslaughter, or which excuse or justify the homicide. (O. C. 607; Acts 1858, p. 173; Acts 1913, p. 238, ch. 116, sec. 1.)

See Miller v. S., 126 S. W. 864; Crutchfield v. S., 152 S. W. 1053; Shaw v. S., 160 S. W. 103; Robbins v. S., 166 S. W. 528; Nelson v. S., 206 S. W. 361.

Generally under this chapter see Henson v. S., 168 S. W. 89.

Acts 1913, ch. 116, sec. 1 repeals articles 1140, 1141, 1142, 1144, Revised Penal Code, and inserts, in lieu thereof articles 1140 and 1141, to read as herein set out. Sec. 2 repeals all laws in conflict. Sec. 3, the emergency clause, recites: "The fact that the present law defining murder divides the same into two degrees, to-wit: first degree murder and second degree murder and the fact that such definitions of murder or divisions of murder are creating complications in the trial of those charged with murder," etc.

Art. 1141. (714) Punishment.—The punishment for murder shall be death or confinement in the penitentiary for life or for any terms of years not less than five. (O. C. 612a; Acts 1858, p. 173; Acts 1913, p. 238, ch. 116, sec. 1.)

Coleman v. S., 90 S. W. 499; Shaw v. S., 160 S. W. 103; Christian v. S., 161 S. W. 101; Essery v. S., 163 S. W. 17; Robbins v. S., 166 S. W. 528; Nelson v. S., 206 S. W. 361.

Art. 1142. (712) [Repealed.]

See art. 1140, ante.

Art. 1143. (713) Evidence of threats and deceased's character admissible, when.—Where a defendant accused of murder seeks to justify himself on the ground of threats against his own life, he may be permitted to introduce evidence of the threats made, but the same shall not be regarded as affording a justification for the offense, unless it be shown that, at the time of the homicide, the person killed by some act then done manifested an intention to execute the threat so made. In every instance where proof of threats has been made, it shall be competent to introduce evidence of the general character of the deceased. Such evidence shall extend only to an inquiry as to whether the deceased was a man of violent or dangerous character, or a man of kind and inoffensive disposition, or whether he was such a person as might reasonably be expected to execute a threat made. (O. C. 612; Acts 1858, p. 174.)

See Swain v. S., 86 S. W. 335; Armsworthy v. S., 88 S. W. 215; Arnwine v. S., 96 S. W. 4; Mitchell v. S., 96 S. W. 43; Menefee v. S., 97 S. W. 486; Arnwine v. S., 99 S. W. 97; Clark v. S., 102 S. W. 1136; Jirou v. S., 108 S. W. 655; Cornelius v. S., 112 S. W. 1050; Dobbs v. S., 113 S. W. 923; Knight v. S., 116 S. W. 56; Smith v. S., 118 S. W. 145; Duke v. S., 133 S. W. 432; Edwards v. S., 135 S. W. 540; Melton v. S., 182 S. W. 289.

Art. 1144. (714) [Repealed.]

See art. 1140, ante.

CHAPTER SEVENTEEN

OF DUELING

Art. 1145. (715) Dueling, etc., how punished.—Any person who shall, within this state, fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within the state or out of it, or who shall act as a second, or knowingly aid or assist in any manner those thus offending, shall be deemed guilty of a felony, and, upon conviction, shall be punished by confinement in the penitentiary not less than two nor more than five years. (O. C. 603.)

See Guerrero v. S., 47 S. W. 655.

Art. 1146. (716) Homicide in, murder in first degree.—If, in any duel hereafter fought in this state, either of the combatants be killed, or receive a wound from which he afterwards dies within three months, the survivor shall be deemed guilty of murder in the first degree and be punished accordingly. (O. C. 605; amended on revision.)

CHAPTER EIGHTEEN

GENERAL PROVISIONS RELATING TO HOMICIDE

Art. 1147. (717) Means or instruments used must be considered.—The instrument or means by which a homicide is committed are to be taken into consideration in judging of the intent of the party offending; if the instrument be one not likely to produce death, it is not to be presumed that death was designed, unless, from the manner in which it was used, such intention evidently appears. (O. C. 613.)

See Honeywell v. S., 49 S. W. 586; Johnson v. S., 60 S. W. 48; Danforth v. S., 69 S. W. 159; Lee v. S., 72 S. W. 195; Posey v. S., 78 S. W. 689; Burnett v. S., 79 S. W. 550; Connell v. S., 81 S. W. 746; Baker v. S., 81 S. W. 1215; Jackson v. S., 85 S. W. 10; Craiger v. S., 88 S. W. 208; Wilson v. S., 90 S. W. 312; Lucas v. S., 90 S. W. 880; Campos v. S., 95 S. W. 1042; Williams v. S., 96 S. W. 42; McKenzie v. S., 96 S. W. 932; Washington v. S., 110 S. W. 751, 126 Am. St. Rep. 800; Crow v. S., 116 S. W. 52, 21 L. R. A. (N. S.) 497; McDowell v. S., 117 S. W. 831; Vinson v. S., 117 S. W. 846; Hightower v. S., 119 S. W. 691, 133 Am. St. Rep. 966; Halsford v. S., 120 S. W. 193; Grant v. S., 120 S. W. 481; Betts v. S., 124 S. W. 424; Snowberger v. S., 126 S. W. 878; Coker v. S., 128 S. W. 137; McGill v. S., 132 S. W. 941; Betts v. S., 133 S. W. 251; Ross v. S., 133 S. W. 688; Pool v. S., 137 S. W. 666; Crutchfield v. S., 152 S. W. 1053; Jones v. S., 153 S. W. 310; Huddleston v. S., 156 S. W. 1168; Boyd v. S., 180 S. W. 230; Carr v. S., 190 S. W. 727; Garrett v. S., 198 S. W. 308; Dugan v. S., 199 S. W. 616; Merka v. S., 199 S. W. 1123; Lowe v. S., 201 S. W. 986; Hamilton v. S., 201 S. W. 1009; Houston v. S., 202 S. W. 84.

Art. 1148. (718) If injury be done in a cruel manner.—If any injury be inflicted in a cruel manner, though with an instrument not likely under ordinary circumstances to produce death, the killing will be manslaughter or murder, according to the facts of the case. (O. C. 614.)

See Taylor v. S., 51 S. W. 1106; Brownlee v. S., 87 S. W. 755; Betts v. S., 133 S. W. 251; Merka v. S., 199 S. W. 1123.

Art. 1149. (719) If in sudden passion not with deadly weapon.—Where a homicide occurs under the influence of sudden

passion, but by the use of means not in their nature calculated to produce death, the person killing is not deemed guilty of the homicide, unless it appear that there was an intention to kill, but the party from whose act the death resulted may be prosecuted for and convicted of any grade of assault and battery. (O. C. 615.)

See Wilson v. S., 90 S. W. 312; Coleman v. S., 90 S. W. 499; Lucas v. S., 90 S. W. 880; Terrell v. S., 111 S. W. 152; Crow v. S., 116 S. W. 52, 21 L. R. A. (N. S.) 497; Vinson v. S., 117 S. W. 846; Hightower v. S., 119 S. W. 691, 133 Am. St. Rep. 966; Pool v. S., 137 S. W. 666; Kinslow v. S., 147 S. W. 249; McDowell v. S., 151 S. W. 1049; House v. S., 171 S. W. 206; Carr v. S., 190 S. W. 727; Garrett v. S., 198 S. W. 308; Merka v. S., 199 S. W. 1123.

Art. 1150. (720) If evil or cruel disposition be exhibited.—Where the circumstances attending a homicide show an evil or cruel disposition, or that it was the design of the person offending to kill, he is deemed guilty of murder or manslaughter, according to the other facts of the case, though the instrument or means used may not in their nature be such as to produce death ordinarily. (O. C. 615.)

See Taylor v. S., 51 S. W. 1106; Barnes v. S., 59 S. W. 882; Johnson v. S., 60 S. W. 48; Lee v. S., 72 S. W. 195.

TITLE 16

OF OFFENSES AGAINST REPUTATION

CHAPTER ONE

OF LIBEL

For civil actions in cases of libel see, ante, Civ. St., arts. 5595-5598.

Art. 1151. (721) "Libel" defined.—He is guilty of "libel" who, with intent to injure, makes, writes, prints, publishes, sells or circulates any malicious statement affecting the reputation of another in respect to any matter or thing pointed out in this chapter.

1. That the person to whom it refers has been guilty of some penal offense; or

2. That he has been guilty of some act or omission which, though not a penal offense, is disgraceful to him as a member of society, and the natural consequence of which is to bring him into contempt among honorable persons; or

3. That he has some moral vice, or physical or mental defect or disease, which renders him unfit for intercourse with respectable society, and such as should cause him to be generally avoided; or

4. That he is notoriously of bad or infamous character; or

5. That any person in office, or a candidate therefor, is dishonest, and therefore unworthy of such office, or that while in office he has been guilty of some malfeasance rendering him unworthy of the place. (O. C. 618.)

See Jones v. S., 43 S. W. 78; Baldwin v. S., 45 S. W. 714; Smith v. S., 45 S. W. 707; Mankins v. S., 57 S. W. 952; Gonzalez v. S., 124 S. W. 937; Aldama v. S., 163 S. W. 730.

Art. 1152. (722) Punishment.—If any person be guilty of libel, he shall be punished by fine not less than one hundred nor more than two thousand dollars, or by imprisonment in the county jail not exceeding two years; and the court may enter up judgment and issue an order thereupon directing the sheriff to seize and destroy all the publications, prints, paintings or engravings constituting the libel as charged in the indictment or information. (O. C. 619.)

Art. 1153. (723) Publishing writing purporting to be done by another.—If any person, with intent to injure the reputation of another, shall, without lawful authority, make, publish or circulate a writing purporting to be the act of some other person, and which comes within the definition of libel, as given in this chapter, he shall be punished in the same manner as if the act purported to be his own; and the rules with respect to libel apply also to the making and circulation of such false writing. (O. C. 620.)

Art. 1154. (724) "Maker" explained.—He is the maker of a libel who originally contrived and either executed it himself by writing, printing, engraving or painting, or dictated or caused it to be done by others. (O. C. 621.)

Art. 1155. (725) "Publisher."—He is the publisher of libel who, either of his own will or by the persuasion or dictation of another, executes the same in any of the modes pointed out as constituting a libel; but if any one by force or threats is compelled to execute such libel he is guilty of no offense. (O. C. 622.)

Art. 1156. (726) Circulating.—He is guilty of circulating a libel who, knowing its contents, either sells, distributes or gives, or who, with malicious design, reads or exhibits it to others. (O. C. 622a.)

Art. 1157. (727) The ideas the statement must convey.—The written, printed or published statement, to come within the definition of libel, must convey the idea either—

1. That the person to whom it refers has been guilty of some penal offense; or

2. That he has been guilty of some act or omission which, though not a penal offense, is disgraceful to him as a member of society, and the natural consequence of which is to bring him into contempt among honorable persons; or

3. That he has some moral vice, or physical or mental defect or disease, which renders him unfit for intercourse with respectable society, and such as should cause him to be generally avoided; or

4. That he is notoriously of bad or infamous character; or

5. That any person in office, or a candidate therefor, is dishonest, and therefore unworthy of such office, or that while in office he has been guilty of some malfeasance rendering him unworthy of the place. (O. C. 623.)

See Nordhaus v. S., 40 S. W. 804; Byrd v. S., 44 S. W. 521; Mankins v. S., 57 S. W. 950; Gonzalez v. S., 124 S. W. 937; Aldama v. S., 163 S. W. 730.

Art. 1158. (728) Mode of publication.—A libel may be either written, printed, engraved, etched or painted, but no verbal defamation comes within the meaning thereof; and whenever a defendant is accused of libel by means of a painting, engraving or caricature, it must clearly appear therefrom that the person said to be defamed was, in fact, intended to be represented by such painting, engraving or caricature. (O. C. 624.)

Art. 1159. (729) A manuscript must be circulated.—In order to render any manuscript a libel, it must be circulated or posted up in some public place. (O. C. 625.)

Art. 1160. (730) Editor, etc., prima facie guilty.—If the libel be in printed form, and issues or is sold in any office or shop where a public newspaper is conducted, or where books or other printed works are sold or printed, the editor, publisher and proprietor of such newspaper, or any one of them, or the owner of such shop, is to be deemed guilty of making or circulating such libel until the contrary is made on the trial to appear. (O. C. 626.)

Art. 1161. (731) But may avoid responsibility, how.—The editor, publisher or proprietor of a public newspaper may avoid the responsibility of making or publishing a libel by giving the true author of the same; provided, such author be a resident of this state and a person of good character, except in cases where it is shown that such editor, publisher or proprietor caused the libel to be published with malicious design. (O. C. 627.)

Art. 1162. (732) Mechanical executor not guilty, unless.—No person shall be convicted of libel merely on evidence that he has made a manuscript copy of a libel or has performed the manual labor of printing it, unless it be shown positively that such person was actuated by a malicious design against the person defamed. But the person for whose account or by whose order it was printed shall be presumed to have known the intent of the publication, and shall be liable for the offense. (O. C. 628.)

Art. 1163. (733) Actual injury not necessary.—It is sufficient to constitute the offense of libel if the natural consequence of the publication of the same is to injure the person defamed, although no actual injury to his reputation has been sustained. (O. C. 629.)

Art. 1164. (734) Intent to injure presumed.—The intent to injure is to be presumed if such would be the natural consequence of the libel, though no actual proof be made that the defendant had such design; and in all trials of libel the jury are to judge from the facts proved relative to the malicious design of the defendant as to what penalty ought to be imposed under the restrictions herein prescribed. (O. C. 630.)

Art. 1165. (735) True statement concerning candidate not libel.—It is no offense to make true statements of fact or express opinions as to the integrity or other qualifications of a candidate for any office or public place or appointment. (O. C. 631.)

Art. 1166. (736) Nor concerning qualifications of professional men.—It is no offense to publish true statements of fact as to the qualifications of any person for any occupation, profession or trade. (O. C. 632.)

Art. 1167. (737) No criticism of any book, work of art, etc.—It is no offense to publish any criticism or examination of any work of literature, science or art, or any opinion as to the qualifications or merits of the author of such work. (O. C. 633.)

Art. 1168. (738) The offense relates to persons only.—To constitute libel, there must be some injury intended to the reputation of persons, and no publication as to the government, or any of the branches thereof, as such is an offense under the name of seditious writings or any other name. (O. C. 634.)

Art. 1169. (739) Respecting religious systems, etc.—It is no libel to make publication respecting the merits or doctrines of any particular religion, system of morals or politics, or of any particular form of government. (O. C. 635.)

Art. 1170. (740) Corporations can not be libeled.—It is no libel to make any publication respecting a body politic or corporate as such. (O. C. 636.)

Art. 1171. (741) Nor legislative or judicial proceedings, unless, etc.—It is no libel to publish any statement respecting any legislative or judicial proceedings, whether the statement be in fact true or not, unless in such statement a charge of corruption is made against some person acting in a legislative or judicial capacity. (O. C. 637.)

Art. 1172. (742) Recorder of minutes, etc., not liable.—Where any person by virtue of his office is required to record the proceedings of any department of the government or of any body corporate or politic, or of any association organized for purposes of business, or as a religious, moral, benevolent, literary or scientific institution, he can not be charged with libel for any entry upon the minutes or records of such department, body or association made in the course of his official duties. (O. C. 638.)

See Kubricht v. S., 69 S. W. 157.

Art. 1173. (743) But all members of the association who assent are.—If any false statement be entered upon the minutes or record of proceedings of any corporate body or association included within the meaning of the preceding article, which would be libel if written, printed, published or circulated by an individual, according to the previous articles of this chapter, the persons being members of such body or association, who assent to and direct such libelous statement to be made, are guilty of libel under the same rules as if the false statement had been written, published or circulated in any other manner than as a part of the record or proceedings of such body or association, subject, however, to the restrictions contained in the succeeding article. (O. C. 639.)

Art. 1174. (744) Intent to injure not presumed, unless, etc.—The libelous statement referred to in the preceding article, is not to be presumed to have been made with intent to injure, from the mere fact that such would be the natural result thereof, unless it appear from other facts that the statement was in fact made with that intention. (O. C. 640.)

Art. 1175. (745) "Malicious" signifies what.—The word "malicious" is used to signify an act done with evil or mischievous design, and it is not necessary to prove any special facts showing ill feeling on the part of the person who is concerned in making, printing, publishing or circulating a libelous statement against the person injured thereby. (O. C. 641.)

Art. 1176. (746) Statement in legislative or judicial proceedings not included.—No statement made in the course of a legislative or judicial proceeding, whether true or false, although made with intent to injure

and from malicious purposes, comes within the definition of libel. (O. C. 642.)

Art. 1177. (747) Truth of statement may be shown, when.—In the following cases, the truth of any statement charged as libel may be shown in justification of the defendant:

1. Where the publication purports to be an investigation of the official conduct of officers or men in a public capacity.

2. Where it is stated in the libel that a person has been guilty of some penal offense, and the time, place and nature of the offense is specified in the publication.

3. Where it is stated in the libel that a person is of notoriously bad or infamous character.

4. Where the publication charges any person in office, or a candidate therefor, with a want of honesty, or of having been guilty of some malfeasance in office, rendering him unworthy of the place. In other cases, the truth of the facts stated in the libel can not be inquired into. (O. C. 643.)

See Williams v. S., 51 S. W. 220.

Art. 1178. (748) Province of jury.—The jury in every case of libel are not only the judges of the facts and of the law, under the direction of the court, in accordance with the constitution, but they are judges of the intent with which a libel may have been published or circulated subject to the rules prescribed in this chapter; and in rendering their verdict they are to be governed by a consideration of the nature of the charge contained in the libel, the general reputation of the person said to be defamed, and the degree of malice exhibited by the defendant in the commission of the offense. (O. C. 644.)

See Squires v. S., 45 S. W. 147; McArthur v. S., 57 S. W. 848.

Art. 1179. (749) This title relates only to penal action.—This title regulates the law with regard to libel when prosecuted as a penal offense, and is not intended to have any operation upon the subject so far as relates to civil remedies for the recovery of damages. (O. C. 645.)

CHAPTER TWO

OF SLANDER

Art. 1180. (750) (645) Definition and punishment.—If any person shall, orally or otherwise, falsely and maliciously or falsely and wantonly impute to any female in this state, married or unmarried, a want of chastity, he shall be deemed guilty of slander, and, upon conviction, shall be fined not less than one hundred nor more than one thousand dollars; and the jury may, in addition thereto, find a verdict for the imprisonment of defendant in the county jail not exceeding one year.

See Collins v. S., 40 S. W. 846; Whitehead v. S., 45 S. W. 10; Stayton v. S., 78 S. W. 1071; Woods v. S., 124 S. W. 918; Curl v. S., 145 S. W. 602; Lehmann v. Medack, 152 S. W. 433; McDonald v. S., 164 S. W. 831; Ethridge v. S., 169 S. W. 1152; Kelly v. S., 195 S. W. 853.

Art. 1181. (751) (646) Procedure in prosecution for.—In any prosecution under this chapter, it shall not be necessary for the state to show that such imputation was false, but the defendant may in justification show the truth of the imputation, and the general reputation for chastity of the female alleged to have been slandered may be inquired into.

Dobbs v. S., 117 S. W. 799; Richmond v. S., 126 S. W. 596, 137 Am. St. Rep. 973; McDonald v. S., 164 S. W. 831.

CHAPTER THREE

SENDING ANONYMOUS LETTERS

Art. 1182. Prohibited, penalty for so doing.—If any person shall send, or cause to be sent, deliver, or cause to be delivered, to any other person any anonymous letter or written instrument of any character whatsoever, reflecting upon the integrity, chastity, virtue, good character or reputation of the person to whom such letter or written instrument is sent or addressed, or of any other person, or wherein the life of such person is threatened, said person so sending such letter or written instrument shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than two hundred and fifty dollars nor more than one thousand dollars, and by imprisonment in the county jail for not less than one month nor more than twelve months. (Acts 1909, p. 138.)

Art. 1183. Definition of.—By an anonymous letter or written instrument, within the meaning of this law, is meant where the sender of such letter or written instrument withholds his or her full and true name from the same, or where no name is signed thereto, or where a fictitious name is signed thereto, or where any description of such sender instead of a name is used, such as "a friend," or "a true friend" or the like. (Id. p. 138.)

Art. 1184. Two or more persons concerned in, either may be compelled to testify.—If two or more persons are concerned in the composition or sending of any anonymous letter or written instrument, as hereinbefore prohibited by this law, then either of such persons shall be compelled to testify thereto; and the fact that such testimony will incriminate such person shall not exempt such person from testifying in regard thereto; provided, that where such person has been compelled to testify in regard thereto as above stated, then, in that event, when such person has testified fully, fairly and truthfully in regard thereto, then such person shall not be prosecuted under this law for the particular offense about which such person has so testified. (Id. p. 138.)

CHAPTER FOUR

OF FALSE ACCUSATION AND THREATS OF PROSECUTION

Art. 1185. (752) Combination to falsely accuse another.—If any two or more persons shall combine falsely to accuse another of an offense, and shall, in pursuance of such combination, make such accusation before a court or magistrate, or in any newspaper or other public print, or by the circulation of hand bills, or in any other public manner, by writing, they shall be punished by fine not exceeding two thousand dollars, or by imprisonment in the county jail not exceeding two years. (O. C. 646.)

Art. 1186. (753) To extort money.—If the purpose of such combination be to extort money or any pecuniary advantage, the punishment shall be by fine not to exceed two

thousand dollars, and imprisonment in the penitentiary not to exceed three years. (O. C. 647.)

See Williams v. S., 100 S. W. 149.

Art. 1187. (754) Threats of prosecution to extort money.—If any person, with intent to extort money, or any pecuniary advantage, shall threaten to accuse another of a felony, before any court, or to publish any other statement respecting him which would come within the meaning of libel, he shall be punished in the manner set forth in article 1185. (O. C. 648.)

Art. 1188. (755) Publishing another as a coward.—If any person shall, in any newspaper or hand bill, or by notice posted up in any place, publish another as a coward, or use toward him other approbrious language, he shall be fined in an amount not exceeding two hundred dollars; and, if such publication or posting be in consequence of a refusal to fight a duel, the punishment shall be by fine of not less than five hundred nor more than one thousand dollars. (O. C. 649.)

Art. 1189. "Whitecapping" defined, punishment for.—Any person who shall post any anonymous notice, or make any threats or signs, or skull and cross bones, or shall, by any other method, post any character or style of notice or threat to do personal violence or injury to property on or near the premises of another, or who shall cause the same to be sent with the intention of interfering in any way with the right of such person to occupy said premises, or to follow any legitimate occupation, calling or profession, or with the intention of causing such person to abandon such premises, or precincts, or county, in which such person may reside, shall be deemed guilty of the offense of whitecapping, and, upon conviction therefor, shall be punished by confinement in the state penitentiary for any period of time not less than two years nor more than five years. (Acts 1899, p. 215.)

See Dunn v. S., 63 S. W. 573.

CHAPTER FIVE

BLACKLISTING

Art. 1190. What constitutes discrimination against persons seeking employment.—Either or any of the following acts shall constitute discrimination against persons seeking employment:

1. Where any corporation, or receiver of the same, doing business in this state, or any agent or officer of any such corporation or receiver, shall blacklist, prevent, or attempt to prevent, by word, printing, sign, list or other means, directly or indirectly, any discharged employé, or any employé who may have voluntarily left said corporation's service, from obtaining employment with any other person, company, or corporation, except by truthfully stating in writing, on request of such former employé, the reason why such employé was discharged, or why his relationship to such company ceased.

2. Where any corporation, or receiver of the same, doing business in this state, or any officer or agent of such corporation or receiver, shall by any means, directly or indirectly, communicate to any other person or corporation any information in regard to a person who may seek employment of such person or corporation, and fails to give such person in regard to whom the communication may be made, within ten days after demand therefor, a complete copy of such communication, if in writing, and a true statement, if by sign or other means not in writing, and the names and addresses of all persons or corporations to whom said communication shall have been made.

3. Where any corporation, or receiver of the same, doing business in this state, or any agent or employé of such corporation or receiver, shall have discharged an employé, and such employé demands a statement in writing of the cause of his discharge, and such corporation, receiver, agent or employé thereof fails to furnish a true statement of the same to such discharged employé within ten days after such demand, or where any corporation or receiver of the same, or any officer or agent of such corporation, or receiver, shall fail, within ten days after written demand for the same, to furnish to any employé voluntarily leaving the service of such corporation or receiver, a statement in writing that such employé did leave such service voluntarily, or where any corporation or receiver of the same doing business within this state, shall fail to show in any statement under the provision of this law the number of years and months during which such employé was in the service of the said corporation or receiver in each and every separate capacity or position in which he was employed, and whether his services were satisfactory in each such capacity or not, or where any such corporation or receiver shall fail, within ten days after written demand for the same, to furnish to any such employé a true copy of the statement originally given to such employé for his use in case he shall have lost, or is otherwise deprived of the use of, the said original statement.

4. Where any corporation, or receiver of same, doing business in this state, or any agent or officer of the same, shall have received any request, notice or communication, either in writing or otherwise, from any person, company or corporation, preventing or calculated to prevent the employment of a person seeking employment, and shall fail to furnish to such person seeking employment, within ten days after a demand in writing therefor, a true statement of such request, notice or communication, and, if in writing, a true copy of same, and, if otherwise than in writing, a true statement thereof, and a true interpretation of its meaning, and the names and addresses of the persons, company or corporation furnishing the same.

5. Where any corporation, or receiver of the same, doing business in this state, or any officer or agent of such corporation or receiver, discharging an employé, shall have failed to give such employé a true statement of the causes of his discharge within ten days after a demand in writing therefor, and shall thereafter furnish any other person or corporation any statement or communication in regard to such discharge, unless at the request of the discharged employé.

6. Where any corporation, or receiver of same, doing business in this state, or any officer or agent of such corporation or receiver shall discriminate against any person seek-

ing employment on account of his having participated in a strike.

7. Where any corporation, or receiver of the same, doing business in this state, or any officer or agent of such corporation, or receiver, shall give any information or communication in regard to a person seeking employment, having participated in any strike, unless such person violated the law during his participation on such strike, or in connection therewith, and unless such information is given in compliance with subdivision 1 of article 1190. (Acts 1909, p. 160.)

Art. 1191. Penalty for violating preceding article.—Every person violating any of the provisions of the preceding article shall be guilty of a misdemeanor, and, upon conviction, shall be punished by imprisonment in the county jail for not less than one month nor more than one year. (Acts 1907, p. 143.)

Art. 1192. Prosecutions under, what is prima facie proof.—In prosecutions for the violation of any of the provisions of this law, evidence that any person has acted as the agent of a corporation in the transaction of its business in this state shall be received as prima facie proof that his act in the name, behalf or interest of the corporation, of which he was acting as the agent, was the act of the corporation. (Id. p. 143.)

Art. 1193. "Blacklisting" defined.—He is also guilty of "blacklisting" who places, or causes to be placed, the name of any discharged employé, or any employé who has voluntarily left the service of any individual, firm, company or corporation on any book or list, or publishes it in any newspaper, periodical, letter or circular, with the intent to prevent said employés from securing employment of any kind with any other person, firm, corporation or company, either in a public or private capacity. (Acts 1901, p. 264.)

Art. 1194. Same prohibited.—No corporation, company, or individual shall blacklist or publish, or cause to be blacklisted or published, any employé, mechanic or laborer discharged by such corporation, company or individual, with the intent and for the purpose of preventing such employé, mechanic or laborer from engaging in or securing similar or other employment from any other corporation, company or individual. (Id., p. 264.)

Art. 1195. Penalty for.—If any officer or agent of any corporation, company or individual, or other person, shall blacklist or publish, or cause to be blacklisted or published, any employé, mechanic or laborer discharged by such corporation, company or individual, with the intent and for the purpose of preventing such employé, mechanic or laborer from engaging in or securing similar or other employment from any other corporation, company or individual, or shall in any manner conspire or contrive by correspondence or otherwise, to prevent such discharged employé from procuring employment, as provided in articles 1193 and 1194, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty nor more than two hundred and fifty dollars, or be imprisoned in the county jail not less than thirty nor more than ninety days or both. (Id., p. 264.)

Art. 1196. Exceptions, when.—But this law shall not be construed as prohibiting any corporation, company or individual, from giving in writing, on application from such discharged employé, or any corporation, company or individual who may desire to employ such discharged employé, a truthful statement of the reason for such discharge; provided, that said written cause of discharge, when so made by such person, agent, company or corporation, shall never be used as the cause for an action for libel, either civil or criminal, against the person, agent, company or corporation so furnishing same. (Id., p. 264.)

Art. 1197. Servants or employés not to be coerced.—It shall be unlawful for any person or persons, corporation or firm, or any agent, manager or board of managers, or servant, of any corporation or firm in this state to coerce or require any servant or employé to deal with or purchase any article of food, clothing or merchandise of any kind whatever, from any person, association, corporation or company, or at any place or store whatever. And it shall be unlawful for any such person or persons, or agent, manager, or board of managers, or servants, to exclude from work, or to punish or blacklist any of said employés for failure to deal with any such person or persons, or any firm, company or corporation, or to purchase any article of food, clothing or merchandise whatever at any store or any place whatever. (Acts 1903, p. 89.)

Art. 1198. Penalty for.—Any person or persons, company or corporation, or association, or any agent, manager or managers, or servant of any company, corporation or association, described in the foregoing article, who shall violate any of the provisions of the preceding article, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than fifty nor more than two hundred dollars for each offense. (Id., p. 89.)

Art. 1199. Witness summoned and examined, when.—Upon the application of the attorney general, or of any district or county attorney, made to any justice of the peace in this state, and stating that he has reason to believe that a witness, who is to be found in the county of which such justice of the peace is an officer, knows of a violation of any of the provisions of this chapter, it shall be the duty of the justice of the peace to whom such application is made, to have summoned and to have examined such witness in relation to violations of any of the provisions of this chapter, said witness to be summoned as provided for in criminal cases. The said witness shall be duly sworn, and the justice of the peace shall cause the statements of the witness to be reduced to writing and signed and sworn to before him; and such sworn statement shall be delivered to the attorney general, district or county attorney, upon whose application the witness was summoned. Should the witness, summoned as aforesaid, fail to appear or to make statements of the facts within his knowledge, under oath, or to sign the same after it has been reduced to writing, he shall be guilty of contempt of court, and may be fined not exceeding one hundred dollars, and may be attached and imprisoned in the county jail

until he shall make a full statement of all the facts within his knowledge with reference to the matter inquired about. Any person so summoned and examined shall not be liable to prosecution for any violation of the provisions of this chapter about which he may testify fully and without reserve. (Acts 1907, p. 143.)

TITLE 17

OF OFFENSES AGAINST PROPERTY

CHAPTER ONE

OF ARSON

Art. 1200. (756) Definition of.—"Arson" is the wilful burning of any house included within the meaning of the succeeding article of this chapter. (O. C. 679.)

Art. 1201. (757) "House" defined.—A "house" is any building, edifice or structure inclosed with walls and covered, whatever may be the materials used for building. (O. C. 680.)

See Hester v. S., 51 S. W. 933; Caddell v. S., 97 S. W. 705; Allen v. S., 137 S. W. 1133.

Generally under this chapter see Tinker v. S., 179 S. W. 572.

Art. 1202. (758) Offense complete, when.—The burning is complete when the fire has actually communicated to a house, though it may be neither destroyed nor seriously injured. (O. C. 684.)

Art. 1203. (759) "Design" the essence of the offense.—It is of no consequence by what means the fire is communicated to a house, if the burning is with design. It may be by setting fire to any combustible material communicating therewith, by an explosion, or by any other means. (O. C. 685.)

Art. 1204. (760) Intent presumed, when.—When fire is communicated to a house by means of the burning of another house, or some combustible matter, it shall be presumed that the intent was to destroy every house actually burnt; provided there was any apparent danger of such destruction. (O. C. 686.)

Art. 1205. (761) Explosions included.—The explosion of a house by means of gunpowder, or other explosive matter, comes within the meaning of arson. (O. C. 687.)

See Landers v. S., 47 S. W. 1008.

Art. 1206. (762) Except, when.—A house, blown up or otherwise destroyed for the purpose of saving another house from fire, is not within the meaning of arson. (O. C. 688.)

Art. 1207. (763) Owner may destroy, except when.—The owner of a house may destroy it by fire or explosion without incurring the penalty of arson, except in the cases mentioned in the succeeding article. (O. C. 689.)

Art. 1208. (764) Exceptions.—When a house is within a town or city, or when it is insured, or when there is within it any property belonging to another, or when there is apparent danger by reason of the burning thereof, that the life or person of some individual, or the safety of some house belonging to another will be endangered, the owner, if he burn the same, is guilty of arson, and shall be punished accordingly. (O. C. 690.)

See Kelley v. S., 70 S. W. 20; Arnold v. S., 168 S. W. 122; Johnson v. S., 197 S. W. 995.

Art. 1209. (765) Part owner can not burn.—One of the part owners of a house is not permitted to burn it. (O. C. 691.)

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. (O. C. 694; Acts 1917, ch. 145, sec. 1.)

Art. 1211. (767) Burning a state building.—If any person shall wilfully burn the capitol building of the state, the treasury building or comptroller's office, the supreme court building, the executive mansion or the general land office, he shall be punished by confinement in the penitentiary for life. (O. C. 694.)

Art. 1212. (768) Attempt at arson.—If any person shall, by any means calculated to effect the object, attempt to commit the offense of arson, he shall be punished by confinement in the penitentiary not less than two nor more than seven years. (O. C. 708.)

CHAPTER TWO

OF OTHER WILFUL BURNING

Art. 1213. (769) Rules of arson applicable.—The rules and definitions, contained in the preceding chapter with respect to arson, apply also to wilful burnings under the provisions of this chapter, where they are not clearly inapplicable. (O. C. 697.)

Art. 1214. (770) Burning other buildings, hay, lumber, etc.—If any person shall wilfully burn any building, not coming within the description of a house, as defined in the preceding chapter, or shall wilfully burn any stack of corn, hay, fodder, grain or flax, or any pile of boards, lumber or wood, or any fence or other inclosure, the property of another, he shall be punished by confinement in the penitentiary not less than two nor more than five years, or by fine not exceeding two thousand dollars. (O. C. 698.)

See Wade v. S., 63 S. W. 878.

Art. 1215. (771) Ship, or other vessel, or boat.—If any person shall wilfully burn any ship or other vessel, or any boat of any kind whatsoever, he shall be punished by confinement in the penitentiary not less than two nor more than seven years, or by fine not exceeding two thousand dollars. (O. C. 699.)

Art. 1216. (772) Offense complete, when.—This offense is complete only when some person other than the person offending has an interest in the property by insurance or otherwise at the time the burning takes place. (O. C. 700.)

Art. 1217. (773) Bridge burning.—If any person shall wilfully burn any bridge, which, by law or usage, is a public highway, he shall be punished by imprisonment in the penitentiary not less than two nor more than seven years, or by fine not exceeding five thousand dollars. (O. C. 701; Acts 1858, p. 177.)

Art. 1218. (774) Burning woodland or prairie.—In any person shall wilfully or negligently set fire to, or burn, or cause to be burned, any woodland or prairie, not his own, he shall be punished by fine not less than fifty nor more than three hundred dollars. (O. C. 702; Acts 1883, p. 102.)

Art. 1219. (775) Offense complete, when.—The offense named in the foregoing article is complete where the person offending sets fire to his own woodland or prairie and the fire communicates to the woodland or prairie of another. (O. C. 703.)

Art. 1220. (776) Burning personal property insured.—If any person, with intent to defraud, shall wilfully burn any personal property owned by himself, which shall be at the time insured against loss or damage from fire, he shall be punished by confinement in the penitentiary not less than two nor more than five years. (O. C. 704; Acts 1858, p. 178.)

Art. 1221. (777) Burning personal property of another.—If any person shall wilfully burn any personal property belonging to another, the punishment for which is not otherwise provided for in this chapter, he shall be fined not exceeding two thousand dollars. (O. C. 705.)

See Stanton v S., 74 S. W. 771.

Art. 1222. (778) Punishment doubled in case of personal injury.—If any bodily injury less than death is suffered by any person by reason of the commission of any of the offenses named in this and the preceding chapter, the punishment may be increased by the jury so as not to exceed double that which is prescribed in cases where no such injury is suffered. (O. C. 706.)

Art. 1223. (779) When death ensues, murder.—Where death is occasioned by any of the offenses described in this and the preceding chapter, the offender is guilty of murder. (O. C. 707.)

Art. 1224. (780) Attempts at other wilful burning.—If any person shall, by any means calculated to effect the object, attempt to commit any of the offenses enumerated in this chapter, he shall receive such punishment as may be assessed by the jury, not to exceed one-half of the penalty which would have been affixed in case the offense attempted had been actually committed; provided, that, when the punishment shall be confinement in the penitentiary in no case shall the lowest term be less than two years. (O. C. 708; Acts 1858, p. 178.)

Art. 1225. (781) Wilfully firing grass in inclosure of another.—Any person who shall wilfully fire any grass within any inclosure, not his own, in this state, with intent to destroy the grass in such pasture, or any part thereof, or any person who shall fire the grass on the outside of any inclosure with the intent to destroy the grass in such inclosure, by the communication of said fire to the grass within, shall be deemed guilty of a felony, and, upon conviction, punished by confinement in the state penitentiary for a term of not less than two nor more than five years. (Acts 1884, pp. 66–67.)

Art. 1226. (782) Wilfully firing grass with intent to injure, etc.—If any person shall wilfully, and with intent to injure the owner or owners of the stock grazing thereon, set fire to any grass upon land not his own, with intent to destroy the same, he shall be confined in the state penitentiary for a period not less than one year nor more than three years. (Id.)

CHAPTER THREE

MALICIOUS MISCHIEF, [CRUELTY TO ANIMALS, TRESPASS, ETC.]

Art. 1227. (783) Wilfully sinking vessels, etc.—If any person shall wilfully and maliciously cast away, sink or destroy, in any way other than by fire, any vessel or boat which, together with its cargo, if any, shall be of the value of one hundred dollars or more, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years, or by fine not exceeding two thousand dollars. If the life of any person is lost by such act, the offender is guilty of murder. (O. C. 709; Acts 1858, p. 178.)

Art. 1228. (784) Destroying telegraph or obstructing message.—If any person shall intentionally break, cut, pull or tear down, misplace, or in any other manner injure any telegraph or telephone wire, post, machinery or other necessary appurtenance to any telegraph or telephone line, or in any way wilfully obstruct or interfere with the transmission of messages along such telegraph or telephone line, he shall be punished by confinement in the penitentiary not less than two nor more than five years, or by fine not less than one hundred nor more than two thousand dollars. (O. C. 710; Acts 1885, p. 10.)

See S. W. T. & T. Co. v. Priest, 72 S. W. 241.

Art. 1229. (785) Obstructing railroad tracks, etc.—If any person shall wilfully place any obstruction upon the track of any railroad, or remove any rail therefrom, or displace or interfere with any switch thereof, or in any way injure such road, or shall do any damage to any railroad, locomotive, tender or car, whereby the life of any person might be endangered, he shall be punished by imprisonment in the penitentiary not less than two nor more than seven years. If the life of any person be lost by such unlawful act, the offender is guilty of murder. (O. C. 711; Acts 1887, p. 14.)

See Cox v. S., 59 S. W. 903.

Art. 1230. (786) Killing animal to injure owner.—If any person shall wilfully kill, maim, wound, poison or disfigure any horse, ass, mule, cattle, sheep, goat, swine, dog or other domesticated animal, or any domesticated bird, of another, with intent to injure the owner thereof, he shall be fined not less than ten nor more than two hundred dollars. And in prosecutions under this article, the intent to injure may be presumed from the perpetration of the act. (O. C. 713; Acts 1858, p. 178.)

See Johnson v. S., 141 S. W. 524.

Art. 1231. (787) Cruelty to animals.—Every person who overdrives, wilfully overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, unnecessarily or cruelly beats, or needlessly mutilates or kills, or carries in or upon any vehicle, or otherwise in a cruel or inhumane manner, or causes or procures to be done, or who having the charge or custody of any animal unnecessarily fails to provide it with proper food, drink or cruelly abandons it, shall, upon conviction be punished by fine of not more than two hundred ($200.00) dollars. (O. C. 714; amended Acts 1901, p. 289;

Acts 1913, p. 168, ch. 88, sec. 1; Acts 1919, ch. 59, sec. 1.)

See Cryer v. S., 38 S. W. 203; Porter v. S., 86 S. W. 767; Johnson v. S., 141 S. W. 524; Hobbs v. S., 170 S. W. 1100.

Art. 1231a. Same; feeding and watering animals impounded.—Every person who shall impound, or cause to be impounded in any pound or corral under the laws of this State or of any municipality in this State, any animal, shall supply to the same during such confinement a sufficient quantity of wholesome food and water, and in default thereof, upon conviction, be punished by fine or not less than five nor more than fifty dollars. (Acts 1913, p. 168, ch. 88, sec. 2.)

Art. 1231b. Same; care of poultry or birds confined.—Every person who shall receive live fowls, poultry or other birds for transportation or to be confined on wagons or stands, or by the owners of grocery stores, commission houses, or other market houses, or by other persons when to be closely confined shall place same immediately in coops, crates or cages made of open slats or wire on at least three sides, and of such height, that the fowls can stand upright without touching the top, and shall have troughs or other receptacles easy of access at all times by the birds confined therein and so placed that their contents shall not be defiled by them, in which troughs or other receptacles clean water and suitable food shall be constantly kept; shall keep such coops, crates or cages in a clean and wholesome condition; shall place only such numbers in each coop, crate or cage as can stand without crowding one another, but have room to move around; shall not expose same to undue heat or cold; shall remove immediately all injured, diseased or dead fowls or other birds, and in default thereof shall, upon conviction, be punished by fine of not less than five nor more than two hundred dollars, or by both such fine and imprisonment, for each offense. (Id. sec. 4.)

Art. 1231c. Same; member of Humane Society may require arrests to be made.—Any member of the Texas State Humane Society may require the sheriff of any county, the constable of any precinct or the marshal or any policeman of any town or city, or any agent of said society authorized by the sheriff to make arrests for the violation of this Act, to arrest any person found violating any of the provisions of this Act, and to take possession of any animal cruelly treated in their respective counties, cities or towns. (Id. sec. 11.)

Art. 1231d. Same; definition of terms.—In this Act the word "animal" shall be held to include every living dumb creature; the words "torture" and "cruelty" shall be held to include every act, omission or neglect whereby unnecessary or unjustifiable pain or suffering is caused, permitted or allowed to continue, when there is a reasonable remedy or relief, and the words "owner" and "person" shall be held to include corporations, and the knowledge and act of agents and employés of corporations in regard to animals transported, owned, employed by or in custody of the corporation shall be held to be the knowledge and acts of such corporations. (Id. sec. 12.)

Art. 1231e. Same; repeal.—All Acts or parts of Acts in conflict with this Act are hereby repealed. (Id. sec. 13.)

Art. 1231f. Same; pending prosecutions.—Nothing in this Act shall be held to apply to or in any manner affect any indictment, trial, writ of error, appeal or other proceedings, judgment, or sentence in case of violation of the provisions of this Section by this Act repealed now pending in any court in this State, and the same shall be held, conducted and adjudged as provided by the law in force before this Act shall take effect. Any offense under the provisions of the Section by this Act repealed which shall have been committed before this Act takes effect shall be required to be prosecuted and punished in accordance with the law in force at the time of the commission of such offense. (Id. sec. 14.)

Art. 1232. (788) Using animals without consent of owner.—Any person who shall hereafter take and use, or take up and use, any horse, mare, gelding, mule, ox, cow, or any other dumb animal, the property of another, and without the consent of the owner thereof, shall be fined in any sum not less than ten nor more than one hundred dollars; provided, that nothing herein contained shall prevent a prosecution for the theft of such animal whenever the offense of which said party shall be guilty shall come within the meaning of that crime; provided, that this article shall not be construed as in any way to interfere with the laws regulating estrays. (Acts of 1879, p. 129; amended Acts 1899, p. 319.)

Art. 1233. (789) Removing buoy, etc.—If any person shall wilfully and mischievously remove any buoy, beacon, light or any other mark or signal erected for the purpose of indicating the channel in any bay, river, lake or other navigable water within the state, or shall erect any false buoy, beacon, light or mark or signal to indicate the channel in any such bay, river, lake or other navigable water, with intent to mislead or deceive, he shall be punished by confinement in the penitentiary not less than two nor more than five years, or by fine not exceeding two thousand dollars; and, if death occurs by reason of such unlawful conduct, the offender is guilty of murder. (O. C. 715; Acts 1858, p. 179.)

Art. 1234. (790) Robbing orchards, gardens, etc.—If any person shall take or carry away from the farm, orchard, garden or vineyard of another, without his consent, any fruit, melons or garden vegetables, he shall be fined in any sum not exceeding one hundred dollars. (Acts 1874, p. 55.)

See Grant v. Haas, 75 S. W. 342.

Art. 1235. (791) Destroying fruit, corn, etc.—If any person shall wilfully and mischievously injure or destroy any growing fruit, corn, grain, or other like agricultural products, or if any person shall wilfully or mischievously injure or destroy any real or personal property of any description whatever, in such manner as that the injury does not come within the description of any of the offenses against property otherwise provided for by this Code, he shall be punished by fine not exceeding one thousand dollars; provided, that when the value of the property

injured is fifty dollars or less, then, in that event, he shall be punished by fine not exceeding two hundred dollars. (O. C. 716; Acts 1889, p. 35.)

See Beaufler v. S., 38 S. W. 608; Todd v. S., 45 S. W. 596; Patterson v. S., 55 S. W. 338; Adams v. S., 81 S. W. 963; Price v. S., 92 S. W. 811.

Art. 1236. (791a) Introducing Johnson grass.—If any person in this state shall knowingly, wilfully, and with intent to injure, sow, scatter or place, on any land, not his own, the seed or roots of Johnson grass or Russian thistle, or wilfully and knowingly sell or give away any oats, hay, straw, seed or grain, containing or intermixed with the seeds or roots of Johnson grass, to any one who is ignorant of the fact that such seeds or roots are so contained in or intermixed with such oats, hay, straw, seed or grain, he shall be deemed guilty of a misdemeanor, and, on conviction thereof, he shall be punished by fine of not less than twenty-five dollars and not more than one thousand dollars. (Acts 1895, p. 160.)

See Clary v. Myers, 40 S. W. 633.

Art. 1237. (791b) Requisites of indictment.—In prosecutions under the preceding article, it shall not be necessary for the indictment to allege the name of the owner of the land, nor shall it be necessary for the state to prove the name of such owner, but it shall be sufficient to allege and prove that the land was not the property of the person accused. (Id.)

Art. 1238. (792) Injuring, etc., baggage.—Any baggage-master, express agent, stage or hack driver, or other common carrier, whose duty it is to handle, remove, transfer or to take care of trunks, valises, boxes or other baggage while loading, transporting, unloading, transferring, delivering, storing or handling the same, whether or not in the employ of any transportation company or common carrier, who shall maliciously or carelessly or recklessly break, injure or destroy the said baggage, shall be deemed guilty of a misdemeanor, and, on conviction, be fined a sum not exceeding one hundred dollars; provided, that a prosecution for a misdemeanor as provided in this article shall not be a bar to a civil action for damages. (Acts 1881, p. 17.)

Art. 1239. (793) Throwing stone or firing gun or pistol at railroad car, etc.—Any person who shall wilfully or maliciously throw a stone or other missile, or fire any gun, or pistol, at, against, or into, any engine, tender, coach, passenger car, whether moving or not, or any other car of any moving train on any railway, or any railway depot, or any private residence, school house, church house, court house, store house, hotel, or other public or private building, public or private tent, sail-boat or steam-boat, in this state, shall be deemed guilty of a misdemeanor, and, on conviction therefor, shall be fined in any sum of not less than five dollars nor more than one thousand dollars, or be confined in the county jail for any term of not less than ten days nor more than two years. During such term, such convict may be put to hard labor. (Act March 22, 1889; Amend. 1895, p. 161; amended Acts 1897, p. 41.)

See Lucas v. S., 37 S. W. 427.

Art. 1240. (794) Injuring fence, leaving open gates.—If any person shall break, pull down or injure, the fence of another without his consent, or shall wilfully and without the consent of the owner thereof open and leave open any gate leading into the inclosure of another, or shall knowingly cause any hogs, cattle, mules, horses or other stock to go within the inclosed lands of another without his consent, or shall tie or stake out, or cause to be tied or staked out, to graze within any inclosed lands not his own and without the consent of the owner, any horse, mule or other animal, he shall be fined in any sum not less than ten nor more than one hundred dollars, and, in addition thereto, may be imprisoned in the county jail not exceeding one year. (Acts 1873, pp. 41–42.)

See Klein v. S., 39 S. W. 369; Hankins v. S., 45 S. W. 807; Dickens v. S., 46 S. W. 246; Daly v. S., 48 S. W. 515; Broyles v. S., 55 S. W. 967; Gartrell v. S., 61 S. W. 487; Barber v. S., 63 S. W. 323; Dennis v. S., 66 S. W. 838; Pate v. S., 81 S. W. 737; McNeely v. S., 96 S. W. 1083; Becker v. S., 119 S. W. 95.

Art. 1241. Where stock law adopted, what constitutes offense.—Any person who shall wilfully turn out, or cause to be turned out, on land not his own or under his control, or who shall wilfully fail or refuse to keep up any stock, prohibited by law from running at large in any county or subdivision of any county in this state, in which the stock law has been adopted, or who shall wilfully allow such stock to trespass upon the land of another, in such county, or subdivision thereof, or who shall wilfully permit to run at large any stock of his own, or of which he is the agent, or of which he has the control, and not permitted to run at large in any county or subdivision of any county in this state, in which the stock law has been adopted, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by fine in any sum not less than five dollars and not more than fifty dollars. (Acts 1897, p. 112.)

See McElroy v. S., 47 S. W. 359; Robertson v. S., 63 S. W. 884; Fisher v. S., 160 S. W. 683; Neuvar v. S., 163 S. W. 58.

Art. 1242. (795) Wantonly and wilfully, etc., cutting, etc., fence.—Any person who shall wantonly or with intent to injure the owner, wilfully cut, injure or destroy any fence or part of a fence (without such fence is the property of the person so cutting or destroying the same) shall be deemed guilty of an offense, and, upon conviction therefor, shall be punished by confinement in the state penitentiary for a term not less than one nor more than five years. A fence, within the meaning of this law, is any structure of wood, wire, or of both, or of any other material, intended to prevent the passage of cattle, horses, mules, asses, sheep, goats or hogs; provided, however, that it shall constitute no offense for any person owning and residing upon land inclosed by the fence of another, who refuses permission to such person or persons so residing within said inclosure free egress and ingress to their said land, for said person or persons to open a passage way through said inclosure. (Acts 1884, p. 34.)

See Scott v. S., 56 S. W. 61.

Art. 1243. (796) Unlawful for owner of party fence to remove, etc.—Hereafter it shall be unlawful for any person who is a joint owner of any separating or dividing fence, or who is in any manner interested in any fence attached to, or connected with, any fence owned or controlled by any other person, to remove the same, except by mutual consent, or as hereinafter provided. (Act April 6, 1889, sec. 1.)

See Camp v. S., 92 S. W. 845.

Art. 1244. (797) Notice of intention to remove.—Any person who is the owner or part owner of any fences connected with or adjoined to any fences, owned in part or in whole by any other person, shall have the right to withdraw or separate his fence or part of fence from the fence of any other person or persons in this state; that such person who desires to withdraw or separate such fence from the fence of any other person shall give notice in writing to such person, his agent, attorney, or lessee, of his intention to separate or withdraw his fence or part thereof for at least six months prior to the time of such intended withdrawal or separation. Any person, failing to comply with the provisions of this article, shall be fined in any sum not less than two dollars nor more than fifty dollars, and every ten days shall constitute a separate offense for the violation of this article. (Id. sec. 2.)

See Camp v. S., 92 S. W. 845; Dennis v. S., 66 S. W. 838.

Art. 1245. (798) Notice requiring removal.—Any person who is the owner of any fence wholly upon his own land to which the fence of another is adjoined, or connected in any manner, may require the owner of any such fence to disconnect and withdraw the same back on his own land by first giving notice, in writing, for at least six months, to such person, his agent, attorney, or lessee, to disconnect and withdraw his fence back on his own land. Any person who shall negligently or wilfully fail to disconnect his fence and remove the same back upon his own land, after the expiration of said notice, shall be fined in any sum not less than ten nor more than fifty dollars; and each ten days' failure, after such notice shall constitute a separate offense for the violation of the provisions of this article. (Id. sec. 3.)

See Elkins v. S., 51 S. W. 372; Meissner v. S., 188 S. W. 977.

Art. 1246. (799) Dogging stock when fence insufficient.—Any owner, proprietor, lessee, or other person, in charge of cleared and cultivated land surrounded with an insufficient fence, or the agent or employé of such person, who shall, with fire-arms, dogs, or otherwise, maim, wound or kill any cattle, horses or hogs of another within such inclosure, or who shall cause or procure the same to be done, shall be fined not less than ten nor more than two hundred dollars. (Acts 1871, p. 10.)

See Lucas v. S., 37 S. W. 427; Cryer v. S., 38 S. W. 203; McCampbell v. S., 45 S. W. 711; Porter v. S., 86 S. W. 767; Hobbs v. S., 170 S. W. 1100.

Art. 1247. (800) (686) "Insufficient fence" defined.—An "insufficient fence," as used in the preceding article, means a fence less than five feet high, or with openings or crevices in some part thereof sufficiently large for the passage of the animal so maimed, wounded or killed.

Art. 1248. (801) Removing rock, earth, etc., from premises of another.—If any person shall knowingly enter upon the land or premises of another, and take or remove therefrom any rock, earth, sand, coal, slate or mineral of any description, without the consent of the owner of such land or premises, he shall be fined in any sum not exceeding one thousand dollars. (Acts 1876, p. 28.)

Art. 1249. When horses, mules, etc., are prohibited from running at large.—If any person or persons shall knowingly permit any horses, mules, jacks, jennets, and cattle to run at large in any territory in this state where the provisions of the laws of this state have been adopted prohibiting any of such animals from running at large, such person or persons shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than five dollars nor more than two hundred dollars. (Acts 1907, p. 123.)

Art. 1250. (802) Herding stock in half mile of residence.—If any person shall herd any drove of horses, mules, cattle, sheep, goats, or hogs, numbering more than five head, upon any land not his own, and within one-half mile of the residence of any citizen of this state, whenever the owner, lessee or legal representative of such land shall forbid such herding, and shall fail, neglect or refuse to remove such drove at once upon the request of such owner, lessee or legal representative; or whenever any person shall herd any such drove of horses, mules, cattle, sheep, goats or hogs upon the inclosed lands or pasture of another, or cause the same to be so herded, without the consent of such owner, lessee or legal representative, he shall be fined in any sum not exceeding one hundred dollars; provided, that this article shall not apply to droves which are driven through pastures, by the usual route of travel through such pastures, in the most direct and practicable route to any named point of destination, traveling at the greatest practicable speed, and where there is no public road leading to the point of destination; and provided, further, that no person shall be authorized, under the provisions of this article, to drive any drove or herd of stock of any kind into any inclosure belonging to another, for the purpose of grazing or holding such drove or herd of stock for any length of time whatever, without the consent of the owner, lessee or person in charge of such inclosure. This article shall not apply to herds or droves of stock while being held for shipment; provided, that the owner or agent of such stock shall pay the owner of the premises so herded upon, reasonable pasturage and all damages done by said stock. (Acts 1885, p. 29; amended Acts 1897, p. 183.)

See Broyles v. S., 55 S. W. 967.

Art. 1251. (803) Each hour a separate offense.—Each hour of delay, after notice given or request made, shall constitute a separate offense under the preceding article. (Acts 1873, p. 18.)

Art. 1252. (803b) Wilful destruction of irrigating canal, etc.—Any person who

shall wilfully or maliciously injure or destroy any irrigation canal or its appurtenances, or any irrigation reservoir, dam, well, or any of the appurtenances thereto to the extent of fifty dollars, or if said injury shall amount in value to fifty dollars, shall be deemed guilty of a felony, and for each offense shall be punished by confinement in the state penitentiary for not less than two nor more than ten years. (Acts 1895, p. 25.)

The act from which this article was derived was embraced in Title 73, chapter 2 of the Rev. St. 1911. That chapter was repealed by Acts 1913, ch. 171, sec. 101, and its subject matter, both civil and criminal, re-enacted. The criminal features of the new act are included in this compilation as arts. 837a-837p, ante. It would seem, therefore, that the above article (1252) is wholly superseded. See, also, art. 837, ante, which is an earlier enactment of the irrigation law. Art. 837, however, was amended in 1899.

Art. 1253. Obstructing or injuring county drain.—Any person who shall wrongfully or purposely fill up, cut, injure or destroy, or in any manner impair the usefulness of any canal, drain, ditch or water-course or other work constructed, repaired or improved, under the provisions of this Act [Civ. Stat. arts. 2567-2625] for the purpose of drainage or protection from an overflow of water, shall be deemed guilty of a misdemeanor, and, upon conviction, may be fined in any sum not exceeding one hundred dollars, or imprisoned in the county jail not exceeding two months. (Acts 1907, p. 88; Acts 1911, ch. 118, sec. 40.)

Art. 1254. Cut, destroy or injure levee.—Any person or persons who shall wrongfully or purposely cut, injure, destroy, or in any manner impair the usefulness of any levee or other reclamation improvement, 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 by imprisonment in the county jail for a period not exceeding one year; or by both such fine and imprisonment. (Acts 1909, p. 152; Acts 1915, ch. 146, sec. 40; Acts 1918, 4th C. S., ch. 44, sec. 58.)

Art. 1254a. Destroying or defacing corner, line, mark, etc., in connection with levee.—Any person or persons who shall wilfully destroy or deface any corner, line, mark, bench mark or other object fixed or established in connection with the work herein authorized, 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 by imprisonment in the county jail for a period of not less than thirty days, or by both such fine and imprisonment (Acts 1915, ch. 146, sec. 41; Acts 1918, 4th C. S., ch. 44, sec. 59.)

Art. 1255. (804) Entering upon inclosed land of another and hunt or take fish.—Any person who shall enter upon the inclosed land of another without the consent of the owner, proprietor or agent in charge, and therein hunt with firearms, or therein catch or take any fish from any pond, lake, tank or stream, or in other manner depredate upon the same, shall be punished by fine not less than ten nor more than one hundred dollars. Provided, that this article shall not apply to inclosures including two thousand acres or more in one inclosure. (Acts 1903, p. 159; Acts 1885, p. 80.)

See Ex parte Cox, 109 S. W. 369; Berry v. S., 156 S. W. 626; Patridge v. S., 170 S. W. 717.

Art. 1255a. Hunting on enclosed and posted lands containing 2000 acres or more.—That it shall be unlawful for any person or persons knowingly to hunt with firearms or dogs upon the enclosed and posted lands of another without the consent of the owner thereof where such lands are in use as agricultural lands or for grazing purposes, having cattle, horses, sheep or goats herding or grazing thereon. By enclosed lands is meant any structure for fencing either of wood or iron, or a combination of wood and iron, or wood and wire, or partly enclosed by a fence of iron or wood, or wood and iron, or wood and wire, and partly by water or streams, canon, brush, or rock or bluffs, or any of the islands; provided, same are used for pasturage or cultivation as designated herein; provided, the State shall prove in the trial of any case under this act, before a conviction shall be had, that all the lands in said enclosure is owned or leased by the owner or proprietor of such enclosure; where such lands are subject to purchase or lease; provided, that proof of ownership or lease may be made by oral testimony. (Acts 1899, p. 173, ch. 102, sec. 1.)

This article and the following articles (1255b-1255e) were omitted from the Revised Criminal Statutes of 1911, and are inserted in view of the decision of the Court of Criminal Appeals in Berry v. S., 156 S. W. 626.

Art. 1255b. Same; punishment; proviso.—That any person who shall knowingly, without the consent of the owner or agent enter the enclosed and posted lands of another and shall, with fire-arms or dogs, hunt on such lands, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not more than two hundred dollars; providing further, that nothing in this act shall prohibit any bona fide traveler, while traveling along a public road in an enclosure, from killing game within a distance of four hundred yards on either side of said road. (Id. sec. 2.)

See note under art. 1255a, ante.

Art. 1255c. Same; necessity of posting.—No person shall be liable to the penalty prescribed in the preceding article [art. 1255b] unless the owner or proprietor of such enclosure shall at each entrance thereto keep a notice in a conspicuous place, with the word "posted" plainly marked thereon, which shall constitute posting within the meaning of this act. (Id. sec. 3.)

See note under art. 1255a, ante.

Art. 1255d. Same; repeal.—Nothing in this act shall be construed to repeal the present law relating to enclosures of two thousand acres or less. (Id. sec. 4.)

See note under art. 1255a, ante.

Art. 1255e. Same; does not authorize hunting in enclosed farms.—Nothing in this act shall be held to authorize any person to hunt in any enclosure which is a farm, or in which are growing crops, without the consent of the owner or lessee of such enclosure. (Id. sec. 5.)

See note under art. 1255a, ante.

Art. 1256. Same; counties exempted.—That the following counties be and the same are hereby exempted and the provisions of

this Act shall not affect or be operative therein or in any county thereof, viz: Upton. That all laws and parts of laws in conflict with the provisions of this Act are hereby repealed. (Acts 1899, ch. 102, sec. 6; Acts 1903, ch. 123; Acts 1905, ch. 71a; Acts 1907, ch. 93; Acts 1909, ch. 23; Acts 1909, p. 135, ch. 80; Acts 1911, p. 90, ch. 50, sec. 1, superseding art. 1256, revised Pen. Code.)

Acts 1909, p. 135, ch. 80, had reference to Acts 1899, ch. 102, omitted from the revision of 1911, and inserted in this compilation as arts. 1255a-1255e, and not to Acts 1903, p. 159, from which art. 1255 was constructed. In view of the decision in Stevens v. S., 159 S. W. 505, art. 1256, as it appeared in Rev. Pen. Code, is omitted from this compilation, and Acts 1911, ch. 50, amendatory of Act 1909, p. 135, ch. 80, is inserted in its place, but in its proper relation.

Art. 1257. (806) Preventing the moving, etc., of railroad trains.—Any person or persons who shall, by force, threats, or intimidation of any kind whatever, against any railroad engineer or engineers, or any conductor, brakeman, or other officer or employé employed or engaged in running any passenger train, freight train, or construction train, running upon any railroad in this state, prevent the moving or running of said passenger, freight or construction train, shall be deemed guilty of an offense, and, upon conviction thereof, each and every person so offending shall be fined in a sum not less than one hundred dollars nor more than five hundred dollars, and also imprisoned in the county jail for any period of time not less than three months nor more than twelve months. (Acts 1887, pp. 72-73.)

Art. 1258. (807) Each day a separate offense.—Each day said train or trains mentioned in the preceding article are prevented from moving on their road, as specified in the preceding article, shall be deemed a separate offense, and shall be punished as prescribed in the preceding article. (Id.)

Art. 1259. (808) Wilfully injuring railroad, etc.—Any person who shall wilfully injure any railroad, locomotive engine, or tender, or baggage, passenger or freight car of any railroad in this state, so as to prevent the use of same, shall be punished by fine in any sum not less than one hundred dollars, and imprisoned in the county jail not less than three nor more than twelve months. (Id.)

Art. 1259a. Taking or driving motor vehicle belonging to another.—Whoever purposely takes, drives or operates, or purposely caused to be taken, driven or operated upon the public road, highway or other public place, any motor vehicle, bicycle, buggy, carriage or other horse driven vehicle, without the consent of the owner thereof shall, if the value of such motor vehicle, bicycle or other vehicle is thirty-five ($35.00) dollars or more, be imprisoned in the county jail for not less than six months nor more than one year, or if the value is less than that sum, be fined not more than two hundred dollars ($200.00), or imprisoned not more than thirty days, or both. (Acts 1913, p. 187, ch. 100, sec. 1, amended; Acts 1915, p. 160, ch. 105, sec. 1.)

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 of 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. (Acts 1917, ch. 207, sec. 31.)

Art. 1259b. Removing tools and parts from motor vehicle with intent to steal the same; receiving same.—Whoever shall maliciously or with intent to steal or without authority from the owner, unlawfully removes from any motor vehicle or bicycle any portion of the running or steering gear, pump, or any tire, rim, robe, cover, tube, clock, casing, radiator, fire-extinguisher, tool, lamp, starter, battery, coil, spring, gas or oil tank, bell or any signal device, speedometer, license, number, horn, box, basket, trunk or carrier, shield, hood, oiler, gauge, grease-cup, chain, lock, nut, bracket, valve, bolt, rod, cap, screws, wire, spark-plug, pipe, carbureter, magneto, fan, belt, cylinder, switch, brake, electric bulbs, or any device, emblem or monogram thereon or any attachment, fastenings or other appurtenances, or any other part or parts attached to said motor vehicle which are necessary in the use, control, repair or operation thereof, or whoever knowingly buys, receives or has in his possession, any of such articles or any part thereof so unlawfully removed as aforesaid, shall be imprisoned in the county jail not less than six months nor more than one year. (Acts 1913, p. 187, ch. 100, sec. 2.)

See post, art. 1259bb.

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. (Acts 1917, ch. 207, sec. 33.)

See ante, art. 1259b.

Art. 1259c. Meddling with or injuring motor vehicle.—Whoever purposely and without authority from the owner, shall start or cause to be started, the motor of any motor vehicle, or whoever purposely and maliciously shall shift or change the starting device or gears of a standing motor vehicle to a position other than that in which they were left by the owner or driver of said motor vehicle, or whoever shall purposely cut, mark, scratch or damage the chassis, running gear, body, sides, top, robe, covering or upholstering of a motor vehicle, the property of another. or shall purposely destroy any part thereof with or by any liquid or oth-

er substance, or shall cut, mash, mark, or in any other way destroy or damage the cylinder, radiator, steering gear, fire-extinguisher, fan, belt, valve, pipe, wire, cap, lamp, gas or oil tank, cup, signal, device, clock, chain, tool, coil, spring, speedometer, starter, battery, spark-plug, brake, tool box, oiler, pump, switch, nut, casing, tire, rim, tube, box, basket, trunk, or carrier, rod, bolt, shield, fender, bracket, gauge, glass, hood, lock, cap, screw, carbureter, magneto, license, number, electric bulb or any device, emblem, monogram or any other attachment, fastening or appurtenance of a motor vehicle, without the permission of the owner thereof, or whoever purposely shall drain or start the drainage of any radiator or oil tank upon a motor vehicle without permission of the owner thereof, or whoever purposely shall put any metallic or other substance or liquid in the radiator, carbureter, oil-tank, grease cup, oilers, lamps or machinery of a motor vehicle, with the intent to injure or damage the same or impede the working of the machinery, or whoever shall maliciously tighten or loosen any bracket, bolt, wire nut, screw, or other fastening on a motor vehicle, or whoever shall purposely release the brake upon a standing motor vehicle, with the intent to injure said machine, shall, upon conviction thereof, be imprisoned in the county jail for not less than six months or more than one year (Acts 1913, p. 187, ch. 100, sec. 3.)

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. (Acts 1917, ch. 207, sec. 34.)

Art. 1259d. Peddlers, etc., refusing to leave premises on request of owner.—If any person in this State, pursuing the business or occupation of a peddler, hawker, or itinerant vendor of goods, wares and merchandise, shall enter upon the premises owned or leased by another, and shall wilfully refuse to leave such premises, after having been notified by the person, or the agent of the person, owning or in possession of such premises, to leave such premises, he shall be guilty of a misdemeanor, and on conviction, he shall be fined in any sum not less than one dollar nor more than twenty-five dollars. (Acts 1913, p. 142, ch. 76, sec. 1.)

CHAPTER FOUR

OF INFECTIOUS DISEASES AMONG ANIMALS AND BEES

Art. 1260. (809) Failing to confine horses with glanders or farcy.—If any person shall wilfully and knowingly fail, neglect or refuse to place and keep in secure confinement, separate and apart from all other stock, any animal of the horse or ass species, diseased with glanders or farcy, belonging to him or subject to his control, he shall be fined not less than twenty-five nor more than two hundred dollars, or imprisoned in the county jail not less than ten days nor more than three months. (Acts Aug. 19, 1876, p. 211.)

Art. 1261. Sell or trade or offer to sell or trade animal affected with glanders.—If any person or persons shall trade or sell, or offer to trade or sell, any animal of the horse or ass species, known or suspected to be affected with glanders, he shall be fined in any sum not less than five nor more than one hundred dollars, or imprisoned in the county jail not less than ten days nor more than ninety days. (Acts 1897, p. 216.)

Art. 1262. Driving sheep affected with scab or other contagious diseases.—If any person owning or controlling sheep affected with the scab, or other infectious or contagious disease, shall drive or permit to be driven, such sheep over or along any public road or highway in this state, or shall drive such sheep so affected, or direct or permit such sheep so affected to be driven, on or over the inclosed lands of another without first obtaining the written consent of the owner or person in charge of such inclosed lands, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars. (Acts 1897, ch. 125, sec. 1; Acts 1909, p. 114.)

Art. 1263. (810) Using horse with glanders or farcy.—If any person shall ride, drive or in any manner use any animal of the horse or ass species diseased with glanders or farcy, knowing the same to be so diseased, he shall be punished as prescribed in the preceding article. (Act Nov. 8, 1866, p. 102.)

This article, when carried into the revised Penal Code, had been superseded by Acts April 12, 1892 (art. 1264, post). See Stevens v. S., 159 S. W. 505.

Art. 1264. (811) Penalty for riding or driving infected animals, etc.; cumulative of other laws.—Any person who may drive, lead or ride any animal infected with said diseases of glanders or farcy, knowing them to be so infected, on, along or across any public highway in this state, or allow any such animal so diseased (knowing them to be so diseased and owning such animal) to run at large on the open range of any county in this state, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than ten dollars nor more than two hundred dollars. (Act April 12, 1892, 22d Leg., S. S.)

Art. 1265. (812) Permitting sheep with scab to run at large.—If any person, owning or controlling sheep affected with the scab or other infectious or contagious disease, shall permit such sheep to run at large or in charge of any one beyond the limits of his own land, he shall be fined not exceeding one thousand dollars. (Act Dec. 28, 1861, p. 21.)

Art. 1265a. Failure to dip sheep affected with scab.—Any person having knowledge or notice of the existence of scab on any sheep owned or in charge of such person, who shall fail or refuse to dip in some preparation known to be effectual in curing scab, all flocks of sheep in which one or more such animals are so infected, within

twenty days after such knowledge or notice has been received, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than one hundred nor more than two hundred dollars; provided, that every successive twenty days of failure or refusal to dip such sheep, under the provisions of this section, shall be considered a separate offense. (Acts 1897, p. 179, ch. 125, sec. 2.)

Art. 1265b. Arrest of persons violating preceding article.—For the purpose of determining the existence of scab, under the provisions of this act, and to serve notice on persons as provided in Section 2 [Art. 1265a], the justice of the peace having jurisdiction, upon complaint of any person owning or having charge of sheep, supported by affidavit, as to his belief that a flock of sheep within such jurisdiction are infected with scab, shall forthwith issue order to a constable or some peace officer of his county, directing such officer to summon to his aid two persons having knowledge of scab, and to proceed with such persons and examine the sheep so designated, and to notify in writing the owner or person in charge of said sheep, of the result of such examination, and to return to the court of issue such order, showing how he has executed the same. (Id. sec. 3.)

Art. 1265c. Refusing to permit examination.—Any person refusing to permit the examination provided for in Section 3 of this Act [Art. 1265b], or to place the sheep in pens for such purpose, shall be deemed guilty of a misdemeanor, and upon conviction thereof, punished by fine of not less than one hundred nor more than two hundred dollars. (Id. sec. 4.)

Art. 1265d. Same; dismissal of cause or trial of complaint; defense; costs.—Upon return of the order provided for in Section 3 of this Act [Art. 1265b] the Justice of the Peace shall, if it states said sheep are not infected, or that they have been dipped, within ten days next preceding such examination, dismiss such cause. But if such order states said sheep are infected with scab and have not been dipped within the ten preceding days, said Justice of the Peace shall issue warrant of arrest forthwith, against the owner or person having said sheep in charge, and proceed as in other misdemeanor cases; provided, should defendant show, by competent testimony, that such infected sheep were held only on his own or accustomed range, and that he had dipped all flocks so infected, as provided in this act, within twenty days after receiving notice, or within ten days next preceding the serving of such notice, he shall upon payment of all accrued costs be discharged. (Id. sec. 5.)

Art. 1265e. Compensation of constable, witnesses, etc.; costs.—The constable or other peace officer and the person summoned to assist, shall receive as compensation for services performed under the provisions of this act, and for attendance at court as witnesses in such cases, the sum of two dollars and fifty cents per day for each day actually and necessarily so engaged, and such fees shall be taxed as costs against the owner of such sheep; and execution shall be issued; provided, in all cases where it is found such sheep are not infected or have been dipped within the ten days next preceding the examination so made, the costs and fees shall be taxed against the person who made the complaint, and execution shall so issue. (Id. sec. 6.)

Art. 1266. [Repealed by Acts 1917, ch. 60, sec. 23, ante, art. 7314q, Civil Statutes.]

Art. 1267. [Superseded.]

See art. 1267g.

Art. 1267a. Selling or buying sheep affected with scab.—That from and after the taking effect of this Act it shall be unlawful for any person, firm or corporation to sell or buy any sheep affected with scab. (Acts 1911, p. 7, ch. 5, sec. 1.)

Art. 1267b. "Scab" defined.—Scab in this Act is defined to be a disease or itch caused from a bug or parasite which works itself into the wool and flesh of the sheep, causing a crusted sore, injuring the wool and causing same to fall from the animal. (Id. sec. 1a.)

Art. 1267c. Importing sheep affected with scab.—That from and after the taking effect of this Act it shall be unlawful for any person, firm or corporation to import into this State any sheep affected with scab. (Act Dec. 28, 1861, p. 21; Acts 1897, ch. 125, sec. 1; Acts 1905, p. 222; Acts 1911, p. 7, ch. 5, sec. 2.)

Art. 1267d. Moving sheep affected with scab from one county to another.—That from and after the taking effect of this Act it shall be unlawful for any person, firm or corporation to move from one county to another in this State any sheep affected with scab. (Acts 1897, ch. 125, sec. 1; Acts 1905, p. 222; Acts 1911, p. 7, ch. 5, sec. 3.)

Art. 1267e. Moving sheep affected with scab within county.—That from and after the taking effect of this Act it shall be unlawful for any person, firm or corporation to move from one part of any county in this State to any other part of the same county any sheep affected with scab. (Id. sec. 4.)

Art. 1267f. Driving sheep affected with scab across land of another.—That from and after the taking effect of this Act it shall be unlawful for any person, firm or corporation to drive or cause to be driven on or across the lands of another any sheep affected with scab. (Acts 1897, ch. 125, sec. 1; Acts 1905, p. 222; Acts 1911, p. 7, ch. 5, sec. 5.)

Art. 1267g. Driving sheep affected with scab over public road.—That from and after the taking effect of this Act it shall be unlawful for any person, firm or corporation to drive along or over a public road any sheep affected with scab. (Acts 1876, p. 227; Acts 1897, ch. 125, sec. 1; Acts 1905, p. 222; Acts 1911, p. 7, ch. 5, sec. 6.)

Art. 1267h. Penalty for violation of preceding articles.—Any person, whether acting for himself or as agent for another person, firm or corporation, who shall violate Section 1, 3, 4, 5, or 6 of this Act [Arts. 1267a, 1267c–1267g] shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not less than one hundred dollars and not more than two hundred dollars. (Id. sec. 7.)

Art. 1267i. Penalty for violation of art. 1267b.—Any person, whether acting for

himself or as agent or employé of any other person, firm or corporation, who shall in person or by agent violate any of the provisions of Section 2 of this Act [Art. 1267b] shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than five hundred and not more than two thousand dollars. (Id. sec. 8.)

Art. 1268. Persons refusing to permit sheep to be examined.—Any person who shall refuse to permit his sheep to be examined for scab or other infectious diseases, or to place the sheep in pen for such purpose, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than fifty dollars nor more than one hundred dollars. (Acts 1905, p. 223.)

Art. 1269. [Repealed by Acts 1917, ch. 60, sec. 23, ante, art. 7314q, Civil Statutes.]

See post, art. 1284a.

Art. 1270. [Superseded by art. 1284a, post.]

Arts. 1271-1278. [Repealed by Acts 1917, ch. 60, sec. 23, ante, art. 7314q, Civil Statutes.]

See post, art. 1284a.

Art. 1279. (823) [Superseded by art. 1267g, ante.]

Art. 1280. (824) Importation of sheep with scab.—If any person shall drive or cause to be driven into this state from any other state or country, any sheep affected with scab or any other infectious or contagious disease, knowing the same to be so affected, he shall be fined not exceeding one thousand dollars. (Act Dec. 28, 1861, p. 21.)

Art. 1281. (824a) Bringing infected animal into the state.—Any person who shall knowingly bring into this state any domestic animal which is infected with any contagious or infectious disease, or any animal which has been exposed to any contagious or infectious disease, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than five hundred nor more than five thousand dollars. (Acts 1893, p. 72.)

Art. 1282. (824b) Obstructing live stock commissioner.—Any person who owns or is in possession of live stock, which is reported to be affected with any infectious or contagious disease, who shall refuse to allow the state live stock sanitary commissioners to examine such stock, or shall hinder or obstruct the said commissioners in any examination of, or in any attempt to examine, such stock, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars. (Id.)

Art. 1283. (824c) Owner permitting infected animal to run at large.—Any person who shall have in his possession any domestic animal affected with any contagious or infectious disease, knowing such animal to be affected, who shall permit such animal to run at large, or who shall keep such animal where other domestic animals, not affected by or previously exposed to such disease, may be exposed to its contagion or infection, or who shall ship, drive, sell, trade, or give away, such diseased animal or animals which have been exposed to such infection or contagion, or who shall move or drive any domestic animal in violation of any direction, rule, regulation, or order of the live stock sanitary commission of Texas establishing and regulating live stock quarantine, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars for each of such exposed or diseased domestic animals which he shall permit to run at large, or sell, ship, drive, trade or give away in violation of the provisions of this article; provided, that any owner of a domestic animal, which has been affected with or exposed to any contagious or infectious disease, may dispose of the same, after having obtained from the state live stock sanitary commissioners a bill of health for such animal or animals. (Id.)

Art. 1284. (824d) Penalties.—Except as otherwise provided in this law, any person who shall violate, disregard, or evade, or attempt to violate, disregard or evade, any of the provisions of this law, or who shall violate, disregard, or evade, or attempt to violate, disregard, or evade, any of the rules, regulations, orders, or directions of the live stock sanitary commission, establishing and governing quarantine, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than one hundred nor more than five thousand dollars.

The above provision constitutes section 13 of Acts 1893, p. 70, relating to the Live Stock Sanitary Commission, and, hence, it applies only to the three preceding articles.

Art. 1284a. Powers of Live Stock Sanitary Commission; quarantine regulations; inspection and dipping of sheep affected with scab; refusal of owner to permit dipping; cost of dipping and recovery thereof from owner; inspectors; compensation.—It shall be the duty of the Commission provided for in Article 7312 [Rev. Civ. St. 1911] to protect the domestic animals of this state from all contagious or infectious diseases of a malignant character, including cholera in hogs, whether said diseases exist in Texas or elsewhere; and for this purpose they are hereby authorized and empowered to establish, maintain and enforce such quarantine lines and sanitary rules and regulations as they may deem necessary. It shall also be the duty of said Commission to co-operate with livestock quarantine commissioners and officers of other states and territories, and with the United States Secretary of Agriculture, in establishing such interstate quarantine lines, rules and regulations as shall best protect the livestock industry of this state against Texas or splenetic fever and scabbies in sheep. It shall be the duty of said Commission upon receipt by them of reliable information of the evidence among the domestic animals of the state of any malignant disease, including scabbies in sheep and cholera in hogs, to go at once to the place where any such disease is alleged to exist and make a careful examination of the animals believed to be affected with any such disease, and ascertain, if possible, what, if any, disease exists among the livestock reported to be affected and whether the same is contagious or infectious; and if said disease is found to be of a malignant contagious or infectious

character, they shall direct and enforce such quarantined lines and sanitary regulations as are necessary to prevent the spread of any such disease. And no domestic animal infected with disease, or capable of communicating same, shall be permitted to enter or leave the district, premises or grounds so quarantined, except by authority of the Commission. The said Commission shall also, from time to time, give and enforce such directions and prescribe such rules and regulations as to separating, feeding and caring for such diseased and exposed animals as they shall deem necessary to prevent the animals so affected with such disease from coming in contact with other animals not so affected. And the said Commissioners are hereby authorized and empowered to enter upon any grounds or premises, to carry out the provisions of this Act. If scab or scabbies are found in any flock of sheep when same is inspected, which inspection shall be made whenever the Commission may receive information by notification by any citizen or otherwise that scab probably exists, any member of said Commission, or an inspector appointed by said Commission, shall have the power, and he is hereby given the power, to inspect and dip said sheep at the owner's expense; and if any owner or owners shall refuse to permit said sheep to be dipped after having been examined and condemned by said Commission, he shall be fined in any amount not less than fifty dollars, nor more than two hundred dollars, and if any owner or owners shall refuse to pay the actual cost of said dipping, the Commission, as hereinbefore provided, shall have the right to bring civil action against such owner or owners, in the county where said sheep are so inspected, for the sum or sums actually paid out as the expense of said inspection and dipping; provided, that in case the Live Stock Sanitary Commission shall not have sufficient number of inspectors to execute the provisions of this law, then the Commission may appoint a resident sheep inspector to serve in one or more counties whenever it is necessary to do so, provided the Commissioners Court in said county or counties shall agree to pay the salary of said inspector, or their pro rata of said salary based upon the number of sheep in each county as shown by the tax roll of said counties, where the duties of inspector are performed in more than one county. Said inspectors shall be paid a salary of not less than twenty-five dollars per month nor more than one hundred dollars per month. Such inspectors shall be practical and experienced sheepmen; they shall be under the exclusive control of the Livestock Sanitary Commission, and shall be subject to removal by said Livestock Sanitary Commission, or either of said Commissioners, whenever said Commission or Commissioners shall deem necessary to do so. (Acts 1883, ch. 54; Acts 22d Leg. p. 140; Acts 1911, ch. 5; Acts 1913, ch. 169, sec. 1; Acts 1913, ch. 176, secs. 1–3; Acts 1915, p. 167, ch. 111, sec. 1, amending art. 7314, Rev. St. 1911.)

Acts 1917, ch. 60, sec. 23 (set forth ante as art. 7314q, Civ. St.), 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, secs. 1-3, and Acts 1915, ch. 111, sec. 1, it is no doubt superseded by the said act of 1917.

Arts. 1284aa-1284h. [Repealed by Acts 1917, ch. 60, sec. 23, set forth ante as art. 7314q, Civil Statutes.]

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. (Acts 1917, ch. 60, sec. 6.)

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 of this Act, [Arts. 7314e and 7314g, Civ. St., ante] 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. (Acts 1917, ch. 60, sec. 11; Acts 1917, 1st C. S., ch. 12, sec. 1.)

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. (Acts 1917, ch. 60, sec. 15.)

Art. 1284*l*. 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. sec. 16.)

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. sec. 22.)

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. (Acts 1917, 1st C. S., ch. 12, sec. 1.)

Arts. 1285-1288. [Amended.]

See post, arts. 1288a-1288o.

Art. 1288a. State entomologist; duties and powers; assistants and inspectors; annual report.—That for the purpose of carrying out the provisions of this Act, the entomologist of the Agricultural Experiment Station of the Agricultural & Mechanical College of Texas shall be the State Entomologist of this State, and as such it shall be his duty to enforce the provisions of this Act and to issue such rules, regulations, etc., as are hereinafter required. As State Entomologist he shall receive no fees or remuneration other than his regular salary as Entomologist of the Experiment Station and State Entomologist; provided, that he may be reimbursed for necessary expenses incurred in discharge of his duties as State Entomologist. He shall employ such assistants and inspectors as may be necessary, subject to the approval and confirmation of the Director and Governing Board of the Texas Agricultural Experiment Station. He shall make an annual report to the Director and Governing Board of the Experiment Station, such report giving a detailed account of all funds received and disbursed, and for what purpose, as well as a full report upon all prosecutions, etc., made under the provisions of this Act. (Acts 1903, ch. 126, amended; Acts 1913, p. 96, ch. 51, sec. 2.)

Art. 1288b. Power to deal with diseases; prohibiting shipments into state.—The said State Entomologist shall have full and plenary power to deal with all contagious or infectious diseases of honey bees which, in his opinion, may be prevented, controlled or eradicated; and shall have full power and authority to make, promulgate and enforce such rules, ordinances, orders and regulations, and to do and perform such acts as, in his judgment, may be necessary to control, eradicate or prevent the introduction, spread or dissemination of any all contagious diseases of honey bees as far as may be possible, and all the rules, ordinances, orders and regulations of said State Entomologist shall have the force and effect of law in so far as they conform to the General Laws of this State and the United States. The State Entomologist, in the exercise of the power and authority herein delegated, shall have authority to prohibit the shipment or bringing into this State of any honey bees, honey, honeycomb, or articles or things capable of transmitting contagious or infectious diseases of bees, from any state, territory or foreign country except under such rules and regulations as may be adopted and promulgated by said State Entomologist. (Id. sec. 3.)

Art. 1288c. Bees shipped into state to be accompanied by certificate of official entomologist of state of shipment; shipper to file certified copy; evidence in lieu of certificate; confiscation, etc.—All honey bees shipped or moved into this State shall be accompanied by a certificate of inspection signed by the State Entomologist or State Foul Brood Inspector of the state or country from which shipped. Such certificate shall certify to the apparent freedom of the bees, and their combs and hives, from contagious and infectious diseases and must be based upon an actual inspection of the bees themselves within a period of sixty days preceding date of shipment. The shipper of such bees is hereby required to file with the State Entomologist at College Station, Texas, at least ten days in advance of such shipment, a certified copy of said certificate, together with the names and addresses of both consignor and consignee; provided, that when honey bees are to be shipped into this State from other states or countries wherein no official apiary inspector or state entomologist is available, the State Entomologist of Texas may issue permit for such shipment upon presentation of suitable evidence show-

ing such bees to be free from diseases. Shipments of bees arriving at points within this State, not accompanied by the certificate herein described, shall be subject to confiscation and destruction by the State Entomologist or his assistants. This requirement shall not apply to shipments of live bees in wire cages, when without combs or honey. (Id. sec. 4.)

Art. 1288d. Carriers not to accept shipments except under regulations.—It shall be unlawful for railroad companies, express companies and other common carriers to accept for shipment, between points within this State, any honey bees, used honey combs, used bee hives or fixtures, except under such regulations and provisions as the State Entomologist shall prescribe. (Id. sec. 5.)

Art. 1288e. Authority to declare protective quarantine, etc.—The State Entomologist shall have authority to declare a protective quarantine in any district, county, precinct or other defined area wherein foul brood or other contagious disease of bees is not known to exist, or wherein any disease of bees is being eradicated in accordance with the provisions of this Act, said quarantine to prohibit the movement or shipment, into said district, county, precinct or other area, of any bees, honey, appliances or other things capable of transmitting the disease or infection, except under such rules and regulations as he shall prescribe. (Id. sec. 8.)

Art. 1288f. Authority to place restrictive quarantine, etc.—The State Entomologist shall have authority when, in his opinion, public welfare and necessity require it, to place a restrictive quarantine upon any district, county, precinct or other defined area wherein are located any honey bees infected with contagious or infectious disease, said quarantine to prohibit the movement or shipment therefrom of any bees, honey, appliances or other things capable of transmitting the infection, except under such rules and regulations as he shall prescribe. (Id. sec. 9.)

Art. 1288g. Queen bees not to be sold without copy of certificate, etc.—Queen bees and their attendant bees shall not be sold or offered for sale in this State unless accompanied by a copy of a certificate from a State or Government entomologist or apiary inspector to the effect that the apiary from which said queen bees are shipped has been inspected within the preceding twelve months and found apparently free from contagious and infectious diseases, or by a copy of a statement by the beekeeper made before a notary public or other officer having a seal that the bees are not diseased to the best belief of affiant and that the honey used in making the candy contained in the queen cage has been diluted and boiled for at least thirty minutes in a closed vessel. (Id. sec. 10.)

Art. 1288h. Violation of provisions, etc., a misdemeanor; prosecutions; injunctions; duties of attorney general and district attorneys; production of documents; witnesses; duties of sheriffs and constables, etc.—Any person, firm or corporation violating any of the provisions of this Act, or violating any of the rules, quarantines, orders or regulations of the State Entomologist issued in accordance with the provisions of this Act, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be fined in any sum not less than twenty-five nor more than two hundred dollars. All prosecutions under this Act shall be commenced and carried on in any county of the State affected by the violation of said orders, quarantines, rules or regulations, and the said State Entomologist may enjoin any threatened or attempted violation of his orders, quarantines, rules or regulations in any court of competent jurisdiction, or take any other civil proceedings necessary to carry out and enforce the provisions of this Act. It shall be the duty of the Attorney General and the various county and district attorneys to represent said State Entomologist whenever called on to do so; and said State Entomologist, in the discharge and enforcement of the duties and powers herein delegated, shall have the authority to compel the production for examination by said State Entomologist, or any one designated by him, of all books, papers and documents in the possession of any person; to take testimony, and compel the attendance and examination under oath of witnesses; and it is hereby made the duty of the various sheriffs and constables throughout the State to serve all papers, orders, summons and writs, that may be delivered to them by said State Entomologist and to protect the State Entomologist or his assistants or inspectors in the discharge of their duties, as herein defined whenever called upon to do so. The said State Entomologist is authorized when necessary to apply to any court of competent jurisdiction for the necessary writs and orders to enforce the provisions of this Article, and in such cases he shall not be required to give bond. (Id. sec. 11.)

Art. 1288i. Entomologist to publish directions, rules and information, etc.—For the purpose of disseminating knowledge regarding honey bees and their diseases, the State Entomologist shall publish methods and directions for treating, eradicating or suppressing contagious or infectious diseases of honey bees, including the rules and regulations provided for in Sections 2, 3, 5, 8 and 9 [arts. 1288a, 1288b, 1288d–1288f] and such other information as he shall deem of value or necessity to the beekeeping interests of the State. (Id. sec. 12.)

Art. 1288j. Bees affected with foul brood, etc., to be reported by owner, etc.—If any owner of, or any person having control or possession of any honey bees in this State, knows that any bees so owned or controlled are affected with American foul brood, or any other contagious or infectious disease, or knows of any other bees so diseased, it shall be and is hereby made his duty to at once report such fact to the State Entomologist at College Station, Texas, setting out in his said report all the facts known with reference to said infection. (Id. sec. 13.)

Art. 1288k. Power to transfer bees to movable frame hives, etc.—The State Entomologist shall have full power in his discretion to order any owner or possessor of bees dwelling in hives without movable frames, or not permitting of ready examina-

tion, to transfer such bees to a movable frame hive within a specified time. In default of such transfer the State Entomologist may destroy, or order destroyed, such hives, together with the honey, frames, combs and bees contained therein, without recompense to the owner, lessee or agent thereof. (Id. sec. 14.)

Art. 1288*l*. Penalty for sale or shipment of infected bees.—If any owner or keeper of any diseased colonies of bees shall barter, give away, sell, ship or move any infected bees, honey or appliances, or shall expose any other bees to the danger of infection of the disease, or shall refuse or neglect to make report as provided in Section 13 of this Act [Art. 1288j], he shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than twenty-five nor more than two hundred dollars. (Id. sec. 17.)

Art. 1288m. Exposing honey, etc., infected with foul brood.—It shall be unlawful for any person, firm or corporation to expose, on their own premises or elsewhere, any honey, hives, frames, combs, brood or appliances known to be infected by foul brood or other dangerous disease of bees in such a manner that honey bees may have access to same; and it shall be unlawful to sell, offer for sale, barter, give away, ship or distribute any honey taken from a colony or colonies of bees infected with foul brood or other infectious or contagious disease. Violation of this Section shall be deemed a misdemeanor and any person, firm or corporation convicted thereof shall be fined in any sum not less than twenty-five nor more than two hundred dollars. (Id. sec. 18.)

Art. 1288n. Preventing inspection or detection of disease.—Any one who shall seek to prevent any inspection of bees, honey or appliances under the direction of the State Entomologist, in accordance with this Act, or who shall seek or attempt to prevent the discovery or treatment of diseased honey bees, or who shall attempt to intimidate the State Entomologist, his assistants or inspectors, or otherwise interfere with them in the lawful discharge of their duties as herein defined shall be deemed guilty of a misdemeanor, and shall, upon conviction, be fined in any sum not less than twenty-five nor more than two hundred dollars. Prosecutions under the provisions of this Section shall be instituted in any county of the State in which the offense is committed. (Id. sec. 19.)

Art. 1288*o*. Disposition of fines.—All fines collected for prosecutions under the provisions of this Act shall be paid to the State Treasurer, to become a part of the fund for carrying out the provisions of this Act. (Id. sec. 20.)

CHAPTER FIVE

OF CUTTING AND DESTROYING TIMBER

Art. 1289. (825) Punishment for.—If any person, without the consent of the owner, shall knowingly cut down or destroy any tree or timber upon any land not his own, or shall knowingly, and without such consent, carry away any such timber, he shall be fined not less than ten nor more than five hundred dollars.

Art. 1290. (826) "Timber" and "owner" include what.—The word "timber," as used in the preceding article, includes rails or other articles maufactured from timber; and the word "owner" includes the state and any corporation public or private owning lands within this state.

Art. 1291. (827) Procedure in prosecutions.—In any prosecution under article 1289, the indictment or information need not allege the name of the owner of the timber, but it shall be sufficient for it to state that the timber was not the property of the accused; and it shall be sufficient to describe the land by the name of the owner, or of the original grantee, or by any name or names by which it may be commonly known in the neighborhood in which the alleged offense was committed.

Art. 1292. (828) Modes of proving ownership.—Upon the trial of any case coming within the provisions of article 1289, the state may prove the ownership of the land to be in some person other than the defendant by either of the following modes:

1. By the copy of a grant duly certified from the general land office.

2. By a deed, or a copy of a deed, or other evidence of title, duly certified, from the office of the clerk of the county court of the county where the prosecution is pending.

3. By a certificate from the comptroller's office, or from the assessor and collector of the county, that some person other than the defendant pays taxes on the land.

4. By verbal testimony of title, or of notorious use and possession of the land by some person other than the defendant; and such proof shall be held sufficient until contradicted by competent evidence on the part of the defendant that he is the owner of the land. (Act Feb. 12, 1858, p. 179.)

Art. 1293. (829) Road repairs, etc., not included.—Nothing in the foregoing articles of this chapter contained shall render any person guilty of an offense who cuts or uses timber for the purpose of making or repairing any public road or bridge passing over or immediately adjacent to the land on which such tree or timber may be found, or who uses a reasonable amount of wood standing outside of an inclosure for the purpose of making fires while traveling upon the road.

Art. 1294. (830) If the offense is theft, punishable as such.—Nothing contained in the foregoing articles of this chapter shall exempt a person from the penalty affixed to the offense of theft whenever timber is taken in such manner as to come within the definition of that offense.

Art. 1295. (831) Destroying pecan or walnut timber.—If any person shall cut down or otherwise destroy or injure any pecan or walnut tree on land not his own without authority in writing from the owner of such pecan or walnut tree, he shall be punished by fine of not less than twenty-five nor more than fifty dollars. (Act April 20, 1871, p. 42.)

Art. 1296. Gathering pecans or injuring pecan timber without consent of owner.—Any person who shall, hereafter, gather any pecan nuts upon inclosed land not owned, leased or controlled by him, unless it be made to appear in defense that it was

done by the consent of the owner, lessor or person in control, or any person who shall cut, destroy, or injure any pecan timber upon lands not his own, unless it be made to appear in defense that it was done with the consent of the owner thereof, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than five dollars and not more than three hundred dollars, or by imprisonment in the county jail not more than three months, or by both such fine and imprisonment. (Acts 1897, p. 53.)

Art. 1297. (832) Person floating timber shall brand same.—Any person engaged in floating or rafting timber upon the waters of any river or creek of this state shall have a log brand with which to brand every log or stick that he may float or haul and put into the waters for sale or market, the same to be distinctly branded. (Act April 7, 1879, p. 81, sec. 1.)

Art. 1298. (833) Shall have brand recorded.—He shall have said brand recorded in every county in which he cuts any of said timber, and in the county where he proposes to sell or market said timber, by the county clerk, in a book to be kept by said clerk for that purpose, for which said clerk shall receive a fee the same as is by law allowed for recording stock brands. (Id. sec. 2.)

Art. 1299. (834) Shall make report of logs cut, etc.—Any persons who float any logs or timber in this state shall, on the first day of April, first day of July, first day of October and the first day of January of each year, or within fifteen days of such dates, make a written report, under oath, showing the number of logs cut or floated during the next preceding three months, the survey or surveys of land from which they were cut or carried, and the number cut from each, and a description of the brand placed thereon, and shall file the same with the county clerk of the county in which the timber was cut; and such clerk shall record the same in a book kept for that purpose, and index it, and receive therefor the sum of fifty cents from the party presenting the same; provided, this act shall not apply to pickets, post, rails or firewood. (Id. sec. 3.)

Art. 1300. (835) Certificate of clerk evidence of ownership.—A certificate, under the hand of the county clerk, containing a description of a log brand and the name of the owner thereof, with a transfer on the back of it, signed and acknowledged by such owner or proved as other instruments for record, shall be prima facie evidence that the person to whom the transfer is made owns the logs described thereon. (Id. sec. 5.)

Art. 1301. (836) Offenses and punishment; definitions.—Any person who shall buy or sell any timber or log floating or that has been floated in this state, before the same has been branded, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not more than ten dollars for each log or piece of timber so purchased, sold or traded for. Any person who shall float any unbranded log or timber for market, or who shall fail to make the reports required by this act, or any person who shall brand any log or timber of another without his authority, or any person who shall deface any brand on any log or timber otherwise than when it is in the act of being sawed or manufactured into lumber or other commodity for use in building, or any person not an employé of the owner, who shall, without the written consent of the owner, take into possession any branded or unbranded log or timber cut for floating or sawing, or any sawed timber, lumber or shingle, floating in any of the waters of this state, or deposited upon the banks of any river or stream in this state, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by fine not exceeding two hundred dollars for each offense. By "lumber" is meant lumber attached or bound together in some way for floating, and not loose lumber, and by "shingles" is meant shingles in bunches or bundles, and not loose shingles. (Id. sec. 5.)

Art. 1302. (837) Venue.—The courts of the county in which the timber or lumber was deposited in the water, or in which it was unlawfully taken into possession or unlawfully defaced, sold, purchased or branded, as the case may be, shall have jurisdiction of the violation of the act or omission complained of or constituting an offense under this chapter. (Id. sec. 6.)

CHAPTER SIX
OF BURGLARY

Art. 1303. (838) "Burglary" defined.—The offense of burglary is constituted by entering a house by force, threats or fraud, at night; or in like manner by entering a house at any time, either day or night, and remaining concealed therein, with the intent in either case of committing a felony or the crime of theft. (O. C. 724; Acts 1897, p. 65; Acts 1876, p. 231.)

See St. Louis v. S., 59 S. W. 889; Cleland v. S., 61 S. W. 492; Gilford v. S., 87 S. W. 698; Jones v. S., 87 S. W. 1157; Summers v. S., 90 S. W. 310; Mason v. S., 100 S. W. 383; Reyes v. S., 102 S. W. 421; Lewis v. S., 114 S. W. 818; Railey v. S., 121 S. W. 1120; Sedgwick v. S., 123 S. W. 702; Malloy v. S., 126 S. W. 598; Rodgers v. S., 127 S. W. 834; Alinis v. S., 139 S. W. 980; Williams v. S., 162 S. W. 838; Stewart v. S., 174 S. W. 1077; Miller v. S., 189 S. W. 259; Miller v. S., 195 S. W. 192; Shackelford v. S., 203 S. W. 600.

Art. 1304. (839) Same subject.—He is also guilty of burglary who, with intent to commit a felony or theft by breaking, enters a house in the daytime. (O. C. 725; Acts 1876, p. 231.)

See Favro v. S., 49 S. W. 932; Cogshall v. S., 58 S. W. 1011; St. Louis v. S., 59 S. W. 889; Reyes v. S., 102 S. W. 421; Bates v. S., 99 S. W. 551; Martinez v. S., 103 S. W. 930; Lewis v. S., 114 S. W. 818; Railey v. S., 121 S. W. 1120; Sedgwick v. S., 123 S. W. 702; Malloy v. S., 126 S. W. 598; Winkler v. S., 126 S. W. 1134; Hopkins v. S., 135 S. W. 553; Fox v. S., 138 S. W. 413; Alinis v. S., 140 S. W. 227; Miller v. S., 195 S. W. 192.

Art. 1305. "Burglary of private residence" defined.—The offense of burglary of a private residence is constituted by entering a private residence by force, threats or fraud, at night, or in any manner by entering a private residence at any time, either day or night, and remaining concealed therein until night, with the intent, in either case, of committing a felony, or the crime of theft. (Acts 1899, p. 318.)

See Osborn v. S., 61 S. W. 491; Cleland v. S., 61 S. W. 492; Harvey v. S., 61 S. W. 492; Fonville v. S., 62 S. W. 573; Williams v. S., 62 S. W. 1057; Jones v. S., 80 S. W. 531; Gilford v. S., 87 S. W. 698; Jones v. S., 96 S. W. 44; Reyes v. S., 102 S. W. 421; Martinez v. S., 103 S. W. 930; Lewis v. S., 114 S. W. 818; Sedgwick v. S., 123 S. W. 702; Malloy v. S., 126 S.

W. 598; Rodgers v. S., 127 S. W. 834; Hopkins v. S., 135 S. W. 553; Alinis v. S., 139 S. W. 980; Alinis v. S., 140 S. W. 227; Miller v. S., 195 S. W. 192; Robinson v. S., 200 S. W. 162.

Art. 1306. (840) "Entry" defined.—The "entry" into a house, within the meaning of article 1303, includes every kind of entry but one made by the free consent of the occupant, or of one authorized to give such consent; it is not necessary that there should be any actual breakage to constitute the offense of burglary, except when the entry is made in the day time. (O. C. 725a.)

Art. 1307. (841) Further defined.—The entry is not confined to the entrance of the whole body; it may consist of the entry of any part for the purpose of committing a felony; or it may be constituted by the discharge of fire-arms or other deadly missile into the house, with intent to injure any person therein; or it may be constituted by the introduction of any instrument for the purpose of taking from the house any personal property, although no part of the body of the offender should be introduced. (O. C. 726.)

See Jones v. S., 87 S. W. 1157; Mason v. S., 100 S. W. 383; Railey v. S., 121 S. W. 1120; Boyd v. S., 124 S. W. 651; Shetters v. S., 147 S. W. 582; Miller v. S., 195 S. W. 192; Shackelford v. S., 203 S. W. 600.

Art. 1308. (842) "Breaking" defined.—By the term "breaking," as used in article 1304, is meant that the entry must be made with actual force. The slightest force, however, is sufficient to constitute breaking; it may be by lifting the latch of the door that is shut, or by raising a window, the entry at a chimney, or other unusual place, the introduction of the hand or any instrument to draw out the property through an aperture made by the offender for that purpose. (O. C. 727.)

See Jones v. S., 87 S. W. 1157; Mason v. S., 100 S. W. 383; Winkler v. S., 126 S. W. 1134; Hollis v. S., 153 S. W. 853; McNew v. S., 208 S. W. 528.

Art. 1309. (843) "House" defined.—A "house," within the meaning of this chapter, is any building or structure erected for public or private use, whether the property of the United States, of this state, or of any public or private corporation or association, or of any individual, and of whatever material it may be constructed. (O. C. 728.)

See Favro v. S., 46 S. W. 932; Clark v. S., 120 S. W. 892; James v. S., 140 S. W. 1086; Williams v. S., 162 S. W. 838; Robinson v. S., 200 S. W. 162.

Art. 1310. (844) "Day time" defined.—By the term "day time," is meant any time of the twenty-four hours from thirty minutes before sunrise until thirty minutes after sunset. (O. C. 737.)

Art. 1311. (845) Punishment.—The punishment for burglary shall be imprisonment in the penitentiary not less than two nor more than twelve years.

Art. 1312. Punishment for burglary of private residence.—The punishment for burglary of a private residence shall be by imprisonment in the penitentiary for any term of years not less than five. (Act 1899, p. 318.)

See Harvey v. S., 61 S. W. 492; Handy v. S., 80 S. W. 526; Reyes v. S., 102 S. W. 421; Lewis v. S., 114 S. W. 818; Malloy v. S., 126 S. W. 598; Hopkins v. S., 135 S. W. 553; Miller v. S., 195 S. W. 192.

Art. 1313. Burglary of private residence at night distinct offense.—Nothing in articles 1305 and 1312 shall be construed to alter or in any manner repeal articles 1303 and 1304, nor any part thereof, but shall be construed to make burglary of a private residence at night a separate and distinct offense from burglary, as defined in articles 1303 and 1304. (Id.)

Cleland v. S., 61 S. W. 492; Reyes v. S., 102 S. W. 421; Lewis v. S., 114 S. W. 818; Malloy v. S., 126 S. W. 598; Miller v. S., 195 S. W. 192.

Art. 1314. "Private residence" defined.—The term "private residence," mentioned in this and articles 1305 and 1313, shall be construed to mean any building or room occupied and actually used, at the time of the offense, by any person or persons as a place of residence. (Id.)

See Humphrey v. S., 40 S. W. 489; Robles v. S., 41 S. W. 620; Handy v. S., 80 S. W. 526; Reyes v. S., 102 S. W. 421; Lewis v. S., 114 S. W. 818; Parker v. S., 149 S. W. 108; Robinson v. S., 200 S. W. 162.

Art. 1315. Burglary with explosives.—Any person who shall commit burglary, as defined by the Penal Code of this state, and in the commission of the offense uses nitroglycerine, dynamite, gunpowder, or other high explosives, shall be deemed guilty of burglary with explosives. (Acts 1907, p. 210, sec. 1.)

Art. 1316. Punishment for same.—Any person who shall be convicted of burglary with explosives shall be punished by imprisonment in the state prison for not less than twenty-five years and not more than forty years. (Id. sec. 2.)

Art. 1317. (846) Other offenses committed after entry punishable.—If a house be entered in such manner as that the entry comes within the definition of burglary, and the person guilty of such burglary shall, after so entering, commit theft, or any other offense, he shall be punished for burglary, and also for whatever other offense is so committed. (O. C. 734; Acts 1858, p. 180.)

See Adams v. S., 62 S. W. 1059; Newton v. S., 143 S. W. 638; McDonald v. S., 156 S. W. 209; Park v. S., 179 S. W. 1152; Jennings v. S., 190 S. W. 733.

Art. 1318. (847) Same subject.—If the burglary was effected for the purpose of committing one felony, and the person guilty thereof shall, while in the house, commit another felony, he shall be punishable for any felony so committed as well as for the burglary. (O. C. 735.)

Art. 1319. (848) Actual breaking necessary in case of domestic.—An entry into a house for the purpose of committing theft, unless the same is effected by actual breaking, is not burglary when the same is done by a domestic servant or other inhabitant of such house; but a theft committed by such person after entering a house is punishable as in other cases. (O. C. 736.)

Art. 1320. (849) Attempt at burglary; how punished.—If any person shall attempt to commit the crime of burglary, he shall be punished by confinement in the penitentiary not less than two nor more than four years. (O. C. 737a; Acts 1860, pp. 100–101.)

See Summers v. S., 90 S. W. 310; Peters v. S., 154 S. W. 563; Stewart v. S., 174 S. W. 1077.

Art. 1321. (850) "Attempt" defined.—An "attempt" in the sense in which the word is used in the preceding article, is an endeavor to accomplish the crime of burglary carried beyond mere preparation, but falling

short of the ultimate design in any part of it. (O. C. 737b; Id.)

See Fonville v. S., 62 S. W. 573; Peters v. S., 154 S. W. 563.

CHAPTER SEVEN

OF OFFENSES ON BOARD OF VESSELS, STEAMBOATS AND RAILROAD CARS

Art. 1322. (851) Burglarious entry on board of vessel.—If any person, by any of the means enumerated in article 1303, shall at night enter any vessel, steamboat or railroad car, with intent to commit a felony or theft, he shall be punished by confinement in the penitentiary not less than two nor more than five years. (O. C. 738.)

See Summers v. S., 90 S. W. 310.

Art. 1323. (852) By actual breaking in daytime.—If any person shall, by breaking, enter a vessel, steamboat or railroad car in the daytime, with intent to commit a felony or theft, he shall be punished as prescribed in the preceding article. (O. C. 739.)

Art. 1324. (853) Other offenses committed after entry punishable.—If a vessel, steamboat or railroad car be entered in such manner as that the entry, if made in a house, would be burglary, and the person so entering shall commit theft or any other offense after entry, he shall be punished for the offense defined in article 851, and also for whatever other offense he may so commit. (O. C. 740.)

Art. 1325. (854) Rules, etc., of burglary applicable.—The definitions, rules and explanations of terms in the preceding chapter are applicable to such terms in this chapter; and the rules prescribed in articles 1303, 1304, 1305, 1306 and 1307 of the preceding chapter shall also apply to similar cases on board of a vessel, steamboat or railroad car. (O. C. 741.)

Art. 1326. (855) Theft by a servant on board punishable as such.—A theft on board a steamboat, vessel or railroad car, committed by a servant or employé, except in cases where there has been an actual breaking in, is punishable simply as theft. (O. C. 742.)

CHAPTER EIGHT

OF ROBBERY

Art. 1327. (856) "Robbery" defined and punished.—If any person by assault or violence or by putting in fear of life or bodily injury shall fraudulently take from the person or possession of another any property with intent to appropriate the same to his own use, he shall be punished by confinement in the penitentiary for life or for a term of not less than five years; and, when a firearm or other deadly weapon is used or exhibited in the commission of the offense, the punishment shall be death, or by confinement in the penitentiary for any term not less than five years. (Acts 1883, pp. 80-81; Acts 1895, p. 89.)

See Glenn v. S., 92 S. W. 806; Underwood v. S., 46 S. W. 245; Carroll v. S., 57 S. W. 100; Foreman v. S., 57 S. W. 845; Murdock v. S., 106 S. W. 374; Flannagan v. S., 116 S. W. 54; Green v. S., 147 S. W. 593; Robinson v. S., 149 S. W. 186; Coker v. S., 160 S. W. 366; Bell v. S., 177 S. W. 966; Goodman v. S., 177 S. W. 968.

Art. 1328. (857) Fraudulent acquisition of property by threats.—If any person, by threatening to do some illegal act injurious to the character, person or property of another, shall fraudulently induce the person so threatened to deliver to him any property, with intent to appropriate the same to his own use, he shall be punished by confinement in the penitentiary not less than two nor more than five years. (O. C. 744; Acts 1858, p. 180.)

See Davis v. S., 38 S. W. 792; Burnsides v. S., 102 S. W. 118.

CHAPTER NINE

OF THEFT IN GENERAL

Art. 1329. (858) "Theft" defined.—"Theft" is the fraudulent taking of corporeal personal property belonging to another from his possession, or from the possession of some person holding the same for him, without his consent, with intent to deprive the owner of the value of the same, and to appropriate it to the use or benefit of the person taking. (O. C. 745.)

See Hayes v. S., 38 S. W. 171; Lopez v. S., 40 S. W. 972; Sanders v. S., 42 S. W. 983; Spillman v. S., 44 S. W. 149; Beard v. S., 78 S. W. 348; Glascow v. S., 100 S. W. 933; Franklin v. S., 140 S. W. 1091; Ellington v. S., 140 S. W. 1100; Ellington v. S., 140 S. W. 1102; Smith v. S., 146 S. W. 547; Johnson v. S., 159 S. W. 849; McAdams v. S., 172 S. W. 792; Anderson v. S., 177 S. W. 85; Downs v. S., 194 S. W. 138; Federal Ins. Co. v. Munden, 203 S. W. 917.

Art. 1330. (859) Property must have some value.—The property must be such as has some specific value capable of being ascertained. It embraces every species of personal property capable of being taken. (O. C. 746.)

Sims v. S., 142 S. W. 572.

Art. 1331. (860) Asportation not necessary.—To constitute "taking," it is not necessary that the property be removed any distance from the place of taking; it is sufficient that it has been in the possession of the thief, though it may not be moved out of the presence of the person deprived of it; nor is it necessary that any definite length of time shall elapse between the taking and the discovery thereof; if but a moment elapse, the offense is complete. (O. C. 747.)

Art. 1332. (861) The "taking" must be wrongful.—The taking must be wrongful, so that if the property came into the possession of the person accused of theft by lawful means, the subsequent appropriation of it is not theft, but if the taking, though originally lawful, was obtained by any false pretext, or with any intent to deprive the owner of the value thereof, and appropriate the property to the use and benefit of the person taking, and the same is so appropriated, the offense of theft is complete.

Siemers v. S., 55 S. W. 334; Harris v. S., 65 S. W. 921; Johnson v. S., 80 S. W. 621; Flynn v. S., 83 S. W. 206; Lovell v. S., 86 S. W. 758; Lewis v. S., 87 S. W. 831; Price v. S., 91 S. W. 571; Bink v. S., 98 S. W. 249; Flagg v. S., 103 S. W. 855; Lewis v. S., 171 S. W. 217; Anderson v. S., 177 S. W. 85; Campos v. S., 207 S. W. 931.

Art. 1333. (862) Possession and ownership need not be in same person.—It is not necessary, in order to constitute theft, that the possession and ownership of the property be in the same person at the time of taking. (O. C. 749.)

Price v. S., 115 S. W. 586; Clark v. S., 125 S. W. 12.

Art. 1334. (863) Possession; how constituted.—Possession of the person so unlawfully deprived of property is constituted by the exercise of actual control, care and

management of the property, whether the same be lawful or not. (O. C. 750.)

Price v. S., 115 S. W. 586.

Art. 1335. (864) Theft of one's own property, when.—No person can be guilty of theft by taking property belonging to himself, except in the following cases:

1. Where the property has been deposited with the person in possession as a pledge or security for debt.

2. Where it is in the possession of an officer of the law by process from a court of competent jurisdiction.

3. Where the property is in the possession of an executor or administrator for the purpose of administration.

4. In all other cases where the person so deprived of possession is, at the time of taking, lawfully entitled to the possession thereof as against the true owner. (O. C. 751.)

See Kelly v. S., 70 S. W. 20; Lewis v. S., 97 S. W. 481; Chandler v. Bridges, 128 S. W. 694.

Art. 1336. (865) Part owner can not commit, unless.—If the person accused of the theft be part owner of the property, the taking does not come within the definition of theft, unless the person from whom it is taken be wholly entitled to the possession at the time. (O. C. 752.)

See Warren v. S., 100 S. W. 952.

Art. 1337. (866) "Property" defined.—The term "property," as used in relation to the crime of theft, includes money, bank bills, goods of every description commonly sold as merchandise, every kind of agricultural produce, clothing, any writing containing evidence of an existing debt, contract, liability, promise or ownership of property real or personal, any receipts for money, discharge, release, acquittance and printed book or manuscript, and, in general, any and every article commonly known as and called personal property, and all writings of every description; provided such property possesses any ascertainable value. (O. C. 753.)

Worsham v. S., 120 S. W. 439, 18 Ann. Cas. 134; Diaz v. S., 137 S. W. 377; Sims v. S., 142 S. W. 572; McAdams v. S., 172 S. W. 792.

Art. 1338. (867) Animals of domestic breed included.—Within the meaning of "personal property" which may be the subject of theft, are included all domesticated animals and birds, when they are proved to be of any specific value. (O. C. 755.)

See Hasley v. S., 94 S. W. 899.

Art. 1339. (868) Particular penalties exclude general punishment.—Theft of certain particular kinds of property, as of a horse, property wrecked, etc., have a punishment, affixed differing from the general punishment of the crime of theft; whenever, therefore, the law provides a particular punishment for theft committed in regard to a special kind of property, theft of such property is not included within the law affixing a general penalty to the offense; but in other cases, whenever it is declared to be an offense to steal or otherwise fraudulently appropriate property, the provision is intended to include any and every species of personal property according to its general and broadest signification. (O. C. 754.)

Art. 1340. (869) Theft of fifty dollars and over.—Theft of property of the value of fifty dollars or over shall be punished by confinement in the penitentiary not less than two nor more than ten years. (O. C. 756; Acts 1858, p. 181; Acts 1895, p. 15.)

Johnson v. S., 122 S. W. 877.

Art. 1341. (870) Petty theft; how punished.—Theft of property under the value of fifty dollars shall be punished by imprisonment in the county jail not exceeding two years, during which time the prisoner may be put to hard work on the county roads or otherwise, and by fine not exceeding five hundred dollars, or by such imprisonment without fine. (O. C. 757; Acts 1876, p. 242.)

Art. 1342. (871) General penalties not applicable, when.—The two preceding articles do not apply to theft of property from the person, nor to cases of theft of any particular kind of property where the punishment is specially prescribed. (O. C. 758.)

Art. 1343. (872) Voluntary return of stolen property.—If property, taken under such circumstances as to constitute theft, be voluntarily returned within a reasonable time, and before any prosecution is commenced therefor, the punishment shall be by fine not exceeding one thousand dollars. (O. C. 759; Acts 1858, p. 181.)

Art. 1344. (873) "Steal" or "stolen" include, what.—The words "steal" or "stolen," when used in this code in reference to the acquisition of property, include property acquired by theft. (O. C. 760.)

Art. 1345. (874) Stealing agricultural products.—The stealing or feloniously taking any growing, standing or ungathered Indian corn, wheat, cotton, potatoes, rice, or other agricultural product, shall hereafter be deemed theft; and any person who shall hereafter steal or feloniously take, pluck, sever or carry away any Indian corn, or wheat, cotton, potatoes, rice or other agricultural product, growing, standing or remaining ungathered in any plantation, field or other ground, shall, on conviction thereof, be deemed guilty of theft, and suffer punishment as in other cases of theft. (O. C. 761.)

Carson v. S., 121 S. W. 860.

Art. 1346. (875) Stealing record books or filed papers.—If any person shall take and carry away any record book or filed paper from any clerk's office, public office, or other place where the same may be lawfully deposited, or from the lawful possession of any person whatsoever, with intent to destroy, suppress, alter or conceal, or in any wise dispose of the same, so as to prevent the lawful use of such record book or filed paper, he shall be deemed guilty of theft, and punished by imprisonment in the penitentiary not less than three nor more than seven years. (O. C. 753a; Acts 1858, p. 181.)

See Williams' v. S., 100 S. W. 149.

Art. 1347. (876) Stealing from a wreck.—If any person, with intent to deprive the true owner of the value thereof, shall appropriate to his own use, or dispose of to his own benefit, any property taken or driven on shore from any vessel wrecked, stranded or burned on the seashore, or on any river, bay or harbor of the state, he

shall be punished by confinement in the penitentiary not less than two nor more than five years. (O. C. 770.)

Art. 1348. (877) Conversion by a bailee is theft.—Any person having possession of personal property of another by virtue of a contract of hiring or borrowing, or other bailment, who shall, without the consent of the owner, fraudulently convert such property to his own use with intent to deprive the owner of the value of the same, shall be guilty of theft, and shall be punished as prescribed in the Penal Code for theft of like property. (Acts 1887, p. 14.)

See Malz v. S., 37 S. W. 748; Yost v. S., 38 S. W. 192; Mangum v. S., 42 S. W. 291; Smith v. S., 42 S. W. 302; Von Senden v. S., 45 S. W. 725; Elton v. S., 50 S. W. 379; Caskey v. S., 50 S. W. 703; Elton v. S., 51 S. W. 245; Harrison v. S., 60 S. W. 963; Young v. S., 75 S. W. 798; McCarty v. S., 78 S. W. 506; Wilson v. S., 82 S. W. 652; Lewis v. S., 87 S. W. 831; Price v. S., 91 S. W. 571; Simpson v. S., 96 S. W. 925; Bink v. S., 98 S. W. 249; Jeffreys v. S., 103 S. W. 886; Maulding v. S., 108 S. W. 1182; Piper v. S., 119 S. W. 869; Brown v. S., 124 S. W. 101; Chandler v. Bridges, 128 S. W. 694; Whitaker v. S., 136 S. W. 1072; Johnson v. S., 159 S. W. 849; Lee v. S., 193 S. W. 313.

Art. 1349. (878) Receiving stolen property.—If any person shall receive or conceal property which has been acquired by another in such manner as that the acquisition comes within the meaning of the term theft, knowing the same to have been so acquired, he shall be punished in the same manner as if he had stolen the property. (O. C. 745a; Acts 1897, p. 26; Acts 1858, pp. 180–81.)

See Thurmon v. S., 40 S. W. 795; Trail v. S., 57 S. W. 92; Harris v. S., 57 S. W. 834; Johnson v. S., 60 S. W. 668; Meek v. S., 160 S. W. 698; Cuilla v. S., 187 S. W. 210; Bloch v. S., 193 S. W. 303.

CHAPTER TEN

OF THEFT FROM THE PERSON

Art. 1350. (879) Punishment for.—If any person shall commit theft by privately stealing from the person of another, he shall be punished by confinement in the penitentiary not less than two nor more than seven years. (O. C. 762.)

See Mathis v. S., 65 S. W. 523; Bush v. S., 109 S. W. 184.

Art. 1351. (880) Ingredients of the offense.—To constitute the offense it is necessary that the following circumstances occur:

1. The theft must be from the person; it is not sufficient that he property be merely in the presence of the person from whom it is taken.

2. The theft must be committed without the knowledge of the person from whom the property is taken, or so suddenly as not to allow time to make resistance before the property is carried away.

3. It is only necessary that the property stolen should have gone into the possession of the thief; it need not be carried away in order to complete the offense. (O. C. 763.)

See Clemmons v. S., 45 S. W. 911; Jones v. S., 46 S. W. 250; Roquemore v. S., 99 S. W. 547; Bush v. S., 109 S. W. 184; Bunch v. S., 194 S. W. 144; White v. S., 201 S. W. 186.

Art. 1352. (888) Attempt to commit the offense.—If any person shall attempt to commit the offense of theft from the person, as defined in the two preceding articles, he shall be punished by confinement in the penitentiary not less than one nor more than three years. (Acts 1909, p. 70; Acts 1866, p. 224.)

CHAPTER ELEVEN

THEFT OF ANIMALS

Art. 1353. (881) Theft of horse, etc.—If any person shall steal any horse, ass or mule, he shall be punished by confinement in the penitentiary not less than two nor more than ten years. (O. C. 765; Acts 1858, p. 181; Acts 1897, p. 83.)

See Lopez v. S., 40 S. W. 972; Mangum v. S., 42 S. W. 291; Crook v. S., 45 S. W. 720; Long v. S., 46 S. W. 821; Eastland v. S., 59 S. W. 167; Beard v. S., 78 S. W. 348; Brown v. S., 124 S. W. 101; Hudson v. S., 183 S. W. 886.

Art. 1354. (882) Theft of cattle.—If any person shall steal any cattle or hog, he shall be punished by confinement in the state penitentiary not less than two nor more than four years. (O. C. 766; Acts 1873, p. 80.)

See Dungan v. S., 45 S. W. 19; Brooks v. S., 47 S. W. 640; Arismendis v. S., 54 S. W. 599; Johnson v. S., 55 S. W. 576; Foster v. S., 56 S. W. 58; Welch v. S., 60 S. W. 46; Warren v. S., 105 S. W. 817; Whorton v. S., 152 S. W. 1082; Grider v. S., 198 S. W. 579.

Art. 1355. (883) Theft of sheep, goat, etc., how punished.—If any person shall steal any sheep or goat, he shall be punished by confinement in the state penitentiary for not less than two nor more than four years. (O. C. 766a; Acts 1905, p. 16.)

See Diaz v. S., 53 S. W. 632; McMullen v. S., 59 S. W. 891.

Art. 1356. (884) Wilfully driving stock from range, theft.—If any person shall wilfully take into possession and drive, use or remove from its accustomed range, any live stock not his own, without the consent of the owner, and with intent to defraud the owner thereof, he shall be deemed guilty of theft, and, on conviction, shall be confined in the penitentiary not less than two nor more than five years, or be fined in a sum not to exceed one thousand dollars, or by both such imprisonment and fine, at the discretion of the jury trying the case. (O. C. 766b; Acts 1866, p. 188.)

See Long v. S., 46 S. W. 821; Terry v. S., 66 S. W. 451; Hudson v. S., 183 S. W. 886.

Art. 1357. (885) Party may drive stock in range.—Nothing in the preceding article contained shall be construed to prevent any person from driving his own and other stock that may be mixed therewith to the nearest convenient point within the usual range of such stock, for separation. (O. C. 766c; Id. p. 187.)

Art. 1358. (886) What proof sufficient for the state.—In any prosecution under article 1356, it shall only be necessary for the state to prove the act of driving, using or removing from its accustomed range, any live stock not belonging to, or under the control of, the accused; and it shall devolve upon the accused to show any fact under which he can justify or mitigate the offense. (O. C. 766d; Id. p. 188.)

CHAPTER ELEVENA

THEFT OF MOTOR VEHICLES

Art. 1358a. Sale of motor vehicle with engine number removed or obliterated.—From and after the taking effect of this Act it shall be unlawful for any person,

or persons in this State to have or retain in his or their possession, or sell or offer to sell any motor vehicle from which the engine number has been removed or obliterated. Every such owner of a motor vehicle from which the engine number has been removed, erased, or destroyed in any manner, before using the same upon the public highways of this State, or selling or offering for sale any such motor vehicle, shall make application to the Highway Commission for an engine number, and the number assigned by the Highway Commission shall be stamped with a steel die on the engine of such motor vehicle. (Acts 1919, ch. 138, sec. 1.)

Art. 1358b. Record of engine numbers. —The State Highway Commission shall cause to be kept in the State Highway Department a separate register in which shall be recorded the engine number assigned to owners of motor vehicles, from which the original engine number has been removed, erased or destroyed in any manner, and before assigning any such number the Commission shall require the filing of an application for same, attested by oath of the applicant, that he is the owner of such motor vehicle, and such record shall disclose the name and address of the owner; the trade name and model of the motor vehicle; the year manufactured, and the engine number assigned, and shall be authorized to collect a registration fee of $2.00 for such services. (Id. sec. 2.)

Art. 1358c. Registration of motor vehicle with engine number removed or obliterated.—Any person who shall make an application to the county tax collector for the registration of any motor vehicle from which the original engine number has been removed, erased, or destroyed in any manner until it bears the new engine number designated by the State Highway Department under the provisions of Section 2 of this Act [Art. 1358b], shall be guilty of a misdemeanor and upon conviction shall be subject to fine of not less than $50.00, and not more than $100.00; and it shall be the duty of any person who has applied to and received from the State Highway Department a new engine number as herein provided, to present the receipt received for the registration of such new engine number from the Department to the County Tax Collector when applying for the registration of such motor vehicle under the provisions of the law and failure to so present such receipt to the county tax collector shall subject the owner of said motor vehicle to a fine of not less than $10.00, nor more than $50.00. Any tax collector who shall knowingly accept an application for the registration of a motor vehicle from which the original engine number has been removed, erased or destroyed in any manner, and which does not have on it the number designated by the Highway Department, shall be subject to a fine in a sum not less than $10.00, and not more than $50.00. (Id. sec. 3.)

Art. 1358d. Sale of motor vehicle without possession of receipt showing registration of engine number.—It shall be unlawful for any person acting for himself or any one else, to offer for sale or trade any second-hand motor vehicle in this State, without then and there, having in his actual physical possession the Tax Collector's receipt for the license fee issued for the year that said motor vehicle is offered for sale or trade. (Id. sec. 3a.)

Art. 1358e. Sale of motor vehicle without transferring license fee receipt.— It shall be unlawful to sell or trade any second-hand motor vehicle in this State without transferring by indorsement of the name of the person to whom said license fee receipt was issued by the Tax Collector and by physical delivery of the Tax Collector's receipt for license fee for the year that the said sale or trade is made. (Id. sec. 3b.)

Art. 1358f. Buying motor vehicle without demanding license fee receipt.— It shall be unlawful for any person acting for himself or another to buy or trade for, any second-handed motor vehicle in this State without demanding and receiving the Tax Collector's receipt for the license fee issued for said motor vehicle for the year that said motor vehicle is bought or traded for.

Any person violating the provisions of Sections 3a, 3b, [Arts. 1358d, 1358e] or 3c shall be guilty of a misdemeanor and upon conviction shall be fined in any sum, not less than Ten Dollars ($10) or more than Two Thousand Dollars ($2,000.00), or by confinement in the County Jail for any term less than one year, or both such fine and imprisonment, and all moneys collected for such fines shall be placed in the Road and Bridge Fund of the County in which the violation occurs and the penalty is recovered. (Id. sec. 3c.)

Art. 1358g. Sale of motor vehicle without bill of sale.—It shall be unlawful for any person, whether acting for himself or as an employé or agent to sell, trade, or otherwise transfer any second-hand motor vehicle without delivering to the purchaser a bill of sale in duplicate, the form of which is prescribed in this Act, one copy of which shall be retained by the transferee as evidence of title to ownership, and the other copy of which shall be filed by the transferee with the county tax collector as an application for transfer of license together with the lawful transfer fee of $1.00.

The following form of transfer shall be subscribed before a Notary Public:

Bill of Sale and Application for Transfer.

State of Texas, }
County of ——— }

Know all men by these presents that the ownership of the following described motor vehicle is hereby transferred by the undersigned to ——— for and in consideration of ——— and other valuable consideration.

Seal No. ——— State License No. ——— Name and Model and Year made ——— Engine No. ——— Horse Power (A. L. A. M.) ——— Transferee's name in full ——— Transferee's correct address in full ———

Before me, the undersigned authority personally appeared the vender of the vehicle described above, and, being duly sworn, deposes and upon oath states that the vehicle described is hereby transferred to the transferee named above.

——————— Vender.

Subscribed and sworn to before me this ——— day of ———, 191—

(Id. sec. 4.)

Art. 1358h. Record of work done on motor vehicles in garages, etc.—It shall be the duty of every person, firm or corporation engaged in the business of operating a repair shop or garage of every kind, within this State, where the repairing, rebuilding or repainting of automobiles is carried on, or electrical work in connection with the repair of automobiles is done and performed, and also it shall be the duty of every person, firm or corporation engaged in the business of the purchase and sale of second hand or used automobiles within this State, to keep a well bound book in the office or place of business where said work is carried on, or said business conducted, in which shall be kept, in a clear and intelligent manner, a register of each and every repair or change in any automobile of every description so repaired or dealt in, by any of the parties mentioned in this Act. Provided that repairs of a value not exceeding One ($1.00) Dollar are hereby excepted. (Id. sec. 5.)

Art. 1358i. Same subject; contents.—Said register shall contain a substantially complete and accurate description of each and every car upon which there is performed said repairs, or upon which there is installed any new parts or accessories of any character, and where the said car is bought or sold as a used car, the said register shall particularly show in each of the cases mentioned, the make of the automobile, the number of cylinders, motor number, passenger capacity, model, and also the name, apparent age and sex and any special identifying physical characteristics of the party or parties claiming to be the owner or owners of the automobile, his or their usual place of address, and the State register number of such automobile. In case of the sale of a used or second-hand car by any dealer, or the owner or proprietor of any garage, a like register shall be made as to the name and address and description of said purchaser, the character and description of said car and the state register thereof. Said registers provided for herein shall be kept in a secure place and be subject at all times to the inspection of any peace officer desiring to examine the same or any party or parties interested in tracing or locating stolen automobiles. (Id. sec. 6.)

Art. 1358j. Engine number to be stamped on new cylinder block.—Any owner of a motor vehicle registered in the State Highway Department, as provided by law, and of which motor vehicle the cylinder block has been so damaged as to make necessary the installation of a new cylinder block, shall cause the original engine number of the motor vehicle to be stamped with a steel die on the new cylinder block, and the garage or repair shop so installing the new cylinder block and impressing the number thereon, as herein provided, shall enter a record in a substantially bound book showing the aname of the owner of such motor vehicle and his address, the engine number, and the registration number of the motor vehicle. (Id. sec. 7.)

Art. 1358k. Inspection of records.—All records required to be kept by the provisions of this Act shall be reserved for a period of one year after the date recorded, and shall be open for the inspection of the public at all reasonable hours. (Id. sec. 8.)

Art. 1358*l*. Punishment for violations of act.—Anyone who shall fail to comply with any of the requirements of this Act as prescribed in Sections 1, 2, 3, 4, 7, and 8 [Arts. 1358a–1358c, 1358g, 1358j, 1358k] shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than ten ($10.00) dollars, nor more than One Hundred ($100.00) Dollars, and all such fines when recovered, shall be placed in the road and bridge fund of the county in which the violation occurs and the penalty is recovered. (Id. sec. 9.)

CHAPTER TWELVE

MISCELLANEOUS PROVISIONS RELATING TO THE RECOVERY OF STOLEN ANIMALS AND THE DETECTION AND PUNISHMENT OF THIEVES

Art. 1359. (887) Want of bill of sale prima facie evidence of illegal possession.—Upon the trial of any person charged with the theft of any animal of the horse, ass or cattle species the possession of such stolen animal by the accused, without a written transfer or bill of sale, containing a specific description of such animal, shall be prima facie evidence against the accused that such possession was illegal. (Acts 1886, p. 223; amended, Act 1899, p. 87.)

See Braun v. S., 49 S. W. 620.

Art. 1360. (888) Driving stock to market without bill of sale.—Any person who may be found in any county of this state driving to market any animals, such as are specified in the preceding article, and who has not in his possession a bill of sale or transfer for each and all of said animals, containing their marks and brands, or a list of such marks and brands of any of such animals as were raised by himself, both said bill of sale and list being duly certified as recorded by the clerk of the county court of the county from which such animals have been driven, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not exceeding two thousand dollars. (Id. p. 224.)

Art. 1361. (889) Butchering unmarked or unbranded animals.—If any butcher or other person, engaged in the slaughter of animals, shall kill, or cause to be killed, any unmarked or unbranded animal for market, or shall purchase and kill, or cause to be killed, any animal, without having taken a bill of sale or written transfer from the person selling the same, he shall be fined not less than fifty nor more than three hundred dollars. (Id.)

Art. 1362. (890) Not applicable to animals raised by butchers.—The preceding article shall not apply to the slaughter of any animal raised by the person slaughtering the same. (Id.)

Art. 1363. (891) Butcher failing to make report of animals slaughtered.—If any person engaged in the slaughter and sale of animals for market in any county, city, town or village in this state, shall fail to report to the commissioners' court of the county in which he transacts such business, at each regular term thereof, the number,

color, age, sex, marks and brands of every animal slaughtered by him since the last term of said court, accompanied with a bill of sale or written conveyance to him of every animal slaughtered; save such as were raised by himself, which shall be specified, he shall be punished by a fine of not less than fifty nor more than three hundred dollars. (Id.)

Art. 1364. Before engaging in business of slaughter and sale of animals, what is required.—Before engaging in the business of slaughter and sale of animals for market, every person, firm or corporation, desiring to so engage, must first register his name or their names with the county clerk, indicating their purpose to engage in such business, and, upon failure to so first register their names, they may be fined in any sum not less than five dollars nor more than twenty-five dollars. Provided, nothing in this law shall be construed to apply to slaughter houses in this state slaughtering as many as three hundred cattle per day. (Acts 1907, p. 240.)

Art. 1365. (892) Butchers and slaughterers required to file bond.—Every person, before he shall set up and carry on the trade or occupation of a butcher or slaughterer of cattle in the state of Texas, shall file a bond, to be approved by the county judge of the county in which he resides to carry on the business, in a sum not less than two hundred dollars, nor more than one thousand dollars, payable to the state of Texas, conditioned that he shall keep a true and faithful record, in a book kept for that purpose, of all cattle purchased or slaughtered by him, with a description of the animal, including marks, brands, age, color, weight and from whom purchased and the date thereof, that he will have the hide and ear of such animal inspected by the inspector, or some magistrate of the county, within twenty days after it is slaughtered, and that he will not purchase any cattle that has been slaughtered by another, unless the hide and ears of such slaughtered animal accompany said animal offered for sale, and that he will not purchase any animal that has been slaughtered by another, when the ear marks or brands on the hide accompanying such animal, when offered for sale, have been changed, mutilated or destroyed. (Act April 6, 1889, sec. 1; amend. Acts 1893, p. 38; amended, Acts 1899, p. 87.)

Art. 1366. (893) Penalty for failure to make such bond.—Every person who shall carry on the business of butcher or slaughterer of animals, without having filed with the clerk of the county court of the county in which he conducts such business the bond provided for in article 1365, shall be fined in any sum not less than five dollars nor more than two hundred dollars. (Id. sec. 2; amend. Id.; amended, Acts 1899, p. 87.)

Art. 1367. (894) Required to keep record of cattle purchased or slaughtered.—Every person who shall carry on the business of butcher or slaughterer of animals and shall fail to keep a true and faithful record, in a book kept for the purpose, of all cattle purchased and slaughtered by him, together with a description of each animal, including brand, age, color, weight and from whom purchased and the date of purchase, or shall fail to give the hide and ears of such animal or animals inspected by the inspector or some magistrate, within twenty days after such animal is slaughtered, shall be fined in any sum not less than twenty dollars nor more than two hundred dollars. (Id. sec. 3; amended, Acts 1899, p. 87.)

Art. 1368. (895) Penalty for purchasing slaughtered cattle, unless accompanied by hide and ears, etc.—Any person engaged in butchering or slaughtering, and who shall purchase any cattle that have been slaughtered by another without the hide and ears of such animal accompanying the same, or shall purchase any animal that has been slaughtered by another when the ear mark or brand on the hide accompanying the same, when offered for sale, have been changed, mutilated or destroyed, shall be fined in any sum not less than fifty nor more than two hundred dollars. (Id. sec. 4; amend. Id.; amended, Acts 1899, p. 87.)

Art. 1369. (896) The record provided for in article 1367 to be open for inspection.—The record provided for in article 1367 of this charter shall be open to the inspection of all parties; and any butcher refusing to permit such inspection at any reasonable hour shall be fined in any sum not exceeding twenty-five dollars. (Id. sec. 5; amended, Acts 1899, p. 87.)

Art. 1370. (897) Duty of county attorney.—In addition to the criminal prosecution that may be brought under this law, it is the duty of the county attorney to bring a civil action against any butcher or slaughterer of animals for any violations of the terms of the bond prescribed in article 1365. (Acts 1893, p. 38; amended, Acts 1899, p. 87.)

Art. 1371. (898) Inspector to keep record.—It shall be the duty of the inspector or magistrate to keep a record of the marks, brands, color and general description of such hides, and for whom inspected, with the date of inspection, and return a copy of the same to the clerk of the county court of the county in which it was inspected within thirty days after said inspection; and said inspector or magistrate shall be entitled to receive ten cents for each hide so inspected, to be paid by the party having the hide inspected; and any inspector or magistrate failing to keep such book, or failing to make such report as above provided for, may be fined in any sum not less than one dollar nor more than twenty-five dollars. (Id.; amended, Acts 1899, p. 87.)

Art. 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, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Hardin, Harris, Harrison, Hays, Henderson, Hill, Hopkins, Houston, 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. (Acts 1889, p. 84; Acts 1893, p. 38; Acts 1899, p. 87; Acts 1905, p. 104; Acts 1909, p. 74; Acts 1911, ch. 14, sec. 1; Acts 1915, ch. 65, sec. 1; Acts 1915, 1st C. S., p. 35, ch. 17, sec. 1; Acts 1917, ch. 150, sec. 1.)

Art. 1373. (901) Auctioneer selling animal without written statement, etc.—If any auctioneer or other person shall sell at auction any horse, mule or ox, without first requiring from the party for whom such sale is made, a written statement signed by him of the manner in which, and the name and residence of the person from whom, he acquired such animal, he shall be fined not less than fifty nor more than one hundred dollars. (Acts 1874, p. 98; amended, Acts 1899, p. 89.)

Art. 1374. (902) Auctioneer failing to report sales of animals.—If any auctioneer or other person shall sell at auction any horse, mule or ox, and shall fail, within ten days after such sale, to file with the clerk of the county court the written statement specified in the preceding article, duly attested with his certificate as to its genuineness, and accompanied with a further certificate containing an accurate description of the animal sold, together with the names and residences of the seller and purchaser, he shall be punished as prescribed in the preceding article. (Id.)

Art. 1375. This chapter not to apply to Karnes county.—The provisions of chapter 12, title 17, of the Penal Code, in so far as the same relate to and require the inspection by a magistrate, or an inspector, of the ears and hides of animals slaughtered by butchers, shall not apply to Karnes county. (Acts 1909, p. 132.)

CHAPTER THIRTEEN

ILLEGAL MARKING AND BRANDING AND OTHER OFFENSES RELATING TO STOCK

Art. 1376. (903) Illegal marking and branding.—Every person who shall mark or brand any horse, mule, ass or cattle, or who shall mark any sheep, goat or hog, not being his own, and without the consent of the owner, and with intent to defraud, shall be punished in the same manner as if he had committed a theft of such animal. (O. C. 767.)

See Childers v. S., 35 S. W. 654; Thompson v. S., 40 S. W. 997; Diaz v. S., 53 S. W. 632.

Art. 1377. (904) Altering or defacing mark or brand.—Every person who shall alter or deface the mark or brand of any horse, mule, ass or cattle, or shall alter or deface the mark of any sheep, goat or hog, not being his own property, and without the consent of the owner, and with intent to defraud, shall be punished in the same manner as if he had committed a theft of such animal. (O. C. 768; Acts 1858, pp. 181–82.)

Art. 1378. (905) Using mark or brand not on record.—If any person shall mark or brand any unmarked or unbranded stock with a mark or brand not upon record, he shall be punished by fine not exceeding five hundred dollars. (Acts 1866, p. 188.)

Art. 1379. (906) Same subject.—If any person shall alter or change any mark or brand upon any stock of his own, or that is under his control, without first having such changed mark or brand recorded, he shall be punished as prescribed in the preceding article. (Id.)

Art. 1380. (907) Killing unmarked or unbranded cattle.—If any person shall knowingly kill any unmarked or unbranded animal of the cattle species, or any unmarked hog, sheep or goat, not his own, he shall be fined not less than twenty-five nor more than one hundred dollars. (Id.)

Art. 1381. (908) (764) Procedure in prosecutions for.—In prosecutions under the preceding article, it shall only be necessary for the state to allege and prove that the animal killed was not the property of the accused, without stating or proving the true owner of such animal.

Art. 1382. (909) Skinning cattle.—If any person shall remove the hide, or any part thereof, from any cattle not his own, and without the consent of the owner, he shall be fined in a sum not less than twenty nor more than one hundred dollars; and the removal of each separate hide from each animal shall constitute a separate offense. (Acts 1866, p. 188; Acts 1887, p. 105.)

Art. 1383. (910) Having possession of hide without owner's consent.—If any person shall be found in possession of any hide of any cattle not his own, and possession of said hide is obtained without the consent of the owner or his legal representative, he shall be fined in a sum not less than twenty nor more than one hundred dollars. (Acts 1887, p. 105.)

Art. 1384. (911) Having possession of hide with brand cut out, etc.—If any person be found in possession of any hide of any cattle with brand cut out or disfigured, and shall offer the same for sale, he shall be fined in a sum not less than twenty nor more than one hundred dollars; and the possession and offer of sale of each hide with the brand cut out or disfigured shall constitute a separate offense; provided, that nothing in this act shall prevent any person who shall be guilty of the offense of theft of such hide from being prosecuted and convicted for such offense. (Id.)

Art. 1385. (912) Milking another's cow.—If any person, without the consent of the owner, shall take up, use or milk any cow, not his own, he shall, for every such offense, be punished by fine not exceeding ten dollars. (O. C. 769a; Acts 1866, p. 188.)

See Murray v. S., 78 S. W. 927.

Art. 1386. (913) Driving live stock from range.—If any person shall wilfully kill, or destroy, or drive, or remove from its accustomed range, any live stock, not his own, without the consent of the owner, under such circumstances as not to constitute theft, he shall, nevertheless, be guilty of a misdemeanor, and shall be punished by fine not exceeding one thousand dollars. (O. C. 766b; Acts 1866, p. 187.)

See Newport v. S., 77 S. W. 224.

Art. 1387. (914) Preceding article qualified.—Nothing in the preceding article shall be construed to prevent any person from driving his own and other stock, which

may be mixed therewith, until the same can be conveniently separated; provided, that nothing herein shall be construed to authorize any person under any circumstances to remove any live stock, not his own, from their usual range. (O. C. 766c; Id.)

Art. 1388. (915) Procedure in such cases.—In any prosecution under article 1386, it shall only be necessary to prove the act of killing, or destroying or driving, using, or removing from the range of any stock not belonging to, or under the control of, the accused; and it shall devolve upon the accused to show any fact under which he can justify or mitigate the offense. (O. C. 766d; Id.)

Art. 1389. (916) False pedigree and certificate in sale of animals; penalty.—Any person who shall knowingly and wilfully furnish or give to a purchaser of any animal any false pedigree or false certificate of sale of such animal, and every person who shall knowingly and wilfully use, for the purpose of deceiving, any false pedigree or false certificate of sale of any animal, whether such false pedigree or false certificate of sale was furnished, given or procured in this state or elsewhere, shall, upon conviction thereof, be punished by a fine in any sum not less than twenty-five nor more than five hundred dollars, or be imprisoned in the county jail for a term not exceeding six months, or by both such fine and imprisonment. (Acts 1891, p. 84, sec. 1.)

CHAPTER FOURTEEN

OFFENSES RELATING TO ESTRAYS

Art. 1390. (917) Unlawfully disposing of an estray.—If any person shall unlawfully remove, sell or in any other manner dispose of, any animal which has been taken up by him as an estray, he shall be punished by fine not exceeding two hundred and fifty dollars. (O. C. 775a; Acts 1858, p. 184.)

Art. 1391. (918) Taking up and using without complying with the law.—If any person shall, without complying with the laws regulating estrays, take up and use, or otherwise dispose of, any animal coming within the meaning of an estray, he shall be punished as prescribed in the preceding article. If the unlawful taking or disposition of an estray animal be effected in such manner as to come within the meaning of theft, the person guilty of the same shall be punished for that offense. (O. C. 775b; Id.)

See Williams v. S., 78 S. W. 928.

CHAPTER FIFTEEN

OFFENSES AGAINST LABELS, TRADE MARKS, ETC.

Art. 1392. (918a) Trade marks of carbonated goods, etc., how established.—All manufacturers or dealers in carbonated goods, mineral waters, soda water, wine, cider, or other beverage, or manufacturers of medicine or other compound requiring the use of kegs, casks, barrels, boxes, syphons, bottles, or any other vessels for containers, upon which the names, brands, marks, or trade marks, or other designation of ownership or proprietorship, is stamped, engraved, etched, blown in, impressed, or otherwise produced upon such boxes, syphons, bottles, or any other vessels for containers, may file in the office of the county clerk of the county in which the principal place or office of business is situated, a fac simile or description of the name or names, marks or devices, so used by such manufacturer or dealer in such wares herein enumerated, and cause such description to be published in a public newspaper published in such county for three successive weeks; and the act of so filing and causing to be recorded by the county clerk, and publishing, shall operate as a trade mark, securing to the said manufacturer the full protection of the law as a trade mark, entitling the said manufacturer to the sole and exclusive use in Texas of said mark, name, or device; for which services the clerk shall be allowed the sum of one dollar, to be paid by the party having such brands, etc., recorded.

Unlawful to use, etc., trade mark of another.—It is hereby declared to be unlawful for any person or persons, corporate or otherwise, other than the proprietor, or by his written consent, to fill, for the purpose of traffic, or for sale, with any compound whatever, any box, syphon, bottle or other container so marked, recorded in the office of the county clerk, and published as provided in this article, or to deface, erase, obliterate, cover up or otherwise remove or cancel any such mark or device. (Acts 1893, p. 125; amended, Acts 1901, p. 288.)

Art. 1393. (918b) Possession prima facie evidence, etc.—To knowingly and wilfully have in possession, otherwise than by contract with the proprietor of the goods herein enumerated, or with his duly accredited agents, any of the vessels in said article enumerated, or to use, buy, sell, or dispose of any such vessel, with or without contents of any kind, except by authority of the proprietor, or to wantonly and wilfully break, damage, mar, injure, or destroy any such vessel, is declared hereby to be prima facie evidence of such unlawful use, and shall constitute a misdemeanor, punishable by fine, upon conviction in a court of competent jurisdiction, an employé being equally liable with the principal so offending. (Id.)

Art. 1394. (918c) Penalties.—Any person violating any of the provisions of the two preceding articles shall be deemed guilty of a misdemeanor, and, upon conviction before a justice of the peace, shall be fined for such unlawful use of each and every box, five dollars, for each and every syphon, five dollars, for each and every bottle, five dollars, and for every other receptacle, except a fountain, five dollars, and for each fountain, twenty-five dollars; the fines so designated to be the minimum in each case, the maximum not to exceed double the minimum. (Id.)

Art. 1395. (918d) Counterfeiting trade mark, etc.; penalty.—Whenever any person, association, private corporations or union of working men, incorporated or unincorporated, have adopted, or shall hereafter adopt, for their protection any label, trade mark, design, device, imprint or form of advertisement, indicating that goods to which such label, trade mark, design, device, imprint, or form of advertisement, shall be attached, were manufactured by such person, association, private corporations or union, or

by a member or members of such association or union, it shall be unlawful for any person, inclusive of officers, agents, receiver or receivers of corporations, to counterfeit or imitate such label, trade mark, design, device, imprint or form of advertisement, or to use such counterfeit or imitation of such label, trade mark, design, device, imprint, or form of advertisement, knowing the same to be counterfeit or imitation, or to aid, assist, countenance or knowingly permit such counterfeit or imitation, or the use of such counterfeit or imitation, for his own use or benefit, or for the use or benefit of any corporation of which he may then be an officer, agent or receiver. Every person, whether in his individual capacity or as an officer, agent or receiver of a corporation, violating this article, shall, upon conviction, be punished by fine of not less than twenty-five nor more than one hundred dollars; and each day's violation of this article shall be considered a separate offense. (Acts 1895, p. 108.)

Art. 1396. (918e) Unlawfully using; penalty.—Every person, whether in his individual capacity or as the officer, agent or receiver of a corporation, who shall wilfully and knowingly use or display the genuine label, trade mark, design, device, imprint, or form of advertisement, or name of any such person, association or union, incorporated or unincorporated, not being authorized to use or display the same, or shall aid, assist, countenance or knowingly permit the use of same, not being authorized to use the same, shall, upon conviction, be punished by fine of not less than twenty-five nor more than one hundred dollars. (Id.)

Art. 1396a. Names or trade marks in milk cans, etc.; unlawful use of or refusal to return to owner.—It shall hereafter be unlawful for any person, other than the lawful owner or owners, for the purpose whatever, to fill with milk, cream, butter or ice-cream any milk can, milk bottle, milk jar, butter box, ice cream can or ice cream tub or to mutilate or destroy without the consent of the owner of same, or to wilfully refuse to return or deliver to such owner, upon demand, any such milk can, milk bottle, milk jar, butter box, ice cream can, or ice cream tub branded or stamped with the name or trademark of such owner, or bearing any private mark in common use by such owner, or from which such brand or stamp or private mark or marks have been removed, cut off or defaced. (Acts 1918, 4th C. S., ch. 78, sec. 1.)

Art. 1396b. Same subject; removal or defacing.—It shall hereafter be unlawful for any person within this State to remove, cut off, defaced or obliterate the stamp or brand or private mark of any owner of any milk bottle, milk jar, butter box, milk can, ice cream can or ice cream tub, or to stamp or place other than brands or stamps or private mark on any such milk bottle, milk jar, milk can, butter box, ice cream can or ice cream tub, without the written permission of such owner. (Id. sec. 2.)

Art. 1396c. Same subject; who is owner.—Any person or persons, firm or corporation, or joint stock association owning or using milk cans, milk bottles, milk jars, butter boxes, ice-cream cans or ice-cream tubs in his, her or their name or names, or private mark or marks in common use branded or stamped or placed on the same shall be considered the owner or owners thereof. (Id. sec. 3.)

Art. 1396d. Same subject; punishment.—Any person violating Sections 1 and 2 of this Act [Arts. 1396a, 1396b] shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than ten nor more than one hundred dollars. (Id. sec. 4.)

CHAPTER SIXTEEN

OFFENSES RELATING TO THE PROTECTION OF STOCK RAISERS IN CERTAIN LOCALITIES

Art. 1397. (919) Inspector giving a fraudulent certificate.—Any inspector of hides and animals who shall give a certificate of inspection without having first made such inspection in accordance with law, or who shall fraudulently issue any certificate of inspection of any hides or animals, shall be fined not less than fifty nor more than five hundred dollars. (Act Aug. 23, 1876, p. 302, sec. 31.)

Art. 1398. (920) Inspector or deputy failing to examine hides, etc.; penalty.—If any inspector or deputy inspector of hides and animals shall knowingly fail or refuse to faithfully examine and inspect all hides or animals known or reported to him as sold, or as leaving or going out of the county for sale or shipment, and all animals driven or sold in his district for slaughter, packeries or butcheries, shall be fined not less than twenty-five dollars nor more than two hundred dollars. (Act April 4, 1889, sec. 1.)

Art. 1399. (921) Inspector failing to keep book and record; penalty.—Any inspector of hides and animals who shall fail to provide and keep a well-bound book, and record therein a correct statement, showing the number, ages and marks and brands of each animal inspected by him or by his deputy or deputies, and the number and all the marks and brands of all hides inspected by him or by his deputies, and whether the hides are dry or green, and the name or names of the vendor or vendors and of the purchaser or purchasers of said animals or hides, shall be fined not less than fifty dollars nor more than three hundred dollars. (Id. sec. 2.)

Art. 1400. (922) Certificate by inspector.—Any inspector or deputy inspector of hides and animals who shall fail to correctly state in his certificate of inspection, or in his certificate of acknowledgment, all the marks and brands of all animals and hides inspected by him, shall be fined not less than twenty-five dollars nor more than three hundred dollars. (Id. sec. 3.)

Art. 1401. (923) Return of certified copies, etc.—Any inspector of hides and animals who shall fail to return a certified copy of all entries made in his record during each month to the clerk of the county court of his county, on the last day of each month, shall be fined not less than fifty nor more than three hundred dollars. (Id. sec. 4.)

Art. 1402. (924) Counterbranding cattle without consent of owner.—Any person who shall counterbrand any cattle with-

out the consent of the owner, or his agent, shall be fined not less than ten nor more than fifty dollars for each animal so counter-branded. (Act Aug. 23, 1876, p. 302, sec. 32.)

Art. 1403. (925) Clandestine driving cattle across the Rio Grande.—Any person who shall drive any cattle across the Rio Grande into Mexico, at any other point than where a United States custom house is established, or where there is a place of inspection by United States custom house officers, or without first having the same inspected in accordance with law, shall be confined in the penitentiary not less than two nor more than five years. (Id. sec. 35.)

Art. 1404. (926) Shipping hides imported from Mexico without inspection.—Any person who shall ship from any port in this state any hides of cattle imported from Mexico, without first having procured a certificate of importation and inspection in accordance with law, shall be fined not less than one nor more than five dollars for each hide so shipped. (Id.)

Art. 1405. (927) Selling hides without inspection.—Any person who shall sell any hides of cattle, without the same having been inspected, shall be punished as prescribed in the preceding article. (Id. sec. 36.)

Art. 1406. (928) Driving cattle out of county to market without road brand.—Any person who shall drive any cattle out of any county, with the intention of driving the same beyond the limits of the state, to a market, without first having road-branded the same in accordance with law, shall be fined not less than twenty nor more than one hundred dollars for each animal so driven. (Id. sec. 37.)

Art. 1407. (929) Driving stock out of county without owner's consent.—Any person who shall drive any cattle or horses out of any county, without the written authority of the owner thereof, duly authenticated as the law requires, and without first having the same duly inspected, shall be punished as prescribed in the preceding article. (Id. sec. 39.)

Art. 1408. (930) Failing to take bill of sale in purchasing animals.—Any person who shall purchase any animals or hides of cattle without obtaining a bill of sale from the owner or his agent, shall be fined not less than twenty nor more than one hundred dollars for each animal or hide so purchased. (Id. sec. 39.)

Art. 1409. (931) Agent selling without power of attorney.—Any person who shall, as the agent of another, sell any cattle without first having obtained a power of attorney from the owner, duly authenticated, shall be fined not less than fifty nor more than five hundred dollars. (Id. sec. 40.)

Art. 1410. (932) More than one brand or mark.—Any person who shall, in originally branding or marking cattle, use more than one mark or brand, shall be fined not less than twenty-five nor more than one hundred dollars for each animal so branded or marked. (Id. sec. 41.)

Art. 1411. (933) Branding or marking outside a pen.—Any person who shall brand or mark any animal, except in a pen, shall be fined not less than ten nor more than fifty dollars for each animal so branded or marked. (Id. sec. 42.)

Art. 1412. (934) Clerk improperly recording brand.—Any clerk of the county court who shall record any brand when the person having the same recorded fails to designate the part of the animal upon which the same is to be placed, shall be fined not less than ten nor more than fifty dollars. (Id. sec. 43.)

Art. 1413. (935) Agent of railroad, etc., receiving for shipment uninspected animals.—If any agent of any railroad, steamship, sailing vessel, or shipping company of any kind, shall receive for shipment any horses or cattle, unless such horses or cattle have been duly inspected according to law, he shall be fined not less than twenty-five nor more than one thousand dollars for each animal so unlawfully shipped. (Act April 10, 1883, p. 71.)

Art. 1414. (936) Counties exempted.—The counties of Anderson, Angelina, Aransas, Archer, Armstrong, Atascosa, Austin, Bailey, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Bowie, Bosque, Brazoria, Brazos, Brewster, Briscoe, Brown, Burleson, Burnet, Caldwell, Callahan, Calhoun, Cameron, Camp, Carson, Cass, Chambers, Cherokee, Childress, Clay, Cochran, Collin, Collingsworth, Colorado, Comal, Comanche, Cooke, Coryell, Cottle, Crockett, Crosby, Dallam, Delta, Denton, De Witt, Dickens, Donley, Duval, Eastland, Ellis, El Paso, Erath, Falls, Fannin, Fayette, Floyd, Foard, Fort Bend, Franklin, Freestone, Frio, Galveston, Gillespie, Goliad, Gonzales, Gray, Grayson, Gregg, Grimes, Guadalupe, Hall, Hamilton, Hardeman, Hardin, Harris, Harrison, Hartley, Hays, Hemphill, Henderson, Hidalgo, Hill, Hockley, Hood, Hopkins, Houston, Hunt, Irion, Jackson, Jack, Jasper, Jeff Davis, Jefferson, Johnson, Karnes, Kaufman, Kendall, Knox, Kinney, Lamar, Lamb, Lampasas, Lavaca, Leon, Liberty, Limestone, Lipscomb, Live Oak, Llano, Loving, Madison, Marion, Mason, Medina, Maverick, McLennan, Milam, Mills, Mitchell, Montague, Montgomery, Morris, Motley, Nacogdoches, Navarro, Newton, Orange, Palo Pinto, Panola, Parker, Pecos, Polk, Presidio, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Reeves, Sabine, San Augustine, San Jacinto, San Patricio, Schleicher, Shelby, Smith, Shackelford, Somervell, Starr, Stephens, Tarrant, Terrell, Throckmorton, Titus, Trinity, Tyler, Upshur, Val Verde, Van Zandt, Victoria, Walker, Ward, Washington, Webb, Wharton, Wheeler, Williamson, Wilson, Wise, Winkler and Young are hereby exempted from the provisions of this chapter, and from all laws regulating the inspection of hides and animals. (Acts 1893, ch. 107; Acts 1895, ch. 43; Acts 1897, p. 171; Acts 1899, p. 205; Acts 1901, p. 269; Acts 1903, pp. 111, 186; Acts 1905, p. 70; Acts 1907, pp. 26, 121, 190, 203; Acts 1909, pp. 30, 113, 129, 130; Acts 1913, p. 85, ch. 43, sec. 1.)

Art. 1414, revised Pen. Code, was made up from Acts 1893, p. 162, amending Act Mar. 29, 1889, sec. 1. The revisers overlooked the fact that the act of 1893 had been superseded by various acts passed in the subsequent years 1895, 1897, 1899, 1901, 1903, 1905, 1907, 1909. Most of these acts amended art. 5043, Rev. Civ. St. 1895 (art. 7305, Rev. Civ. St. 1911). Tracing back the history of the hide and animal inspection law it will be seen that the counties affected by the act are the same, whether the ques-

tion is viewed from the standpoint of the civil statutes or from that of the criminal statutes. The latest expression of the legislature as to the parts of the state affected by the law is given above in art. 1414, and below in arts. 1414a-1415a.

Art. 1414a. Other counties exempted.—That the counties of Stonewall, Kent, Scurry and Fisher be, and the same are hereby exempt from the provisions and operations of Articles 7256 to 7305 inclusive of Chapter 7, title 124, of the Revised Civil Statutes of 1911 relative to the inspection of hides and animals. (Acts 1913, p. 87, ch. 45, sec. 1.)

Art. 1414b. Same.—That the counties of Oldham and Potter be and the same are hereby exempt from the provisions and operations of Articles 7256 to 7305, inclusive, of Chapter 7, Title 124, Revised Civil Statutes of 1911, relative to the inspection of hides and animals. (Acts 1915, p. 222, ch. 142, sec. 1.)

Art. 1415. Counties placed under the law.—That the Governor of Texas shall immediately appoint an inspector of hides and animals for each of the following counties, to wit: the counties of El Paso, Cameron, Hidalgo, Lamb, and Starr each of whom shall hold his office for a term of two years and until the election and qualification of his successor. That said counties of El Paso, Cameron, Lamb, Hidalgo and Starr shall be subject to all of the provisions of Articles 7256 to 7304, inclusive, Revised Civil Statutes of Texas, 1911, except that the inspector shall be elected in each of said counties at the first general election held after appointment herein authorized. (Acts 1915, p. 22, ch. 13, sec. 1.)

Art. 1415a. Same.—That the Governor of Texas shall immediately appoint an inspector of hides and animals for each of the following counties, to wit: The counties of Bee, Duval, Live Oak, Maverick and Val Verde, each of whom shall hold his office for a term of two years and until the election and qualification of his successor. All animal and hide inspectors appointed by the Governor shall be entitled to receive for their services the sum of three cents for each animal and hide personally inspected. That said counties of Bee, Duval, Live Oak, Maverick and Val Verde shall be subject to all of the provisions of Articles 7256 to 7304, inclusive, Revised Civil Statutes of Texas, 1911, except that the inspector shall be elected in each of said counties at the first general election held after the appointment, herein authorized. (Acts 1915, p. 107, ch. 57, sec. 1.)

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, Civ. St., 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. (Acts 1917, ch. 51, sec. 1a.)

Art. 1415c. Violation of hide and animal inspection laws in Nueces County.—If said inspector [Arts. 7305e, 7305f, Civ. St., 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. sec. 1c.)

CHAPTER SEVENTEEN
EMBEZZLEMENT

Art. 1416. (938) Defined and punished.—If any officer, agent, clerk or attorney at law or in fact, of any incorporated company or institution, or any clerk, agent, attorney at law or in fact, servant or employé of any private person, copartnership or joint stock association, or any consignee or bailee of money or property, shall embezzle, fraudulently misapply or convert to his own use, without the consent of his principal or employer, any money or property of such principal or employer which may have come into his possession or be under his care by virtue of such office, agency or employment, he shall be punished in the same manner as if he had committed a theft of such money or property. (O. C. 771; Acts 1858, p. 182; 1876, p. 9.)

See Price v. S., 40 S. W. 596; Ximenes v. S., 54 S. W. 588; Wilson v. S., 82 S. W. 631; Maulding v. S., 108 S. W. 1182; Smith v. S., 109 S. W. 118, 17 L. R. A. (N. S.) 531, 15 Ann. Cas. 435; Hamer v. S., 131 S. W. 813; Adams v. S., 172 S. W. 219.

Art. 1417. (939) By factor or commission merchant.—If any factor or commission merchant shall embezzle or fraudulently misapply or convert to his own use any money, goods, produce, commodity or other property, which shall have come into his possession or shall be under his care by virtue of his office, agency or employment, he shall be punished in the same manner as if he had committed a theft of such money, goods, produce, commodity or other property. (O. C. 771a; Acts 1858, p. 182.)

Art. 1418. (940) By carrier.—If any carrier, to whom any money, goods or other property, shall have been delivered to be carried by him, or if any other person who shall be intrusted with such property, shall embezzle or fraudulently convert to his own use any such money, goods or property, either in the mass, as the same were delivered, or otherwise, he shall be deemed guilty of theft, and shall be punished as prescribed for that offense according to the value of the money, goods or other property so embezzled or converted. (O. C. 772; Id.)

Art. 1419. (941) (789) "Money" and "property" defined.—The term "money," as used in this chapter, includes, besides gold, silver, copper or other coin, bank bills, government notes or other circulating medium current as money; and the term "property" includes any and every article commonly known and designated as personal property, and all writings of every description that may possess any ascertainable value.

Ex parte Sauls, 78 S. W. 1073; Butler v. S., 81 S. W. 743; Ferrell v. S., 152 S. W. 901.

Art. 1420. (942) Fraudulently receiving, etc., embezzled property.—If any person shall fraudulently receive or conceal any property which has been acquired by another in such manner as that the acquisition comes within the meaning of embezzlement, knowing the same to have been so acquired, he shall be punished in the same manner as

the person embezzling the same would be liable to be punished. (Acts 1883, p. 24.)

CHAPTER EIGHTEEN

OF SWINDLING AND THE FRAUDULENT DISPOSITION OF MORTGAGED PROPERTY

1. SWINDLING

Art. 1421. (943) "Swindling" defined.—"Swindling" is the acquisition of any personal or movable property, money or instrument of writing conveying or securing a valuable right, by means of some false or deceitful pretense or device, or fraudulent representation, with intent to appropriate the same to the use of the party so acquiring, or of destroying or impairing the rights of the party justly entitled to the same. (O. C. 773a; Acts 1858, p. 183.)

See Cummings v. S., 36 S. W. 266; Ayers v. S., 38 S. W. 792; Faulk v. S., 41 S. W. 616; Perry v. S., 46 S. W. 816; Deshard v. S., 57 S. W. 814; Hunter v. S., 81 S. W. 730; Johnson v. S., 123 S. W. 143; Brown v. S., 138 S. W. 604; McDaniel v. S., 140 S. W. 232; Hubbert v. S., 147 S. W. 267; Yoakum v. S., 150 S. W. 910; Lewis v. S., 171 S. W. 217; Whitehead v. S., 196 S. W. 851; Krueger v. S., 199 S. W. 629; Pruitt v. S., 202 S. W. 81.

Art. 1422. (944) Certain wrongful acts included.—Within the meaning of the term "swindling" are included the following wrongful acts:

1. The exchange of property upon the false pretense that the party is the owner or has the right to dispose of the property given in exchange.

2. The purchase of property upon the faith and credit of some other person upon the false pretense that such other has given the accused the right to use his name in making the acquisition.

3. The obtaining by false pretense the possession of any instrument of writing, certificate, field notes or other paper relating to lands, the property of another, with the intent that thereby the proper owner shall be defeated of a valuable right in such lands.

4. The obtaining by any person of any money or other thing of value with intent to defraud by the giving or drawing of any check, draft or order upon any bank, person, firm or corporation, with which or with whom such person giving or drawing said check, draft or order has not at the time of the giving or drawing of such check, draft or order, or at the time when in the ordinary course of business such check, draft or order would be presented to the drawee for payment, sufficient funds to pay same, and no good reason to believe that such check, draft or order will be paid.

5. The special enumeration of cases of swindling above set forth shall not be understood to exclude any case which by fair construction of the language, comes within the meaning of the preceding Article. (O. C. 773b; Acts 1858, p. 12; Acts 1913, p. 184, ch. 98, sec. 1.)

See Jenkins v. S., 82 S. W. 1036; Brown v. S., 138 S. W. 604; Dawson v. S., 185 S. W. 875; Krueger v. S., 199 S. W. 629; Pruitt v. S., 202 S. W. 81.

Art. 1423. (945) "Money" includes bank bills.—Within the meaning of "money," as used in this chapter, are included also bank bills or other circulating medium current as money. (O. C. 773c; Acts 1858, p. 183.)

Baxter v. S., 105 S. W. 195; King v. S., 146 S. W. 543.

Art. 1424. (946) No benefit need accrue to defendant.—It is not necessary, in order to constitute the offense of swindling, that any benefit shall accrue to the person guilty of the fraud or deceit, nor that any injury shall result to the persons intended to be defrauded, if it is sufficiently apparent that there was a wilful design to receive benefit or cause an injury. (O. C. 773d; Id.)

Art. 1425. (947) If the act constitutes any other offense.—Where property, money or other articles of value enumerated in the definition of swindling are obtained in such manner as to come within the meaning of theft, or some other offense known to the law, the rules herein prescribed with regard to swindling shall not be understood to take any such case out of the operation of the law which defines any such other offense. (O. C. 773e; Id.)

Rupe v. S., 61 S. W. 933; Witherspoon v. S., 37 S. W. 433; Abel v. S., 97 S. W. 1055; Bullard v. Stuart, 102 S. W. 174; Anderson v. S., 177 S. W. 85.

Art. 1426. (948) Executor, etc., converting estate, guilty of swindling.—If any executor, administrator or guardian, having charge of any estate, real, personal or mixed, shall unlawfully, and with intent to defraud any creditor, heir, legatee, ward, or distributee interested in such estate, convert the same, or any part thereof, to his own use, he shall be deemed guilty of the offense of swindling. (Acts 1858, p. 183; 1883, p. 66.)

Art. 1427. (949) Punishment.—Every person guilty of swindling shall be punished in the same manner as is provided for the punishment of theft, according to the amount of the money or the value of the property or instrument of writing so fraudulently acquired. (O. C. 773g; Acts 1858, p. 183.)

Baxter v. S., 105 S. W. 195.

Art. 1428. Obtaining board or lodging by false or fraudulent representations, trick, etc.—Every person who shall obtain board or lodging in any hotel or boarding house by means of any trick or deception or false or fraudulent representations, or statement or pretense, and shall fail or refuse to pay therefor, shall be held to have obtained the same with the intent to cheat and defraud such hotel or boarding house keeper, and shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding one month, or by both such fine and imprisonment. (Acts 1899, p. 172.)

See Jannin v. S., 51 S. W. 1126.

As to constitutionality of this act see Jannin v. S., 51 S. W. 1126, 62 S. W. 419.

Art. 1429. [Repealed by Acts 1919, ch. 49, sec. 1.]

2. FRAUDULENT DISPOSITION OF PROPERTY MORTGAGED OR SUBJECT TO LIEN

Art. 1430. (950) Fraudulent disposition of mortgaged property.—If any person has given, or shall hereafter give, any mortgage, deed of trust or other lien, in writing, upon any personal or movable property or growing crop of farm produce, and shall

remove the same, or any part thereof, out of the state, or shall sell or otherwise dispose of the same, with intent to defraud the person having such lien, either originally or by transfer, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years. (O. C. 773; Acts 1858, p. 183; Acts 1885, p. 85.)

See Wood v. S., 84 S. W. 1058.

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. (Acts 1917, ch. 17, sec. 6.)

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.

Art. 1430b. Mortgagor of motor vehicle to inform mortgagee of location thereof.—Every person, firm or corporation who shall hereafter purchase any motor vehicle or accessories therefor, giving a mortgage thereon to secure the purchase price thereof or any portion of same, shall, upon demand, notify the mortgagee or holder of such mortgage of the location of such motor vehicle or accessories therefor. (Acts 1919, ch. 128, sec. 1.)

Art. 1430c. Same subject; punishment for refusal.—Any person, firm or corporation who shall, upon demand, hereafter fail or refuse to notify the mortgagee or holder of a mortgage given upon any motor vehicle or accessories therefor purchased by him to secure the purchase price thereof or any portion of same, of the location of such motor vehicle, shall be deemed guilty of a misdemeanor, and upon conviction therefor shall be punished by a fine of not less than ten dollars nor more than one hundred dollars, or by confinement in the county jail for a period of not more than sixty days, or by both such fine and imprisonment. (Id. sec. 2.)

CHAPTER NINETEEN

OF OFFENSES COMMITTED IN ANOTHER COUNTRY OR STATE

Art. 1431. (951) Bringing stolen property into this state.—If any person having committed an offense in any foreign country, state or territory, which, if committed in this state, would have been robbery, theft, embezzlement or receiving of stolen goods or property, knowing the same to have been stolen, or fraudulently receiving or concealing property acquired by another by embezzlement, knowing the same to have been so acquired, shall bring into this state any property so acquired or received, he shall be deemed guilty of robbery, theft, embezzlement, or receiving of goods or property stolen or embezzled, as the case may be, knowing the same to have been stolen or embezzled, and shall be punished as if the offense had been committed in this state. And, in cases herein mentioned, the offense may be charged to have been committed in any county into or through which the property may be brought in the same manner as if the act constituting such offense had taken place wholly within this state. (Acts 1895, p. 116.)

See Smith v. S., 39 S. W. 933; Beard v. S., 78 S. W. 348; Bink v. S., 98 S. W. 249; Zweig v. S., 171 S. W. 747.

Art. 1432. (952) Requisites of guilt under preceding article.—To render a person guilty under the preceding article, it must appear that by the law of the foreign country, state or territory from which the property was taken and brought to this state, the act committed would also have been robbery, embezzlement, theft or receiving stolen goods or property, or receiving or concealing goods or property embezzled. (Id.)

See Bink v. S., 98 S. W. 249; Zweig v. S., 171 S. W. 747; see also authorities under preceding article.

TITLE 18

OF MISCELLANEOUS OFFENSES

CHAPTER ONE

OF CONSPIRACY

Art. 1433. (953) Definition.—A "conspiracy" is an agreement entered into between two or more persons to commit any one of the offenses hereafter named in this chapter. (O. C. 776; Acts 1871, p. 15.)

See Dawson v. S., 40 S. W. 731; Cohen v. S., 56 S. W. 752; Cosner v. S., 57 S. W. 825; Cain v. S., 59 S. W. 277; Stevens v. S., 59 S. W. 548; Bailey v. S., 59 S. W. 901.

Generally under this chapter see Serrato v. S., 171 S. W. 1133.

Art. 1434. (954) When offense complete.—The offense of conspiracy is complete, although the parties conspiring do not proceed to effect the object for which they have so unlawfully combined. (O. C. 777; Id.)

Art. 1435. (955) Agreement must be positive.—Before any conviction can be had for the offense of conspiracy, it must appear that there was a positive agreement to commit one of the offenses hereafter named in this chapter. It will not be sufficient that such agreement was contemplated by the parties charged. (O. C. 778; Id.)

Art. 1436. (956) Mere threat not sufficient.—A threat made by two or more persons acting in concert will not be sufficient to constitute conspiracy. (O. C. 779; Id.)

Art. 1437. (957) What crimes the subject of.—The agreement, to come within the definition of conspiracy, must be to commit one or more of the following offenses, to-wit: Murder, robbery, arson, burglary, rape or any other offense of the grade of felony. (O. C. 780; Id.; Acts 1884, p. 25.)

Art. 1438. (958) Punishment.—Conspiracy to commit murder shall be punished by confinement in the penitentiary not less than two nor more than ten years. Conspiracy to commit any one of the other offenses named in the preceding article shall be punished by confinement in the penitentiary not less than two nor more than five years. (O. C. 781; Id.; Acts 1871, p. 15.)

Art. 1439. (959) To kill, same as murder.—A conspiracy to kill a human being

shall be deemed a conspiracy to commit murder. (O. C. 782; Id. p. 16.)

Art. 1440. (960) Conspiracy to commit an offense in another state.—A conspiracy entered into in this state for the purpose of committing any one of the offenses named in article 1437 in any other of the states or territories of the United States, or in any foreign territory, shall be punished in the same manner as if the conspiracy so entered into was to commit the offense in this state. (O. C. 783; Id.)

Art. 1441. (961) (808) Conspiracy in another state to commit offense in this.—A conspiracy entered into in another state or territory of the United States to commit any one of the offenses named in article 1437 in this state, shall be punished in the same manner as if the conspiracy had been entered into in this state.

CHAPTER TWO
OF THREATS

Art. 1442. (962) Threats to take life, etc.—If any person shall threaten to take the life of any human being, or to inflict upon any human being any serious bodily injury, he shall be punished by fine of not less than one hundred nor more than two thousand dollars, and, in addition thereto, he may be imprisoned in the county jail not exceeding one year. (O. C. 784; Acts 1875, p. 51.)

See Allen v. S., 66 S. W. 674; Shelton v. S., 119 S. W. 862; Bolt v. S., 150 S. W. 431.

Art. 1443. (963) Threats must be seriously made.—In order to render a person guilty of the offense provided in the preceding article, it is necessary that the threat be seriously made. (O. C. 785; Acts 1875, p. 51.).

Art. 1444. (964) Which is a question of fact.—It is for the jury to determine, in every case of prosecution under article 1442, whether the threat was seriously made or was merely idle and with no intention of executing the same. (O. C. 786; Id.)

Art. 1445. (965) Certain threats not included.—A threat that a person will do any act merely to protect himself, or to prevent the commission of some unlawful act by another, does not come within the meaning of this chapter. (O. C. 787; Id. p. 52.)

Art. 1446. (966) (813) Sending threatening letter.—If any person shall knowingly send or deliver to another any letter or writing, whether signed or not, threatening to accuse such other person of a criminal offense, with a view of extorting money, property, thing of value, or any advantage whatever from such other person, or threatening to kill or in any manner injure the person of such other, or to burn or otherwise destroy or injure any of his property, real or personal, or to do any other injury to such other person, he shall be punished by fine not less than one hundred nor more than one thousand dollars, and, in addition thereto, may be imprisoned in the county jail not exceeding one year.

CHAPTER THREE
SEDUCTION

Art. 1447. (967) Punishment.—If any person, by promise to marry, shall seduce an unmarried female under the age of twenty-five years, and shall have carnal knowledge of such female, he shall be punished by imprisonment in the penitentiary not less than two nor more than ten years. (O. C. 788; Acts 1903, p. 221; Acts 1858, p. 185.)

See Anderson v. S., 45 S. W. 15; Cabiness v. S., 60 S. W. 555; Merrill v. S., 57 S. W. 291; Ex parte Biela, 81 S. W. 739; Elige v. S., 96 S. W. 39; Waldon v. S., 98 S. W. 848; Wofford v. S., 132 S. W. 929; De Rossett v. S., 168 S. W. 531; Barlow v. S., 206 S. W. 198.

Art. 1448. (968) "Seduction," how used.—The term "seduction" is used in the sense in which it is commonly understood. (O. C. 789.)

Art. 1449. (969) Marriage obliterates offense.—If the parties marry each other at any time before the defendant pleads to the indictment before a court of competent jurisdiction, then the prosecution, if begun, shall be suspended, but not dismissed; and, if indictment has been returned, the case shall be continued on the docket of the court from term to term; and, if the defendant after said marriage in good faith continues to live with the person so seduced for two years after said marriage, the said prosecution shall be dismissed; but, if the defendant within two years after said marriage, without the fault of his said wife, such fault amounting to acts committed by her after said marriage as would entitle him to a divorce, shall abandon her or refuse to live with her, or shall be so cruel to her as to compel her to leave him, or shall be guilty of such outrages or cruelties toward her as to render their living together insupportable, then the prosecution shall be revived, and said marriage shall be no bar to the same, and the female so seduced shall be a competent witness against the defendant; provided, however, that if, after the prosecution is begun, and prior to the time he pleads to the indictment before a court of competent jurisdiction, the defendant, in good faith, offers to marry the female so seduced, and if she refuses to marry him, such refusal shall be a bar to further prosecution; but the benefit of this article shall not apply to the case of a defendant who was in fact married at the time of committing the offense. (O. C. 790; Acts 1903, p. 221; Acts 1899, p. 66.)

See Bailey v. S., 38 S. W. 185; Davis v. S., 38 S. W. 175; Barnes v. S., 39 S. W. 684; Elige v. S., 96 S. W. 39; Wofford v. S., 132 S. W. 929.

So much of this article as suspends the indictment, in case the defendant marries the seduced female, for two years in which to live in good faith with his wife and treat her well is invalid. Waldon v. S., 98 S. W. 848.

Art. 1450. Abandonment after seduction and marriage, offense defined.—If any person, by promise of marriage, shall seduce an unmarried female under the age of twenty-five years, and shall have carnal knowledge of such female, and if, after prosecution has begun, the parties marry each other, at any time before the defendant pleads to the indictment before a court of competent jurisdiction, and if the defendant within two years after said marriage, without the fault of his said wife, such fault amounting to acts committed by her after said marriage as would entitle him to a divorce under the laws of this state, shall abandon her or refuse to live with her, or shall be so cruel to her as to compel her to

leave him, or shall be guilty of such outrages or cruelties towards her as to make their living together insupportable, thereby leaving her or forcing her to leave him and live apart from each other, shall be guilty of the offense of abandonment after seduction and marriage; and any person convicted of said offense shall be confined in the penitentiary for a term not less than two nor more than ten years; and said marriage shall be no bar to the qualifications of said female to testify against the defendant; and the female so seduced and subsequently married and abandoned, as herein provided, shall be a competent witness against said defendant. (Acts 1909, p. 97.)

Art. 1451. (970) Married man not liable if known.—No person who was, at the time of committing the offense, married, and the fact of marriage known to the woman, shall be held liable for the offense defined in this chapter. (O. C. 791.)

CHAPTER THREE A

HOURS OF LABOR ON PUBLIC WORK OR IN PUBLIC SERVICE

Art. 1451a. What constitutes day's work.—Eight hours shall constitute a day's work for all laborers, workmen or mechanics now employed or who may hereafter be employed by or on behalf of the State of Texas, or by or on behalf of any county, municipality, or political subdivision of the State, county or municipality in any one calendar day, where such employment, contract or work is for the purpose of constructing, repairing or improving buildings, bridges, roads, highways, streams, levees, or other work of a similar character, requiring the service of laborers, workmen or mechanics. (Acts 1913, p. 127, ch. 68, sec. 1.)

Art. 1451b. Contracts for work to be made on basis of this law; unlawful to require longer hours; exception; wages in case of exceeding limit; proviso.—All contracts hereafter made by or on behalf of the State of Texas, or by or on behalf of any county, municipality or other legal or political subdivision of the State, with any corporation, persons or association of persons for the performance of any work, shall be deemed and considered as made upon the basis of eight hours constituting a day's work. It shall be unlawful for any corporation, person or association of persons having a contract with the State or any political subdivision thereof, to require or permit any such laborers, workmen, mechanics or other persons to work more than eight hours per calendar day in doing such work, except in case of emergency, which may arise in times of war, or in cases where it may become necessary to work more than eight hours per calendar day for the protection of property, human life or the necessity of housing inmates of public institutions in case of fire or destruction by the elements. In such emergencies the laborers, workmen, mechanics or other persons so employed and working to exceed eight hours per calendar day shall be paid on the basis of eight hours constituting a day's work; provided that not less than the current rate of per diem wages in the locality where the work is being performed shall be paid to the laborers, workmen, mechanics or other persons so employed by or on behalf of the State of Texas, or for any county, municipality or other legal or political subdivision of the State, county or municipality, and every contract hereafter made for the performance of work for the State of Texas, or for any county, municipality or other legal or political subdivision of the State, county or municipality, must comply with the requirements of this Section; provided, that nothing in this Act shall affect contracts in existence at the time of the taking effect of this Act; provided further, that nothing in this Act shall be construed to affect the present law governing State and county convict labor while serving their sentences as such. (Id. sec. 2.)

Art. 1451c. Penalty for violation.—Any person, or any officer, agent or employé of any person, corporation or association of persons, or any officer, agent or employé of the State, county, municipality or any legal or political subdivision of the State, county or municipality, who shall fail or refuse to comply with the provisions of this Act or who shall violate any of the provisions of this Act, shall, on conviction thereof, be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than fifty dollars ($50.00) nor more than one thousand dollars ($1000.00), or by imprisonment not to exceed six months or by both such fine and imprisonment and each and every day of such violation shall constitute a separate offense. (Id. sec. 3.)

Art. 1451d. Repeal.—All laws or parts of laws in conflict herewith are hereby repealed, and expressly an Act passed at the Regular Session of the Thirty-second Legislature, known as House Bill No. 98, and being the same Act that was attempted to be vetoed by the Governor, but which veto was held ineffective by the Supreme Court because the veto message was filed with the Secretary of State after the expiration of twenty days as held by the Supreme Court in the case of R. B. Minor, et. al., vs. C. C. McDonald, Secretary of State. (Id. sec. 4.)

CHAPTER THREE B

TIME OF SERVICE OF FIREMEN

Art. 1451e. Limitation of days of service.—No member of any paid fire department in any city containing twenty-five thousand inhabitants or more, according to the last United States census, shall be required to be on duty for more than six days in any one week, except in cases of emergency. (Acts 1915, 1st C. S., p. 22, ch. 9, sec. 1.)

Art. 1451f. Designation of time for service.—The city official having supervision of the fire department shall designate the day of the week upon which each member of such department shall not be required to be on duty. (Id. sec. 2.)

Art. 1451g. Penalty for violation.—Any city official having charge of the fire department in any city coming under this Act who shall violate any of the provisions hereof shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $10.00 nor more than $100.00. (Id. sec. 3.)

Art. 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, Civ. St.], 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. (Acts 1917, ch. 185, sec. 4; Acts 1917, 1st C. S., ch. 14, sec. 4.)

CHAPTER THREE C

EMPLOYMENT OF FEMALES

Art. 1451h. More than nine hours labor per day in certain employments prohibited, proviso.—No female shall be employed in any factory, mine, mill, workshop, mechanical or mercantile establishment, laundry, hotel, restaurant or rooming house, theater or moving picture show, barber shop, telegraph, telephone or other office, express or transportation company, or any State institution, or any other establishment, institution or enterprise where females are employed, except as hereinafter provided, for more than nine hours in any one calendar day, nor more than fifty-four hours in any one calendar week; provided, however, that in cases of extraordinary emergencies, such as great public calamities, or where it becomes necessary for the protection of human life or property, longer hours may be worked, but for such time not less than double time shall be paid such female with the consent of the said female; provided, this Act shall not apply to stenographers and pharmacists. (Acts 1915, p. 105, ch. 56, sec. 1.)

Art. 1451i. Laundries.—No female shall be employed in any laundry for more than fifty-four hours in one calendar week; the hours of such employment to be so arranged as to permit the employment of such female at any time so that she shall not work more than a maximum of eleven hours during the twenty-four hours' period of one day; provided that if such female is employed for more than nine hours in any one day she shall receive pay at the rate of double her regular pay for such time as she is employed for more than nine hours per day. (Id. sec. 1a.)

Art. 1451j. Cotton mills; wages for labor in excess of nine hours.—No female shall be employed in any factory engaged in the manufacture of cotton, woolen or worsted goods or articles of merchandise manufactured out of cotton goods for more than ten hours in any one calendar day, nor for more than sixty hours in any one calendar week.

Provided, that if such female is employed for more than nine hours in any one day she shall receive pay at the rate of double her regular pay for such time as she may be employed for more than nine hours per day. (Id. sec. 1b.)

Art. 1451k. Seats for females.—Every employer owning or operating any factory, mine, mill, workshop, mechanical or mercantile establishment, laundry, hotel, restaurant or rooming house, theater or moving picture show, barber shop, telegraph or telephone or other office, express or transportation company, the superintendent of any State institution or any other establishment, institution or enterprise where females are employed, as provided by Sections 1, 1a and 1b, [Arts. 1451h–1451j] shall provide and furnish suitable seats, to be used by such employés when not engaged in the active duties of their employment, and shall give notice to all such female employés by posting in a conspicuous place, on the premises of such employment in letters not less than one inch in height, that all such female employés will be permitted to use such seats when not so engaged. (Id. sec. 2.)

Art. 1451l. Punishment; provisos.—Any employer, overseer, superintendent, foreman, or other agent of any such employer who shall permit any female to work in any of the places mentioned in Sections 1, 1a and 1b [Arts. 1451h–1451j] more than the number of hours provided for in this Act during any day of the twenty-four hours, or who shall fail, neglect or refuse to so arrange the work of females employed in the said places mentioned in Sections 1, 1a and 1b so that they shall not work more than the number of hours provided for in Sections 1, 1a and 1b of this Act, during any day of twenty-four hours or the number of hours prescribed by this Act in any one week, or who shall fail, neglect or refuse to provide suitable seats as provided in Section 2 of this Act [Art. 1451k] shall be deemed guilty of a misdemeanor, and upon conviction in any court of competent jurisdiction shall be fined in any sum not less than fifty ($50.00) dollars nor more than two hundred ($200.00) dollars and each day of such violation and each such female employé required or permitted to work more than the time provided in the various sections of this Act shall constitute a separate offense. "Provided, that the provisions of the law shall not apply to telegraph and telephone companies in rural districts and in cities or towns of less than 3000 inhabitants, as shown by the last Federal census." Provided that the provisions of this Act shall not apply to mercantile establishments in rural districts and in cities and towns and villages of less than 3000 inhabitants. (Id. sec. 3.)

Art. 1451m. Partial invalidity.—If any section or provision of this Act is for any reason held or declared to be unconstitutional it shall not affect nor impair nor render invalid the rest of this Act, and changing other sections to conform thereto. (Id. sec. 4.)

Section 5 repeals Acts 1913, p. 421.

CHAPTER THREE D

PROTECTION OF EMPLOYÉS IN FACTORIES, MILLS, ETC.

Art. 1451n. Temperature of factories, etc.—In every factory, mill, workshop, mercantile establishment, laundry, or other establishment, adequate measures shall be taken for securing and maintaining a reasonable, and as far as possible, an equable temperature consistent with a reasonable requirement of the manufacturing process. No unnecessary humidity which would jeopardize the health of the employees shall be permitted. In every room, apartment, or building used as a factory, mill, workshop, mercantile establishment, laundry or other place of employment, sufficient air space shall be provided for every person employed therein, and which in the judgment of the Commissioner of Labor Statistics, or of his deputies and inspectors is sufficient for their

health and welfare. (Acts 1918, 4th C. S., ch. 58, sec. 1.)

Art. 1451nn. Sewer gas.—All factories, mills, workshops, mercantile establishments, laundries and other establishments shall be kept free from gas or effluvia arising from any sewer, drain, privy or other nuisance on the premises; all poisonous or noxious gases arising from any process; all dust of a character injurious to the health of persons employed, which is created in the process of manufacturing within the above named establishment, shall be removed as far as practicable by ventilators or exhaust fans or other adequate devices. (Id. sec. 2.)

Art. 1451o. Removal of waste, etc.—All decomposed, fetid or putrescent matter, and all refuse, waste and sweepings of any factory, mill, workshop, mercantile establishment, laundry or other establishment, shall be removed at least once each day and be disposed of in such manner as not to cause a nuisance. All cleaning, sweeping and dusting shall be done as far as possible outside of working hours, but if done during working hours, shall be done in such manner as to avoid so far as possible the raising of dust and noxious odors. In all establishments where any process is carried on which makes the floors wet, the floors shall be constructed and maintained with due regard for the health of the employés, and gratings or dry standing room shall be provided wherever practicable, at points wherever employés are regularly stationed, and adequate means shall be provided for drainage and for preventing leakage or seepage to lower floors. (Id. sec. 3.)

Art. 1451oo. Doors, stairways, and elevator shafts.—All doors used by employés as entrances to, or exits from factories, mills, workshops, mercantile establishments, laundries or other establishments of a height of two stories or over, shall open outward, and shall be so constructed as to be easily and immediately opened from within in case of fire or other emergencies. Proper and substantial hand rails shall be provided on all stairways, and lights shall be kept burning at all main stairs, stair landings and elevator shafts in the absence of sufficient natural light; provided that the provisions of this section shall not apply to any mercantile establishment having seven female employés or less. (Id. sec. 4.)

Art. 1451p. Water closets.—Every factory, mill, workshop, mercantile establishment, laundry or other establishment, shall be provided with a sufficient number of water closets, earth closets or privies, and such water closets, earth closets or privies shall be supplied in the proportion of one (1) to every twenty-five (25) male persons, and one (1) to every twenty (20) female persons, and whenever both male and female persons are employed, said water closets, earth closets or privies shall be provided separate and apart for the use of each sex, and such water closets, earth closets, or privies shall be constructed in an approved manner and properly enclosed, and at all times kept in a clean and sanitary condition, and effectively disinfected and ventilated, and shall at all times during operation of such establishment be kept properly lighted. In case there be more than one shift of not more than eight hours each of employés the average number of persons in the establishment at any one time should be used in determining the number of toilets required. (Id. sec. 5.)

Art. 1451pp. Practices affecting morals of employés.—It shall be unlawful for the owner, manager, superintendent or other person in control or management of any factory, mill, workshop, mercantile establishment, laundry or other establishment where five or more persons are employed, all or part of whom are females, to permit in such place of employment any influence, practices or conditions calculated to injuriously affect the morals of such female employés. (Id. sec. 6.)

Art. 1451q. Inspections; orders.—The Commissioner of Labor Statistics, or any of his deputies or inspectors, shall have the right to enter any factory, mill, workshop, mercantile establishment, laundry, or other establishment where five or more persons are employed, for the purpose of making inspections and enforcing the provisions of this Act; and they are hereby empowered, upon finding any violations of this Act by reason of unsanitary conditions such as to endanger the health of the employees therein employed, or of neglect to remove and prevent fumes and gases or odors injurious to employees, or by reason of the failure or refusal to comply with any requirement of this Act, or by reason of the inadequacy or insufficiency of any plan, method, practice or device employed in assumed compliance with any of the requirements of this Act, to pass upon and to make a written finding as to the failure or refusal to comply with any requirement of this Act, or as to the adequacy or sufficiency of any practice, plan or method used in or about any place mentioned in this Act in supposed compliance with any of the requirements of this Act, and, thereupon they may issue a written order to the owner, manager, superintendent, or other person in control or management of such place or establishment, for the correction of any condition caused or permitted in or about such place or establishment in violation of any of the requirements of this Act, or of any condition, practice, plan, or method used therein or thereabouts in supposed compliance with any of the requirements of this Act, but which are found to be inadequate or insufficient, in any respect, to comply therewith, and shall state in such order how such conditions, practices, plans or methods, in any case, shall be corrected, and the time within which the same shall be corrected, a reasonable time being given in such order therefor. One copy of such order shall be delivered to the owner, manager, superintendent, or other person in control or management of such place or establishment, and one copy thereof shall be filed in the office of the Bureau of Labor Statistics. Such findings and orders shall be prima facie valid, reasonable and just, and shall be conclusive unless attacked and set aside in the manner provided therefor in Section 8 of this Act [Art. 1451qq]. Upon the failure or refusal of the owner, manager, superintendent, or other person in control or management of such place or establishment, to comply with such order within the time therein specified, unless the same shall have been attacked and suspended or set aside as provided for in Section 8 of this Act, the Commissioner of Labor

Statistics, or his deputy or inspectors shall have full authority and power to close such place or establishment, or any part of it that may be in such unsanitary or dangerous condition or immoral influences in violation of any requirement of this Act or of such order, until such time as such condition, practice or method shall have been corrected in accordance with such order. And the further operation or use of such place, or part thereof, ordered closed, without the correction thereof as ordered, shall subject the owner, manager, superintendent, or other person in control or management of such place or establishment to the penalties provided for in Section 9 [Art. 1451r] of this Act. (Id. sec. 7.)

Art. 1451qq. Precedence of trials.—The owner or owners, manager, superintendent, or other person in control or management, of any place or establishment covered by this Act, and directly affected by any finding or order provided for in Section 7 of this Act [Art. 1451q], may, within fifteen days from the date of the delivery to him or them of a copy of any such order as provided for in Section 7 of this Act, file a petition setting forth the particular cause or causes of objection to such order and findings in a court of competent jurisdiction against the Commissioner of Labor Statistics. Said action shall have precedence over all other causes of a different nature, except such causes as are provided for in Article 6657, R. S., 1911, and shall be tried and determined as other civil causes in said court, provided, that if the court be in session at the time such cause of action arises, the suit may be filed during such term and stand ready for trial after ten days' notice. Either party may appeal, but shall not have the right to sue out a writ of error from the trial court, and said appeal shall at once be returnable to the proper appellate court at either of its terms, and said appeal shall have precedence in such appellate court over other causes of a different nature, except the causes provided for in Article 6657, Revised Statutes 1911. In all trials under this section the burden of proof shall be upon the Plaintiff, to show that the findings and order complained of are illegal, unreasonable, or unjust to it or them. (Id. sec. 8.)

Art. 1451r. Punishment for violations of act.—Any person, firm, or corporation, or any owner, manager, superintendent or other person in control or management of any factory, mill, workshop, mercantile establishment, laundry or other establishment, who shall violate any of the provisions of this Act, or who shall fail or refuse to comply with any order of correction provided for in Section 7 of this Act [Art. 1451q], unless such order shall have been attacked and set aside as provided for in Section 8 of this Act, 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 twenty-five ($25.00) Dollars, nor more than two hundred ($200.00) Dollars, or by not to exceed sixty (60) days in the county jail, or by both such fine and imprisonment; and each day the law is so violated shall constitute a separate offense. (Id. sec. 9.)

CHAPTER THREE E
WAGES AND LABOR CONDITIONS

Art. 1451s. Discharging employee for testifying before Industrial Welfare Commission.—Any employer who discharges, or threatens to discharge, or in any other manner discriminates against any employee because such employee has testified or is about to testify, or because such employer believes that said employee may testify in any investigation or proceedings relative to the enforcement of this Act, shall be deemed guilty of a misdemeanor, and shall upon conviction be punished by a fine of not less than ten ($10.00) Dollars nor more than one hundred ($100.00) Dollars, or by imprisonment in the county jail of not more than thirty days, or by both such fine and imprisonment. (Acts 1919, ch. 160, sec. 9.)

For remainder of Acts 1919, ch. 160, see ante, Civ. St., arts. 5243a-5243p.

Art. 1451t. Payment of less than minimum wage.—The minimum wage for women and minors fixed by said Commission as in this Act provided, shall be the minimum wage paid to such employees, and the payment to such employees of a less wage than the minimum wage so fixed shall be unlawful, and every employer or other person who, either individually or as an officer, agent or employee of a corporation or other person, pays or causes to be paid to any such employee a wage less than such minimum 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, or by imprisonment of not more than thirty days in the county jail, or by both such fine and imprisonment. (Id. sec. 10.)

CHAPTER THREE F
PROTECTION OF WORKMEN ON BUILDINGS

Art. 1451u. Temporary floorings on certain buildings in course of construction.—Hereafter any building three or more stories in height, in the course of construction or repairs, shall have the joists, beams or girders of each and every floor below the floor level where any work is being done, or about to be done, covered with planking laid close together, said planking to be of not less than one and one-half inches in thickness, in buildings that have steel framework, and what is commonly known as one-inch plank in all others where joists are set on two feet centers or less, to protect the workmen engaged in the erections or construction of such buildings from falling through joists, girders, and from falling planks, bricks, rivets, tools or other substances, whereby life and limb are endangered. Where any scaffolding is placed on the outside of any of said buildings over any public street or alley where persons are in the habit of passing, then said scaffolding shall be so constructed as to prevent any material, tools or other things from falling off and endangering the life of passersby. (Acts 1919, ch. 152, sec. 1.)

Art. 1451v. Same subject; removal.—Such flooring shall not be removed until the same is replaced by a permanent flooring in such building. (Id. sec. 2.)

Art. 1451w. Elevator shafts or openings on certain buildings in course of construction.—If elevators, elevating machines or hod hoisting apparatus are used within a building in the course of construction, for the purpose of lifting materials to be used in such construction the contractor or owners or the agents of the owners, shall cause the shafts or openings in each floor to be inclosed or fenced in on all sides, two sides of which must be at least six feet, and two sides where material is to be taken off or on, shall be protected by automatic safety gates. (Id. sec. 3.)

Art. 1451x. Duty of general contractor as to floorings.—It shall be the duty of the general contractor having charge of the erection and construction of such building to provide for the flooring as herein required, and to make such arrangements as may be necessary with the subcontractor in order that the provisions of this Act may be carried out. (Id. sec. 4.)

Art. 1451y. Duty of owners of buildings.—It shall be the duty of the owner, or the agent of the owner, of such building, to see that the general contractor or sub-contractors carry out the provisions of this Act. (Id. sec. 5.)

Art. 1451z. Same subject.—Should the general contractor or sub-contractors of such building fail to provide for the flooring of such buildings as herein provided, then it shall be the duty of the owner or the agent of the owner of such buildings to see that the provisions of this Act are carried out. (Id. sec. 6.)

Art. 1451zz. Punishment for violations of act.—Failure upon the part of the owner, agent of the owner, general contractor or sub-contractors to comply with the provisions of this Act shall be deemed a misdemeanor, and upon conviction thereof shall be fined in any sum not less than fifty dollars nor more than two hundred dollars, and each day of such violation shall constitute a separate offence. (Id. sec. 7.)

CHAPTER FOUR

EMPLOYMENT OF SAILORS AND CREW

Art. 1452. (971) Restriction on employment of crew of vessel.—No sailor or portion of the crew of any foreign sea-going vessel shall engage in working on the wharves or levees of ports in the state of Texas beyond the end of the vessel's tackle. Any officer, sailor or member of the crew of a foreign sea-going vessel violating this law shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in a sum not less than ten dollars nor more than one hundred dollars, or be imprisoned in the county jail for not less than ten nor more than thirty days, or both, in the discretion of the court or jury. (Acts 1885, ch. 54, p. 52.)

CHAPTER FIVE

PROTECTION OF SETTLERS ON SCHOOL LANDS

Art. 1453. (972) Punishment for certain threats, etc.—Any person who, by force, threats or intimidation shall prevent, or attempt to prevent, or shall combine and confederate with others to prevent, or attempt to prevent, any person who has acquired a right thereto in accordance with the laws of the state, from peaceably entering upon and establishing a settlement on any parcel or tract of land belonging to the common school, university, the lunatic, blind, deaf and dumb and orphan asylum lands, subject to purchase and settlement under and in accordance with the laws of this state, shall be deemed guilty of a misdemeanor, and, upon conviction therefor, shall be fined in any sum not less than two hundred nor more than one thousand dollars, and, in addition thereto, shall be imprisoned in the county jail not less than one nor more than six months. (Act March 31, 1885, ch. 89, p. 83.)

CHAPTER SIX

TRUSTS—CONSPIRACIES AGAINST TRADE

Art. 1454. Defining trusts.—A "trust" is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or either two or more of them for either, any, or all of the following purposes:

1. To create, or which may tend to create or carry out, restrictions in trade or commerce or aids to commerce, or in the preparation of any product for market or transportation, or to create or carry out restrictions in the free pursuit of any business authorized or permitted by the laws of this state.

2. To fix, maintain, increase or reduce the price of merchandise, produce, or commodities, or the cost of insurance, or of the preparation of any product for market or transportation.

3. To prevent or lessen competition in the manufacture, making, transportation, sale or purchase of merchandise, produce, or commodities, or the business of insurance, or to prevent or lessen competition in aids to commerce, or in the preparation of any product for market or transportation.

4. To fix or maintain any standard or figure whereby the price of any article or commodity of merchandise, produce or commerce, or the cost of transportation, or insurance, or the preparation of any product for market or transportation, shall be in any manner affected, controlled or established.

5. To make, enter into, maintain, execute or carry out any contract, obligation or agreement by which the parties thereto bind, or have bound, themselves not to sell, dispose of, transport or to prepare for market or transportation any article or commodity, or to make any contract of insurance at a price below a common standard or figure, or by which they shall agree, in any manner, to keep the price of such article or commodity, or charge for transportation or insurance, or the cost of the preparation of any product for market or transportation, at a fixed or graded figure, or by which they shall, in any manner, affect or maintain the price of any commodity or article, or the cost of transportation or insurance, or the cost of the preparation of any product for market or transportation, between them or themselves and others, to preclude a free and unrestricted competition among themselves or others in the sale or

transportation of any such article or commodity or business of transportation or insurance, or the preparation of any product for market or transportation, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or purchase of any article or commodity, or charge for transportation or insurance, or charge for the preparation of any product for market or transportation, whereby its price or such charge might be in any manner affected.

6. To regulate, fix or limit the output of any article or commodity which may be manufactured, mined, produced or sold, or the amount of insurance which may be undertaken, or the amount of work that may be done in the preparation of any product for market or transportation.

7. To abstain from engaging in or continuing business, or from the purchase or sale of merchandise, produce or commodities partially or entirely within the state of Texas, or any portion thereof. (Acts 1903, p. 119, sec. 1.)

Art. 1455. "Monopoly" defined.—A "monopoly" is a combination or consolidation of two or more corporations when effected in either of the following methods:

1. When the direction of the affairs of two or more corporations is in any manner brought under the same management or control for the purpose of producing, or where such common management or control tends to create a trust as defined in the first section of this chapter.

2. Where any corporation acquires the shares or certificates of stock or bonds, franchise or other rights, or the physical properties, or any part thereof, of any other corporation or corporations, for the purpose of preventing or lessening, or where the effect of such acquisition tends to affect or lessen competition, whether such acquisition is accomplished directly or through the instrumentality of trustees or otherwise. (Id. p. 120, sec. 2.)

Art. 1456. "Conspiracy in restraint of trade" defined.—Either or any of the following acts shall constitute a conspiracy in restraint of trade:

1. Where any two or more persons, firms, corporations or associations of persons, who are engaged in buying or selling any article of merchandise, produce or any commodity, enter into an agreement or understanding to refuse to buy from or sell to any other person, firm, corporation or association of persons, any article of merchandise, produce or commodity.

2. Where any two or more persons, firms, corporations or associations of persons, shall agree to boycott or threaten to refuse to buy from or sell to any person, firm, corporation or association of persons for buying from or selling to any other person, firm, corporation or association of persons. (Id. p. 120, sec. 3.)

Art. 1457. Trusts, monopolies and conspiracies in restraint of trade prohibited.—Any and all trusts, monopolies and conspiracies in restraint of trade, as herein defined, are hereby prohibited and declared to be illegal. (Id. p. 121, sec. 4.)

Art. 1458. Corporations forfeit charter for violation of this law.—Any corporation holding a charter under the laws of the state of Texas, which shall violate any of the provisions of this chapter, shall thereby forfeit its charter and franchise, and its corporate existence shall cease and determine. (Id. p. 121, sec. 5.)

At the time the above provision was carried into the revised Penal Code of 1911, it had been amended by Acts 1909, p. 281. In view of the decision in Stevens v. S., 159 S. W. 505, the amendatory act is included in this compilation, and is set out below.

Attorney general to institute quo warranto proceedings.—For a violation of any of the provisions of this chapter, or any anti-trust laws of this state, by any corporation, it shall be the duty of the attorney general, upon his motion and without leave or order of any judge or court, to institute suit or quo warranto proceedings in Travis county, or at the county seat of any county in the state which the attorney general may select, for the forfeiture of its charter rights and franchises, and the dissolution of its corporate existence; and for such purposes, venue is hereby given to each district court in the state of Texas. (Acts 1903, p. 121, amended Acts 1909, p. 281.)

Art. 1459. Duty of attorney general.—For a violation of any of the provisions of this chapter by any corporation mentioned herein, it shall be the duty of the attorney general, upon his own motion, and without leave or order of any judge or court, to institute suit or quo warranto proceedings in Travis county, at Austin, or at the county seat of any county in the state, where such corporation exists, does business, or may have a domicile, for the forfeiture of its charter rights and franchise, and the dissolution of its corporate existence. (Acts 1903, p. 121, sec. 6.)

Art. 1460. When corporation of this state has forfeited its charter, no other corporation to which property of defaulting corporation has been transferred shall be incorporated or be permitted to do business in this state.—When a corporation, organized under the laws of this state, shall have been convicted of a violation of any of the provisions of this chapter, and its charter and franchise has been forfeited, as provided in article 1458, no other corporation to which the defaulting corporation may have transferred its properties and business, or which has assumed the payment of its obligations, shall be permitted to incorporate or do business in Texas. (Id. p. 121, sec. 7.)

Holland v. S., 105 S. W. 812.

Art. 1461. Foreign corporation violating this law forbidden to do business.—Every foreign corporation violating any of the provisions of this chapter is hereby denied the right, and is prohibited from doing any business within this state; and it shall be the duty of the attorney general to enforce this provision by injunction or other proceedings in the district court of Travis county, in the name of the state of Texas. (Id. p. 121, sec. 8.)

See Holland v. S., 105 S. W. 812.

Art. 1461a. Revival of permit to do business; procedure.—Any foreign corporation not engaged in the manufacture or sale

of spirituous, vinous or malt liquors, which has heretofore, more than ten years prior to the passage of this Act, been convicted of a violation of any of the provisions of Title 130 of the Revised Statutes of Texas of 1911, and its right to do business has been forfeited thereunder, and which, under the judgment of any court in this State, was not assessed a penalty in excess of $3000.00, shall be permitted to revive its permit to do business in Texas under the following provisions and in the following manner;

(a) It shall file suit in the court where the original judgment was entered, making the Attorney General of Texas a party defendant thereto, and serve notice upon him ten days prior to the time said suit is called for trial of the filing thereof, furnishing him a copy of the petition filed.

(b) It shall establish to the satisfaction of the court that the judgment of conviction against it was had more than ten years prior to the passage of this Act, and that the penalty assessed against it, either in the suit which forfeited its right to do business in this State or in any other suit against it for violation of the provisions of said chapter, was not in excess of $3000.00.

(c) It shall establish to the satisfaction of the court that it has not violated in any respect the judgment of the court forfeiting its right to do business in this State, and that it has paid in full the penalty assessed against it.

(d) It shall establish to the satisfaction of the court that it has no connection at the time of the trial, and has had no connection since said judgment of conviction, with any person, firm or corporation engaged in violating the provisions of said chapter.

(e) And the court must find as a fact that the company doing business is not at the time engaged in any business in violation of the anti-trust laws of the State of Texas.

Upon the establishment of the things hereinbefore set out it shall be the duty of the court to set aside the previous judgment of conviction, and a certified copy of said judgment setting aside such previous judgment shall be filed in the office of the Secretary of State, who shall, upon of receipt of same, issue a permit to said foreign corporation to do business in Texas upon the payment by it of such fees as the law may require for issuing permits to foreign corporations; provided, however, that no corporation shall be permitted to do business in this State which has been convicted a second time of any violation of the anti-trust laws of this State. (Acts 1919, ch. 4, sec. 1.)

Art. 1461b. Same subject; corporations excepted.—The provisions of this Act shall not apply to any foreign corporation who is at the time of said trial, or was at the time of said judgment of conviction, or has been at any time during said dates been engaged in the manufacture or sale of spirituous, vinous or malt liquors. (Id. sec. 2.)

Art. 1461c. Same subject; costs.—The costs of said court proceedings shall be paid by said foreign corporation. (Id. sec. 3.)

Art. 1462. Quo warranto proceedings.—The provisions of the Revised Statutes of this state, prescribing the remedy and regulating the proceedings by quo warranto, etc., shall, except in so far as they conflict herewith, govern and control the proceedings when instituted to forfeit any charter under this chapter. (Acts 1903, p. 121, sec. 9.)

Art. 1463. Foreign corporations convicted of violating this law, no other corporation to which the defaulting corporation has transferred its business or property shall be permitted to incorporate or do business in this state.—When any foreign corporation has been convicted of a violation of any of the provisions of this Chapter, and its right to do business in this State has been forfeited, as provided in Article 7803, Revised Civil Statutes of Texas of 1911, then, before such corporation or any other corporation to which such corporation may have transferred its properties and business or which has assumed its obligations, shall be permitted to incorporate or do business in Texas, it shall be required to go into the court where the original judgment of forfeiture was entered and show that it has fully obeyed the decree of court forfeiting its charter, and has satisfied in full all fines and penalties assessed against it, and it shall further show that it has so organized or reorganized its affairs and business that if permitted to do business in Texas it can and will do so without violating any of the laws of this State, and particularly that it has no connection with any person, firm, or corporation engaged in violating the laws against trusts and monopolies, and is not itself so engaged; provided that no such action shall be instituted within five years from the date of such original conviction and provided further that any corporation which shall be convicted a second time of a violation of any provision of this title shall be forever barred from instituting any such action hereunder. Whereupon and after a hearing had, after the notice to the Attorney General herein provided, the court may modify or reform such judgment so as to permit such corporation to incorporate, or secure a permit, and do business in Texas, and such modified or reformed judgment shall be by the clerk of said court certified to the Secretary of State for action by him in conformity therewith. Nothing in this Act shall in any manner affect any judgment hereafter rendered by any court against any corporation, its agent, or employés or successors.

Provided, that notice of filing of such proceeding and the taking of evidence shall be served upon the Attorney General of the State, whose duty it shall be to represent the State in such proceeding; and provided, further, that the court may require the production of all books and records and may appoint a commission to take testimony, either within or without the State; and provided, further, that the expense of the entire proceeding, including reasonable attorney's fee, the amount of which to be determined by the judge trying the case, and the same to be paid to the attorney representing the State, and same to be delivered by such attorney to the State Treasurer and by him deposited to the account of the General Revenue Fund of the State; and it is further provided that the court, after modifying or reforming the judgment, as provided herein, shall retain jurisdiction of the case and at any time thereafter shall, upon showing that the said corporation is violating the laws against trusts or monop-

olies, or has connection with any person, firm, or corporation engaged in violation of the laws against trusts or monopolies, set aside any order or judgment entered, and in which event all proceedings based thereon, including all transfers of any and all properties shall be nullified, and it shall be the duty of the Attorney General, for good cause, to enter proceedings to set aside and nullify the modified judgment of the court and its proceedings, as herein provided; and provided, further, that if the court shall, after the hearing provided for, refuse to modify or reform such judgment, no permit shall be issued by the Secretary of State to such corporation or to any other corporation to which its properties or business have been transferred or which has assumed the payment of its obligations. (Acts 1903, p. 121, sec. 10; Rev. Civ. St. 1911, art. 7805, amended; Acts 1917, ch. 37, sec. 1; Acts 1919, ch. 30, sec. 1.)

Art. 1464. Penalty may be recovered for violating this law.—Each and every firm, person, corporation or association of persons, who shall in any manner violate any of the provisions of this chapter, shall, for each and every day that such violation shall be committed or continued, forfeit and pay the sum of fifty dollars, which may be recovered in the name of the state of Texas in any county where the offense is committed or where either of the offenders reside, or in Travis county; and it shall be the duty of the attorney general, or the district or county attorney under the direction of the attorney general, to prosecute for the recovery of the same; and the fees of the prosecuting attorney for representing the state in proceedings under this chapter shall be over and above the fees allowed him under the general fee bill.

At the time the above provision was inserted in the revised Penal Code it had been amended by Acts 1909, p. 281. In view of the decision in Stevens v. S., 159 S. W. 505, the amendatory act is included in this compilation, and is set out below.

Penalties; venue; fees of attorney general.—Each and every firm, person, corporation or association of persons, who shall in any manner violate the provisions of this chapter, shall, for each and every day that such violation shall be committed or continued, forfeit and pay a sum of not less than fifty nor more than fifteen hundred dollars, which may be recovered in the name of the state of Texas in the district court of any county in the state of Texas, and venue is hereby given to such district courts; provided, that when any such suit shall have been filed in any county and jurisdiction thereof acquired, it shall not be transferred to any other county, except upon change of venue allowed by the court; and it shall be the duty of the attorney general, or the district or county attorney under the direction of the attorney general, to prosecute for the recovery of the same; and the fees of the district or county attorney for representing the state in all anti-trust proceedings, or for the collection of penalties for the violation of the anti-trust laws of this state, shall be ten per cent of the amount collected up to and including the sum of fifty thousand dollars, and five per cent on all sums in excess of the first fifty thousand dollars, to be retained by him when collected; and all such fees which he may collect shall be over and above the fees allowed under the general fee bill; provided, that the provisions of this chapter as to the fees allowed the prosecuting attorney shall not apply to any case in which judgment has heretofore been rendered in any court, nor to any moneys to be hereafter collected upon any such judgment heretofore rendered in any court, whether such judgment or judgments are pending upon appeal or otherwise; and provided, further, that the district or county attorney who joins in the institution or prosecution of any suit for the recovery of penalties for a violation of any of the anti-trust laws of this state, who shall, previous to the collection of such penalties, cease to hold office, he shall be entitled to an equal division with his successor of the fee collected in said cause; and in case of the employment of special counsel by any such district or county attorney, the contract so made shall be binding upon such prosecuting officer making such contract and thereafter retiring from office; provided, further, that in case any suit is compromised before any final judgment in the trial court is had, then the fees herein provided for shall be reduced one-half. (Acts 1903, p. 121, sec. 11, amended Acts 1909, p. 281).

Art. 1465. Contract in violation of provisions of this law void.—Any contract or agreement in violation of the provisions of this chapter shall be absolutely void and not enforcible either in law or equity. (Acts 1903, p. 122, sec. 12.)

Art. 1466. Punishment for violating this law.—And, in addition to all other penalties and forfeitures herein provided for, every person violating the provisions of this chapter shall be further punished by imprisonment in the penitentiary not less than two nor more than ten years. (Acts 1907, p. 194; Acts 1903, p. 119, sec. 13.)

Art. 1467. In prosecutions for violating this law, what evidence used.—In prosecutions for the violations of any of the provisions of this chapter, evidence that any person has acted as the agent of a corporation in the transaction of its business in this state shall be received as prima facie proof that his act in the name, behalf or interest of the corporation of which he was acting as the agent, was the act of the corporation. (Acts 1903, p. 122, sec. 14.)

Art. 1468. Persons may be summoned and required to testify when, shall not be subject to indictment or prosecution.—Upon the application of the attorney general or of any of his assistants, or of any district or county attorney, acting under the direction of the attorney general, made to any county judge, or any justice of the peace, in this state, stating that he has reason to believe that a witness, who is to be found in the county in which such county judge or justice of the peace is an officer, knows of a violation of any of the provisions of this chapter, it shall be the duty of the county judge, or of the justice of the peace, as the case may be, before whom such application is made, to have summoned and to have examined such witness in relation to violations of any of the provisions of this chapter, said witness to be summoned as provided for in criminal cases. The said witness shall be duly sworn; and the county judge, or justice of the peace, as the case may be, shall cause

the statements of the witness to be reduced to writing and signed and sworn to before him; such sworn statement shall be delivered to the attorney general, his assistants, or the district or county attorney, upon whose application the witness was summoned. Should the witness summoned as aforesaid fail to appear, or to make statements of the facts within his knowledge, under oath, or to sign the same after it has been reduced to writing, he shall be guilty of contempt of court, and may be fined not exceeding one hundred dollars, and may be attached and imprisoned in the county jail until he shall make a full statement of all the facts within his knowledge with reference to the matter inquired about. Any person who shall testify before any county judge, or justice of the peace, as provided for in this chapter, or who shall testify as a witness for the state in the course of any statutory proceeding to secure testimony for the enforcement of this law, or in the course of any judicial proceeding to enforce the provisions of this chapter, shall not be subject to indictment or prosecution for any transaction, matter or thing concerning which he shall so give evidence, documentary or otherwise. (Acts 1907, p. 221; Acts 1903, p. 122, sec. 15.)

Art. 1469. Actions brought under this law have precedence.—All actions authorized and brought under this chapter shall have precedence, on motion of the prosecuting attorney or the attorney general, of all other business, civil and criminal, except criminal cases where the defendants are in jail. (Acts 1903, p. 122, sec. 16.)

Art. 1470. Entering into agreement to form trust, monopoly, etc., penalty.—If any person shall enter into an agreement or understanding of any character to form a trust, or to form a monopoly, or to form a conspiracy in restraint of trade, as these offenses are defined in this chapter, or shall form a trust, monopoly or conspiracy in restraint of trade, or shall be a party to the formation of a trust or monopoly or conspiracy in restraint of trade, or shall become a party to a trust or monopoly or conspiracy in restraint of trade, or shall do any act in furtherance of or aid to such trust or monopoly or conspiracy in restraint of trade, he shall be punished by imprisonment in the penitentiary for a period of not less than two years nor more than ten years. (Acts 1907, S. S. p. 457; Acts 1907, p. 322.)

Art. 1471. Person, member, agent, employé, etc., operating in violation of this law, penalty.—If any person shall, as a member, agent, employé, officer, director or stockholder of any business, firm, corporation or association of persons, form, in violation of the provisions of this chapter, or shall operate, in violation of the provisions of this chapter, any such business, firm, corporation or association formed in violation of this chapter, or shall make any sale, or purchase, or any other contract, or do business for such business, firm, corporation or association, or shall do any other act which has the effect of violating or aiding in the violation of any of the provisions of this chapter, or shall, with the intent or purpose of driving out competition or for the purpose of financially injuring competitors, sell within this state at less than cost of manufacture or production, or sell in such a way or give away within this state, products for the purpose of driving out competition or financially injuring competitors engaged in a similar business, or give secret rebates on such purchase for the purpose aforesaid, he shall be punished by confinement in the penitentiary for a period of not less than two years nor more than ten years. (Acts 1907, S. S. p. 457.)

Art. 1472. Persons outside state liable to punishment, when.—If any person shall, outside of this state, do anything which, if done within this state, would constitute the formation of a trust or monopoly or conspiracy in the restraint of trade, as defined in this chapter, and shall cause or permit the trust or monopoly so formed by him to do business within this state, or shall cause or permit such trust, monopoly, or conspiracy in restraint of trade to have any operation or effect within this state, or, if such trust, monopoly or conspiracy in restraint of trade, having been formed outside of said state, any person shall give effect to such trust, monopoly or conspiracy in this state, or he shall do anything to help or aid it doing business in this state, or otherwise violate the anti-trust laws of this state, or if any person shall buy or sell or otherwise make contracts for or aid any business, firm, corporation or association of persons, formed or operated in violation of the provisions of this chapter, or so formed or operated as would be in violation of the laws of this state, if it had been formed within this state, shall be punished by confinement in the penitentiary for a period of not less than two years nor more than ten years. (Id. p. 457.)

Art. 1473. Persons, etc., who have formed trusts, etc., penalty for.—If any person or employé or employés, or agent or agents, stockholder or stockholders, officer or officers of any person, firm, association of persons, or corporation now doing business in this state who have formed a trust, as defined in this chapter, or formed a monopoly, as defined in this chapter, or has formed a conspiracy in restraint of trade, as defined in this chapter, or shall do or perform any act of any character to carry out such trust, monopoly or conspiracy in restraint of trade, such person, employé or employés, agent or agents, stockholder or stockholders, officer or officers, shall be punished by confinement in the penitentiary for not less than two years nor more than ten years. (Id. p. 458.)

Art. 1474. Venue for criminal prosecutions under this law.—Criminal prosecutions under this chapter may be conducted in Travis county, Texas, or in any county in this state wherein a trust, monopoly, or conspiracy in restraint of trade is being carried on; a recovery or prosecution against any person for any violation of this act shall not bar a prosecution of or recovery against any other person or persons for the same offense. (Id. p. 458, sec. 20; Acts 1907, p. 323.)

Art. 1475. District or county attorney may commence prosecution, shall notify attorney general.—Prosecutions under this chapter may be instituted and prosecuted by any county or district attorney of this state; and, when any such prosecutions have been instituted by any county or district attorney, such officer shall forthwith notify the attorney general of such fact; and it is hereby

made the duty of the attorney general, when he shall receive such notice, to join such officer in such prosecution and do all in his power to secure the enforcement of this chapter. (Acts 1907, p. 458, sec. 21.)

Art. 1476. Fee of district and county attorney.—For every conviction obtained under the provisions of this chapter, the state shall pay to the county or district attorney in such prosecution the sum of two hundred and fifty dollars; and, if both the county and district attorney shall serve together in such prosecution, such fee shall be divided between them as follows: One hundred dollars to the county attorney and one hundred and fifty dollars to the district attorney. (Id. p. 458, sec. 22.)

Art. 1477. Agricultural products and live stock in hands of producer exempt.—The provisions of this law shall not apply to agricultural products or live stock while in the hands of the producer or raiser; and it shall be lawful for any and all persons engaged in any kind of work or labor, manual or mental, or both, to associate themselves together and form trades unions and other organizations for the purpose of protecting themselves in their personal work, personal labor, and personal service, in their respective pursuits and employments. (Acts 1899, p. 262.)

Art. 1478. Trade unions, etc., exempt when.—And it shall not be held unlawful for any member or members of such trades union or other organization or association, or any other person, to induce or attempt to induce, by peaceable and lawful means, any person to accept any particular employment, or quit or relinquish any particular employment in which such person may then be engaged, or to enter any pursuit, or refuse to enter any pursuit, or quit or relinquish any pursuit, in which such person may then be engaged; provided, that such member or members shall not have the right to invade or trespass upon the premises of another without the consent of the owner thereof. (Id. p. 262.)

Art. 1479. Preceding article not to apply to combination, etc.—The foregoing article shall not be held to apply to any combination or combinations, association or associations of capital, or capital and persons, natural or artificial, formed for the purpose of limiting the production or consumption of labor's products, or for any other purpose in restraint of trade; provided, that nothing herein contained shall be held to interfere with the terms and conditions of private contract with regard to the time of service, or other stipulations between employers and employés; provided, further, that nothing herein contained shall be construed to repeal, affect or diminish the force and effect of any statute now existing on the subject of trusts, conspiracies against trade, pools and monopolies. (Id. p. 262).

CHAPTER SEVEN

THEATERS, ETC.—PROHIBITING DISCRIMINATION BETWEEN PERSONS DESIRING TO LEASE SAME

Art. 1480. "Public house of amusement" defined and subject to regulations.—All buildings constructed, fitted and equipped for the purpose of theaters, commonly called theaters, opera houses, playhouses, or by whatever name designated, which are and shall hereafter be used for public performances, the production and exhibition of plays, dramas, operas and other shows of whatever nature, to which admission fees are charged, be, and the same are hereby declared to be "public houses of amusement,'" and the same shall be subject to regulation by the public will as expressed by ordinance, statute, or other law; provided, that owners and lessees shall have the right to assign seats to patrons thereof, and to refuse admission to objectionable characters. (Acts 1907, p. 21.)

Art. 1481. Owner, lessee, manager of, discriminating against reputable theaters, operas, etc., penalty for.—Hereafter it shall be unlawful for any owner, or lessee, or any manager, agent, employé or representative of the owner or lessee, who may be in charge and having the care and management of such house or houses of public amusement, to discriminate against reputable theaters, operas, shows or other productions by whatever name known. And any owner or lessee, or any manager, agent, employé, or representative of the owner or lessee, in charge of such house or houses, who shall fail and refuse to rent, lease and let such house or houses of public amusement, for one or more performances, and upon such terms and conditions as shall not be deemed unreasonable, extortionate or prohibitive, to the agent, manager, proprietor or representative, who may in good faith make application therefor, of any reputable theater, opera or show, by whatever name known, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of competent jurisdiction of this state, be fined in any sum not less than one hundred dollars nor more than five hundred dollars, one-half of which fine shall be paid to the complainant, the balance to go to the jury fund of the county in which such prosecution is had; and, in addition, such person or persons so convicted may be committed to the county jail for a period of not more than ten days. Each violation of any of the provisions of this chapter shall be a separate offense. Provided, however, that if, at the time of the application to lease or rent such house or houses of public amusement for said purposes, it shall be shown by the owner, lessee or other person in charge thereof that said house or houses of public amusement has or have been already leased, let or rented to other persons or parties, and that other bookings have in good faith been made for the date or dates so applied for, and that such leasing, renting, and bookings were made in good faith, and not with the intention of evading the provisions of this chapter, then, and in that instance, the penalties provided by this article shall not be imposed. (Id., p. 22.)

Art. 1482. Shall keep a list of all bookings of shows for inspection of whom.—Owners, lessees, managers or other persons in charge of such house or houses of public amusement shall make and keep; in conveni-

ent form, a list of all bookings of shows for such house or houses, with the dates as to time specifically set out therein; and said list of bookings shall be exhibited, upon request, to all persons applying therefor, who, in good faith, desire to lease or rent such house or houses for the purposes indicated in article 1480; and the failure or refusal of such owner, lessee, or other person or persons in charge of such house or houses, to keep and exhibit such list of bookings as aforesaid, shall, upon conviction thereof, be fined in any sum not less than ten nor more than twenty dollars; and each failure or refusal to so exhibit such list of bookings shall be a separate and distinct offense. (Id., p. 22.)

Art. 1483. Leases of houses of public amusement shall contain what, penalty for violation.—All leases and renewals of leases, hereafter taken and made, for a term, upon such houses of public amusement, as defined in article 1480, shall contain a provision therein to the effect that the lessees and his assigns shall, in good faith, comply with the provisions of this law; and the failure or refusal of any such lessee or his assigns to comply with the provisions of this law shall at once terminate such lease, and, upon conviction of the violation of any provision of this law, such lessee or his assigns, in addition to the penalties provided in articles 1481 and 1482, shall forfeit his lease and all rights and privileges under the same. (Id., p. 22.)

CHAPTER EIGHT

CORPORATIONS—PERMITTING THE ATTORNEY GENERAL AND HIS REPRESENTATIVES TO EXAMINE BOOKS

Art. 1484. Corporation doing business in this state, books, accounts, etc., subject to examination by attorney general, etc.—Every corporation doing business in this state, by virtue of a permit or charter, granted under the laws of this state, shall permit the attorney general, or any of his assistants or representatives when authorized in writing by the attorney general, to make examination of all the books, accounts, records, minutes, letters, memoranda, documents, checks, vouchers, telegrams, constitution and by-laws and other records of said corporation, as often as he may deem it necessary. The attorney general, or his assistant or assistants, or representative or representatives shall present a request in writing to the president, vice-president, treasurer, secretary, manager, agent or other officer of said corporation, at the time the attorney general or his assistant or assistants, or representative or representatives, desire to examine said books, accounts, records, minutes, letters, memoranda, documents, checks, vouchers, telegrams, constitution and by-laws, and other records belonging to said corporation; and it shall be the duty of the officer or agent of any corporation to whom said request is presented to immediately permit the attorney general, or his authorized assistant or assistants, or representative or representatives to inspect and examine all the books, records and other documents of said corporation as hereinabove set forth. (Acts 1907, p. 34, sec. 1.)

Art. 1485. Where and for what purpose such examination may be made, information used, when.—The attorney general, or any of his assistants, or representatives when authorized in writing by the attorney general, shall have the power and authority to make diligent investigation into the organization, conduct and management of any corporation authorized to do business within this state, and shall have power to inspect and examine all or any books, accounts, records, minutes, letters, memoranda, documents, checks, vouchers, telegrams, constitution and by-laws and other records of such corporation, and take copies of any or all of such records or documents, herein set forth, as in his judgment may show or tend to show that said corporation has been or is engaged in acts or conduct in violation of its charter rights and privileges, or in violation of any law of this state; provided, that the attorney general, or his assistant or assistants, or representative or representatives, shall not make public or use said copies or any information derived in the course of said examination of said records or documents, as hereinabove set forth, except in the course of some judicial proceedings of which the state is a party, or in a suit by the state to cancel the permit or forfeit the charter of such corporation, or to collect penalties for a violation of the law of this state, or for the information of any of the officers of this state charged with the enforcement of its laws. (Id. p. 35, sec. 2.)

Art. 1486. President or officer of corporation failing or refusing to permit examination, penalty.—If any president, vice president, treasurer, secretary, manager, agent or other officer of any corporation, doing business under permit or charter from this state, shall fail or refuse to permit the attorney general, or any of his assistants or representatives who may be authorized in writing by the attorney general to make such examination, to examine any or all of the books, accounts, records, minutes, letters, memoranda, documents, checks, vouchers, telegrams, constitution and by-laws and other records of said corporation, or shall fail or refuse to permit said attorney general, or his authorized assistant or assistants, or representative or representatives, to take copies of same, he shall be guilty of a misdemeanor, and, upon conviction therefor, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, and by imprisonment in the county jail for not less than thirty nor more than one hundred days; and each day of such failure or refusal to comply with the provisions of this chapter shall constitute a separate offense. (Id. p. 35, sec. 3.)

Art. 1487. When charter or permit of corporation forfeited, members or officers of such corporation prohibited from using old corporate name.—When any charter or permit, heretofore or hereafter granted under the laws of the state of Texas to any corporation to do business in said state, shall have been forfeited, it shall be unlawful for any persons who were members or officers of said defunct corporation at the time of such forfeiture, to do business in Texas under the old corporate name of such corporation, or to use the same or like signs or advertisements

which were used by such corporation before such forfeiture; and any such person, so violating this law, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in any sum not more than one thousand dollars, nor less than two hundred and fifty dollars; provided, this shall not apply where the charter of a corporation has been revived in the manner provided by law, and is at the time in good standing. (Acts 1907, p. 34, sec. 4; Acts 1905, p. 335.)

CHAPTER EIGHT A

CORPORATIONS—USE OF ASSETS AND FUNDS

Art. 1487a. Funds not to be used except for legitimate corporate business; exceptions.—No corporation, domestic or foreign, doing business in this state, shall employ or use its stock, means, assets or other property, directly or indirectly, for any purpose whatever other than to accomplish the legitimate business of its creation, or those purposes otherwise permitted by law; provided that nothing in this Section shall be held to inhibit corporations from contributing to any bona fide association, incorporated or unincorporated, organized for and actively engaged for one year prior to such contribution in purely religious, charitable or eleemosynary activities, nor to local commercial clubs or associations or other local civic enterprises or organizations not in any manner nor to any extent, directly or indirectly, engaged in furthering the cause of any political party, or aiding in the election or defeat of any candidate for office, or aiding in defraying the expenses of any candidate for office, or defraying or aiding in defraying the expenses of any political campaign, or political headquarters, or aiding or assisting the success or defeat of any question to be voted upon by the qualified voters of this state or any subdivision thereof. Provided, that the provisions of this Act shall not in any wise affect any suit now pending in this State on the behalf of the State of Texas for any violation of unlawful contributions by any corporation. (Rev. Civ. St. 1879, art. 589; Rev. Civ. St. 1895, art. 665; Rev. Civ. St. 1911, art. 1164, amended; Acts 1915, p. 156, ch. 102, sec. 1.)

This article is amended by Acts 1917, ch. 15; Acts Reg. Sess. 35th Leg. See art. 1164, ante, of Civil Statutes.

This article and the following article were brought into being as an amendment of art. 1164, Rev. Civ. St. 1911. As a criminal feature is added by the amendment, the new act is placed in this compilation.

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, sec. 2; Acts 1917, ch. 15, sec. 2.)

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 NINE

STATE REVENUE AGENT

Art. 1488. (989) His duties.—The governor is hereby authorized to appoint a suitable person as revenue agent for the state, for the purpose of securing a better enforcement of the revenue laws of the state. The agent provided for herein shall be known as the state revenue agent. Said revenue agent shall be subject to the direction of the governor, who may, whenever in his judgment the public service demands it, direct the said revenue agent to investigate books and accounts of the assessing and collecting officers of this state, and all officers and persons disbursing, receiving or having in their possession public funds, and to make such other investigations and perform such other duties in the interest of the public revenue as the governor may direct. Whenever any such investigation is ordered by the governor, the revenue agent shall report to him in writing the results of such investigations, and to point out the particulars, if any, wherein the revenue laws have been violated or their enforcement neglected, together with the names of the parties delinquent therein; whereupon the governor shall institute civil and criminal proceedings through the attorney general in the name of the state against such delinquent parties, who are reported by such agent to be delinquent; and it is further provided, that said revenue agent shall have power at any time to examine and check up all and any disbursements or expenditures of money appropriated for any of the state institutions or for any other purpose, or for improvements made by the state on state property, or money received and disbursed by any board authorized by law to receive and disburse any state money. (Act April 13, 1891, sec. 1, 22d Leg., p. 87.)

When this article was carried into the revised Penal Code it had been superseded by Acts 1899, p. 26, amending art. 5058, Rev. Civ. St. 1895, which article had been made up from the same act from which this article was constructed. The amendatory act is set out below.

Powers and duties of state revenue agent.—The Governor is authorized to appoint a suitable person as Revenue Agent for the State, for the purpose of securing a better enforcement of the revenue laws of the State. The agent provided for herein shall be known as the State Revenue Agent. Said Revenue Agent shall be subject to the directions of the Governor, who may, whenever in his judgment the public service demands it,

direct the said Revenue Agent to investigate books and accounts of the assessing and collecting officers of this State, and all officers and persons disbursing, receiving or having in their possession public funds, and to make such other investigations and perform such other duties in the interest of the public revenues as the Governor may direct. Whenever any such investigation is ordered by the Governor, the Revenue Agent shall report to him in writing the results of such investigation, and point out the particulars, if any, wherein the revenue laws have been violated, their enforcement neglected, together with the names of the parties delinquent therein. Whereupon the Governor shall institute civil and criminal proceedings through the Attorney-General in the name of the State against such delinquent parties who are reported by such agent to be delinquent. Said Revenue Agent shall have power at any time to examine and check up all and any disbursements or expenditures of money appropriated for any of the State institutions or for any other purpose or for any improvements made by the State on State property or money received and disbursed by any board authorized by law to receive and disburse any State money. Said Revenue Agent shall also have power and authority, and it is hereby made his duty, to fully investigate any and all State institutions when so directed by the Governor or required by information coming to the knowledge of said agent. He shall investigate the manner of conducting the same and the policy pursued by those in charge thereof, and the conduct or efficiency of any person employed therein by the State. He shall examine into and report upon the character and manner as well as the amount of expenditures thereof. He shall also investigate and ascertain all sums of money due the State from any source whatever; the ascertainment and collection of which does not devolve upon other officers of this State under existing law. And he shall report all such facts to the Governor, who shall proceed therein as provided by this or any other law of this State. (Acts 1891, p. 87; amended Acts 1899, p. 26.)

The office of the State Revenue Agent was abolished by Acts 1918, 4th C. S., ch. 94, sec. 1, and articles 7074, 7366, 7367, 7368, and 7392 of the Revised Civil Statutes were repealed. Section 4 of said Acts 1918, 4th C. S., ch. 94, devolves the duties and functions of the State Revenue Agent upon the Comptroller of Public Accounts. See ante, Civ. St. art. 7368b.

Art. 1489. (990) Books and records of officers to be submitted; penalty.—When said revenue agent, acting under the direction of the governor, calls on any person connected with the public service to inspect his accounts, records or books, said officers or official so called upon shall submit to said agent all books, records and accounts so called for without delay. Any failure or refusal on the part of any officer or official to comply with the provisions of this article shall be an offense, for which, on conviction thereof, he shall be fined not less than one hundred nor more than one thousand dollars, and may be imprisoned in the county jail not more than one year. (Act April 13, 1891, p. 87, sec. 2.)

Art. 1490. (991) Penalty for making false report.—Said revenue agent shall receive as compensation for his services not exceeding two thousand dollars per annum, together with his actual traveling expenses, which shall be paid on the approval of the same by the governor; provided, that said revenue agent shall not be allowed traveling expenses for any service connected with the examination and investigation of the accounts of any institution in Travis county. If the revenue agent herein provided for shall wilfully make a false or fraudulent report of the financial condition of the books of any officer or official, department or institution, handling, receiving or disbursing any state funds, appropriated or unappropriated, he shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than five hundred nor more than one thousand dollars, and imprisoned in the county jail for any period not to exceed twelve months. (Id. sec. 3.)

CHAPTER TEN

GUARANTY AND FIDELITY COMPANIES—REGULATION OF

Arts. 1491-1503. (992-1004) [Superseded.]

The above articles appeared in the revised Penal Code of 1895 as arts. 993-1004. The revisers of 1895 carried the same provisions, with the exception of art. 1000 of the Penal Code, into the Revised Statutes of 1895, as ch. 16 of Title 21 (Arts. 733-744). This title and chapter of the Civil Statutes was repealed by Act 1897, ch. 165, sec. 13, which act reconstructed and re-enacted the repealed law without any criminal feature therein, the criminal features in the old act being displaced by provisions imposing penalties recoverable in a civil action. The result is that the subject matter of this chapter of the Penal Code was dead and obsolete law when it was carried into the revision of 1911. In view of the decisions in Berry v. S., 156 S. W. 626, and Stevens v. S., 159 S. W. 506, the articles of this chapter are omitted from this compilation.

CHAPTER ELEVEN

BOND INVESTMENT COMPANIES

Art. 1504. Doing business in this state, required to do what.—Every corporation, company or individual, doing business in this state as a bond investment company, or company to place or sell bonds, certificates or debentures, on the partial payment or installment plan, shall, and the same is hereby required to, deposit with the state treasurer, in cash or securities approved by the state treasurer, the sum of five thousand dollars; and, in addition thereto, they shall be required to deposit semi-annually with the state treasurer in cash or securities to be approved by said officer, ten per cent of all the net premium received, until the sum deposited shall amount to the sum of one hundred thousand dollars. (Acts 1897, p. 118.)

Art. 1505. Failure to comply with this law, charter forfeited.—If any such company, being a domestic corporation, shall fail, for sixty days after the organization of such company, to make with the state treasurer the deposit required by this chapter, it shall be considered to have forfeited its charter; and the attorney general shall, immediately upon receiving information thereof, bring suit in the name of the state, in the district court of Travis county, to have such charter or certificate of incorporation declared forfeited and of no effect; and said court shall declare such charter forfeited, and appoint a receiver for such company, whose duty it shall be, under the order of the court, to distribute to the shareholders the assets of the company. The court shall, out of the assets

of the company, make such allowance for compensation for the receiver as shall be equitable and just. (Id. p. 118.)

Art. 1506. Officer, agent, etc., of any such company transacting business in violation of this law, penalty.—If any officer, agent, or representative of any such company or companies, whether they be foreign or domestic corporations, shall attempt to place or sell shares, or to transact any business whatsoever in the name or on behalf of such company or companies, while they fail or refuse to comply with the provisions of this chapter, said officer, agent or representative shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars for each offense, or be imprisoned in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment. (Id. p. 118.)

CHAPTER TWELVE

PRIZE FIGHTING, ROPING CONTESTS, ETC.

Art. 1507. (1005) Pugilistic encounters prohibited; penalty.—Any person who shall voluntarily engage in a pugilistic encounter between man and man, or a fight between a man and a bull, or any other animal, for money or other thing of value, or for any championship, or upon the result of which any money or anything of value is bet or wagered, or to see which any admission fee is charged, either directly or indirectly, shall be deemed guilty of a felony, and, upon conviction, shall be punished by imprisonment in the penitentiary not less than two nor more than five years. (Acts Oct. 3, 1895, S. S.)

Art. 1508. (1005a) "Pugilistic encounter" defined.—By the term, "pugilistic encounter," as used in this act, is meant any voluntary fight or personal encounter by blows by means of the fists or otherwise, whether with or without gloves, between two or more men for money, or for a prize of any character, or for any other thing of value, or for any championship, or upon the result of which any money or anything of value is bet or wagered. (Id.)

Art. 1509. (1005b) Exhibition of prize fights by means of moving pictures prohibited.—It shall be unlawful for any person, association, corporation, or any agent or employé of any person, association, corporation or receiver, partnership or firm to give or present to the public an exhibition of prize fights or glove contests, or of any obscene, indecent or immoral picture of any character whatsoever, by means of moving picture films, bioscopes, vitiscopes, magic lanterns, or other device or devices in moving picture shows, theaters, or any other place whatsoever.

Any person or persons, association, or any agent or employé of any person, association, corporation or receiver violating any of the provisions of this act shall, upon conviction thereof, be fined in any sum not less than one hundred dollars and not more than one thousand dollars, or be imprisoned in the county jail for not less than ten nor more than sixty days, or both, in the discretion of the court or jury, and each day's violation of any of the provisions of this article shall constitute and be punishable as a separate offense. (Acts S. S. 1910, p. 21.)

Art. 1510. Matching any cock fight, etc., penalty.—Any person who shall match, or be concerned in matching, any cock fight, or who shall match, or be concerned in matching or causing, a fight between any animals or fowls, or who shall keep, or be concerned in keeping, any cock pit or other place for the purpose of matching fights between cocks, or any other animals or fowls, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than ten nor more than one hundred dollars. Each day such cock pit or other place, as aforesaid, shall be kept shall constitute a separate offense. (Acts 1907, p. 156.)

Art. 1511. Engaging in roping contest, penalty.—Any person who shall engage in a roping contest, with other persons or alone, in which cattle or other animals are roped as a test or trial of the skill of the person or persons engaged in such roping contest, for money or prize of any character, or for any championship, for anything of value, or upon the result of which any money or anything of value is bet or wagered, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars; and each animal roped, or attempted to be roped, shall constitute a separate offense. (Acts 1905, p. 69, sec. 1.)

CHAPTER THIRTEEN

SCHOOLS

Art. 1512. (1006) Teacher contracting with trustees shall exhibit certificate; penalty for approving, etc.—Any county or city superintendent or board of trustees who shall approve any teacher's certificate or voucher, until the person has presented a valid certificate, shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than twenty-five nor more than one hundred dollars. (Acts 1891, sec. 9.)

Art. 1513. Persons selling, giving away, etc., prior to examination, questions propounded by superintendent of public instruction.—Any person or persons who shall sell, barter or give away, prior to any forthcoming examination, to applicants for teachers' certificates, or to any other person, the questions prepared by the state superintendent of public instruction, to be used by the county boards of examiners, or summer normal boards of examiners, in the examination of teachers at said forthcoming examination, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not less than twenty-five nor more than two hundred dollars. (Acts 1901, p. 272.)

At the time this article was placed in the Revised Penal Code of 1911, the act from which it was taken had been superseded by Acts 1905, ch. 124, sec. 124, which is set forth below.

That any person or persons who shall sell, barter or give away, prior to any forthcoming examination, to applicants for teachers' certificates or to any other person, the questions prepared by the State Superintendent of Public Instruction to be used by the county summer normal or any other boards of

examiners in the examination of teachers at said forthcoming examination, or any person or persons who shall accept or otherwise obtain possession of such questions or the answers thereto, prior to any such examination, or any person or persons who shall use the same fraudulently at the time of such examination, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars and not more than five hundred dollars, and in addition thereto shall be imprisoned in the county jail for any number of days not less than twenty and not more than sixty. (Acts 1905, p. 296, ch. 124, sec. 124a.)

Art. 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–2909*oo*, Civ. St., 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. (Acts 1903, 1st C. S., p. 23; Acts 1905, ch. 124; Acts 1907, p. 454; Acts 1911, 1st C. S., p. 95, ch. 11, sec. 23; Acts 1917, 1st C. S., ch. 44, sec. 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. (Acts 1911, 1st C. S., p. 96, ch. 11, sec. 24; Acts 1917, 1st C. S., ch. 44, sec. 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–2909*oo*, Civ. St., 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. (Acts 1911, 1st C. S., p. 96, ch. 11, sec. 24a; Acts 1917, 1st C. S., ch. 44, sec. 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. (Acts 1911, 1st C. S., p. 96, ch. 11, sec. 25; Acts 1917, 1st C. S., ch. 44, sec. 27.)

Art. 1513dd. Violations of free text books act.—A wilful violation of any provision of this Act by any person other than text book contractor shall be a misdemeanor punishable by fine of not less than $5.00 nor more than $100.00. (Acts 1919, ch. 29, sec. 21.)

For remainder of this act see ante, Civ. St., arts. 2904¼-2904¼v.

Art. 1513e. Loitering on school grounds.—It shall be unlawful for any person or persons to loiter or loaf upon any public school grounds in this state, during the session of such school, after being warned by the person in charge of such school to leave such grounds; and such person or persons so found shall be guilty of a misdemeanor, and, upon conviction therefor, shall be fined in any sum not less than five and not to exceed twenty-five dollars. (Acts 1897, ch. 164, sec. 11; Acts 1903, 1st C. S., ch. 12, sec. 12; Acts 1907, p. 452; Acts 29th Leg., ch. 124.)

Art. 1513f. Employment of children of school age.—No child under fourteen years of age not lawfully excused from attendance upon school shall be employed by any one during the school hours in any occupation during the period which the child is required to be in school, as provided by this Act. Any person, firm or corporation found guilty of employing any child or any person inducing any child to remain out of school who is subject to the provisions of this Act shall be fined not to exceed ten dollars for each offense, and each day that said child is employed after due notice given by any school official that said child can not be legally employed shall constitute a separate offense. (Acts 1915, p. 94, ch. 49, sec. 5.)

Art. 1513ff. Attendance requirements and provisions.—Every child in this State who is eight years and not more than fourteen years old shall be required to attend the public schools in the district of its residence, or in some other district to which it may be transferred, as provided by law, for a period of not less than sixty days for the scholastic year, beginning September 1, 1916, and for a period of not less than eighty days for the scholastic years beginning September 1, 1917, and for the scholastic year 1918–19, and each scholastic year thereafter a minimum attendance of 100 days shall be required. The period of compulsory school attendance at each school shall begin at the opening of the school term unless otherwise authorized by the dis-

trict school trustees and notice given by the trustees prior to the beginning of such school term; provided, that no child shall be required to attend school for a longer period than the maximum term of the public school in the district where such child resides. (Id. sec. 1.)

Art. 1513fff. Exemptions.—The following classes of children are exempt from the requirements of this Act:

(a) Any child in attendance upon a private or parochial school or who is being properly instructed by a private tutor.

(b) Any child whose bodily or mental condition is such as to render attendance inadvisable, and who holds definite certificate of a reputable physician specifying this condition and covering the period of absence.

(c) Any child who is blind, deaf, dumb or feeble-minded, for the instruction of whom no adequate provision has been made by the school district.

(d) Any child living more than two and one-half miles by direct and traveled road from the nearest public school supported for children of the same race and color of such child, and with no free transportation provided.

(e) Any child more than twelve years of age who has satisfactorily completed the work of the fourth grade of a standard elementary school of seven grades, and whose services are needed in support of a parent or other person standing in parental relation to the child, may, on presentation of proper evidence to the County Superintendent of Public Instruction, be exempted from further attendance at school. (Id. sec. 2.)

Art. 1513g. Duties of parent or guardian.—If any parent or person standing in parental relation to a child within the compulsory school attendance ages who is not properly excused from attendance upon school for some one or more of the exemptions provided in Section 2 of this Act [art. 1513fff] fails to require such child to attend school regularly for such period as is required in Section 1 [art. 1513ff] hereof, it shall be the duty of the attendance officer who has jurisdiction in the territory where said parent or person standing in parental relation resides, to warn such parent or person standing in parental relation, that the provisions of this Act must be immediately complied with, and upon failure of said parent or persons standing in parental relation to immediately comply with the provisions of this Act after such warning has been given, the official discharging the duties of the attendance officer shall forthwith file complaint against such parent or person standing in parental relation to said child, which complaint shall be filed in the County Court, or in the Justice Court in the precinct where such parent or guardian resides, and shall diligently prosecute same to its conclusion. Any parent or other person standing in parental relation upon conviction for failure to comply with the provisions of this Act shall be deemed guilty of a misdemeanor, and shall be fined for the first offense five dollars, and for the second offense ten dollars, and for each subsequent offense twenty-five dollars. Each day that said child remains out of school after said warning has been given or after said child has been ordered in school by the juvenile court, may constitute a separate offense; provided, however, that if any parent or person standing in parental relation to any child within the compulsory school attendance ages shall present proofs that he or she is unable to compel such child to attend school, said person in parental relation shall be exempt from the above penalties as regards the non-attendance of such child, and such child may be proceeded against as an habitual truant and be subject to commitment to the State Juvenile Training School or any other suitable school agreed upon between the parent or the guardian of said child and the judge of the juvenile court. All fines collected under the provisions of this Act shall be paid into the available school fund of the common school district or of the independent school district in which the person fined resides, as the case may be. (Id. sec. 9.)

Art. 1513h. Failure of school officers to make reports.—The State Superintendent of Public Instruction shall require of Judges acting as ex-officio county superintendents of public schools, of county, city and town superintendents, of county and city treasurers and depositories, and of treasurers and depositories of school boards, and of other school officers and teachers such school reports relating to the school fund and to 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 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. All teachers librarians, school presidents, superintendents, principals, or other school officers employed by all schools supported wholly or partly by the State, shall fill out and send to the State Department of education, before the expiration of the first school month of each annual session, a registration card, supplied by the State Department of Education, which card shall furnish blanks for useful statistical information, and said teachers, librarians, school presidents, superintendents, and principals shall not be paid the salary for the first month's service, except on the presentation of a receipt certifying that the said registration card has been received by the State Department of Education; provided also that any teacher, librarian, school president, superintendent, principal or other school officer employed in any school supported wholly or partly by the State of Texas, on changing his position from one school to another at any time during the school session, shall not be entitled to receive the first month's salary in any new position except on presenting a receipt from the State Department of Education certifying that he has filed with the State Department of Education another registration card giving information as to the said change of position. The monthly salary of any county judge acting as ex-

officio county superintendent of public schools, of any county, district city or town superintendent, or principal, of any teacher, or librarian in any school supported wholly or partly by the State of Texas, or any assessor, county treasurer, treasurer in county school depository or treasurer of any school district depository, shall be withheld by the officials or authorities paying the said salary, on notification by the State Superintendent of Public Instruction that said county judge, acting as ex-officio county superintendent of public schools, county, district, city or town superintendent or principal, teacher, librarian, assessor, county treasurer, treasurer of county school depository or treasurer of school district depository has refused or failed to make the reports required of him; provided that this notification shall not be sent by the State Superintendent until at least two written requests have been made for the desired information and until thirty days have elapsed from the time of the first request without the receipt of the information required; in such case the aforesaid monthly salary shall be withheld until a notice is received from the State Superintendent, certifying that the information requested has been furnished by the delinquent person.

An employé of the state or of any district, county, city, town, or school, who may be responsible for the payment of the salary of any county judge acting as ex-officio county superintendent of public schools, of any county, district, or town superintendent of principal, or other school officer, or any teacher, librarian, assessor, county treasurer, treasurer of county school depository, or treasurer of school district depository, after notice by the State Superintendent that the said person has failed to comply with the provisions of this Act, 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, and the State Superintendent of Public Instruction may withhold warrants for further payment of state apportionments until the aforesaid officials have made satisfactory reports as herein provided. (Acts 1917, ch. 104, sec. 1; Acts 1919, 2d C. S., ch. 71, sec. 1.)

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, Civ. St.], 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. (Acts 1917, ch. 112, sec. 3.)

Art. 1514.

See ante, arts. 1513a, 1513d, 1513e, for matter formerly contained in this article, incorporated into such acts to avoid confusion with art. 1514, post.

CHAPTER FOURTEEN
RAILROAD COMMISSION

Art. 1514. (1007) Right to inspect books and papers.—The commissioners, or either of them, or such persons as they employ therefor, shall have the right, at such times as they may deem necessary, to inspect the books and papers of any railroad company, and to examine, under oath, any officer, agent or employé of such railroad, in relation to the business and affairs of the same. If any railroad shall refuse to permit the commissioners, or either of them, or any person authorized thereto, to examine its books and papers, such railroad company shall, for each offense, pay to the state of Texas not less than one hundred and twenty-five dollars nor more than five hundred dollars for each day it shall so fail or refuse; provided, that any person other than one of said commissioners who shall make any such demands shall produce his authority, under the hand and seal of said commission, to make such inspection. (Acts 22d Leg. ch. 51, sec. 55; 1891, R. R. Com. sec. 10.)

Art. 1514a. Penalty for refusal to exhibit books or papers.—Any officer, agent or employé of any railroad company who shall, upon proper demand, fail or refuse to exhibit to the commissioners, or either of them, or any person authorized to investigate the same, any book or paper of such railroad company, which is in the possession or under the control of such officer, agent or employé, shall be deemed guilty of a misdemeanor, and, upon conviction in any court having jurisdiction thereof, shall be fined for each offense a sum not less than one hundred and twenty-five dollars and not to exceed five hundred dollars. (Id.)

Art. 1515. (1008) Commissioners may propound questions to be answered.—1. The said commission shall cause to be prepared suitable blanks with questions calculated to elicit all information concerning railroads, and as often as it may be necessary, furnish said blanks to each railroad company. Any railroad company receiving from the commission any such blanks shall cause said blanks to be properly filled out so as to answer fully and correctly each question therein propounded; and, in case they are unable to answer any question, they shall give a satisfactory reason for their failure; and the said answers, duly sworn to by the proper officer of said company, shall be returned to said commission at its office in the city of Austin within thirty days from the receipt thereof. (Id. sec. 12.)

Art. 1515a. Penalty for refusal to answer and fill out blanks.—2. If any officer or employé of a railroad company shall fail or refuse to fill out and return any blanks, as above required, or fail or refuse to answer any question therein propounded, or give a false answer to any such question, where the fact inquired of is within his knowledge, or shall evade the answer to any such question, such person shall be guilty of a misdemeanor, and shall, on conviction thereof, be fined for each day he shall fail to perform such duty, after the expiration of the time aforesaid, a penalty of five hundred dollars; and the commission shall cause a prosecution therefor in the proper court; and a penalty of like amount shall be recovered from the company when it appears that such person acted in obedience to its direction, permission or request in his failure, evasion or refusal. Said commission shall have the power to prescribe a system of bookkeeping, to be observed by all the railroads subject hereto, under the penalties prescribed in this article. (Id. sec. 12.)

Art. 1516. (1009) Punishment for false billing, classification, weight, etc.—Any officer or agent of any railroad subject to this law who, by means of false billing, false

classification, false weight, or by any other device, shall suffer or permit any person or persons to obtain transportation for property, at less than the regular rates then in force on such railroad, or who, by means of false billing, false classification, false weighing, or by any device whatever, shall charge any person, firm or corporation more for the transportation of property than the regular rates, shall be guilty of a misdemeanor, and, on conviction thereof, fined in a sum of not less than one hundred dollars nor more than one thousand dollars. (Id. sec. 16.)

Art. 1517. "Unjust discrimination" defined, penalty for.—If any officer, agent, clerk, servant or employé, or any receiver, or his servant, agent or employé of any railroad company in this state shall, directly or indirectly, or by any special rate, rebate, drawback, or other device, for, and on behalf of, such railroad company, knowingly charge, demand, contract for, collect or receive from any person, firm or corporation a greater or less compensation for any service rendered, or to be rendered, by any such railroad company in this state than such railroad company, or its said officers, agents, clerks, servants or employés, or receiver thereof, charges, demands, contracts for, collects or receives from any other person, firm or corporation for doing a like and contemporaneous service, or if any officer, agent, clerk, servant or employé, or receiver, or his agents, servants or employés, of any railroad company in this state, who shall, for, and on behalf of, such railroad company, make or give any undue or unreasonable preference or any advantage to any particular person, company, firm, corporation or locality, as to any service rendered, or to be rendered or performed, by such railroad company, or to subject any particular description of traffic on such railroad company to any undue or unreasonable prejudice, delay or disadvantage in any respect whatever, such officer, clerk, servant or employé, or receiver, his agents, servants or employés of such railroad company, shall be deemed guilty of unjust discrimination within the meaning of this chapter, and, on conviction thereof, shall be punished by confinement in the state penitentiary for not less than two nor more than five years. (Acts 1899, p. 203, sec. 1.)

See post, art. 1535.

Art. 1518. Not applicable, when.—Nothing herein shall prevent the carriage, storage or handling, by railroad companies in this state, or by their agents, officers, clerks, servants and employés, of freight free or at reduced rates, or to prevent railroads, their agents and employés and officers, from giving free transportation or freight rates to any railroad officers, agents, employés, attorneys, stockholders or directors, or to any other officer or person, when permitted by chapter 16 of this title, article 1533. (Id. sec. 2.)

Art. 1519. Persons subpœnaed and compelled to testify as to violations of this law exempt from prosecution; evidence on which conviction may be had.—Any court, officer or tribunal, having jurisdiction of the offense mentioned in this chapter, or any district or county attorney, may subpœna persons and compel their attendance as witnesses to testify as to the violations of this chapter; and any person so summoned and examined shall not be liable to prosecution for any violation of this law about which he may testify; and for any offense by reason of violations of this chapter, a conviction may be had upon the unsupported evidence of an accomplice or participant. (Id. p. 203, sec. 3.)

Art. 1520. District judge to specially charge grand jury.—It shall be the duty of every district judge in this state, in whose court a grand jury shall be impaneled, to charge said grand jury, whenever organized, to thoroughly investigate with reference to violations of this chapter. (Id. p. 203, sec. 4.)

Art. 1521. (1009a) Railroad official making false statement to secure registration of bond.—Each and every railroad director, president, secretary or other official who shall knowingly make any false statement upon which to secure the registration of any bond or other evidence of debt, as required by the law regulating the issuance of stocks and bonds, or who shall, by false statement knowingly made, procure of the railroad commission direction to the secretary of state to register the same, and which shall be, by the secretary of state, registered, or shall, with knowledge of such fraud, negotiate or cause to be negotiated, any such bond or other security issued in violation of said chapter, shall be guilty of a felony, and, upon conviction thereof in any court of competent jurisdiction, shall be punished by confinement at hard labor in the state penitentiary for a term of years not less than two nor more than fifteen, and shall likewise be liable to any creditor of such company for the full amount of damages sustained by such wrongful conduct. Venue in such cases shall be in either of the district courts held in Travis county, or in the county where the principal office of the railway company whose property is sought to be so incumbered or affected is located. (Acts 1893, p. 59.)

Art. 1521a. Penalty not otherwise provided.—If any railway company doing business in this state shall hereafter violate any other provision of this chapter, or shall do any other act herein prohibited, or shall fail or refuse to perform any other duty enjoined upon it for which a penalty has not been provided by law, or shall fail, neglect or refuse to obey any lawful requirement, order, judgment or decree made by the railroad commission of Texas, for every such act of violation it shall pay to the state of Texas a penalty of not more than five thousand dollars. (Id., sec. 18; amended Acts 1901, p. 265.)

The above provision was not included in the revised Penal Code, 1911, and is placed in this compilation, in view of the decision in Berry v. S., 156 S. W. 626, for the reason that it seems to state a general criminal penalty for violation of the orders of the Railroad Commission. In this respect it seems to give effect to art. 1522, post. That article, as it now stands, and as it stood in the revised Penal Code, seems to be lacking in vital force (there being nothing in the revised Penal Code indicating the penalty spoken of but not defined), unless it can be attached to the above general provision. On the assumption that this view is correct the publishers have added a number of acts similar to that embraced in art. 1522, some of which antedate the revision and were not included therein. The acts added, in this connection, will be found below as arts. 1521b, 1522a-1522*l*.

Art. 1521b. Duty to provide suitable freight and passenger depots.—It shall be the duty of all railroad companies in this state to provide and maintain adequate, comfortable and clean depots and depot buildings at their several stations for the accommoda-

tion of passengers, and to keep said depot buildings well lighted and warmed for the comfort and accommodation of the traveling public; provided, further, that said railroad companies shall keep and maintain separate apartments in such depot buildings for the use of white passengers and negro passengers, and to keep and maintain adequate and suitable freight depots and buildings for the receiving, handling, storing and delivering of all freights handled by such roads. (Acts 1909, 2d S. S., p. 401, ch. 13, sec. 1.)

This provision was omitted from the revision of 1911. See note under art. 1521a, ante.

Art. 1521c. Commission to require compliance.—Power is hereby conferred upon the railroad commission of Texas to require compliance by railroad companies with the provisions of this act under such regulations as said commission may deem reasonable, and all railroad companies shall be subject to the penalties prescribed by law for failure to comply with such requirements. (Id. sec. 2.)

Art. 1522. Railroad commission may require construction of union passenger depots.—Where two or more railroad companies reach the same city or town in this state, it shall be the duty of the railroad commission of Texas to ascertain whether it is practicable and feasible for such railroad companies to use a joint or union passenger depot; and, if the railroad commission finds, upon investigation, that it is practicable for such railroad companies to join in the construction and use of a passenger depot, then it shall give notice to said railroad companies, and, after investigation and public hearing, may require the construction and maintenance of such union passenger depot by the railroad companies entering any such city or town, provided, that it shall appear to the railroad commission that the construction and maintenance of such joint or union passenger depot are just and reasonable to the railroad companies involved, and demanded by the public interest. The railroad commission may specify the requirements of such union depot as to kind and character; and said railroad commission may apportion the cost of constructing and maintaining the same to each railroad company, in cases where the interested railroad companies can not themselves agree.

Failure upon the part of any railroad company to observe and obey the orders of the railroad commission, issued in compliance with this article, shall subject such railroad company to the fines and penalties prescribed by law for failure to obey the lawful requirements, orders, judgments and decrees made by the railroad commission of Texas. (Acts 1909, p. 399.)

Art. 1522a. Construction of switch tracks and furnishing of facilities.—Any railroad company or receiver thereof upon application of any shipper tendering traffic for transportation, shall construct, maintain and operate upon reasonable terms, a switch connection with any such private sidetrack or spur track which has been or shall hereafter be constructed by any such shipper, to connect with its railroad where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against such shipper. (Acts 1915, p. 66, ch. 35, sec. 1.)

Art. 1522b. Same; penalty.—If any railroad company or receiver thereof shall fail to install and operate any such switch connection as aforesaid, on application therefor by any shipper, such shipper may make application to the Railroad Commission of Texas, and said commission shall be authorized and empowered to enter such orders as may be necessary governing the construction, maintenance and operation of said switch connection with said private sidetrack or spur track, where such connection is reasonably practicable, and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same. (Id. sec. 2.)

Art. 1522c. Same; rates; discrimination.—The Railroad Commission of Texas shall fix just and reasonable rates to be charged by railroad companies or receivers thereof for traffic moved and handled over such private sidetracks or spur tracks extending to private industries, and it shall be the duty of the Railroad Commission to adopt such rates, rules, and regulations as will prevent any discrimination in the operation of such tracks or the handling of such traffic. Whenever any railway company or receiver thereof shall operate any private sidetrack or spur track without charge, the Railroad Commission of Texas shall have power and authority to compel the operation without charge of and private sidetrack or spur track similarly situated. (Id. sec. 3.)

Art. 1522d. Same; Railroad Commission to prescribe rates and make regulations.—The Railroad Commission of Texas shall prescribe reasonable rates, rules and regulations for the operation of all private sidetracks or spur tracks as may already have been or may hereafter be constructed either by the railroad companies themselves or by individuals or corporate interests, or jointly by such railroads and individuals or corporations, when such private sidetracks or spur tracks are operated by railroad companies or the receivers thereof; and shall have power and authority to order and compel the operation of said private sidetracks or spur tracks whenever the railway company or receiver thereof is operating other private sidetracks or spur tracks similarly situated, and to prevent discrimination therein. (Id. sec. 4.)

Art. 1522e. Same; power of Railroad Commission to prevent discrimination.—Whenever any railroad company or receiver thereof shall hereafter construct or maintain or contribute to the construction or maintenance of any private sidetrack or spur track to any private industry, the Railroad Commission shall have power to order such railway company or receiver to construct or maintain or contribute to the construction or maintenance of a sidetrack or spur track to any private industry similarly situated, on the same terms and conditions. (Id. sec. 5.)

Art. 1522f. Same; penalty.—Failure upon the part of any railroad company or receiver thereof to observe and obey the orders

of the Railway Commission issued in compliance with this Act, shall subject such railroad company to the fines and penalties prescribed by law for failure to obey the lawful requirements, orders, judgments and decrees of the Railroad Commission. (Id. sec. 6.)

Art. 1522g. Maintenance of roadbed and track.—The Railroad Commission of Texas shall have authority and it is hereby made its duty to see that each and every railroad corporation owning or operating a line of railroad in this State shall maintain its roadbed and track in such condition as to enable it to perform all of its duties as a common carrier with reasonable safety to persons and property carried by it and its employés and with reasonable dispatch.

The Railroad Commission of Texas shall be vested with full power to require of any such railroad company to purchase or secure for installation in its roadbed or track all such ties, rails, ballast and other materials and equipment as may, in the judgment of the Railroad Commission of Texas, be necessary for the proper maintenance of such track and roadbed so as to enable such railroad corporation to adequately perform its duties to the public and to transport freight and passengers with safety thereunto and without delay.

The Railroad Commission of Texas is hereby empowered to require any such railroad company to acquire and install in the whole of such track or roadbed, or any portion thereof that may be designated by the Railroad Commission of Texas, such ties, rails, ballast and other materials as may, in the judgment of the Railroad Commission, be adequate and sufficient to place such track or roadbed in safe condition. (Acts 1915, p. 201, ch. 129, sec. 1.)

Art. 1522h. Same; penalty.—When the Railroad Commission of Texas shall have made any such order as authorized by Section 1 of this Act [Art. 1522g], it shall be the duty of any such railroad company or receiver subject thereto, to promptly comply with the terms thereof, and for failure or refusal to do so, such company or receiver shall become liable to the State of Texas, "as in other cases of failure to comply with orders of the Railroad Commission as provided by law." In addition to such penalties, any court of competent jurisdiction shall have the power to, and it shall be its duty to, issue writs of mandamus and mandatory injunctions and other proper writs to compel the compliance with such orders. (Id. sec. 2.)

Art. 1522i. Trains to be regular, and notice to be given.—Every such corporation shall start and run their cars for the transportation of passengers and property at regular times to be fixed by public notice, and shall furnish sufficient accommodations for the transportation of all such passengers and property as shall, with a reasonable time previous thereto, offer or be offered for transportation at the place of starting and at junctions of other roads and at sidings and stopping places established for receiving and discharging way passengers and freights, and shall take, transport and discharge such passengers and property at, from, and to such places, on the due payment of the tolls, freight or fare legally authorized therefor. Failure on the part of railroad companies to comply with the requirements of this article shall be deemed an abuse of their rights and privileges and subject to regulation and correction by the railroad commission. (P. D. 4893; amended Acts 1903, 1st S. S., p. 21, ch. 11, sec. 1.)

The above provision was omitted from the Revision of 1911. See art. 1521a, ante, and note thereunder.

Art. 1522j. To build sidings, etc., when.—All railroads in Texas shall be required to build sidings and spur tracks sufficient to handle the business tendered such railroads, when ordered to do so by the railroad commission, as hereinafter provided. (Acts 1903, p. 93, ch. 68, sec. 1.)

The above provision was omitted from the revision of 1911; but is included here. See ante, art. 1521a, and note thereunder.

Art. 1522k, *l*. Commission to enforce compliance.—Power is conferred on the railroad commission of Texas to require compliance by railroad companies with the provisions of Section 1 of this Act [art. 1522j,] under such regulations as said commission may deem reasonable; and all railroad companies shall be subject to the penalties prescribed by law for failure to comply with the requirements of the railroad commission as provided herein. (Acts 1903, p. 93, ch. 68, sec. 2.)

See note under preceding article.

Art. 1522m. Powers of commission over other subjects.—Power and authority are hereby conferred upon the Railroad Commission of Texas over all public wharves, docks and piers and all elevators, warehouses, sheds, tracks and other property used in connection therewith in the State of Texas, and over all suburban, belt and terminal railroads in said State, and over all persons, associations and corporations, private or municipal, owning or operating any such railroad, wharf, dock, pier, elevator, warehouse, shed, track, or other property, and it is hereby made the duty of the said Railroad Commission to fix and adopt all necessary rates, charges and regulations, to govern and regulate said persons, associations and corporations, and to correct abuses and prevent unjust discriminations in the rates, charges and tolls of said persons, associations and corporations, and to fix divisions of rates, charges and regulations between same and railroads and all other common carriers, under the control of the Railroad Commission where a division is proper, and to correct and prevent any and all other abuses in the conduct of their business. (Acts 1911, p. 157, ch. 86, sec. 1.)

Art. 1522n. Same; charging greater rates than those prescribed by commission.—If any person, association or corporation subject to the provisions of this Act, shall demand or receive a greater compensation for any service rendered or to be rendered than that fixed and established by the said Railroad Commission then, and in every such case, such person, association or corporation shall be deemed guilty of extortion and shall forfeit and pay to the State of Texas, a sum not to exceed five hundred dol-

lars for each offense; provided, that if it shall appear that such violation was not wilful, said person, association or corporation shall have ten days to refund such overcharges or damages, in which case the penalty shall not be incurred, and the said Commission shall have authority and it shall be its duty to sue for and recover the same in the same manner as may be prescribed by law for like suits against railroad companies. (Id. sec. 2.)

Art. 1522o. Same; discrimination.—If any person, association or corporation subject to the provisions of this Act shall by any special rate, rebate, drawback or other device, or in any manner directly or indirectly charge, demand, collect or receive from any other person, association or corporation a greater or less compensation for any service rendered, or to be rendered, by it than it charges, demands, collects or receives from any other person, association or corporation for doing a like and contemporaneous service, or if any such person, association or corporation shall make or give any undue or unreasonable preference or advantage to any other person, association or corporation, or to any locality, or shall subject any particular description of traffic to any undue or unreasonable prejudice, delay or disadvantage, then and in any such case the person, association or corporation thus offending shall forfeit and pay to the State of Texas a sum not to exceed five hundred dollars ($500.00) for each and every offense. (Id. sec. 3.)

Art. 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. (Acts 1917, ch. 30, sec. 9.)

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. 732½-732½m of the Civil Statutes.

CHAPTER FIFTEEN

OFFENSES BY RAILWAY OFFICIALS OR AGAINST RAILWAYS

Art. 1523. (1010) 1. Railroad to provide separate coaches for white and negro passengers.—Every railway company, street car company and interurban railway company, lessee, manager, or receiver thereof, doing business in this state, as a common carrier of passengers for hire, shall provide separate coaches or compartments, as hereinafter provided, for the accommodation of white and negro passengers, which separate coaches or compartments shall be equal in all points of comfort and convenience. (Acts 22d Leg. ch. 41, sec. 1, pp. 44 and 165; amended Acts 1907, p. 58.)

2. "Negro" defined.—The term "negro" used herein includes every person of African descent as defined by the statutes of this state. (Id. sec. 2; amended Acts 1907, p. 58.)

3. "Compartment" defined, etc.; lettering on coach.—Each compartment of a railroad coach, divided by good and substantial wooden partitions, with a door therein, shall be deemed a separate coach within the meaning of this law, and each separate coach shall bear in some conspicuous place appropriate words in plain letters indicating the race for which it is set apart; and each compartment of the street car or interurban car divided by board or marker placed in a conspicuous place, bearing appropriate words in plain letters, indicating the race for which it is set apart, shall be sufficient as a separate compartment within the meaning of this law. (Id. sec. 3; amended Acts 1907, p. 58.)

4. Penalty for failure to provide, etc.—Any railway company, street car company or interurban railroad company, lessee, manager or receiver thereof, which shall fail to provide its cars bearing passengers with separate coaches or compartments, as above provided for, shall be liable for each and every failure to a penalty not less than one hundred nor more than one thousand dollars, to be recovered by suit in the name of the state in any court of competent jurisdiction; and each trip run with such train or street car or interurban car without such separate coach or compartment shall be deemed a separate offense. (Id. sec. 4; amended Acts 1907, p. 59.)

5. Passenger riding in coach not for his race; penalty.—If any passenger upon a train or street car or interurban car, provided with separate coaches or compartments, as above provided, shall ride in any coach or compartment, not designated for his race, after having been forbidden to do so by the conductor in charge of the train, he shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than five nor more than twenty-five dollars. (Id. sec. 5; amended Acts 1907, p. 59.)

6. Does not apply, wherein.—The provisions of this law shall not be so construed as to prohibit nurses from traveling in any coach or compartment with their employer, or employés, upon the train of cars in the discharge of their duty, nor shall it be construed to apply to such freight trains as carry passengers in cabooses; provided, that nothing herein contained shall be construed to prevent railroad companies in this state from hauling sleeping cars, dining or café cars or chair cars attached to their trains, to be used exclusively by either white or negro passengers, separately, but not jointly. (Amended by Acts 22d Leg. ch. 103, sec. 4; amended Acts 1907, p. 59.)

7. Law to be posted, where.—Every railroad company carrying passengers in this state shall keep this law posted in a conspicuous place in each passenger depot and in each passenger coach provided in this law. (Acts 22d Leg. ch. 41, sec. 7; amended Acts 1907, p. 59.)

8. Does not apply to excursion trains.—The provisions of this law shall not apply to any excursion train, or street car, or in-

terurban car, as such, for the benefit of either race. (Id. sec. 8; amended Acts 1907, p. 59.)

9. Duty of conductors.—Conductors of passenger trains, street cars or interurban lines, provided with separate coaches, shall have the authority to refuse any passenger admittance to any coach or compartment, in which they are not entitled to ride under the provisions of this law; and the conductor in charge of the train or street car or interurban car shall have authority, and it shall be his duty, to remove from a coach or street car, or interurban car any passenger not entitled to ride therein, under the provisions of this law, and, upon his refusal to do so knowingly, shall be guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than five or more than twenty-five dollars. (Id. sec. 9; amended Acts 1907, p. 59.)

10. Fines collected to go to school fund.—All fines collected under the provisions of this law shall go to the available common school fund of the county in which conviction is had. Prosecutions under the provisions of this law may be instituted in any court of competent jurisdiction in any county through, or into which, said railroad may be run or have an office. (Id. sec. 10; amended Acts 1907, p. 59; Acts 22d Leg. p. 44, secs. 1-10.)

Art. 1524. (1010a) Locomotive engineer failing to sound bell and whistle; penalty.—A bell of at least thirty pounds weight and a steam whistle shall be placed on each locomotive engine, and the whistle shall be blown and the bell rung at the distance of at least eighty rods from the place where the railroad shall cross any public road or street; and such bell shall be kept ringing until it shall have crossed such public road, or stopped; and each locomotive engine approaching a place where two lines of railway cross each other, shall, before reaching such railway crossing, be brought to a full stop; and any engineer having charge of such engine, and neglecting to comply with any of the provisions of this article, shall be fined in any sum not less than five nor more than one hundred dollars for such neglect; and the corporation operating such railway shall be liable for all damages which shall be sustained by any person by reason of any such neglect; provided, however, that the full stop at such crossings may be discontinued when the railroads crossing each other shall put into full operation at such crossing an interlocking switch and signal apparatus, and shall keep a flagman in attendance at such crossing. (Acts 1893, p. 87.)

Art. 1525. (1010b) Ticket agents to be provided with certificate of authority.—It shall be the duty of all railroad companies doing business in this state, or the receiver of any such railroad company, through their duly authorized officers, to provide each agent who may be authorized to sell tickets or other evidences entitling the holder to travel upon any such railroad, with a certificate, setting forth the authority of such agent to make such sale. Such certificate shall be duly attested by the corporate seal of such railroad company, or the signature of the receiver, if any there be, of such railroad company, or by the signature of the officer whose name is signed upon the tickets or coupons which such agent may be authorized to sell. (Acts 1893, p. 97, sec. 1.)

Acts 1893, p. 97, making it an offense for any person other than a railroad agent to sell tickets, but requiring that the ticket shall contain a notice that it is unlawful for one not a railroad agent to sell the same was held unconstitutional in Jannin v. S., 62 S. W. 419, 96 Am. St. Rep., and was omitted from the revised Penal Code.

Art. 1526. (1010e) Agents must exhibit authority on demand.—It shall be the duty of every agent who shall be authorized to sell tickets, or parts of tickets, or other evidences of the holder's right to travel over any railroad within this state, upon demand, to exhibit to any person desiring to purchase a ticket, or to any officer of the law who may request it, the certificate of his authority to sell, and to keep said certificate posted in a conspicuous place in his office for the information of travelers. (Id. sec. 4.)

The revisers of 1911 ascribed the above provision to the act of 1893. The subject-matter of this article was carried into Rev. Civ. St. 1895, as art. 4560c, and such article was amended by Acts 1903, p. 162, but no change was made in its language.

Art. 1527. (1010f) Railway companies to redeem unused tickets.—It shall be the duty of all railroad companies in this state, or the receiver or trustee of any such railroad company, to provide for the redemption, from the holder thereof, of the whole, or any parts or coupons of any ticket or tickets which they, or any of their duly authorized agents, may have sold, if for any reason the holder has not used, and does not desire to use the same, upon the following terms: If neither the ticket, nor any part thereof, has been used by the holder, he shall be entitled to receive the full amount he paid therefor; and, where the ticket has been used in part, the holder thereof shall be entitled to receive the remainder of the price paid for the whole ticket, after deducting therefrom the tariff rate between the points for which the portion of said ticket was actually used. (Id.)

Art. 1528. Demand must be made within ten days.—Provided, however, such tickets, or parts thereof, shall be presented for redemption to the railroad company from which it has been purchased, or the receiver of such railroad company, or to any of the duly authorized ticket agents of such railroad company, or receiver thereof, or in case of a through ticket, to any of the authorized agents of any connecting line, within a time not exceeding ten days after the right to use said ticket has expired by limitation of time as stipulated therein. (Id.)

Art. 1529. Refusal to redeem; penalty.—Any railroad company, or receiver, or trustee of such railroad company, over or on which said ticket may be used, which shall refuse or fail to redeem the whole, or any part or coupon of any ticket or tickets, when presented, shall forfeit to the holder thereof a sum not less than one hundred dollars nor more than five hundred dollars, recoverable in any court of competent jurisdiction. (Id. sec. 5.)

See Jannin v. S., 51 S. W. 1127; M. K. & T. of Texas v. Fookes, 40 S. W. 858; Donalson v. G. C. & S. F. Ry., 45 S. W. 391; Ft. W. & D. C. Ry. v. Cushman, 50 S. W. 1009; Texas & P. Ry. Co. v. Beaird, 169 S. W. 1050.

Art. 1530. (1010g) Law to be printed on tickets.—It shall be the duty of the railway company to print conspicuously across the face of every ticket, sold by its duly authorized agents in this state, a notice to the

holder thereof that this ticket, or any unused part thereof, is redeemable by the company or its receiver at any ticket office of the company, when presented for redemption. (Id. p. 98, sec. 6.)

See Jannin v. S., 51 S. W. 1127.

Art. 1531. (1010h) Unlawful boarding of train.—Any person who shall board any passenger, freight or other railway train, whether moving or standing, for any purpose, and without, in good faith, intending to become a passenger thereon, and with no lawful business thereon, and with intent to obtain a free ride on such train, however short the distance, without the consent of the person or persons in charge thereof, shall be guilty of a misdemeanor, and shall be punished by fine of not less than five dollars nor more than one hundred dollars. (Acts 1895, p. 178.)

See Daugherty v. S., 56 S. W. 620; Freeman v. Costley, 124 S. W. 458; Grubb v. Galveston, H. & S. A. Ry. Co., 153 S. W. 694.

Art. 1531a. Train dispatchers; duties.—Every such railroad corporation operating trains in this State shall employ a competent train dispatcher whose duty it shall be to keep informed of the movement of all trains upon the lines of such railroad corporation. Said train dispatcher shall also keep all agents at stations having telegraph offices in or near them, informed of the movement of all passenger trains one hour prior to the time such passenger train or trains are due, according to the published schedule at such stations. And in the event any such passenger train is delayed for more than one hour, than the published schedule, then it shall be the duty of such train dispatcher to inform such local agents how late said train is and the last telegraph station passed. If such train dispatcher shall fail or refuse to furnish the information concerning the movement of trains to agents as herein required, then such dispatcher shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than fifty nor more than two hundred dollars for each offense. (Acts 1903, 1 S. S., p. 21; Acts 1913, p. 318, ch. 148, sec. 2, amending Art. 6553, Rev. Civ. St. 1911.)

Act 1903, 1 S. S., p. 21, of which Acts 1913, ch. 148, sec. 2, is amended, was omitted from the Revised Pen. Code of 1911, and is included in this compilation, in view of the decision in Berry v. S., 156 S. W. 626.

Art. 1531b. Derailing devices on repair tracks; exception.—It shall be unlawful for any person, firm, corporation or receiver operating any railroad, machine shop or other concern engaged in repairing or manufacturing cars within this State to use any tracks not equipped with derailing devices upon which to repair or manufacture cars; such derailing devices to be provided with private locks, to be kept locked at all times when tracks are in use; provided, that nothing in this Act shall be construed as prohibiting temporary repairs to cars on tracks other than where cars are regularly repaired or manufactured. (Acts 1913, p. 334, ch. 158, sec. 1.)

Art. 1531c. Same; punishment.—Any person, firm, corporation or receiver, operating any railroad, machine shop or other concern engaged in the repairing or manufacture of cars in this State, who shall violate the provisions of Section on [1] of this Act [Art. 1531b], shall be deemed guilty of a misdemeanor, and upon conviction in any court of competent jurisdiction, shall be fined in a sum not less than fifty ($50.00) dollars nor more than two hundred ($200.00) dollars and each day such violation shall exist shall constitute a separate offense. (Id. sec. 2.)

Art. 1531d. Train bulletins at stations.—It shall be also the duty of every such railroad agent at stations having telegraph communication with the train dispatcher of the railroad, to ascertain one hour before the schedule time of the arrival of passenger trains, if such train is on time, and if on time, to bulletin that fact on a board provided by the company and placed in some conspicuous place at the passenger station. And if the train is late, he shall bulletin how late, and the last telegraph station passed by such train. If later than one hour, said agent shall thereafter ascertain the latest news from such train dispatcher, or some other reliable source, every hour, and bulletin such information and the time of the probable arrival of such train. If any such agent shall fail or refuse to perform the duties required of him by this Article, he shall be deemed guilty of a misdemeanor, for each time he fails or refuses to perform the duties required of him by this Article, and upon conviction shall be punished by a fine of not less than fifty nor more than one hundred dollars for each offense. (Acts 1903, p. 162, ch. 107, sec. 1; Rev. Civ. St. 1911, art. 6639, amended; Acts 1913, p. 350, ch. 166, sec. 2.)

Acts 1903, ch. 107, sec. 1, consists of an amendment of Art. 4560c, Rev. St. 1895. It was omitted from the Revised Penal Code of 1911, and is included, in its amended form, in this compilation, in view of the decision in Berry v. S., 156 S. W. 626.

Art. 1531e. Obstruction of highway crossings.—It shall hereafter be unlawful for any railway company or any officer, agent, servant, receiver or receivers of any railway corporation to wilfully obstruct for more than five minutes at any one time any street, railway crossing or public highway in this State by permitting their trains to stand on or across such crossing or crossings. (Acts 1915, p. 109, ch. 60, sec. 1.)

Art. 1531f. Same; punishment.—Any person, firm or corporation, or the officers, agents, servants, receiver or receivers of any corporation violating any of the provisions of this Act, shall, upon conviction thereof, be fined in any sum not less than five nor more than one hundred dollars. (Id. sec. 2.)

Art. 1531g. Section foremen shall make report of animals killed; evidence.—Whenever any animal is killed or found dead upon the roadbed or right of way of any railroad company in this State, the section foreman of the railroad where said animal is killed or found dead, shall take and make a description of such animal, stating its kind, the marks and brands, color, and apparent age, and any other description that may serve to identify said animal, which description must be taken and made before said animal is buried or otherwise disposed of, and shall transmit same to the County Clerk of the county in which said animal is found or killed, within ten days from the date of finding or killing, which description shall be by said County Clerk filed and kept of records in his office without exacting any fees from section foreman for filing same. A certified

copy of said report so filed may be introduced in evidence in any case wherein the killing, death, or value of said animal is in question. (Acts 1915, p. 126, ch. 73, sec. 1.)

Art. 1531h. Same; punishment.—Any person violating any of the provisions of Section 1 of this Act [Art. 1531g] shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than five dollars nor more than twenty-five dollars. (Id. sec. 2.)

CHAPTER SIXTEEN

RAILROADS, ETC.—PROHIBITING ISSUANCE OF FREE PASSES, ETC.

Art. 1532. Free pass, frank, privilege or free haul or carrying of persons or property free of charge, penalty for.—If any steam or electric railway company, street railway company, interurban railway company, or other chartered transportation company, express company, sleeping car company, telegraph or telephone company, or person or association of persons operating the same, or the receivers or lessees thereof, or any officer, agent or employé of any such company in this state, shall knowingly haul or carry any person or property free of charge, or give or grant to any person, firm, association of persons, or corporation, a free pass, frank, a privilege or a substitute for pay, or a subterfuge which is used, or which is given to be used instead of the regular fare or rate for transportation, or any authority or permit whatsoever, to travel or to pass or convey or transport any person or property free, or sell any transportation for anything except money, or for any greater or less rate than is charged to all persons under the same conditions, over any railway or other transportation line, or part of line, in this state, or shall knowingly permit any person to transmit any message free in this state, or shall give any frank or right or privilege to transmit messages free in this state, or property free of charge or for greater or less fare or rate than is charged other persons in this state, for similar service, except such persons as are hereinafter exempted under the provisions of this chapter, shall be guilty of a misdemeanor, and, upon conviction in any action brought on this account, and for that purpose, shall pay to the state of Texas the sum of five thousand dollars for each and every act which violates the provisions of this article; and any person, president, director, officer, employé or agent of any such corporation or association of persons, who shall sell any transportation for anything except money, or knowingly give, grant, issue, or cause to be issued, a free pass, a frank, a privilege or any substitute for, or in lieu thereof, for the transportation of any person, article or thing, or the sending or transmitting any messages over wire or other means of transmitting messages in this state, except to such persons as are hereinafter exempted from the provisions of this chapter, shall be deemed guilty of a felony under the laws of this state, and, upon conviction for such act, shall be punished by a fine of not less than five hundred dollars nor more than two thousand dollars, and may, in addition thereto, in the discretion of the jury, be imprisoned in the penitentiary for a term of not less than six months nor more than two years. (Acts 1907, p. 93, sec. 1.)

Art. 1533. Provisions of preceding article not to be held to prohibit what.—That the provisions of section 1 of this act [Art. 1532] shall not be held to prohibit any steam or electric interurban railway, telegraph company or chartered transportation company or sleeping car company or the receivers or lessees thereof or persons operating the same, or the officers, agents or employés thereof from granting free or exchanging free passes, franks, privileges, substitute for pay or other thing herein prohibited to the following persons: The actual bona fide employés of any such companies and the members of their families. The term employés shall be construed to embrace the following persons only: All persons actually employed and engaged in the service of any such companies, including its officers, bona fide ticket, passenger and freight agents, physicians, surgeons and general attorneys and attorneys who appear in courts to try cases and who receive a reasonable annual salary; furloughed, pensioned and superannuated employés, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed in the employment of a carrier, and ex-employés traveling for the purpose of entering the service of any such common carrier. And the term families as used in this paragraph shall include the families of the persons named in this provision; also the families of persons killed while in the service of any such common carrier; also persons actually employed on sleeping cars, express cars, also officers and employés of telegraph and telephone companies, newsboys employed on trains, railway mail service employés and their families, postoffice inspectors, chairmen and bona fide members of grievance committees of employés, bona fide custom and immigration inspectors employed by the government, the state health officer and one assistant, and federal health officers, county health officers, the State Railroad Commissioners, State Superintendent of Public Buildings and Grounds, the State Game, Fish and Oyster Commissioner and his two chief deputies also government representatives accompanying from the Texas fish hatcheries shipments of fish for free distribution in the waters of this state; the Dairy and Food Commissioner and two chief deputies; also when live stock, poultry, fruit, melons or other perishable produce is shipped, the necessary caretakers while en route and return; also trip passes to the indigent poor when application therefor is made by any religious or charitable organization; Sisters of Charity, or members of any religious society of like character; delegates to the different farmers' institutes and farmers' congresses and farmers' unions; also all delegates to the state and district firemen's conventions from volunteer fire companies, and confederate veterans who are or have been or who hereafter may be admitted to the Confederate Home; managers of Young Men's Christian Associations or other eleemosynary institutions while engaged in charitable work; also the officers or employés of industrial fairs during the continuance of any said fair and six months prior

thereto; provided, that no more than four officers or employés of any one fair or fair association shall receive passage in any one year; also persons injured in wrecks upon the road of any such company immediately after such injury, and the physicians and nurses attending such persons at the time thereof; also persons and property carried in cases of general epidemic, pestilence or other calamitous visitations at the time thereof or immediately thereafter; also the United States marshals and not more than two deputies of each such marshal; state rangers; constables; the members of the state militia in uniform and when called into service for the state; sheriffs and not more than two deputies to each constable or sheriff; chiefs of police or city marshals, whether elective or appointive. Any bona fide policeman or fireman in the service of any city or town in Texas may have the right to ride upon free transportation furnished by any steam railroad company, any street railway company, any interurban railway company, or other lines of public transportation, when such policeman or fireman is in the discharge of his public duty; but this provision shall not be construed so as to apply to men holding commissions as special policemen or firemen. Any other bona fide peace officer shall enjoy the same privilege, when their duties are to execute criminal processes; provided, that if any such railroad or transportation company shall grant to any sheriff a free pass over its lines of railroad, then it shall issue like free transportation to each and every sheriff in this state who may make to it written application therefor; and provided further, that said sheriffs and other peace officers above mentioned using such free passes or transportation shall deduct the money value of the same, at the legal rate per mile, from any mileage accounts against the state and litigants earned by them in executing process when such pass was used or could have been used; also members of the Live Stock Sanitary Commission or their inspectors, of Texas, not exceeding twenty-five (25) in number for any one year; any person who has by many years of actual labor aided, assisted and been instrumental in securing the passage of statutes by the Congress of the United States requiring the equipment of railroad trains with adequate safety appliances for the protection of the persons and lives of the employés and passengers; provided, that such person was not at such time a public officer, National, State or local, nor employed directly or indirectly by any railroad company; provided, that nothing in this act shall prevent any such companies, the receivers or lessees thereof and their families or the officers, agents or employés from granting to ministers of religion reduced rates of one-half (½) the regular fare, nor shall anything in this act prevent any such companies, their receivers or lessees from transporting free of charge any article being sent to any orphan home or other charitable institution; provided, further, that nothing in this act shall be construed to prohibit any such companies, their receivers or lessees or officers, agents or servants from making special rates for special occasions or under special conditions, but no such rate shall ever be made without first obtaining authority from the Railroad Commission of Texas; and provided further, that no persons who hold any public office in this state shall at any time during their term of office be entitled to any such pass or transportation, privilege or franks or substitute for fare or charges over any railway or other company mentioned in section one (1) of this act, except employés operating trains when in the actual discharge of their duties as such and the officers hereinbefore exempted; provided, further, that nothing in this act shall prohibit any street railway company from transporting, free of charge, police officers and firemen in any city where said company is authorized so to do by any ordinance or authority from the city council of any such city; provided, however, that no person or persons, beneficiaries of free transportation herein permitted, shall ride on a free pass or enjoy free transportation to or from any political convention or on any political errand; that nothing in this act shall prohibit any express company from hauling or carrying free of charge the packages and property of its actual and bona fide officers, attorneys, agents and employés who are actually in the employment of any such company, its receivers or lessees, at the time such free transportation or the right thereto was given; and provided, further, that nothing in this act shall be construed to prohibit any telegraph or telephone company from carrying and transmitting free of charge the messages of its bona fide officers, attorneys, agents and employés and their families who are actually in the employment of such company, its receivers or lessees at the time when such free transportation or the right thereto was given; provided, the actual bona fide officers and employés upon annual salaries of railway and telephone companies, and telegraph companies are hereby permitted to exchange franks, privileges and free transportation over their respective lines of railway and telegraph or telephone; and provided, further, that nothing in this act shall be construed to prevent the right of contract between railway companies and publishers, editors or proprietors of newspapers or magazines from making an exchange of mileage for advertising space in such newspapers or magazines; and provided, further, that the contract between the railway companies and publishers, editors or proprietors of such newspapers shall be upon the same basis of charge as is charged the public generally for a like service, and that the said exchange shall be on a basis of value received in all cases, and providing that such contract shall be in writing and shall not be operative until approved by the railroad commission of this state and filed in the office of the commission as a part of the records thereof, subject at all reasonable times to public inspection; and that nothing herein contained shall be construed to prevent railway, express, railway news and other companies, persons and corporations performing service for or in connection with the operation of railways, from issuing to or exchanging with each other, franks, passage and free transportation of persons and property to each other and to their respective company's officers and employés for the use of the respective facilities; provided, that nothing

herein contained shall be construed to prohibit actual bona fide employés from riding on a pass if he at the same time holds the position of school trustee or notary public. (Acts 1907, p. 94, sec. 2; Acts 1911, p. 151, sec. 1.)

Art. 1533a. Transportation of public health exhibit.—It shall be lawful for any railroad company to furnish free of charge a car or cars for the display of the public health exhibit and to furnish free transportation to the persons actually engaged in the work in connection with the display of the public health exhibit. (Acts 1913, 1st C. S., p. 191, ch. 45, sec. 2.)

Art. 1534. Persons offering to use permit, pass, franks, etc., issued to any other person, or applying for same, knowing he is not entitled thereto, penalty.—If any persons shall present, or offer to use, in his own behalf, any permit or frank whatsoever, to travel, pass or to convey any person or property or message which has been issued to any other person, or shall, knowing that he is not entitled under the provisions of this chapter, apply to any railway, express, telegraph or telephone company, officer, agent, lessee or receiver thereof, for any free pass, frank, privilege or a substitute for pay given or to be used instead of the regular fare or rate for transportation, or for any other consideration, except money, he shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by confinement in the county jail for not less than thirty days and not more than twelve months, and by a fine of not less than one hundred dollars and not more than one thousand dollars. (Acts 1907, p. 95, sec. 3.)

Art. 1535. Discrimination by any means or device, penalty.—No company, subject to the provisions of this chapter, shall, directly or indirectly, by any special rate, rebate, draw-back, or other device or exchange, demand, charge or collect or receive from any person, firm, association of persons or corporation a greater or less or different compensation for any service rendered, or to be rendered, in the transportation of passengers, property or messages, than it charges, demands, collects or receives from any other person, firm, association of persons or corporation for doing for him, them or it, a like service, if the transportation or transmission is a like kind of traffic or service under substantially similar circumstances and conditions; and any such company violating these provisions shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the state of Texas a penalty of five thousand dollars. (Id. p. 96, sec. 4.)

Art. 1536. Companies, their lessees and receivers shall report annually the name and residence of each person to whom free transportation was given.—Each and all companies subject to the provisions of this chapter, their receivers and lessees, shall report annually on such dates as may be fixed by the railroad commission of this state, the name and residence of each and every person to whom free transportation, or right thereto, was given to travel, or to have his property or messages transported or transmitted over its transportation, express, sleeping car or railway or telegraph or telephone line; and any company violating this provision shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the state of Texas a penalty of one thousand dollars. (Id. p. 96, sec. 5.)

Art. 1537. Persons other than those exempt using free pass, free ticket, etc., penalty.—Any person, other than the persons excepted in this chapter, who uses any such free ticket, free pass or free transportation, frank or privilege over any railway or other transportation line or sleeping or express car, telegraph or telephone line, mentioned in this chapter, for any distance under the control and operation of either of said companies, subject to the provisions of this chapter, or under their authority, or shall knowingly and wilfully, by any means or device whatsoever, obtain, use or enjoy from any such company, a less fare or rate than is charged, demanded, collected or received by any such company from any other person, firm, association of persons or corporations for doing for him, them or it, a like service, if the transportation or service is of a like kind of traffic or service under substantially similar circumstances and conditions, such person or such officer or agent who acts for such corporation or company thus favored, shall be guilty of a misdemeanor, and, on conviction, for each offense, shall be fined not less than one hundred dollars and not more than one thousand dollars. (Id. p. 96, sec. 6.)

Art. 1538. Director, officer, agent, receiver, etc., wilfully violating this law or permitting its violation, penalty.—Any director, officer, agent or any receiver, trustee, lessee or person acting for, or employed by, any company subject to the provisions of this chapter, who alone, or with any other corporation, company, persons or party, shall wilfully do, or cause to be done, or shall wilfully suffer, or permit to be done, any act, matter or thing in this chapter prohibited or declared to be unlawful, or who shall aid or abet therein, or shall wilfully omit or fail to do any act, matter or thing in this act required to be done, or shall cause or wilfully suffer or permit any act, matter or thing so directed, required by this chapter to be done, not to be done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this chapter, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction, be subject to a fine of not less than one hundred dollars nor more than one thousand dollars; and, if the offense for which any person shall be convicted under this section shall be unlawful discrimination in rates, fares or charges for the transportation of passengers or property, or the transmission of messages, such person may, in addition to the fines hereinbefore provided for, at the discretion of the jury, be imprisoned in the penitentiary for a term not less than six months nor more than two years. (Id. p. 96, sec. 7.)

Art. 1539. Person may be compelled to testify, exempt from prosecution.—In any investigation, suit or prosecution which may be had, or instituted, under the provisions of this chapter, the court or tribunal in which the investigation, suit or prosecution is pending may compel all persons to attend and give testimony, and to produce such papers, books and documents as may be desired by the state; and no person shall be exempt from giving testimony therein; provided, however,

that no criminal action or proceeding shall be brought or prosecuted against such witness on account of any testimony so given or furnished by him. (Id. p. 97, sec. 10.)

CHAPTER SEVENTEEN

RAILROADS AND OTHER COMMON CARRIERS—BILLS OF LADING, PRESCRIBING CERTAIN REQUIREMENTS FOR ISSUANCE

Art. 1540. All common carriers to issue bills of lading.—It shall be the duty of all railroad companies, steamship companies and other common carriers, or receivers thereof, except express companies and pipe line companies, upon the receipt of freight for transportation, to issue bills of lading therefor, and to authenticate, validate or certify such bills of lading, when the same shall be demanded by the shipper, in accordance with the provisions of this chapter. (Acts 1910, S. S. p. 138.)

Art. 1541. What intrastate bills of lading shall, and interstate bills of lading may, contain.—Each bill of lading issued by a common carrier, to which the provisions of this chapter apply, for an intrastate shipment, shall contain, and each bill of lading issued by such carrier for interstate or foreign shipment may contain, within the written or printed terms, in addition to the other requirements of this chapter, the following:

(a) The date of its issuance;

(b) The name of the person from whom the goods have been received;

(c) The place where the goods have been received;

(d) The place to which the goods are to be transported;

(e) A statement of whether the goods will be delivered to a specific person or to the order of a specific person;

(f) A description of the goods, or the packages containing them, which may, however, be in terms such as may be approved by the railroad commission;

(g) The signature of the carrier, or the duly authorized agent of the carrier; said bill of lading shall be so signed with pen and ink, and the person signing the same shall attach his signature below all written, printed or stamped matter contained in said bill of lading, except the words, "Authorized agent of ———" (stating the name of his principal), which shall appear below his signature;

(h) The carrier may insert in a bill of lading issued by him any other terms and conditions; provided, such terms and conditions shall not be contrary to law or public policy or the orders promulgated by the railroad commission; and provided, further, that no language shall be inserted in any bill of lading having the effect of limiting or avoiding any of the provisions of this chapter;

(i) Provided, that when any form of bill of lading has been approved by the interstate commerce commission, and has been adopted by any carrier and made a part of its tariff, then such bill of lading, as to interstate and foreign shipments, shall be a sufficient compliance with the provisions of this article. (Id. p. 139.)

Art. 1542. "Straight" and "order" bills of lading defined; latter not issuable in duplicate, etc.—A bill of lading in which it is stated that the goods are consigned or destined to a specific person is a "straight" bill of lading; and a bill of lading in which it is stated that the goods are consigned to the order of any person named in such bill of lading is an "order" bill of lading. Order bills of lading shall not be issued in sets or in duplicate, but copies thereof may be issued; provided, such copy has written or printed across the face thereof: "Copy—not negotiable." (Id.)

Art. 1543. Railroad commission shall prescribe forms, etc., of bills of lading, and regulate issuance thereof.—It shall be the duty of the railroad commission of Texas to adopt and prescribe forms, terms and conditions for the authentication, certification and validation of all bills of lading issued by common carriers referred to in article ——, and to regulate the method and manner of their issuance, and to take all such steps as it may deem necessary to carry into effect the provisions of this chapter. (Id.)

Art. 1544. Authority of agents of common carriers under this law to be posted.—It shall be the duty of the carriers affected by this chapter to keep posted for public inspection in some conspicuous place in the station or place where freight is received an instrument of writing, authorizing the agent of such carrier, or person authorized to act for such carrier, selected for such purpose, to execute, sign and issue bills of lading; and the agent, or person so authorized to act for said carrier, so selected, shall attach his signature to such instrument in the same manner that he signs bills of lading. (Id.)

Art. 1545. Penalty for failure or refusal of officer or agent to issue bill of lading.—Any officer, agent or servant of any carrier, railroad or transportation company, or receiver thereof, affected by this chapter, who shall fail or refuse to issue a bill of lading in accordance with this chapter and the regulations and orders of the railroad commission, when the same is rightfully demanded, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding two hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment. (Id. p. 141.)

Art. 1546. Penalty for issuing wrongful, fraudulent or unauthorized bill of lading.—Any officer, agent or servant of a carrier, railroad or other transportation company, or receiver thereof, affected by this chapter, who shall wrongfully issue a bill of lading, with the intent to defraud any person, or who shall, with intent to defraud, knowingly misdescribe any goods, articles or other property, or the quantity or amount thereof, described in any bill of lading, or who shall knowingly issue a bill of lading without authority so to do, with the intent to defraud any person, shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by confinement in the state penitentiary for a term of not less than two years and not exceeding ten years. (Id.)

Art. 1547. Penalty for forgery of name of agent, etc., to bill of lading, or uttering such forgery.—Any person who shall forge the name of any agent of a rail-

road company, or other common carrier, to a bill of lading, with the intent to defraud, or who shall forge the name of any person to any certificate attached to a bill of lading issued by such carrier, with the intent to defraud, or who shall knowingly utter, or attempt to utter, any such forged instrument, with intent to defraud, shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by confinement in the state penitentiary for a term of not less than five years and not exceeding fifteen years. (Id.)

Art. 1548. Penalty for duplication, etc., of order bill of lading.—Any officer, agent or servant of a common carrier, who knowingly issues, or aids in issuing, or knowingly permits to be issued in parts or sets, or in duplicate, an order bill of lading, shall be guilty of a felony, and, upon conviction, shall be punished for such offense by a fine not exceeding five thousand dollars, and by confinement in the state penitentiary for a term not exceeding five years. (Id.)

Art. 1549. Penalty for transfer of bill of lading issued in violation of this law.—Any person who knowingly, and with the intent to defraud, negotiates or transfers a bill of lading, issued in violation of the provisions of this chapter, or who knowingly, and with the intent to defraud, negotiates or transfers a bill of lading which contains any statement of fact that is untrue, and which statement relates to a material matter, shall be deemed guilty of a felony, and, upon conviction of such offense, shall be punished by a fine not exceeding five thousand dollars, and by imprisonment in the state penitentiary for a term not exceeding ten years. (Id.)

Art. 1550. Penalty for fraudulently procuring issuance of bill of lading.—Any person who shall knowingly and fraudulently procure, and cause the agent of any common carrier to make and set forth in any bill of lading issued by him on behalf of such carrier, any statements or representations which are false and which materially misrepresent the number, amount or quantity of the goods, chattels or other articles therein described, or who shall procure, or cause any agent of a common carrier to issue to him, a bill of lading, with the intent to defraud, shall be deemed guilty of a felony, and shall be punished by confinement in the penitentiary not less than two years nor more than five years. (Id.)

CHAPTER EIGHTEEN

RAILROAD EMPLOYES—LIMITING THE WORK HOURS OF SAME

Arts. 1551-1554. [Repealed.]

The act of 1907, ch. 51, pp. 113, 114, with the amendatory act (Act 1907, S. S. ch. 5), when carried into the revised Penal Code of 1911, as articles 1551 to 1554, inclusive, had been expressly repealed by Acts 1909, ch. 101, sec. 3. This repeal was evidently overlooked by the revisers, and in view of the decisions in Berry v. S., 156 S. W. 626; Stevens v. S., 159 S. W. 505; Robertson v. S., 159 S. W. 713; Williams v. S., 159 S. W. 732, the articles named are omitted from this compilation. The act of 1909 re-enacted the former provisions but substituted a penalty recoverable in a civil action in place of the former criminal penalty. The new act will be found in the Civil Statutes as articles 6584 and 6585.

Art. 1555. Railroad telegraph or telephone operator not to work more than eight hours in twenty-four consecutive hours, penalty.—It shall be unlawful for any railroad telegraph or telephone operator to work more than eight hours in twenty-four consecutive hours at such occupation; and any such operator, violating this article, shall pay a fine in any sum not less than twenty-five dollars nor more than one hundred dollars; provided, that, in case of an emergency, any operator may remain on duty for an additional two hours. (Acts 1907, p. 223, sec. 3.)

This act held unconstitutional. State v. Texas & N. O. R. Co., 124 S. W. 984.

CHAPTER NINETEEN

RAILROAD COMPANIES — REQUIRING ENGINEERS OR CONDUCTORS TO SERVE FIRST AS FIREMEN OR BRAKEMEN

Art. 1556. Person running a locomotive engine upon any railroad, qualification of.—If any person shall run or operate any locomotive engine upon any railroad in the state of Texas, without having served three years prior thereto as a fireman or engineer on a locomotive engine, he shall be deemed guilty of a misdemeanor, and he shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars; and each day he so engages shall constitute a separate offense. (Acts 1909, p. 92.)

Art. 1557. Person engaged as conductor on railroad, qualification of.—If any person shall act, or engage to act, as a conductor on a railroad train in this state, without having for two years prior thereto served or worked in the capacity of a brakeman or conductor on a freight train on a line of railroad, he shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars; and each day he so engages shall constitute a separate offense. (Id. p. 92.)

Art. 1558. Penalty for violating two preceding articles.—If any person shall knowingly engage, promote, require, persuade, prevail upon or cause any person to do any act in violation of the provisions of the two preceding articles, he shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars; and each day he so engages shall constitute a separate offense. (Id. p. 92.)

Art. 1559. Shall not apply, when.—Nothing in this law shall be construed as applying to the running or operating of engines, in taking said engines to or from trains at division terminals by engine hostlers, or of the shifting of cars or making up trains, or doing any work appurtenant thereto at engine houses, tram or freight yards by switchman, or yardman, or in the case of the disability of an engineer or a conductor while out on the road between division terminals. In case of emergency, where such companies can not obtain the employés, mentioned in this law, who have the qualifications prescribed by the provisions thereof,

then such companies may employ temporary firemen, engineers and conductors who have not the qualifications prescribed by this law; but no such employment shall continue longer than such companies can supply their respective places with men who have the qualifications prescribed by this law; and provided, further, that nothing herein contained shall relieve any of such companies from the negligence of any of its employés. (Id. p. 92.)

Art. 1560. Not to apply to railroads less than twenty-five miles in length, or lessee or receiver thereof.—The provisions of this law shall not apply to any railroad company within this state or the receiver, lessee thereof, whose line of railway is less than twenty-five miles in length. (Id. p. 93.)

CHAPTER NINETEEN A

RAILROAD COMPANIES—AIR BRAKES

Art. 1560a. Inspection required; not applicable to tram roads.—It shall be unlawful for any person, corporation or receiver to operate or cause to be operated any train, on any line of railroad in this State, without first having the air brakes and air brake attachments inspected and tested before leaving the division terminals for such trains, by a competent inspector, who shall have had at least three years' experience as a car inspector or car repairer. Provided that this Act shall not apply to tram roads engaged in hauling logs to any saw mill. (Acts 1911, p. 106, ch. 63, sec. 1.)

Art. 1560b. When not applicable.—The provisions of this Act shall not apply in case of emergency where such companies cannot obtain the employés mentioned in this Act who have the qualifications prescribed by the provisions thereof; then such companies may employ temporary inspectors. Provided, the provisions of this Act do not apply to railroads under forty miles in length. (Id. sec. 2.)

Art. 1560c. Penalty for violation.—Any person, corporation or receiver violating any of the provisions of this Act shall be fined not less than fifty dollars ($50.00) nor more than one hundred dollars ($100.00), and each operation of any such train without such inspection first having been made, as provided herein, shall constitute a separate offense. (Id. sec. 3.)

CHAPTER TWENTY

RAILROAD COMPANIES REQUIRED TO DO REPAIR WORK IN TEXAS AND FURNISH SUFFICIENT MOTIVE POWER

Art. 1561. Having shops in this state, required to repair, renovate or rebuild in Texas.—All railroad corporations operating in the state of Texas, and having their repair shops within the state, shall, and are hereby required to repair, renovate or rebuild, in the state of Texas, any and all defective or broken cars, coaches, locomotives or other equipment, owned or leased by said corporations in the state of Texas, when such rolling stock is within the state of Texas; provided, that such railway shall have, or be under obligation to have, proper facilities in the state, to do such work; and provided, this chapter shall not be so construed as to require any railway corporation to violate the safety appliance law of the congress of the United States; and provided, further, that no railway shall be required to haul such disabled equipment a greater distance for repairs at a point within the state of Texas than would be necessary to reach their repair shops in another state; and provided, further, that no such railway company shall haul, or be permitted to haul, for purposes of repair, any disabled equipment by or past any shop owned or operated by any such company, where said disabled equipment can be repaired, in order to reach some other repair shop at a greater distance, for purposes of repairing said disabled equipment; provided, that the provisions of this chapter shall not apply to companies having less than sixty continuous miles of railroad in operation in this state. (Acts 1909, p. 73.)

Art. 1562. Prohibited from sending cars, coaches, etc., out of Texas to be repaired.—All railroad corporations operating in the state of Texas, and having their repair shops within the state, shall be prohibited from sending or removing any of their cars, coaches, locomotives or other equipment out of the state of Texas to be repaired, renovated or rebuilt, when the same is in a defective or broken condition, and within the state. (Id. p. 73.)

Art. 1563. Not to apply to strikes, etc.—The provisions of this chapter shall not apply in cases of strikes, fires, or other unforeseen casualties and emergencies. (Id. p. 73.)

Art. 1564. Penalty for violating this law.—Any railway corporation, lessee, receiver, superintendent, or agent, who shall violate any of the provisions of this chapter, shall, after conviction by any court of competent jurisdiction, be liable to a fine of not less than one hundred dollars nor more than five hundred dollars. (Id. p. 73.)

Art. 1565. Shall equip and furnish sufficient motive power, etc., to handle passenger and freight traffic.—It is hereby declared to be the duty of every railroad company, incorporated under the laws of the state of Texas and doing business in this state, under limitations and regulations prescribed by the railroad commission of Texas, to equip and provide sufficient motive power and rolling stock to handle all passenger and freight traffic expeditiously and without delay. (Acts 1907, p. 298.)

Art. 1566. Penalty for violating preceding article.—Any railroad company or common carrier failing to comply with the provisions of this chapter or to obey the orders of the railroad commission, made in pursuance of the provisions hereof, shall be deemed guilty of an abuse of their rights and privileges, and, upon conviction, shall be subject to a fine of one hundred dollars for a violation or failure to comply with any order that may be issued by the railroad commission as is provided said commission may do by article 1553; and each day that such railroad company or common carrier neglects, fails or refuses to comply with such

orders shall constitute a separate offense. (Id. p. 298.)

CHAPTER TWENTY-ONE

RAILROAD COMPANIES PROHIBITED ESTABLISHING NAME FOR A STATION OTHER THAN NAME OF POST-OFFICE

Art. 1567. Station or depot in city or town to bear name of postoffice.—It shall hereafter be unlawful for any corporation or receiver, operating any line of railroad, in whole or part, in this state, or any officer, agent or representative of such corporation or receiver, to retain, maintain or establish a name for any railway station or depot, in any incorporated or unincorporated town or city within this state, other than the name of the town or city, which have, and bears, the name of its postoffice so given by the United States government. (Acts 1909, p. 89.)

Art. 1568. Not to apply, when.—The provisions of article 1552 shall not apply to two or more incorporated or unincorporated towns or cities in this state which now are situated within five miles of each other, and which each have therein established postoffice named and designated by the United States government. Provided, that this chapter shall not apply to those cases where the postoffice name of the city, town, village or settlement is so similar in sound or otherwise to that of some other station upon such railroad, as that confusion in train orders and directions may arise therefrom; and provided, further, that where the name of such place is changed by the postal department of the federal government, such railway shall not be required to again change the name of its station; and provided, further, that all railways having stations affected hereby shall have ninety days from and after this chapter becomes effective to comply therewith. (Id. p. 89.)

Art. 1569. Penalty for violation.—Any officer, agent, or representative of any corporation, or receiver operating any line of railroad, in whole or in part, within this state, who shall violate the provisions of this chapter, shall be deemed guilty of a misdemeanor, and, upon a conviction therefor, shall be punished by a fine of not less than two hundred dollars nor more than five hundred dollars for such offense, or by confinement in the county jail for not less than thirty nor more than ninety days, or by both such fine and imprisonment. Provided, that the venue of all suits originating under the provisions of this chapter shall be in the county where the station, about which the suit occurs, is located. (Id. p. 89.)

CHAPTER TWENTY-TWO

STREET RAILWAY—REGULATING FARES IN CERTAIN CITIES AND TOWNS

Art. 1570. Required to carry children of the age of twelve years or less for half fare; not apply when.—All persons or corporations, owning or operating street railways in or upon the public streets of any town or city in this state of not less than forty thousand inhabitants are required to carry children of the age of twelve years or less at, and for one-half, the charge or fare regularly collected by such person or corporation for the transportation of adult persons; provided, that this chapter shall not apply to street cars carrying children or students to and from schools, colleges, or other institutions of learning, situated at a distance of one mile or more beyond the limits of the incorporated city or town from which said cars run. (Acts 1903, p. 182.)

Art. 1571. Provide for sale of tickets in lots of twenty, etc.—All such persons or corporations, owning or operating street railways, shall sell or provide for the sale of tickets in lots of twenty, each good for one trip over the line or lines owned or operated by such person or corporation, at, and for, one-half the regular fare or charge collected for the transportation of adult persons, to students not more than seventeen years of age in actual attendance upon any academic, public or private school, of grades not higher than the grades of the public high schools of this state, situated within, or adjacent to, the town or city in which such street railway is located. Such tickets are required to be sold only upon the presentation by the student desiring to purchase the same of the written certificate of the principal of the school upon which he is in attendance, showing that he is not more than seventeen years of age, is in regular attendance upon such school, and is within the grades hereinbefore provided. Such tickets are not required to be sold to such students, and shall not be used except during the months of the year when such schools are in actual session; and such students shall be transported at half fare only upon the presentation of such tickets. (Id. p. 182.)

Art. 1572. Children under the age of five years transported free, when.—All such persons or corporations are required to transport children of the age of five years or less, when attended by a passenger of above said age, free of charge. (Id. p. 182.)

Art. 1573. Providing for transfers.—All such persons or corporations are required to accord to all passengers referred to in articles 1561, 1562 and 1563 the same rights as to the use of transfers issued by their own or other lines as are, or may be, accorded to passengers paying full fare. (Id. p. 182.)

Art. 1574. Officer of any corporation violating this law, penalty.—Any officer of any corporation or other person who shall knowingly violate any of the provisions of this chapter shall, upon conviction, be adjudged guilty of a misdemeanor, and fined not less than twenty-five nor more than one hundred dollars. (Id. p. 182.)

Art. 1575. Person misrepresenting age or grade to secure reduced fare, penalty.—Any person who shall misrepresent the age or the grade of any person for the purpose of securing the reduced fare herein provided for shall, upon conviction, be adjudged guilty of a misdemeanor, and be fined not less than twenty-five nor more than one hundred dollars. (Id. p. 182, sec. 6.)

CHAPTER TWENTY-THREE

ASSIGNOR

Art. 1576. (1011) Secreting or concealing property from assignee.—If any assignor shall secrete or conceal from his assignee any portion of the property belonging

to his estate, other than that which is exempt from execution, or shall, previous to, and in contemplation of, the assignment, transfer any property, with the intent or design to defraud his creditors, such assignor shall be adjudged guilty of a felony, and, upon conviction thereof, shall be punished by imprisonment and labor in the penitentiary for not less than two nor more than five years. (Acts 1879, sec. 11.)

CHAPTER TWENTY-FOUR

DUPLICATION OF PROCESS FOR WITNESSES

Art. 1577. (1012) Duplication of process for witnesses; penalty.—It shall be unlawful for the clerk of any district court, after a witness in a felony case has been served with a subpœna or an attachment, to issue any other or further process for said witness, except upon the order of the presiding judge, made upon application to him for that purpose. When a witness has been served with process by one party, it shall inure to the benefit of the opposite party, in case he should need said witness; and, as far as practicable, the clerk shall include in one process the names of all witnesses for the state and defendant; and such process shall show that the witnesses are summoned for the state and defendant. Any district clerk who shall violate the provisions of this law shall be deemed guilty of a misdemeanor, and punished by a fine of not less than ten nor more than one hundred dollars. (Acts 21st Leg. March 30, 1889, ch. 121, p. 145.)

See Searcy v. S., 53 S. W. 344; Stacy v. S., 177 S. W. 114.

See, also, Title 4, chs. 3 and 5; Title 8, ch. 6, arts. 388-420.

CHAPTER TWENTY-FIVE

COUNTY FINANCES

Art. 1578. (1013) State or county officer refusing information.—If any state or county officer shall fail or refuse to give any data, statistics and information required of him by law, such state or county officer shall be guilty of a misdemeanor, and, upon conviction, be fined in a sum not less than twenty-five nor more than one hundred dollars. (Acts 21st Leg. April 2, 1889, p. 23.)

Art. 1579. (1013a) Clerk failing to keep finance ledger.—If the clerk of the county court of any county in this state, or county auditor in counties having an auditor, shall wilfully fail, neglect, or refuse to keep, or cause to be kept, the finance ledger, provided for by law, or shall wilfully fail, neglect, or refuse to make or cause to be made, the quarterly statement as provided for by law, the clerk or auditor so failing, neglecting or refusing shall be fined in any sum not less than fifty nor more than two hundred dollars; provided, that such failure, neglect, or refusal, for each quarter, shall constitute a separate offense. (Acts 1893, p. 161.)

Art. 1580. (1013b) Treasurer failing to make report.—Any county or city treasurer, or treasurer of the school board of each city or town having exclusive control of its schools, failing to make and transmit the report required by law, and certified copy, or either, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than fifty dollars nor more than five hundred dollars. (Acts 1893, p. 188.)

Art. 1581. Selecting depository of funds for county.—The commissioners' court of each county in this state are authorized, at the February term thereof every two years, to receive proposals from any banking incorporation, association or individual banker in such county, as may desire to be selected as the depository of the funds of such county. Notice that such bids will be received shall be published by, and over the name of the county judge, once each week for at least twenty days before commencement of such term, in some newspaper published in said county; and, if no newspaper be published therein, then, in any newspaper published in the nearest county; and, in addition thereto, notice shall be published by posting same at the courthouse door of said county. (Acts 1907, p. 208.)

Art. 1582. Member of commissioners' court failing or refusing to vote; penalty.—Any member of the commissioners' court of any county who shall fail or refuse to vote for a compliance with the requirements of this section shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by a fine of not less than one hundred nor more than five hundred dollars, or by imprisonment in the county jail for less than one nor more than six months, or by both such fine and imprisonment; and such failure or refusal shall be deemed ground for removal from office. (Id. p. 208.)

Art. 1583. Selecting depository of funds of city.—The city council of every city in the state of Texas, incorporated under the general laws thereof, or incorporated under special charter, at its regular meeting in July of each year, is authorized to receive sealed proposals, for the custody of the city funds, from any banking corporation, association or individual banker, doing business within the city, that may desire to be selected as the depository of the funds of the city. The school funds, from whatsoever source derived, of incorporated cities, is part of the city funds, and is subject to the provisions of this chapter. Notice that such bids will be received shall be published by the city secretary, not less than one nor more than four weeks before such meeting, in some newspaper published in the city. Any banking corporation, association or individual banker, doing business in the city, desiring to bid, shall deliver to the city secretary on or before the day of such meeting designated by said published notice, a sealed proposal, stating the rate per cent upon daily balances that said banking corporation, association or individual banker offers to pay to the city for the privilege of being made the depository of the funds of the city for the year next following the date of such meeting; or, in the event that said election shall be made for a less term than one year, as hereinafter provided, then for the time between the date of bid and the next regular time for the selection of a depository as aforesaid. All such proposals shall be securely kept by the secretary, and shall not be opened until the meeting of the council for the purpose of passing upon same; nor shall any other proposals be received after they shall have been opened. It shall be a misdemeanor for the city secre-

tary or other person to open any of said proposals, or to disclose, directly or indirectly, the amount of any such bid to any person or persons before the selection of such depository, and, upon conviction, he shall be fined in a sum of not less than ten nor more than one hundred dollars. (Id. p. 132.)

Art. 1584. Check and warrants on city depository, how drawn, penalty for violation.—No check shall be drawn upon the city depository by the treasurer, except upon a warrant signed by the mayor and attested by the secretary. No warrant shall be drawn by the mayor and secretary upon any of the special funds, created for the purpose of paying the bonded indebtedness of said city in the hands of the city treasurer, or in the depository, for any purpose whatsoever, other than to pay the principal or interest of said special fund, or for the purpose of investing said special fund according to law. No city treasurer shall pay off, or issue a check, to pay any money out of any special fund created for the purpose of paying any bonded indebtedness of said city other than for the purpose to pay interest due on said bonds, the principal of said bonds, or for the purpose of making an investment of said fund according to law. Any mayor who shall draw a warrant against a special fund, as above defined, for any other purpose than above specified, or any city treasurer who shall pay, or issue a check to pay, a warrant drawn on the special fund of any city, other than for the legal purpose of paying interest due on said bonds, the principal of said bonds, or for investing said sinking fund according to law, shall be guilty of a felony, and, upon conviction, shall be confined in the penitentiary for any term not less than one year nor more than five years. (Acts 1905, p. 397.)

Art. 1584a. Approval of treasurer's report; order; counting cash; affidavit; registration and publication; penalty for violation.—When the commissioners' court has compared and examined the quarterly report of the treasurer, and found the same correct, it shall cause an order to be entered upon the minutes of the court, stating the approval thereof, which order shall recite separately, the amount received and paid out of each fund by the treasurer since the preceding treasurer's quarterly report, and the balance of such fund, if any, remaining in the treasurer's hands, and the court shall cause the proper credit to be made in the accounts of the treasurer, in accordance with said order, and said court shall actually inspect and count all the actual cash and assets in the hands of the treasurer belonging to the county at the time of the examination of his said report; and prior to the adjournment of each regular term of the court, the county judge and each of the commissioners shall make affidavit in writing that the requirements of this article have been in all things fully complied with by them at said term of said court, and that the cash and other assets mentioned in said county treasurer's quarterly report made by said treasurer to said court, and held by him for the county, have been fully inspected and counted by them, giving the amount of said money and other assets in his hands; which affidavits of the members shall be filed with the county clerk of the county, and by him recorded in the minutes of the said county commissioners' court of the term at which the same were filed; and the same shall be published in some newspaper published in the county, if there be a newspaper published in the county, for one time, to be paid for at the same rate as other legal notices.

And any county judge, county commissioner, or county clerk in this State, who shall negligently or intentionally fail or refuse to comply with the requirements of this Article, shall be deemed guilty of a misdemeanor, and upon conviction thereof in a court of competent jurisdiction shall be fined in any sum not less than twenty-five nor more than five hundred dollars. (Acts 1897, p. 28, ch. 30, sec. 1.)

The above provision was omitted from the Revised Penal Code, but in view of the decision in Berry v. S., 156 S. W. 626, it is included here. The civil part of this article was carried into Rev. Civ. St. 1911, as arts. 1448-1450. The criminal feature was added by Acts 1897, ch. 30, p. 27, by way of amendment of art. 867, Rev. Civ. St. 1895.

CHAPTER TWENTY-SIX

BUREAU OF LABOR STATISTICS

Art. 1585. Commissioner of labor statistics, duty of.—The commissioner of labor statistics shall collect, assort, systematize and present in biennial reports to the governor, statistical details relating to all departments of labor in Texas, and especially as affecting or bearing upon the commercial, social, educational and sanitary conditions of the employés and their families, the means of escape from dangers incident to their employment, the protection of life and health in factories and other places of employment, the labor of children and of women and the number of hours of labor exacted of them, and, in general, all matters and things which affect or tend to affect the prosperity of the mechanical, manufacturing and productive industries of this state, and of the persons employed therein. Said commissioner shall also, as fully as may be done, collect reliable reports and information from each county, showing the amount and condition of the mechanical, mining and manufacturing interests therein, and all sites offering natural or acquired advantages for the location and operation of any of the different branches of industry; and he shall, by correspondence with interested parties in other parts of the United States, or in foreign countries, impart to them such information as may tend to induce the location of manufacturing and producing plants within the state, together with such information as may tend to increase the employment of labor and the products of such employment in Texas. (Acts 1909, p. 59.)

Art. 1586. Power to issue subpœna, etc., penalty for person failing to attend or testify.—The commissioner of the bureau of labor statistics shall have power to issue subpœnas, administer oaths and take testimony in all matters related to the duties herein required of the said bureau, but such testimony must be taken in the vicinity of the residence or office of the person testifying. Any person duly subpœnaed under the provisions of this chapter who shall wilfully neglect or fail to attend or testify, at the time and place mentioned in the subpœna,

shall be deemed guilty of a misdemeanor, and, upon conviction thereof before any court of competent jurisdiction, shall be punished by a fine of not to exceed fifty dollars, or by imprisonment in the county jail for not to exceed thirty days. Provided, however, that no witness shall be compelled to go outside of the county in which he resides in order to testify. (Id., p. 60.)

Art. 1587. Owner, manager, etc., of factory, mill, etc., duty of.—It shall be the duty of every owner, manager and superintendent of every factory, mill, workshop, mine, store, business house, public or private work, or any other establishment or place, where five or more persons are employed at work, to make to the bureau of labor statistics, upon blanks to be furnished by such bureau, such reports and returns as said bureau may require for the purpose of securing such labor statistics as are contemplated by this chapter; and such reports and returns shall be made within not to exceed sixty days from the receipt of the blanks furnished by the commissioner or by the bureau; and the same shall be verified under oath. Any owner, manager, superintendent or other person in charge or control of any factory, mill, workshop, mine, store, business house, public or private work, or other establishment or place, where five or more persons are employed at work, who shall negelect or refuse to make such reports and returns as are required by the provisions of this chapter, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not to exceed one hundred dollars, or by imprisonment in the county jail for not to exceed thirty days. (Id., p. 60.)

Art. 1588. Name of same shall not be disclosed by commissioner.—In the reports made by the commissioner of labor statistics to the governor, the names of individuals, firms or corporations, supplying information under the provisions of this chapter, shall not be disclosed; nor shall the name of any such individual, firm or corporation be communicated to any person or persons, except such as are employed in the bureau of labor statistics; and any officer or employé of such bureau violating any of the provisions of this article shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not to exceed five hundred dollars, or by imprisonment in the county jail for not more than ninety days. (Id., p. 60.)

Art. 1589. Commissioner may enter mill, factory, store, etc., when.—Upon the written complaint of two or more persons, or upon his failure otherwise to obtain information, in accordance with the provisions of this chapter, the commissioner of labor statistics shall have the power to enter any factory, mill, workshop, mine, store, business house, public or private work, or other establishment or place where five or more persons are employed at work, when the same is open and in operation, for the purpose of gathering facts and statistics, such as are contemplated by this chapter, and for the purpose of examining into the methods of protecting employés from danger, and the sanitary conditions in and around such building or place, of all of which, the said commissioner shall make and return into the bureau of labor statistics a true and detailed record in writing. (Id., p. 61.)

Art. 1590. Shall give written notice to district or county attorney, when.—If the commissioner of labor statistics shall learn of any violation of the law with respect to the employment of children, or fire escapes, or the safety of employés, or the preservation of health, or in any other way affecting the employés, he shall at once give written notice of the facts to the county or district attorney of the county in which the law has been violated, or of some other county, if any there be, having jurisdiction of the offense; and the county or district attorney to whom such notice has been given shall immediately institute the proper proceedings against the guilty person. (Id., p. 61.)

Art. 1591. Owner, manager or person in control of factory, mill, etc., refusing to allow officer of bureau of labor statistics to enter; penalty.—Any owner, manager, superintendent or other person in charge or control of any factory, mill, workshop, mine, store, business house, public or private work, or other establishment or place, where five or more persons are employed at work, who shall refuse to allow any officer or employé of the said bureau of labor statistics to enter the same, or to remain therein for such time as is reasonably necessary, or who shall hinder any such officer or employé, or in any way prevent or deter him from collecting information, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not to exceed one hundred dollars, or imprisonment in the county jail for not to exceed sixty days. (Id., p. 61.)

CHAPTER TWENTY-SEVEN
MINES AND MINING

Art. 1592. Owner, lessee, agent, etc., operating mine, duty of.—It shall be unlawful for the owner, agent, lessee, receiver or operator of any mine in this state to employ any person or persons in said mine for the purpose of working therein, unless there are in connection with every seam or stratum of coal or ore worked in such mine not less than two openings or outlets, separated by a stratum of not less than one hundred and fifty feet at surface and not less than thirty feet at any place, at which openings or outlets, safe and distinct means of ingress and egress, shall, at all times, be available for the persons employed in such mine. The escapement shafts or slopes shall be fitted with safe and available appliances, by which the employés of the mine may readily escape in case of accident. In slopes used as haulage roads, where the dip or incline is ten degrees or more, there must be provided a separate traveling way, which shall be maintained in a safe condition for travel, and kept free from dangerous gases. (Acts 1903, p. 103.)

Art. 1593. Time for completing escapement shaft.—The time which shall be allowed for completing such escapement shaft or opening as is required by the terms of this chapter, shall be: For mines already opened, one year for sinking any shaft or slope two hundred feet or less in depth, and one additional year, or pro rata portion thereof, for every additional two hundred feet or fraction thereof; but, for mines

which shall be opened after the taking effect of this chapter, the time allowed shall be two years for all shafts or slopes more than two hundred feet in depth, and one year for all shafts two hundred feet in depth or less; and the time shall be reckoned in all cases from the date on which coal or ore is first hoisted from the original shaft or slope, for sale or use. (Id. p. 103.)

Art. 1594. Shafts, cages and passways, constructed, how.—Any shaft in process of sinking, and any opening projected for the purpose of mining coal of all kinds, shall be subjected to the provisions of this chapter.

At the bottom of every shaft and every caging place therein, a safe, commodious passageway must be cut around said landing place, to serve as a traveling way by which employés shall pass from one side of the shaft to the other, without passing under or near the cage.

The upper and lower landings at the top of each shaft, and the openings of each intermediate seam from or to the shaft, shall be clear and free from loose materials, and shall be securely fenced with automatic or other gates or bars, so as to prevent either men or materials from falling into the shaft.

Every hoisting shaft must be equipped with substantial cages fitted to guide rails running from the top to the bottom. Said cages must be safely constructed, they must be furnished with suitable boiler iron covers to protect persons riding thereon from falling objects, and they must be equipped with safety catches. Every cage on which people are carried must be fitted with iron bars, rings, or chains in proper place and in sufficient number to furnish a secure handhold for every person permitted to ride thereon. At the top landing, cage supports, where necessary, must be carefully set and adjusted so as to work properly, and securely hold the cages when at rest.

In all cases where the human voice cannot be distinctly heard, there shall be provided a metal tube or telephone from the top to the bottom of the shaft or slope through which conversation may be held between persons at the bottom and top of such shaft or slope, and that there shall also be maintained an efficient system of signaling to and from the top of the shaft or slope and each seam or opening.

Every underground place on which persons travel, worked by self-acting engines, windlasses or machinery of any description, shall be provided with practical means of signaling between the stopping places and the ends of the plane, and shall further be provided, at intervals of not more than sixty feet, with sufficient manholes for places of refuge.

Every mine shall be supplied with props and timbers of suitable length and size; and, if from any cause the timbers are not supplied when required, the miners shall vacate any and all such working places until supplied with timber needed.

All openings, worked out or abandoned portions of every operated mine likely to accumulate explosive gases or dangerous conditions shall be securely gobbed and blocked off from the operated portions thereof, so as to protect every person working in such mines from all danger that may be caused or produced by such worked out portions of such mines. (Acts 1907, p. 331.)

Art. 1595. Current of fresh air shall be maintained throughout mine.—(a) Throughout every mine there shall be maintained currents of fresh air sufficient for the health and safety of all men and animals employed therein; and such ventilation shall be produced by a fan or some other artificial means; provided, a furnace shall not be used for ventilating any mine in which explosive gases are generated.

(b) The quantity of air required to be kept in circulation and passing a given point shall be not less than one hundred cubic feet per minute for each person, and not less than three hundred cubic feet per minute for each animal in the mine, measured at the foot of the downcast; and this quantity may be increased at the discretion of the inspector, whenever, in his judgment, unusual conditions make a stronger current necessary. Said current shall be forced into every working place throughout the mine, so that all parts of the same shall be reasonably free from standing powder smoke and deleterious air of any kind.

(c) The measurement of the current of air shall be taken with an anemometer at the foot of the downcast, at the foot of the upcast, and at the working face of each division or split of the air current.

(d) The main current of air shall be split or subdivided as to provide a separate current of reasonably pure air to every one hundred men at work; and the inspector shall have authority to order separate currents for smaller groups of men, if in his judgment special conditions make it necessary.

(e) The air current for ventilating the stable shall not pass into the intake air current for ventilating the working parts of the mine.

(f) Whenever the inspector shall find men working without sufficient air, he shall at once give the mine manager or operator notice and a reasonable time in which to restore the current, and, upon his or their refusal or neglect to act promptly, the inspector may order the endangered men out of the mine. (Id. p. 332.)

Art. 1596. Appearance of fire damp, notice to be given.—Immediate notice must be conveyed by the miner or mine owner to the inspector, upon the appearance of any large body of fire damp in any mine, whether accompanied by any explosion or not, and upon the concurrence of any serious fire within the mine or on the surface. (Id. p. 333.)

Art. 1597. Cages on which men are riding, how constructed, speed of.—Cages on which men are riding shall not be lifted or lowered at a rate greater than six hundred feet per minute, except with the written consent of the inspector. No person shall carry any tools or material with him on a cage in motion, except for use in making repairs; and no one shall ride on a cage while the other cage contains a loaded car. No cage, having an unstable or self-dumping platform, shall be used for the carriage of men or materials, unless the same is provided with some convenient device, by which said platform can be securely locked, and un-

less it is so locked whenever men or material are being conveyed thereon. (Id. p. 333.)

Art. 1598. Powder in mine, how carried.—No miner or other person shall carry powder into the mine, except in the original keg or in a regulation powder can, securely fastened, and the can in otherwise air tight condition. (Id., p. 333.)

Art. 1599. Cut-throughs, how made.—It shall be the duty of the mine foreman to see that proper cut-throughs are made in all the pillars at such distances as in the judgment of the mine inspector may be deemed requisite, not more than twenty yards nor less than ten yards apart, for the purpose of ventilation; and the ventilation shall be conducted through said cut-throughs into the rooms and entries by means of check doors made of canvas or other material, placed on the entries or in other suitable places; and he shall not permit any room to be opened in advance of the ventilating current. Should the mine inspector discover any room, entry, airway or other working place being driven in advance of the air current contrary to the requirements of this article, he shall order the workmen in such places to cease work at once until the law is complied with. (Id., p. 333.)

Art. 1600. Safety lamps to be kept when necessary.—At any mine where the inspector shall find fire damp is being generated so as to require the use of a safety lamp in any part thereof, the operator of such mine, upon receiving notice from the inspector that one or more such lamps are necessary for the safety of the men in the mines, shall at once procure and keep for use such number of safety lamps as may be necessary. (Id., p. 334.)

Art. 1601. Shaft, safety lamp, etc., shall not be injured.—It shall be unlawful for any miner, workman or other person, knowingly or carelessly, to injure any shaft, safety lamp, instrument, air-course or brattice or to obstruct or throw open an air-way, or to carry any open lamp or lighted pipe or fire in any form into a place worked by the light of safety lamps, or within three feet of any open powder, or to handle or disturb any part of the hoisting machinery, or to enter any part of the mine against caution, or to do any wilful act whereby the lives or health of persons working in mines, or the security of the mine machinery thereof, is endangered. (Id., p. 334.)

Art. 1602. Rules printed in English shall be posted.—It shall be the duty of every operator to post on the engine house and at the pit top of his mine, in such manner that the employés of the mine can read them, rules not inconsistent with this chapter, plainly printed in the English language, which shall govern all persons working in the mine. And the posting of such notice, as provided, shall charge all employés of such mine with legal notice of the contents thereof. (Id., p. 334.)

Art. 1603. Adequate and accurate scales shall be provided.—The owner or operator of every mine shall provide adequate and accurate scales for weighing coal; and it shall be the duty of the mine inspector to examine such scales, and, if same are not found to be accurate, he shall notify the owner to repair same; and, if such owner fails or refuses to repair same within a reasonable time, said inspector shall institute proceedings under the law against the proper parties. (Id., p. 334.)

Art. 1604. Employés shall have right to employ check weighman.—The employés in any mine in this state shall have the right to employ a check weighman at their own option and their own expense. (Id., p. 334.)

Art. 1605. Kind of oil to be used in mine.—No miner or other person employed in a mine shall use any kind of oil other than a good quality of lard oil for lighting purposes, except when repairing downcast or upcast shafts. (Id., p. 334.)

Art. 1606. Any person violating any of the provisions hereof, penalty.—Any person who shall wilfully violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not exceeding five hundred dollars, or imprisonment in the county jail for a period not exceeding six months. (Id., p. 334.)

Art. 1606a. Electric wires to be insulated; trolley wires, how placed.—From and after September 1, 1911, in all mines in this State where electricity is or hereafter shall be used as a part of the system, power or means of mining and procuring the coal or other mineral from any of said mines, that the owners or operators of every such mine shall cause all wires conducting electricity in and about said mine to be carefully and thoroughly insulated or protected in a safe manner, so that the person or animals coming in contact therewith shall not be injured thereby; all wires as aforesaid shall either be thoroughly insulated or placed where persons employed in and about the mines can not come in contact therewith, or shall be covered, protected or shielded in a safe manner, so as to prevent any injuries or accidents therefrom to those in or about the mines; provided, however, it shall not be necessary to insulate or cover trolley wires, but they shall all be hung and kept not less than five feet and six inches above the rail, and shall be securely fastened, and not permitted to sag less than said height. Where there is sufficient height in existing entries to permit this, but where sufficient height is not available in existing entries, then the trolley wires shall be placed to one side of the entry, six inches outside the rail; and in all such cases the trolley wire shall be placed on the side of the entry opposite from the working rooms, except where there are rooms on both sides of the entry, in which event, the trolley wires may be placed over the opening of said rooms, said trolley wires to be safely shielded; provided, where it is impracticable in existing entries to place trolley wires six inches outside of the rail, or five feet, six inches high, and where separate travel way is not provided, then the trolley wire shall be safely shielded; and it is further provided that this Act shall not apply to entries that are not used as travel ways for workmen or work animals; provided, however, that this Section shall not apply to mines in operation in this State on January 1, 1902, and prior thereto, and which have developed until there is at least two thousand (2000) feet distance from the shaft to the face of the coal being operated except as to extensions of trolley wires made and to be made after January 1,

1910, in such mines. (Acts 1911, p. 196, ch. 97, sec. 1.)

Art. 1606b. Penalty for violation.—Any person who shall violate any of the provisions of this Act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding five hundred ($500.00) dollars or imprisonment in the county jail for a period not exceeding six months. (Id. sec. 2.)

Art. 1606c. Duties of state mining inspector.—It shall be the duty of the State Mining Inspector to see that the provisions of this Act are complied with, and shall report all violations hereof to the State Mining Board and to the district or county attorney of the county where the offense is committed. (Id. sec. 3.)

Art. 1606d. Map of underground workings to be filed.—It shall be the duty of every operator of a coal mine in the State of Texas to make a map of the underground workings of every mine in his charge, under operation on the first day of January, 1912, or that may be opened thereafter; said map shall be drawn on a scale of one inch to one hundred feet, and shall indicate the surface land lines as well as the rooms, entries or openings underground. It shall be brought up to date at least once each month, covering operations for the preceding month. The original of said map shall be on file at the office of the operator at or near said mine. Said map shall be extended or brought up to date at any time requested by the State Mine Inspector, at least every three months, if, for any reason, a mine should be closed, then a final map shall be made and filed; provided, however, that maps existing on the date of the passage of this Act may be continued on the same scale as begun, if not smaller than one-half inch to one hundred feet. (Id. sec. 4.)

Art. 1606e. Same; penalty for violation.—The penalty for noncompliance with Section 4 [art. 1606d] hereof shall be by a fine of not less than twenty-five ($25.00) dollars nor more than fifty ($50.00) dollars for each offense. (Id. sec. 5.)

Art. 1606f. Feeding animals in mine; storing feed.—It shall be unlawful for any person, association of persons, corporation or receiver, owning, operating or managing any mine in this State, to feed or permit to be fed any work animal in said mines, or to store or keep any feed for such animals in said mines. (Acts 1911, p. 205, ch. 102, sec. 1.)

Art. 1606g. Permitting animal to remain over ten hours unlawful.—It shall be unlawful for any person, association of persons, corporation or receiver, owning, operating or managing any mine in this State, to permit any work animal to remain in any mine longer than ten consecutive hours. (Id. sec. 2.)

Art. 1606h. Not applicable to certain mines; open light in stable prohibited; inflammable stock food.—It is further provided that Sections 1 and 2 (arts. 1606f, 1606g) shall not apply to mines complying with the following provisions:

All stables in mines in which work animals are kept shall be equipped with fire proof doors at each opening, with a door frame of concrete, stone or brick, laid in mortar, and such stable door shall be kept closed during working hours of mines.

All feed, hay, grass, cane, etc., except corn, corn chops, bran and shelled oats, shall not be taken down the hoisting shaft until after the regular day shift is out of the mine.

It is further provided that no open light shall be taken into any underground stable by any person.

It is further provided that not over twenty-four (24) hours' supply of hay, grass or cane, or any other kind of inflammable stock food, except corn, corn chops, bran and shelled oats, shall be taken down in any one day. (Id., sec. 2a.)

Art. 1606i. Penalty for violation.—In addition to the penalties provided in Section 3 of this Act (Art. 5946h, Civ. St.), every person violating any of the provisions of this Act shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment in the county jail for not less than one month nor more than one year. (Id., sec. 4.)

Art. 1606j. Duties of state mining inspector.—It shall be the duty of the State Mining Inspector to see that the provisions of this Act are complied with, and he shall report all violations thereof to the State Mining Board and to the district or county attorney of the county where the offense is committed. (Id., sec. 5.)

Art. 1606k. Providing wash houses; mode of construction and equipment.—It shall be the duty of the operator, owner, lessees or superintendent of any coal mine in this State employing ten or more men to provide a suitable building convenient to the principal entrance of such mine, for the use of persons employed in and about said mine, for the purpose of washing themselves and changing their clothing when entering or leaving the mine. Such building shall be provided with proper light and heat, with a supply of hot and cold water and shower baths, and with properly constructed individual lockers for the use of such employés. The employés shall furnish their own towels, soap and locks for their lockers, and shall exercise control over and be responsible for all property by them left in such house. The baths and lockers for negroes shall be separate from those for whites, but may be in the same building. (Acts 1915, p. 100, ch. 51, sec. 1.)

Art. 1606l. Same; penalty for violation; wilfully destroying property.—Any operator, owner, lessee or superintendent of any coal mine violating the provisions of this Act shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than twenty-five dollars, nor more than two hundred dollars, or by imprisonment in the county jail for not more than sixty days or by both such fine and imprisonment, in the discretion of the court or jury. It is further provided that every two weeks of such violation shall constitute a separate offense. Any person wilfully injuring or destroying any property mentioned herein shall be punished as provided by law. (Id., sec. 3.)

CHAPTER TWENTY-EIGHT

PENITENTIARIES—CONTROL AND TREATMENT OF PRISONERS

Art. 1607. Prison commission created.—The management and control of the prison system of the state of Texas shall be vested in a board, to be known as the board of prison commissioners, and, for the purposes of this chapter, shall be referred to as the prison commission. Said board of prison commissioners shall be composed of three men, to be appointed by the governor, with the advice and consent of the senate, whose term of office shall be two years from date of appointment, except those first appointed under this chapter, who shall hold their offices, respectively, for eight, sixteen and twenty-four months from the date of their appointment and qualification. (Acts 1910, S. S. p. 143.)

Art. 1607a. Constitution and tenure of commission.—The Board of Prison Commissioners charged by law with the control and management of the State prisons, shall be composed of three members appointed by the Governor, by and with the consent of the Senate, and whose terms of office shall be six years, or until their successors are appointed and qualified; provided that the terms of office of the Board of Prison Commissioners first appointed after the adoption of this amendment shall begin on January 20th of the year following the adoption of this amendment, and shall hold office as follows: One shall serve two years, one four years, and one six years. Their terms to be decided by lot after they shall have qualified, and one Prison Commissioner shall be appointed every two years thereafter. In case of a vacancy in said office the Governor of this State shall fill said vacancy by appointment for the unexpired term thereof. (Const. art. 16, § 58, adopted Nov. 5, 1912.)

Art. 1608. Commission charged with direction of state prison system and care, etc., of prisoners.—The prison commission shall be vested with the exclusive management and control of the prison system of this state, and shall be held responsible for the proper care, treatment, feeding, clothing and management of the prisoners confined therein, and at all times for the faithful enforcement of the spirit, intent and purpose of the laws and rules governing said system; provided, that the prison commission shall be held responsible for maltreatment of prisoners, and, if permitted, it shall be grounds for removal from office. (Acts 1910, S. S. p. 145.)

Art. 1609. Commission to classify prisoners into three classes and each class into three grades.—The prison commission shall provide for the classification of all prisoners, separating them into the following classes: In the first class shall be included young men, first offenders, those appearing to be corrigible, or less vicious than others, and likely to observe the laws, and to maintain themselves by honest industry after their discharge. In the second class shall be included those appearing to be less corrigible, or more vicious, but content to work and reasonably obedient to prison discipline as not to seriously interfere with the productiveness of their labor, or with the labor or conduct of those with whom they may be employed. In the third class shall be included those appearing to be incorrigible or so insubordinate or so vicious in their nature as to seriously interfere with the labor and moral development of those with whom they must come in contact.

The prison commission shall make rules and regulations for the promotion and reduction of the prisoners from one class to another, and shall transfer them from one class to another from time to time, as they may seem to merit promotion or reduction.

The prisoners in each of the classes hereinbefore named, shall be kept in, or upon different or separate prisons or farms. Any prisoner, upon entering the prison system, shall be assigned to one of its institutions according to his class, as hereinbefore provided, and shall be entered in said institution in a neutral grade, which shall be known as grade No. 2, and in which he shall be furnished with a suitable uniform designated for that grade. The prison commission shall adopt rules for a higher grade which shall be known as grade No. 1, as a reward for obedience to prison discipline and good conduct, and shall provide a suitable uniform for this grade; and they shall provide for a lower grade as a punishment for misconduct and violation of prison discipline, which grade shall be known as No. 3, and in which the prisoner shall be clothed in stripes. The uniforms for grades Nos. 1 and 2 shall not be stripes. The prison commission shall provide rules for promotion of prisoners from any grade to another for good conduct and obedience to prison discipline, and for demotion of prisoners for misconduct and violation of prison discipline. The prison commission shall provide specifically for the extension or denial of privileges for the various grades herein provided. (Id. p. 151.)

Art. 1610. Penalty for excessive whipping of refractory prisoners.—The prison commission may adopt such modes of punishment as may be necessary, such punishment being always humane, and placing prisoners in stocks, shall be prohibited. Whipping with not exceeding twenty lashes on the bare rump and thighs may be resorted to with prisoners of the third class, who can not be made to observe the rules by milder methods of punishment. The strap to be used must be of leather, not over two and one-half inches wide, and twenty-four inches long, attached to a wooden handle; no convict shall be whipped until same has been authorized by at least two members of the prison commission upon their written order; and such order so issued shall be executed only in the presence of a prison physician; and a sworn report shall be made by the officer executing such order to the penitentiary commission, who shall keep a record of all such reports in a well bound book to be kept for that purpose, which shall be at all times open to public inspection; and such report, so to be made by such officer executing the order of the prison commission, shall state the name of the convict whipped, the number of strokes administered, the size of the strap used, the time and place thereof, in whose presence same was done, and the cause thereof. It shall further be the duty of the prison commission to make a semi-annual report of the whipping of convicts to the dis-

trict judge of the county where such whipping occurred, who shall report same to the grand jury, which is hereby authorized to make investigation thereof, if they deem same advisable. The utmost care must be used by the officer executing the order of the commission not to break the skin of the prisoner whipped; and any person guilty of whipping a prisoner more lashes, or other than as provided herein, or striking a prisoner, except in self-defense, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than two hundred and fifty dollars, and imprisoned in the county jail not less than thirty days nor more than six months. White and negro prisoners shall not be worked together when it can be avoided, and shall be kept separate when not at work. (Id. p. 152.)

Art. 1611. Penalty for misapplication of money of prisoners by officers, etc., of prison.—Prisoners, when received into the penitentiary, shall be carefully searched. If money be found on the person of the prisoner, or received by him at any time, it shall be taken in charge by the prison commission and placed to the prisoner's credit, and expended for the prisoner's benefit on his written order, and under such restrictions as may be prescribed by law or the rules. Any officer or employé, having charge of a prisoner's money, who misappropriates the same or any part thereof, shall be deemed guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary for a term of not more than five years. (Id. p. 156.)

Art. 1612. Duties of officers, etc., on decease of prisoner, and penalty for failure to perform.—If any prisoner shall die while in prison, the officer in charge of the prisoner at the time of his death shall immediately report the same to the prison commission, and, if he knows the address or place of residence of any relative within the third degree, either by consanguinity or affinity, shall also notify by wire said relative of the death of such prisoner, and, if the relative of such prisoner claim the body or will take charge of same, then the body of such prisoner shall be turned over to such relative; and the expense of shipping the body to where it is to be buried, provided it is within this state, shall be paid by the prison commission out of any available penitentiary funds on hand, upon the request of such relative. If the residence and address of the relative of such prisoner is unknown, such prisoner shall be decently buried in citizen's clothes, and the grave marked by a stone with the name of said prisoner, date of death and age, if known, inscribed thereon. If the body of such prisoner is not claimed by the relatives, the prison commission shall at once notify the county judge of the county from which the prisoner was sentenced, of his death, the date and cause of death and place of burial. The prison commission shall cause to be made and kept a record of the deaths of prisoners, and certified copies of same, made by the custodian thereof, shall be admissible in evidence under the rules of law applying to official records. Any officer or employé of the prison system of whom any duties are required by this article, who shall fail to discharge such duties, shall be guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding five hundred dollars. (Id.)

Art. 1613. Same.—The prison commission, or other person in charge of prisoners, upon the death of any prisoner under their care and control, shall at once notify the nearest justice of the peace of the county in which said prisoner died, of the death of said prisoner; and it shall be the duty of such justice of the peace, when so notified of the death of such prisoner, to go in person and make a personal examination of the body of such prisoner, and inquire into the cause of the death of such prisoner; and said justice of the peace shall reduce to writing the evidence taken during such inquest, and shall furnish a copy of the same to the prison commission, and a copy of the same to the district judge of the county in which said prisoner died; and the copy so furnished to said district judge shall be turned over by the district judge to the succeeding grand jury; and the said judge shall charge the grand jury, if there should be any suspicion of wrong-doing shown by the inquest papers, to thoroughly investigate the cause of such death.

Any officer or employé of the prison system, having charge of any prisoner at the time of the death of such prisoner, who shall fail to immediately notify a justice of the peace of the death of such prisoner, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, and by confinement in the county jail not less than sixty days nor more than one year; provided, that the justice of the peace making such examination shall be paid a fee as is now provided by law for holding inquests, said fee to be on sworn account therefor, approved by the prison commission. (Id.)

Art. 1614. Prison physician failing to make report, or making false report.—The prison commission shall provide for competent medical attention for all prisoners, and shall establish rules whereby all physicians shall be required to keep a record of all cases of sickness, accident or injury which they treat. The physicians so employed shall be reputable practicing physicians of not less than two years of experience in practice. Each physician employed in the prison system shall, at the end of each month, file with the prison commission a report in writing, subscribed and sworn to by him, which report shall state the names, race and sex of each prisoner treated or examined by him during said month, the malady or disease with which each was afflicted, and, if any shall be suffering with wounds or injuries inflicted by accident or some individual, he shall state the nature and extent of said injuries, by whom and by what means inflicted, or how the same occurred, and all such other information concerning said matters, and the condition of each prisoner treated or examined by him during said months, as he may possess; provided, further, that for a failure to make such a report or any false statement knowingly made by any such physician in any such reports, he shall be prosecuted for the offense of perjury

or false swearing, as provided by law. (Id. p. 157.)

Art. 1615. Conversion of prison property declared to be theft and punishable as such.—Any officer or employé of the prison system, who shall fraudulently convert to his own use and benefit any food, clothing, or other property, belonging to or under control of the prison system, shall be guilty of theft, and, upon conviction, be punished as prescribed by law. (Id. p. 158.)

Art. 1616. Felony for officer, etc., to acquire financial interest in contracts on behalf of prison, or to peculate in any prison transaction; penalty.—Any officer, agent or employé, in any capacity connected with the prison system of this state, who shall be financially interested, either directly or indirectly, in any contract for the furnishing of supplies or property to the prison system, of the purchase of supplies or property for the prison system, or who shall be financially interested in any contract to which said prison system is a party, or who shall knowingly and fraudulently sell or dispose of any property belonging to said prison system below its reasonable market value, or who shall be financially interested in any other transaction connected with the prison system, shall be guilty of a felony, and, upon conviction thereof, shall be punished by confinement in the state penitentiary for a term of not less than two years nor more than five years; and each transaction shall constitute a separate offense. (Id.)

Art. 1617. Officer, etc., inflicting unauthorized punishment on any prisoner; penalty.—Any sergeant, guard or other officer or employé of the prison system of this state who shall inflict any punishment upon a prisoner, not authorized by the rules of the prison system, shall be guilty of an assault, and, upon conviction thereof, shall be punished as prescribed by law; and it shall be the duty of the prison commission to make complaint before the proper officer of any county in which such assault was committed upon such prisoner. Provided, that in all cases where any person is charged by complaint or indictment with an offense against a prisoner, prisoners and ex-prisoners shall be permitted to testify. (Id.)

CHAPTER TWENTY-NINE
REFORMATORY INSTITUTIONS

Art. 1617a. Corporal punishment of inmates of Girls' Training School.—Corporal punishment in any form shall not be inflicted upon the inmates of said institution except as a last resort to maintain discipline, and then only in the presence of the Superintendent, and a resident nurse; and at no time shall any inmate be struck more than twenty times, and that only with such instrument and in such manner as will inflict reasonable and moderate punishment, considering the age, size and strength of the culprit and the strength of the person administering such punishment, and at no time shall any weapon or instrument of torture be used, or any imstrument which by its make, coupled with the manner of its use would be calculated to inflict bodily injury. Any one violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than $25.00 nor more than $100.00 or sentenced to not less than thirty days, nor more than ninety days in jail, or by both such fine and imprisonment. (Acts 1913, 1st C. S., p. 11, ch. 6, sec. 15.)

The above provision is added, by way of amendment, to Rev. Civ. St. 1911, as art. 5234a (Civ. St. art. 5234a). As it contains a criminal feature it is inserted in this compilation.

CHAPTER TWENTY-NINE A
LAND SURVEYORS

Art. 1617b. Violations of act relating to land surveyors.—One who violates any provision of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not to exceed one thousand dollars. (Acts 1919, 2d C. S., ch. 67, sec. 12.)

For remainder of this act see ante, Civ. St., arts. 5491½-5491½k.

CHAPTER THIRTY
REGISTRATION OF AUTOMOBILES REPAIRED

Art. 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. (Acts 1917, ch. 159, sec. 1.)

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. sec. 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., sec. 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., sec. 4.)

TITLE 19

REPETITION OF OFFENSES

Art. 1618. (1014) Second and subsequent convictions for misdemeanor.—If it be shown on the trial of a misdemeanor that the defendant has been once before convicted of the same offense, he shall, on a second conviction, receive double the punishment prescribed for such offense in ordinary cases; and upon a third, or any subsequent conviction for the same offense, the punishment shall be increased, so as not to exceed four times the penalty in ordinary cases. (O. C. 792.)

See Howard v. S., 68 S. W. 274; Kinney v. S., 78 S. W. 225; Kinney v. S., 79 S. W. 570; Kinney v. S., 84 S. W. 590; Muckenfuss v. S., 117 S. W. 853; Gould v. S., 146 S. W. 172; Collins v. S., 171 S. W. 729.

Generally under this title see Koger v. S., 165 S. W. 577..

Art. 1619. (1015) Subsequent conviction for felony.—If it be shown, on the trial of a felony less than capital, that the defendant has been before convicted of the same offense, or one of the same nature, the punishment on such second or other subsequent conviction shall be the highest which is affixed to the commission of such offenses in ordinary cases. (Id.)

Art. 1620. (1016) Third conviction for felony; how punished.—Any person who shall have been three times convicted of a felony less than capital, shall, on such third conviction, be imprisoned to hard labor for life in the penitentiary. (O. C. 793.)

Art. 1621. (1017) Second conviction for capital offense; how punished.—A person convicted a second time of any offense to which the penalty of death is affixed as an alternate punishment, shall not receive, on such second conviction, a less punishment than imprisonment for life in the penitentiary. (O. C. 794.)

Art. 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. (Acts 1917, ch. 207, sec. 36.)

The penal provisions referred to are set forth ante as arts. 820aa-820z, 836a, 1022a, 1259aa, 1259bb, 1259cc.

LIST OF ACTS, PASSED SUBSEQUENT TO THE REVISION OF 1895, OMITTED FROM THE REVISED PENAL CODE OF 1911, AND INCLUDED IN THIS COMPILATION IN ACCORDANCE WITH THE EXPLANATION GIVEN IN THE PREFACE IN THE FRONT OF THIS BOOK

Date of Law.	Chap.	Sec.	Article in this Compilation.	Subject of Act.
1895	43	1	1414	Hide and Animal Inspection.
	47	18	852, note	Grazing Stock on Leased Public Land.
	102	1	831a	Age Limitation of Workers on Public Roads.
1897	30	1	1584a	County Finances.
	77	15	826, note	Willful Obstruction of Public Ditch or Diversion of Water.
	98	1 (Amending art. 529m, Penal Code 1895).	901	Protection of Fish, Birds and Game.
	98	1 (Amending art. 529s, Penal Code 1895).	916	Protection of Fish, Birds and Game.
	121	1	1414	Hide and Animal Inspection.
	129	1	852, note	Grazing Stock on Leased Public Land.
1897 (S. S.)	5		110–110g, 113a–113d, 115a–115c	Fees of Officers—Accounting for.
	15	10	110–110c	Fees of Officers—Accounting for.
1899	23	1	1488	State Revenue Agent.
	102	1–6	1255a–1256	Act to Promote Agriculture and Stock Raising and to Prohibit Hunting with Firearms or Dogs upon Enclosed or Posted Lands of Another.
	104	2	860a	General Land Office—Public Lands—Depredation—Recovery of Damages for.
	119		1414	Hide and Animal Inspection.
1901	21	1	111	Fees of Clerks of District Court for which they are Required to Account under Penalty.
	106	1	1414	Hide and Animal Inspection.
	125	5	852, note	Grazing Stock on Leased Public Land.
1901 (1st S. S.)	12	9	104a	Erection of Sea Walls by Cities and Counties.
1903	68	1	1522j	Railway Companies Required to Build Sidings and Spur Tracks.
	68	2	1522k	Railroad Commission Empowered to Require Railway Companies to Construct Sidings and Spur Tracks.
	84		1414	Hide and Animal Inspection.
	107	1 (part)	1525, 1526	Railroad Agents Required to Exhibit Certificate of Authority to Sell Ticket.
	107	1 (part)	1531d	Bulletin of Railroad Trains.
	120		1414	Hide and Animal Inspection.
	144	1–3	167	Mineral Survey.
1903 (S. S.)	11	1 (Amending art. 4494, Rev. St. 1895).	1522i	Duties and Liabilities of Railways as to Trains and Accommodations.
	11	1	1531a	Duty of Railroad Companies to Employ Train Dispatchers.
1905	50	1	1414	Hide and Animal Inspection.
	106	1	668q	Railway Orders and Associations.
	124	89	317b, 418	Scholastic Census.
	124	124a	1513	Teachers Certificates in Cities.

Date of Law.	Chap.	Sec.	Article in this Compilation.	Subject of Act.
1905	125	1	678 (Transferred to Civil St.)	Certificate of Membership, Policy or Other Contract of Insurance Issued by Mutual Assessment Accident Insurance Companies.
	131	6	420f	Assessment and Collection of Taxes in Certain Cases.
	149	1	403	County Treasurers Required to Furnish Detailed Statement to Commissioners Court upon Demand.
1905 (1st S. S.)	10	67	532, note	Receiving Deposits and Incurring Debts by Bank while Insolvent.
	11		220, note	Elections—Manner of Holding and Making Returns.
1907	16		1414	Hide and Animal Inspection.
	29		115a	Disposition of Fees Collected.
	55		1414	Hide and Animal Inspection.
	94		1414	Hide and Animal Inspection.
	105		1414	Hide and Animal Inspection.
1909	14		1414	Hide and Animal Inspection.
	60		1414	Hide and Animal Inspection.
	73		1414	Hide and Animal Inspection.
	74		1414	Hide and Animal Inspection.
	101	3	1551, note	Repeal of Laws 1907, c. 51, Limiting Hours of Service of Certain Railroad Employés. Repeal of Laws 1907 (S. S.) c. 5, amending Laws 1907, c. 51.
	102	1–3	664b–664d	Fire Insurance Companies not Organized under Laws of State to File Bond with Commissioner of Insurance and Banking.
1909 (1st S. S.)	11		1458, 1464	Amendment of Anti-Trust Law.
1909 (2nd S. S.)	13	1, 2	1521b, 1521c	Railroad Companies Required to Provide Suitable Passenger and Freight Depots.

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Date of Act.	Civil Statutes.	Art. in This Compilation.	Subject of Act.
1879, S. S. p. 5	Arts. 7658, 7659 Rev. St. 1911	108a, 108b	Payment of moneys into treasury by tax collectors and other officers.

ACT INCLUDED IN REVISED PENAL CODE OF 1895, AND OMITTED FROM REVISED PENAL CODE OF 1911

Pen. Code 1895.	Art. in This Compilation.
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