

# Texas Historical Statutes Project

1879  
REVISED CIVIL STATUTES  
OF THE  
STATE OF TEXAS



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REVISED  
CIVIL STATUTES

OF THE

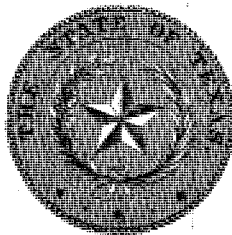
STATE OF TEXAS

PASSED BY THE

SIXTEENTH LEGISLATURE,

FEBRUARY 21, 1879,

TOOK EFFECT AT TWELVE O'CLOCK MERIDIAN SEPT. 1, 1879.



AUSTIN:  
STATE PRINTING-OFFICE.  
1887.

# INTRODUCTION

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On the twenty-eighth of July, 1876, the legislature passed an act authorizing the governor to appoint a commission of five persons, learned in the law, to make a complete revision and digest of the laws, both civil and criminal, and to report to the legislature what laws in their opinion ought, and what ought not, to be repealed, and, also, to reconcile conflicts and supply omissions in the law.

By authority of this act, Governor Richard Coke appointed J. W. Ferris, B. H. Bassett, S. A. Wilson, George Clark and C. S. West, Esqs., commissioners, who, on January 1, 1879, made their report, and submitted therewith to the legislature two printed bills, one entitled "An act to adopt and establish a Penal Code and Code of Criminal Procedure," and containing all the criminal laws, revised and re-arranged; the other, entitled "An act to adopt and establish the Revised Civil Statutes," and containing all the civil statutes revised and arranged.

The plan adopted by the commissioners in preparing the work was, as to the Penal Code and Code of Criminal Procedure, to adhere as nearly as possible to the arrangement of the old codes. Of the latter, in their report to the legislature, they say:

"In their revision of the laws, creating offenses and affixing penalties thereto, the commissioners were not unmindful of the fact that, more than twenty years ago, an admirable Penal Code had been prepared by gentlemen learned in the law and peculiarly fitted for the task, and that the same, with elaborate amendments in 1858, had stood the test of experience, and proved well adapted to the wants and necessities of the state. Proceeding upon the basis that any code to which the profession and people had been thoroughly accustomed, would, in substance and arrangement, prove more satisfactory than even a better work differently arranged, and feeling assured that the present Penal Code was, in most respects, an admirable compilation, their desire has been to preserve, in so far as was practicable, the substance and arrangement of the old Code, and to interweave therein the subsequent penal legislation of the state, together with such suggestions by way of amendment and addition as seemed to them essential. The Penal Code, as prepared by them, will be found upon examination to be a very slight departure from the present body of the criminal laws."

In preparing the revision of the civil statutes, which had not been codified, they adopted in general, as most convenient, the plan followed in the Revised Statutes of the United States. The subjects are arranged alphabetically under the general heads of "titles," subdivided into "chapters" and "articles."

These two bills, submitted by the commissioners, were adopted, with slight amendments, by the sixteenth legislature, and became laws, the first ninety days from the adjournment of the regular session, the second at meridian on September 1, 1879. Subsequent to their passage, many of the articles were amended, new articles added and various general laws passed which, whilst not in terms amending them, materially modified many of their provisions. To place these laws in a convenient shape for distribution, the same legislature passed an act (chapter 151, acts of 1879) providing for their printing and binding, together with the state and United States constitutions, in one volume, to be styled the "Revised Statutes of Texas." The same act required the appointment of a codifier to incorporate the amendments, passed before and after the adoption of the two bills, inserting "the amended articles in the place "of the original articles; and, where new articles have been added to any chapter "and title, he shall insert the new articles in their proper places, and shall note by "marginal or foot references the page and act amending an article, or by which a "new article was enacted; and, when any general law, passed at this session of the "legislature, modifies an article but the same is not amended and reënacted in said "law, he shall leave the article of the Codes or Revised Civil Statutes as it was "adopted, but shall by marginal or foot note refer to the law so modifying the "article. He shall prepare an accurate index of each Code and of the Revised Civil "Statutes, and shall read and revise the proof of statutes, indexes, etc."

Under this act, Governor O. M. Roberts appointed John N. Lyle, Esq., codifier, to prepare the volume for publication in accordance with the above requirements, and to revise the proof and index the several books embraced therein. The sixteenth legislature, at its called session, amended section two of chapter 151 of the acts of the regular session, requiring the codifier to insert the amendments of the extra session in the work, in like manner as those passed at the regular session. In obedience to these laws, he prepared two accurate copies of each of the two bills, submitted by the commissioners, as amended and adopted by the legislature. From the original acts of the regular and extra session on file in the department of state, accurate copies of all "amended" and "new" articles were made and inserted in their proper places, with marginal references to the acts from which they were taken. Each general law of the two sessions of the sixteenth legislature was carefully examined by him, and, where any of its provisions modified those of the Codes or Civil Statutes, notes were prepared and inserted in the body of the work, following the article affected. This mode proved more practicable, more satisfactory and less cumbersome to the volume than a system of marginal or foot notes. The head indexes to chapters, the marginal indexes and references, and the titles, chapters and articles, as numbered by the commissioners, are retained. Where articles were repealed, a note is inserted in their places reciting the fact, with a reference to the act repealing them. The contents of the notes are indexed on the margin and at the heads of the chapters. The text of the whole work has been carefully revised in proof, and errors incident to the former and present printing eradicated as far as possible. In preparing the general indexes, those appended by the commissioners to the bills submitted by them, were adopted as required by law. They have been corrected, conformed to the changes in the Codes and Revised Statutes, have been enlarged and their usefulness thereby increased. They were carefully verified in copy and in proof and are believed to be accurate.

An appendix has been added containing important general laws, passed at the regular and extra sessions of the sixteenth legislature, and that bear upon the provisions of the Codes and the Civil Statutes. It was impossible to compress even their essence within the limits of notes, and, that the volume might contain the whole body of the civil and criminal laws in force, they were thus appended thereto.

The mechanical execution of the work and its expeditious accomplishment in a little over sixty days, are creditable alike to the state and to the publishers.

*Galveston, October 1, 1879.*

**J. N. L.**

# EXPLANATORY.

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**THE ABBREVIATIONS in the marginal references are as follows:**

"Const.," state constitution.

"P. D.," Paschal's Digest.

"P. C.," Penal Code.

"C. C. P.," Code of Criminal Procedure.

The Penal Code and Code of Criminal Procedure cited are those that were in force at the adoption of the Codes in this volume, and the figures refer to the articles thereof.

Amendments made before the adoption of the Codes by the Sixteenth Legislature are cited as follows:

Those to the Civil Statutes, "Act to adopt and establish R. C. S."

Those to the Penal Code and Code of Criminal Procedure, "Act to adopt and establish P. C. and C. of C. P."

The acts of the Sixteenth Legislature are cited thus:

"Acts 1879," and "Acts 1879, extra session."

A BILL to be entitled “An Act to Adopt and Establish the ‘REVISED CIVIL STATUTES of the State of Texas.’”

*WHEREAS, It is expedient that the General Civil Statutes of this state should be arranged in appropriate titles, chapters and articles; that the omissions and defects therein should be supplied and remedied; and that the whole should, as far as practicable, be made concise, plain and intelligible; therefore,*

*Section 1. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS, That the following titles, chapters and articles shall hereafter constitute*

THE  
**REVISED STATUTES**  
 OF  
 THE STATE OF TEXAS.

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**TITLE I.**  
**Adoption.**

[See DESCENT and DISTRIBUTION, Article 1647.]

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	Article		Article
How heir adopted.....	1	Rights of adopted heir.....	2

**ARTICLE 1.** Any person wishing to adopt another as his legal heir, may do so by filing in the office of the clerk of the county court of the county in which he may reside, a statement in writing, by him signed and duly authenticated or acknowledged, as deeds are required to be, which statement shall recite in substance that he adopts the person named therein as his legal heir, and the same shall be admitted to record in said office.

How heir adopted.  
 (Act Jan. 16, 1850.)  
 P.D. 30.

**ART. 2.** Such statement in writing, signed and authenticated, or acknowledged and recorded as aforesaid, shall entitle the party so adopted to all the rights and privileges, both in law and equity, of a legal heir of the party so adopting him; *provided, however,* that if the party adopting such heir have, at the time of such adoption, or shall thereafter have a child begotten in lawful wedlock, such adopted heir shall in no case inherit more than one-fourth of the estate of the party adopting him.

Rights of adopted heir.  
 P.D. 31.



TITLE II.

**Affidavits, Oaths and Affirmations.**

	Article		Article
Form of oath, etc.....	3	All affidavits must be in writing and signed.....	6
Oaths, etc., in judicial proceedings, who to administer.....	4	Officers authorized to take affidavits.....	7
Affidavit may be by agent or attorney.....	5	Other oaths, etc.....	8

Form of oath, etc.  
(Const. Bill of Rights, art. 1,

Oaths, etc., in judicial proceedings, who administer.  
(Act to adopt and establish R. C. S. passed Feb. 21, 1879.)

Affidavit may be made by agent or attorney.  
(Act Jan. 11, 1856, p. 13.)  
P.D. 35.

All affidavits must be in writing, and signed

Officers authorized to take affidavits

ARTICLE 3. All oaths and affirmations shall be administered in the mode most binding upon the conscience of the individual taking the same, and shall be taken subject to the pains and penalties of perjury.

ART. 4. Oaths and affirmations made in the course of any judicial proceeding, may be administered by the judge or clerk of the court, or justice of the peace, as the case may be.

ART. 5. Whenever, at the commencement or during the progress of any civil suit or judicial proceeding, it may be necessary or proper for any party thereto to make an affidavit, such affidavit may be made by either the party or his agent or attorney.

ART. 6. All affidavits provided for in this title shall be in writing and signed by the party making the same.

ART. 7. Affidavits may be made before either of the following officers who are authorized to take such affidavits and give a certificate thereof:

1. If taken within this state, before any clerk of the district court, any judge or clerk of the county court, or any notary public, within their several counties.

2. If taken without this state, and within the United States, before any clerk of a court of records having a seal, any notary public, or any commissioner of deeds duly appointed under the laws of this state, within some other state or territory.

3. If without the United States, before any notary public, or any minister, commissioner or *charge d'affaires* of the United States, resident in and accredited to the country where the affidavit may be taken; or any consul general, consul, vice-consul, commercial agent, vice commercial agent, deputy consul or consular agent of the United States, resident in such country.

Other oaths, etc. ART. 8. Oaths and affirmations may also be administered, and affidavits taken, and certificates thereof given as in other cases, and by such other officers as are or may be prescribed by law.

TITLE III.

Aliens.

[For the mode of taking property by devise or descent, see title "DESCENT AND DISTRIBUTION."]

Reciprocal rights.....	Article 9	Declaration of intention gives rights of citizenship.....	Article 10
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ARTICLE 9. An alien shall have and enjoy in the State of Texas such rights as are, or shall be, accorded to citizens of the United States by the laws of the nation to which such alien shall belong, or by the treaties of such nation with the United States.

Reciprocal rights.  
(Act Feb. 13, 1854.)  
P.D. 45.

ART. 10. Any alien who shall become a resident of this state, and shall in conformity with the naturalization laws of the United States, have declared his intention to become a citizen of the United States, shall have the right to acquire and hold real estate in this state, in the same manner as if he was a citizen of the United States.

Declaration of intention gives rights of citizenship.  
P.D. 47.

## TITLE IV.

### Apportionment.

	Article		Article
Senatorial districts.....	11	In districts containing one county, county	
Returning officers for each district.....	12	judge to give certificates.....	15
Representative districts.....	13	Congressional districts.....	16
Returning officers for same.....	14	Judicial districts.....	17

#### SENATORIAL DISTRICTS.

Senatorial  
districts.

ARTICLE 11. The senatorial districts of the state are constituted as follows, each of which shall be entitled to elect one senator:

Ordinance of  
the Convention  
of 1876.

- No. 1. The counties of Liberty, Chambers, San Jacinto, Hardin, Tyler, Jefferson, Jasper, Orange, Newton and Polk.
- No. 2. The counties of Houston, Angelina, Nacogdoches, San Augustine and Sabine.
- No. 3. The counties of Rusk, Panola and Shelby.
- No. 4. The county of Harrison.
- No. 5. The counties of Marion, Cass, Bowie and Morris.
- No. 6. The counties of Red River, Titus, Franklin and Hopkins.
- No. 7. The counties of Camp, Upshur, Gregg and Smith.
- No. 8. The counties of Cherokee, Anderson and Henderson.
- No. 9. The counties of Lamar, Fannin and Delta.
- No. 10. The counties of Wood, Van Zandt, Kaufman, Rains, Rockwall and Hunt.
- No. 11. The counties of Grayson and Cooke.
- No. 12. The counties of Collin and Denton.
- No. 13. The counties of Dallas and Ellis.
- No. 14. The counties of Navarro, Limestone and Freestone.
- No. 15. The counties of Leon, Robertson and Brazos.
- No. 16. The counties of Grimes, Madison, Trinity and Walker.
- No. 17. The counties of Waller, Fort Bend and Wharton.
- No. 18. The counties of Harris and Montgomery.
- No. 19. The counties of Galveston, Brazoria and Matagorda.
- No. 20. The counties of Austin, Washington and Burleson.
- No. 21. The counties of Falls, Milam and Bell.
- No. 22. The counties of Johnson, Hill and McLennan.
- No. 23. The counties of Tarrant, Parker, Wise, Montague, Clay, Jack and Young, with the unorganized counties west of them.
- No. 24. The counties of Coryell, Bosque, Hamilton, Brown, Coleman, Comanche, Erath, Somervell, Hood, Palo Pinto, Eastland, Shackelford, and the unorganized counties of Runnels, Taylor, Callahan, Jones and Stephens.
- No. 25. The counties of Travis, Williamson, Burnet and Lampasas.
- No. 26. The counties of Fayette, Bastrop and Lee.
- No. 27. The counties of Colorado, Lavaca and Gonzales.
- No. 28. The counties of Calhoun, Victoria, DeWitt, Aransas, Refugio, Bee, Goliad, Karnes, Wilson, Jackson and Atascosa.
- No. 29. The counties of Cameron, Hidalgo, Starr, Zapata, Webb, Maverick, Kinney, Uvalde, Medina, Nueces, San Patricio, Live Oak, Frio, and the unorganized counties of Duval, Encinal, McMullen, LaSalle, Dimmit and Zavala.

TITLE IV.—APPORTIONMENT.

7

No. 30. The counties of Bexar, Comal, Bandera, Kendall, Kerr, Gillespie, Mason, Menard, Tom Green, Pecos, Presidio, El Paso, and the unorganized counties of Concho, Kimball, Edwards and Crockett.

No. 31. The counties of Guadalupe, Caldwell, Hays, Blanco, Llano, San Saba and McCulloch.

ART. 12. The county judges of the following named counties, shall receive the returns and issue the certificates of election to the persons receiving the highest number of votes for senator at any election in their respective districts, to wit:

Returning officers for each district.  
*Ib.*

Tyler county for the first district.  
Nacogdoches county for the second district.  
Panola county for the third district.  
Harrison county for the fourth district.  
Cass county for the fifth district.  
Titus county for the sixth district.  
Gregg county for the seventh district.  
Anderson county for the eighth district.  
Lamar county for the ninth district.  
Kaufman county for the tenth district.  
Grayson county for the eleventh district.  
Collin county for the twelfth district.  
Ellis county for the thirteenth district.  
Limestone county for the fourteenth district.  
Robertson county for the fifteenth district.  
Walker county for the sixteenth district.  
Waller county for the seventeenth district.  
Harris county for the eighteenth district.  
Galveston county for the nineteenth district.  
Washington county for the twentieth district.  
Milam county for the twenty-first district.  
McLennan county for the twenty-second district.  
Tarrant county for the twenty-third district.  
Comanche county for the twenty-fourth district.  
Williamson county for the twenty-fifth district.  
Fayette county for the twenty-sixth district.  
Lavaca county for the twenty-seventh district.  
Victoria county for the twenty-eighth district.  
Nueces county for the twenty-ninth district.  
Bexar county for the thirtieth district.  
Hays county for the thirty-first district.

REPRESENTATIVE DISTRICTS.

ARTICLE 13. The representative districts of the state, and the number of representatives to be elected by each district, are as follows:

Representative districts  
*Ib.*

No. 1. The counties of Liberty, Hardin, Jefferson and Chambers shall elect one representative.

No. 2. The counties of San Jacinto, Polk and Tyler shall elect one representative.

No. 3. The counties of Jasper, Newton and Orange shall elect one representative.

No. 4. The counties of San Augustine and Sabine shall elect one representative.

No. 5. The county of Houston shall elect one representative.

No. 6. The counties of Nacogdoches and Angelina shall elect one representative.

No. 7. The county of Rusk shall elect one representative.

No. 8. The counties of Panola and Shelby shall elect one representative.

## TITLE IV.—APPORTIONMENT.

- No. 9. The counties of Rusk, Panola and Shelby shall elect one representative.
- No. 10. The county of Harrison shall elect one representative.
- No. 11. The counties of Marion, Cass, Bowie and Morris shall elect three representatives.
- No. 12. The county of Red River shall elect one representative.
- No. 13. The counties of Titus and Franklin shall elect one representative.
- No. 14. The county of Hopkins shall elect one representative.
- No. 15. The county of Smith shall elect one representative.
- No. 16. The counties of Smith and Gregg shall elect one representative.
- No. 17. The counties of Camp and Upshur shall elect one representative.
- No. 18. The county of Lamar shall elect one representative.
- No. 19. The county of Fannin shall elect one representative.
- No. 20. The counties of Lamar, Fannin and Delta shall elect one representative.
- No. 21. The counties of Hunt and Rockwall shall elect one representative.
- No. 22. The counties of Kaufman, Rains, Wood and Van Zandt shall elect two representatives.
- No. 23. The county of Henderson shall elect one representative.
- No. 24. The county of Anderson shall elect one representative.
- No. 25. The county of Cherokee shall elect one representative.
- No. 26. The county of Leon shall elect one representative.
- No. 27. The county of Robertson shall elect two representatives.
- No. 28. The county of Brazos shall elect one representative.
- No. 29. The county of Grimes shall elect one representative.
- No. 30. The counties of Grimes and Madison shall elect one representative.
- No. 31. The counties of Walker and Trinity shall elect one representative.
- No. 32. The county of Montgomery shall elect one representative.
- No. 33. The county of Harris shall elect two representatives.
- No. 34. The counties of Harris and Montgomery shall elect one representative.
- No. 35. The county of Galveston shall elect two representatives.
- No. 36. The counties of Brazoria, Galveston and Matagorda shall elect one representative.
- No. 37. The counties of Wharton, Fort Bend and Waller shall elect two representatives.
- No. 38. The county of Austin shall elect one representative.
- No. 39. The county of Washington shall elect one representative.
- No. 40. The counties of Washington and Burleson shall elect one representative.
- No. 41. The counties of Falls, Milam and Bell shall elect three representatives.
- No. 42. The county of Limestone shall elect one representative.
- No. 43. The county of Freestone shall elect one representative.
- No. 44. The county of Navarro shall elect one representative.
- No. 45. The county of Ellis shall elect one representative.
- No. 46. The county of Dallas shall elect two representatives.
- No. 47. The county of Collin shall elect one representative.
- No. 48. The county of Grayson shall elect two representatives.
- No. 49. The counties of Grayson and Collin shall elect one representative.
- No. 50. The county of Cooke shall elect one representative.
- No. 51. The county of Denton shall elect one representative.

No. 52. The counties of Clay, Montague and Wise, and the unorganized counties west of Clay, shall elect one representative.

No. 53. The county of Tarrant shall elect one representative.

No. 54. The counties of Parker, Jack and Young, and the unorganized counties west of them, shall elect one representative.

No. 55. The county of Johnson shall elect one representative.

No. 56. The county of Hill shall elect one representative.

No. 57. The county of McLennan shall elect one representative.

No. 58. The counties of Jackson, Calhoun, Victoria, DeWitt, Aransas, Refugio, Bee and Goliad shall elect two representatives.

No. 59. The counties of Colorado and Lavaca shall elect two representatives.

No. 60. The county of Gonzales shall elect one representative.

No. 61. The county of Fayette shall elect one representative.

No. 62. The county of Bastrop shall elect one representative.

No. 63. The counties of Fayette and Lee shall elect one representative.

No. 64. The counties of Caldwell, Guadalupe and Hays shall elect two representatives.

No. 65. The county of Travis shall elect one representative.

No. 66. The counties of Travis and Blanco shall elect one representative.

No. 67. The counties of Williamson and Lampasas shall elect one representative.

No. 68. The counties of Coryell, Hamilton, Brown and Coleman, and the unorganized county of Runnels, shall elect one representative.

No. 69. The counties of Bosque, Somervell and Hood shall elect one representative.

No. 70. The counties of Erath, Comanche, Palo Pinto, Eastland, Shackelford, and the unorganized counties of Stephens, Jones, Callahan and Taylor, shall elect one representative.

No. 71. The county of Bexar shall elect one representative.

No. 72. The counties of Bexar and Comal shall elect one representative.

No. 73. The counties of Uvalde, Medina, Bandera, Kendall, Kerr, Gillespie, Mason and Menard, and the unorganized counties of Edwards and Kimble, shall elect one representative.

No. 74. The counties of Llano, Burnet, San Saba, McCulloch and Concho, shall elect one representative.

No. 75. The counties of El Paso, Presidio, Pecos, Tom Green and Crockett, shall elect one representative.

No. 76. The counties of Cameron, Hidalgo, Starr, Webb and Zapata, shall elect one representative.

No. 77. The counties of Nueces, Frio, Maverick, Kinney, and the unorganized counties of Duval, Encinal, McMullen, Dimmit, LaSalle and Zavala, shall elect one representative.

No. 78. The counties of San Patricio, Live Oak, Karnes, Wilson and Atascosa, shall elect one representative.

No. 79. The counties of Cherokee, Rusk, Panola, Shelby and Harrison, shall elect one representative.

ART. 14. In the several representative districts, composed of more counties than one, the county judges of the following named counties shall receive the returns and issue the certificates of election to the representatives elected in their respective districts, to wit:

The county judge of Liberty county for the first district.

The county judge of Tyler county for the second district.

The county judge of Jasper county for the third district.

The county judge of San Augustine county for the fourth district.

Returning officers for representative districts.

10.

The county judge of Nacogdoches county for the sixth district.  
 The county judge of Panola county for the eighth and ninth districts.  
 The county judge of Cass county for the eleventh district.  
 The county judge of Titus county for the thirteenth district.  
 The county judge of Smith county for the sixteenth district.  
 The county judge of Upshur county for the seventeenth district.  
 The county judge of Lamar county for the twentieth district.  
 The county judge of Hunt county for the twenty-first district.  
 The county judge of Kaufman county for the twenty-second district.  
 The county judge of Grimes county for the thirtieth district.  
 The county judge of Walker county for the thirty-first district.  
 The county judge of Harris county for the thirty-fourth district.  
 The county judge of Galveston county for the thirty-sixth district.  
 The county judge of Waller county for the thirty-seventh district.  
 The county judge of Burleson county for the fortieth district.  
 The county judge of Bell county for the forty-first district.  
 The county judge of Grayson county for the forty-ninth district.  
 The county judge of Wise county for the fifty-second district.  
 The county judge of Parker county for the fifty-fourth district.  
 The county judge of Victoria county for the fifty-eighth district.  
 The county judge of Lavaca county for the fifty-ninth district.  
 The county judge of Fayette county for the sixty-third district.  
 The county judge of Hays county for the sixty-fourth district.  
 The county judge of Travis county for the sixty-sixth district.  
 The county judge of Williamson county for the sixty-seventh district.  
 The county judge of Coryell county for the sixty-eighth district.  
 The county judge of Bosque county for the sixty-ninth district.  
 The county judge of Comanche county for the seventieth district.  
 The county judge of Bexar county for the seventy-second district.  
 The county judge of Gillespie county for the seventy-third district.  
 The county judge of San Saba county for the seventy-fourth district.  
 The county judge of Tom Green county for the seventy-fifth district.  
 The county judge of Cameron county for the seventy-sixth district.  
 The county judge of Nueces county for the seventy-seventh district.  
 The county judge of Karnes county for the seventy-eighth district.  
 The county judge of Rusk county for the seventy-ninth district.

(Acts 1879, ch. 140, p. 152.)

In districts containing one county, county judge to give certificate.  
 1b.

ART. 15. In all senatorial or representative districts comprised of but one county, the county judge of that county shall receive the returns and issue the certificate of election to the senator or representative elected, as provided in article 12.

#### CONGRESSIONAL DISTRICTS.

Congressional districts.  
 (Act May 2, 1874 pp. 218-19.)

ARTICLE 16. The state shall be apportioned into congressional districts as follows, each of which shall be entitled to elect one member to the congress of the United States:

1. The following counties shall compose the first district, to wit: Chambers, Liberty, Hardin, Jefferson, Orange, Polk, Tyler, Jasper, Newton, Trinity, Angelina, San Augustine, Sabine, Shelby, Nacogdoches, Cherokee, Houston, Anderson, Rusk, Smith, Panola and Henderson.

2. The following counties shall compose the second district, to wit: Harrison, Marion, Cass, Bowie, Upshur, Titus, Red River, Wood, Hopkins, Lamar, Delta, Fannin, Hunt, Rains, Van Zandt and Gregg.

3. The following counties shall compose the third district, to wit: Grayson, Collin, Kaufman, Dallas, Ellis, Johnson, Tarrant, Denton, Cooke, Montague, Wise, Parker, Hill, Hood, Erath, Palo Pinto, Jack, Clay, Wichita, Archer, Young, Stephens, Shackelford, Throckmorton, Baylor, Wilbarger, Hardeman, Knox, Haskell, Jones, Eastland, Callahan, Taylor and Rockwall.

4. The following counties shall compose the fourth district, to wit: Comanche, Coryell, Hamilton, Harris, Grimes, Montgomery, Walker, Madison, San Jacinto, Brazos, Robertson, Leon, Freestone, Limestone, McLennan, Navarro, Bosque, Falls, Waller, Fort Bend and Bell.

5. The following counties shall compose the fifth district, to wit: Galveston, Brazoria, Matagorda, Wharton, Austin, Colorado, Lavaca, Fayette, Washington, Burleson, Bastrop, Travis, Williamson, Milam, Burnet, Lampasas, Brown, Coleman, Runnels, San Saba, Concho, McCulloch and Lee. (Acts 1879, ch. 102, p. 107.)

6. The following counties shall compose the sixth district, to wit: Atascosa, Aransas, Bandera, Bee, Bexar, Blanco, Caldwell, Calhoun, Cameron, Comal, Dimmit, DeWitt, Duval, Edwards, El Paso, Encinal, Frio, Gillespie, Goliad, Gonzales, Guadalupe, Hays, Hidalgo, Jackson, Karnes, Kendall, Kerr, Kimble, Kinney, Llano, La Salle, Live Oak, Mason, Maverick, Medina, Menard, McMullen, Nueces, Pecos, Presidio, Refugio, San Patricio, Starr, Uvalde, Victoria, Webb, Wilson, Zapata and Zavala.

JUDICIAL DISTRICTS.

ARTICLE 17. The judicial districts of the state shall be constituted as follows: Judicial districts.

1. The first district shall be composed of the counties of Jefferson, Tyler, Jasper, Newton and Orange. Ordinance of Convention of 1876.

2. The second district shall be composed of the counties of Harrison, Rusk, Panola and Shelby. (Acts 1879, ch. 36.)

3. The third district shall be composed of the counties of Sabine, San Augustine, Nacogdoches, Cherokee and Anderson. (Acts 1879, ch. 36, p. 35.)

4. The fourth district shall be composed of the counties of Houston, Trinity, Walker, Grimes, Madison and Leon. (Acts 1879, ch. 18, p. 15.)

5. The fifth district shall be composed of the counties of Marion, Cass, Bowie, Titus, Morris, Franklin and Camp.

6. The sixth district shall be composed of the counties of Red River, Lamar and Fannin.

7. The seventh district shall be composed of the counties of Gregg, Smith, Upshur, Wood, Van Zandt and Henderson.

8. The eighth district shall be composed of the counties of Hunt, Hopkins, Rockwall, Kaufman, Rains and Delta.

9. The ninth district shall be composed of the counties of Brazos, Robertson and Milam. (See ch. 16, general laws 1879, pp. 12-13.)

10. The tenth district shall be composed of the counties of Cooke, Denton, Wise, Archer, Wichita, Clay, Montagué and Wheeler. (See acts 1879, ch. 16, pp. 12-13.)

11. The eleventh district shall be composed of the counties of Dallas and Ellis. (Ib. Extra session, ch. 30.)

12. The twelfth district shall be composed of the counties of Brown, Coleman, Taylor, Callahan, Shackelford, Throckmorton, Young, Stephens, Eastland and Comanche. (See acts 1879, ch. 16, pp. 12-13.)

13. The thirteenth district shall be composed of the counties of Navarro, Limestone and Freestone. Ib. 13.

14. The fourteenth district shall be composed of the counties of McLennan, Bell and Falls.

15. The fifteenth district shall be composed of the counties of Austin, Fayette, Bastrop, Caldwell, Hays and Blanco.

16. The sixteenth district shall be composed of the county of Travis. (Acts 1879, ch. ter 48, p. 45, and ch 80, p. 89)

17. The seventeenth district shall be composed of the counties of McCulloch, Menard, Kimble, Mason, Gillespie, Llano, Burnet, San Saba, Lampasas and Williamson. (Acts 1879, ch. 22, p. 21.)

18. The eighteenth district shall be composed of the counties of Waller, Wharton, Fort Bend, Brazoria, Matagorda and Jackson.



19. The nineteenth district shall be composed of the counties of Colorado, Lavaca, Gonzales, Guadalupe and Wilson.
- (Acts 1879, ch. 24, p. 102.) 20. The twentieth district shall be composed of the counties of El Paso, Presidio, Tom Green, Pecos, Crockett and Concho.
21. The twenty-first district shall be composed of the counties of Harris and Montgomery.
22. The twenty-second district shall be composed of the counties of Comal, Bexar and Atascosa.
23. The twenty-third district shall be composed of the counties of De Witt, Victoria, Calhoun, Refugio, Goliad, Bee, Aransas, San Patricio, Karnes and Live Oak.
24. The twenty-fourth district shall be composed of the counties of Kendall, Kerr, Bandera, Medina, Frio, Uvalde, Zavala, Kinney, Maverick, Dimmit, Edwards and Dawson.
- (Acts 1879, ch. 24, p. 22.) 25. The twenty-fifth district shall be composed of the counties of Cameron, Hidalgo, Starr, Zapata, Webb, Encinal, Nueces, Duval, McMullen, and the unorganized county of La Salle.
26. The twenty-sixth district shall be composed of the county of Galveston.
27. The twenty-seventh district shall be composed of the counties of Collin and Grayson.
- (Act July 19, 1876, p. 49.) 28. The twenty-eighth district shall be composed of the counties of Hill, Bosque and Johnson.
- (Acts 1879, ch. 16, pp. 12-13.) 29. The twenty-ninth district shall be composed of the counties of Jack, Parker and Tarrant.
- Id.* 30. The thirtieth district shall be composed of the counties of Palo Pinto, Erath, Hood, Somervell, Hamilton and Coryell.
- (Acts 1879, ch. 21, p. 20.) 31. The thirty-first district shall be composed of the counties of Chambers, Liberty, Hardin, San Jacinto, Polk and Angelina.
- (Acts 1879, ch. 48, p. 45.) 32. The thirty-second district shall be composed of the counties of Washington, Lee and Burleson.

TITLE V.  
Apprentices.

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Shall not be apprenticed without notice..... 21	Apprentice discharged, when..... 33
In what county minor shall be apprenticed... 22	County judge may cause person to whom minor is apprenticed to be cited, etc..... 34
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Certified copy of order sufficient authority, etc..... 27	Suit upon obligation..... 39
Moderate chastisement may be inflicted on minor..... 28	Costs shall be paid by whom..... 40
Rights of person to whom minor is apprenticed..... 29	No guardian of person when a minor is apprenticed..... 41

ARTICLE 18. The county court may bind a minor as an apprentice—

1. When such minor is an orphan and without sufficient estate for his maintenance and education.
2. When the parents of such minor have suffered him to become a charge upon the county.
3. When the parents of such minor, not being a charge on the county, shall consent in writing to such apprenticeship, which consent shall be signed by them, and filed and entered of record in such court.

When minor may be apprenticed. (Const., art. 5, §16.)

ART. 19. A minor shall, in no case, be apprenticed to any one who is not legally competent to act as the guardian of such minor.

Minor shall not be apprenticed to what persons.

ART. 20. The duration of apprenticeship shall be until the minor, if a male, arrives at the age of twenty-one years; if a female, until she arrives at the age of eighteen years, or until she marries if she marries before that age.

Duration of apprenticeship.

ART. 21. A minor shall not be apprenticed without citation in the same manner as is provided in the case of an application for the guardianship of a minor.

Shall not be apprenticed without notice.

ART. 22. A minor shall be apprenticed in the county in which he resides, and shall not be apprenticed to any person who is not at the time a resident of such county.

In what county minor shall be apprenticed.

ART. 23. The person to whom such minor is apprenticed shall enter into an obligation in writing payable to such minor, in a sum to be fixed by the county judge, not less than one thousand dollars, and to be approved by such county judge, conditioned—

Obligation shall be entered into and its conditions.

1. That he will furnish said minor sufficient food and clothing.
2. That he will treat said minor humanely.
3. That he will teach, or cause to be taught, to said minor, some trade or occupation, the same to be specified in such obligation.
4. That he will furnish said minor medicine and medical attention when necessary.
5. That he will, if practicable, send said minor to school at least three months in each year during the continuance of such apprenticeship, after said minor has arrived at the age of ten years, and while such minor is within the scholastic age.

(Act to adopt and establish R. C. S. passed Feb. 21, 1879.)

6. That he will not remove said minor out of the county without the leave of the court.

7. That he will not remove said minor out of the state.

Minor 14 years of age may select, etc.

ART. 24. A minor who is fourteen years old, or over, may select the person to whom he desires to be apprenticed, and the court shall, if such person be competent, apprentice the minor to the person so selected.

Obligation shall be approved, filed and recorded.

ART. 25. The obligations provided for by article 23, when approved by the court, shall be filed in the office of the clerk of the county court and recorded upon the minutes of the court.

Order of the court apprenticing minor.

ART. 26. When such obligation has been approved and filed, the court shall enter an order upon the minutes, reciting the fact that such obligation has been approved and filed, and directing that the same be recorded in the minutes, and authorizing the person to whom such minor is apprenticed to take charge and control of the person of such minor, and to retain the same until such minor arrives at the age of twenty-one years; or if a female, until [she arrives at the age of eighteen years, or until] she marries, if she marries before that age, and the age of such minor at the time of entering such order shall be distinctly stated in such order.

NOTE.—I have inserted the words in brackets to conform the article to the provisions of article 20.—L.

Certified copy of order sufficient authority, etc.

ART. 27. A certified copy of such order, under the seal of the court, shall be sufficient evidence of the authority of the person named therein to control the person of such minor.

Moderate chastisement may be inflicted on minor.

ART. 28. The person to whom a minor has been apprenticed shall have the right, in the management and control of such minor, to inflict such moderate corporeal chastisement as may be necessary and proper.

Rights of person to whom minor is apprenticed.

ART. 29. The person to whom a minor has been apprenticed shall have the right to control the person of such minor, and shall be entitled to his services, and to all the profits arising from any such service during the continuance of such apprenticeship.

Not lawful for apprentice to reside out of the county, etc.

ART. 30. It shall not be lawful for any apprentice to reside out of the county in which he has been apprenticed, without the order of the county judge of such county, entered upon the minutes of the court. When such leave is obtained, a certified copy of the order granting the same shall be filed in the office of the clerk of the county court of the county in which the future residence of the minor is to be, together with a certified copy of the obligation and order apprenticing such minor, and the same shall be filed and recorded upon the minutes of the county court of such last named county, and thereafter such court shall have the same power and control over the case, as if it had been originally commenced therein.

Apprentice kept out of county over 30 days, without leave, is discharged.

ART. 31. When an apprentice has been removed out of the county in which he was apprenticed, by the person to whom he was apprenticed, or with the knowledge or consent of such person, and without an order authorizing such removal, as provided in the preceding article, and shall be detained out of said county for more than thirty days, such apprentice shall not be held bound for a further compliance with his apprenticeship, and can only be retained at the pleasure of such apprentice.

Proceedings when apprentice runs away, etc.

ART. 32. If any apprentice shall run away from, or leave the employment of the person to whom he is apprenticed, without permission, such person may pursue and recapture such apprentice, and bring him before the county judge having jurisdiction of the case, who shall investigate the case, and if satisfied that said apprentice ran away or left the employment of such person without good and sufficient cause, he shall order such apprentice to return to his service, and upon his failure or refusal to do so the court may punish him as for contempt of court.

Apprentice discharged when, etc.

ART. 33. Upon the investigation provided for in the preceding article, if the court be satisfied that such apprentice had good and sufficient cause for running away from or leaving the employment of the person to

whom he was apprenticed, the court shall discharge said apprentice and revoke all authority granted to the person to whom such minor was apprenticed, and shall enter an order to that effect upon the minutes.

ART. 34. The county judge may, upon the complaint of the minor or any other person, or without complaint, cause the person to whom a minor has been apprenticed to be cited to appear before him at any time and place mentioned in such citation, and show cause why his authority over such minor should not be revoked and the minor discharged from his apprenticeship. And upon the return of such citation served, the judge, if satisfied that such person is incompetent from any cause to properly control such minor, or that such person has in any material respect violated the obligation entered into by him, shall enter an order upon the minutes revoking all authority granted to such person over such minor, and discharging such minor from such apprenticeship.

County judge may cause person to whom minor is apprenticed to be cited, etc.

ART. 35. A person to whom a minor has been apprenticed may at any time, upon good cause shown to the county judge, be released from future liability upon his obligation of apprenticeship, and in such case an order shall be entered upon the minutes revoking the authority of such person over such minor, and declaring such apprenticeship at an end.

Person to whom minor is apprenticed may be released, when.

ART. 36. The county judge shall from time to time inquire into the treatment of the minors apprenticed by him, or by his predecessors in office, and shall defend them from all cruelty, neglect, breach of contract, or misconduct on the part of the persons to whom they are apprenticed.

County judge shall inquire into treatment, etc.

ART. 37. When the person to whom a minor has been apprenticed dies, or when his authority has been revoked, the minor may be again apprenticed as in the first instance.

Minor may be again apprenticed, when.

ART. 38. The proceedings provided for in the preceding articles of this title may be had either in term time or in vacation, except that a minor shall be apprenticed only at a regular term of the court for probate business, and after notice as in the case of the appointment of a guardian.

Proceedings may be in term time or vacation, except, etc.

ART. 39. In case of a breach of the obligation on the part of the person to whom a minor has been apprenticed, the minor, or the county judge, or any person for the use of the minor may sue upon such obligation in any court of the county where such obligation, or certified copy thereof has been filed and recorded, having jurisdiction of the amount claimed, and shall be entitled to recover such damages as the minor may have sustained by reason of such breach; and all such damages shall be the property of such minor.

Suit upon obligation.

ART. 40. In all proceedings apprenticing a minor, or discharging him from such apprenticeship, and in all other proceedings connected with such apprenticeship, the person to whom such minor was apprenticed shall pay the costs of such proceedings, and the same shall be adjudged against him and collected as in other cases, except in a suit brought under the preceding article, in which case the costs shall be adjudged as in other civil suits.

Costs shall be paid by whom.

ART. 41. When a minor is apprenticed the person to whom such minor is apprenticed supplies the place of the guardian of the person of such minor, and in such case there shall be no guardian of the person of such minor.

No guardian of person when a minor is apprenticed.

TITLE VI.

Arbitration.

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Agreement to be in writing and name of arbitrators, etc.....	43	Umpire to be selected in case of disagreement.....	50
Agreement to be filed in court having jurisdiction.....	44	Appeal from an award.....	51
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Right to arbitrate. (Const., art 16, §13.)

ARTICLE 42. All persons desiring to submit any dispute, controversy, or right of action supposed to have accrued to either party, to arbitration, shall have the right so to do in accordance with the provisions of this title.

Agreement to be in writing and name arbitrators, etc. (Act April 25, 1846, p. 127.) P.D. 60, 63.

ART. 43. Such persons shall sign an agreement in writing, as plaintiff and defendant, to arbitrate their differences or matters in dispute, and in such agreement each party shall name for himself one arbitrator who shall be over the age of twenty-one years, not related to either party by consanguinity or affinity, possessing the qualifications of a juror, and who is not interested in the result of the cause to be submitted for his decision.

Agreement to be filed in court having jurisdiction. 16.

ART. 44. If the amount in dispute is two hundred dollars or less, exclusive of interest, such agreement shall be filed with some justice of the peace of the county in which the defendant resides or in which the controversy arose. If the matter in dispute exceeds two hundred dollars, exclusive of interest, then such agreement shall be filed with the clerk of the district or county court of the county in which the controversy arose, according as the amount involved or matter in dispute may come within the jurisdiction of one court or the other.

Day of trial to be designated by justice or clerk, etc. 16. §5. P.D. 62.

ART. 45. When such agreement is filed, the justice of the peace or the clerk of the county or district court, as the case may be, shall forthwith designate a day for the trial of the cause, not less than two days thereafter, and shall issue process for such witnesses as either party may desire, returnable on the day fixed for trial.

Oath of arbitrators. 16. §5. P.D. 64.

ART. 46. On the assembling of the arbitrators on the day of trial the justice or clerk shall administer an oath to each, substantially as follows: "You do solemnly swear (or affirm) that you will fairly and impartially decide the matter in dispute between A B, the plaintiff, and C D, the defendant, according to the evidence adduced and the law and equity applicable to the facts proved, so help you God."

Continuances permissible.

ART. 47. After being sworn the arbitrators may, for good cause shown, continue the hearing to some other day, and during the progress of any trial, for like good cause, may adjourn the same over to some other time.

Procedure on trial.

ART. 48. The justice or clerk shall administer the necessary oath to the witnesses, and the trial of the cause shall proceed in like manner with trials in the courts of this state, the plaintiff holding the affirmative and entitled to open and conclude the argument.

ART. 49. After hearing the evidence and arguments, if any, the arbitrators shall agree upon their award and reduce the same to writing, specifying plainly their decision, which award they shall file with the justice or clerk, as the case may be, and at the succeeding term of the court such award shall be entered and recorded as the judgment of the court, with like effect as other judgments of said court, and upon which execution may issue as on ordinary judgments.

Award to be written out, filed, and entered as judgment.

*Ib.* §7.  
P. D. 66.

ART. 50. If the arbitrators chosen as aforesaid can not agree, they shall select an umpire with like qualifications as themselves, or in case they disagree in the choice of an umpire, the justice or clerk shall select such umpire, and he shall be sworn in like manner as the arbitrators, and the cause may be tried anew at such time as the board of arbitration thus constituted may designate, with like proceedings as are prescribed in the preceding article.

Umpire to be selected in case of disagreement.

*Ib.* §6.  
P. D. 65.

ART. 51. If a right of appeal is not expressly reserved in the original agreement to arbitrate, no such right shall exist, but the decision of the arbitrators shall be final. But if such right of appeal is reserved, and either party desire to appeal from such decision or award, he shall file his written application to that effect with the justice or clerk, as the case may be, on or before the return day of the term of the court next thereafter.

Appeal from an award.

*Ib.* §7.  
P. D. 66.

ART. 52. When an application for appeal is filed as prescribed in the preceding article, the same shall be noted on the docket of the court, and the opposite party served with a citation, as in ordinary cases of suit by petition. Upon return of service upon the opposite party, the cause shall stand for trial *de novo* as in ordinary cases.

Procedure in case of appeal.

ART. 53. The arbitrators may award the costs to either party, and if their decision or award is silent as to costs, the same shall be taxed equally against both parties.

Costs.

ART. 54. After an agreement to arbitrate is filed as prescribed in article 44, the parties thereto shall be bound to that mode of trial under the following penalties, to wit: Such agreement may be pleaded in bar to any suit thereafter brought by a plaintiff in such agreement for the same cause of action, when such plaintiff has refused to proceed under such agreement; and said agreement may be pleaded in bar to any right claimed or defense set up, by a defendant in such agreement who has refused to proceed thereunder, where such right or defense existed at the time of filing such agreement.

Penalty for refusing to proceed.

*Ib.* §8.  
P. D. 67.

ART. 55. The provisions of this title shall apply to corporations as well as natural persons, and executors, administrators, and guardians may also consent to an arbitration of any controversy or matter of dispute relating to or affecting their respective trusts, with the consent of the court in which such administration or guardianship is pending.

Corporations, executors, etc., may arbitrate.

ART. 56. Nothing herein shall be construed as affecting the existing right of parties to arbitrate their differences in such other mode as they may select.

Common law right not affected.

TITLE VII.

Archives.

CHAPTER ONE.

ARCHIVES OF THE GENERAL LAND OFFICE.

	Article	Article
What shall be considered archives of the general land office.....	57	Deeds of second or third seal..... 59
Effect to be given to archives deposited in the general land office.....	58	How such deeds, etc., may be withdrawn.... 60

What shall be considered archives of the general land office.

(Act Dec. 22, 1836, p. 216, §5.)  
Hart. Dig. 1786.  
(Act June 12, 1837, p. 263, §6.)  
Hart. Dig. 1819.  
P. D. 69.  
(Act Dec. 14, 1837, p. 44, §1.)  
Hart. Dig. 1835.  
P. D. 70-1.  
(Act Dec. 2, 1850, p. 32.)  
P. D. 73.  
(Act Dec. 14, 1837, p. 62, §6)  
P. D. 71.

ARTICLE 57. The following shall be deemed the records, books and papers of the general land office and constitute a part of the archives of the same:

1. All the records, books, titles, surveys, maps, papers and documents which in any manner pertain to the lands of the late Republic, now State of Texas, which have been, prior to the eighteenth day of April, A. D. 1876, delivered to the commissioner of the general land office in pursuance of and in accordance with the requirements of any law of the Republic or State of Texas, by any of the empresarios, political chiefs, alcaldes, regidores, commissioners, special or general, for extending titles.

2. All books, papers, records, documents and archives pertaining to the lands of the Republic or State of Texas that have heretofore been delivered by the commissioner of the court of claims to the comptroller and by him turned over to the commissioner of the general land office, in pursuance and by authority of law.

3. All other books, records, papers and archives of the colony of Martin de Leon heretofore delivered by the secretary of state, in accordance with law, to the commissioner of the general land office.

4. The duly certified copy of the book or register of land certificates, usually known as the "Lost Book of Harris county," transmitted to the commissioner of the general land office by the clerk of the county court of Harris county, in accordance with law.

5. All other books, transfers, powers of attorney, field-notes, maps, plats, legal proceedings, official reports, original documents, and other papers appertaining to the lands of the Republic or State of Texas that have been deposited or filed in the general land office in accordance with any law of the Republic or State of Texas.

Effect to be given to archives deposited in general land office.

ART. 58. Nothing in the preceding article shall be construed to give any of the said books, records or other papers named in said article any greater force or validity by reason of their being so recognized as archives of the general land office than was accorded them by the laws in force at the date of their execution and deposit in the general land office.

Deeds, etc., of second or third seal.  
(Act Feb. 11, 1850, p. 200.)  
P. D. 76.  
(Act Jan. 11, 1863, p. 35.)  
P. D. 77.

ART. 59. Deeds and other instruments of writing which were executed or issued prior to the second day of March, A. D. 1836, upon stamped paper of the second or third seal, and which deeds or instruments of writing are not original documents in the general land office, or expressly declared by law to be archives of the said office, are hereby declared to constitute no part of the archives of said office.

ART. 60. The owners of any land to which the deeds or other instruments of writing named in the preceding article relate may withdraw the same from the general land office on making a written application therefor, under oath, to the commissioner of the general land office, setting forth the fact of such ownership, and if the commissioner shall be satisfied that the person applying is in fact the owner of the land to which such deed or instrument of writing relates he may deliver the same to such applicant, taking his receipt therefor, and describing in such receipt the deed or instrument of writing delivered, with a summary of its contents and the name of the original grantee of the land to which such deed or instrument of writing may relate or refer.

How such deeds, etc., may be withdrawn.  
Ib.

## CHAPTER TWO.

### OTHER PUBLIC ARCHIVES.

Article	Article
61	Archives of the comptroller's office..... 64
62	Certain books, papers, etc., declared to be
63	historical archives..... 65

ARTICLE 61. The secretary of state is authorized to take possession of one or more rooms in the basement of the capital for the use of the state department and the better preservation and protection of the archives of the state department.

Duty of secretary of state as to archives. (Act July 16, 1856, p. 3.) P.D. 84.

ART. 62. The entire archives of the congress of the late Republic of Texas and of the state legislature, arranged and filed in accordance with law, together with the records, books and journals of said congress and state legislature, prepared in accordance with law, and heretofore deposited in the office of the secretary of state, are declared to be archives of said office.

Archives of the Republic of Texas, etc. (Act Feb. 16, 1852, p. 125.) P.D. 78-80. (Act Feb. 11, 1854, p. 113.) P.D. 81-2.

ART. 63. All books, papers, maps, documents, memoranda and data which related to the history of Texas as a province, colony, republic and state, which have been or may hereafter be delivered to the commissioner of insurance, statistics and history by the secretary of state, comptroller, commissioner of the general land office, or by any of the heads of departments, or by any person, in pursuance of law, shall be deemed books and papers of the office of said commissioner of insurance, statistics and history, and shall constitute a part of the archives of said office, and said commissioner shall classify and carefully preserve the same.

Historical archives. (Act Feb. 7, 1853, p. 38.) P.D. 83. (Act Aug. 25, 1856, p. 50.) P.D. 85-6. (Const., art. 14, §39.) (Act Aug. 21, 1876, p. 225, §19)

ART. 64. All the books, papers, records and archives, that were heretofore archives of the auditor's office, or of the office of the commissioner of the court of claims, and which have heretofore, in pursuance of law, been delivered to the comptroller, shall be deemed papers and records of the comptrollers' office, and shall constitute a part of the archives of his office.

Archives of the comptroller's office. (Act Jan. 16, 1858, p. 40.) P.D. 87. (Act Feb. 7, 1860, p. 48.) P.D. 89.

ART. 65. All the books, papers, records, rolls, documents, returns, reports, lists and all other papers that have been, are now, or that may hereafter be required by law to be kept, filed or deposited in any of the offices of the executive departments of this state, shall constitute a part of the archives of the offices in which the same are so kept, filed or deposited.

Certain books, records, etc., declared to be archives.



TITLE VIII.

Asylums.

CHAPTER ONE.

OF THE LUNATIC ASYLUM.

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Lunatic asy-  
lum recognized  
and continued.

ARTICLE 66. The asylum heretofore established by law, at the seat of government, for the care and treatment of insane persons, is hereby continued, and shall be managed and controlled in accordance with the provisions of this title.

I. OF THE BOARD OF MANAGERS.

Board of man-  
agers provided  
for.

ART. 67. The general control, management and direction of the affairs of said asylum shall be vested in a board of managers, to be styled "the board of managers of the lunatic asylum."

Board, how  
constituted.  
(Act Feb. 5,  
1858, p. 114, §1,2)  
P.D. 112-13.

ART. 68. Such board of managers shall consist of five persons, citizens of this state, to be appointed by the governor. They shall serve without compensation and shall hold their offices for the term of two years. In cases of vacancy in said board, the appointment shall be for the unexpired term.

Organization  
of the board.  
(Act Feb. 5,  
1858, p. 114, §3.  
P. 116, §6.)  
P.D. 114, 118.

ART. 69. The board of managers shall choose one of their number president, and the superintendent of the asylum shall be *ex officio* secretary of the board. A majority of the members of the board shall constitute a quorum for the transaction of its business.

ART. 70. The board of managers shall hold quarterly meetings at the asylum, and a full account of all their acts and proceedings shall be recorded by the secretary in a book to be provided for that purpose.

Meetings and records of the board.  
(Act Feb. 5, 1858, p. 115, §3.)  
P.D. 114.

ART. 71. The board of managers shall have the general direction and control of all the property and business of the asylum, and they may take and hold in trust any gift or devise of real or personal estate for the benefit of said asylum and apply the same as the donor or devisor may direct.

Powers of the board.  
(Act Feb. 5, 1858, pp. 14-15, §2.)  
P.D. 118.

ART. 72. The board of managers shall also have power—

Same subject.  
Ib.

1. To make, with the approval of the governor, all necessary by-laws and regulations, not inconsistent with the constitution and laws of the state, for the government of the institution, its officers, employes and inmates, and for the admission of visitors.

2. To prescribe the duties of all persons employed about the asylum and determine their salaries or wages, except in cases specially provided for by law.

3. To discharge at pleasure any officer, employé or patient in the asylum, except the superintendent.

4. With the concurrence of the superintendent to appoint an assistant physician to the asylum.

5. To examine the accounts and vouchers of the superintendent, and to approve or reject the same as they may deem right and proper.

6. To exercise a careful supervision over the general operations and expenditures of the asylum, and to direct the manner in which its revenues shall be disbursed.

ART. 73. One or more of the managers shall visit the asylum and inspect the same at least once in every month.

Monthly inspections.  
(Act Feb. 5, 1858, p. 115, §3.)  
P.D. 114.

ART. 74. The board of managers shall report to the governor on the first day of November of each year the exact condition of the institution, together with such suggestions and recommendations as they may deem essential to its successful operation.

Annual reports by the board.  
Ib.

## II. OF THE SUPERINTENDENT.

ART. 75. The governor of this state shall appoint, by and with the advice and consent of the senate, a superintendent of the lunatic asylum, who shall, unless sooner removed, hold his office for the term of two years, and in case of a vacancy in said office, the appointment shall be only for the unexpired term, and the term of such officer shall, in any event, expire with the term of the governor making the appointment.

Superintendent provided for.  
(Act Aug. 23, 1856, p. 60, §4.)  
P.D. 111.  
(Acts 1879, ch. 98, p. 105.)

ART. 76. The superintendent shall be a married man and a skillful physician, and also experienced in the treatment of insanity. He shall reside in the asylum with his family, and shall devote his whole time exclusively to the duties of his office.

Qualifications of that officer.  
(Act Jan. 13, 1862, p. 52.)  
P.D. 116.

ART. 77. The superintendent shall, before entering upon the duties of his office, take the oath prescribed by the constitution for all officers of the state, and shall enter into bond in the sum of ten thousand dollars, with two or more good and sufficient sureties, to be approved by the treasurer of the state, payable to the state and conditioned for the faithful performance of his duties as superintendent.

Oath and bond.  
(Act Aug. 23, 1856, p. 60, §64.)  
(Act Feb. 5, 1858, p. 116.)  
P.D. 111, 118.

ART. 78. The bond provided for in the preceding article shall be filed in the office of the treasurer of the state, and shall not become void upon a first recovery thereon, but may be sued upon until the full penalty is recovered. And certified copies of such bond, under the hand and official seal of the state treasurer, may be used in evidence in all courts and proceedings in this state with like effect as the original.

Bond, where filed, etc.

Removal of  
superintendent  
(Act Jan. 13,  
1862, p. 52, §1.)  
P.D. 117.  
(Acts 1879, ch.  
98, p. 105.)

ART. 79. The superintendent may be removed from office by the governor, at any time when he deems the public interest demands it, and, in case of removal, the governor shall report such fact, together with his reasons therefor, to the next succeeding session of the legislature.

Powers and  
duties of  
superintendent  
(Act Feb. 5,  
1858, p. 115, §6.)  
P.D. 118.

ART. 80. The superintendent shall be the chief executive, medical and disbursing officer of the institution, and, subject to the by-laws, shall have general care and control over everything connected therewith. He shall attend to the enforcement of the laws of this state relating to the asylum, and the by-laws of the institution, and shall take care that all employes connected therewith diligently and faithfully perform the duties assigned to them.

Same subject.  
*Id.* p. 116.  
P. D. 118.

ART. 81. The superintendent shall also, with the consent of the board of managers, employ such officers, attendants and other persons as may be required for the service of the institution, and with like consent may discharge them at pleasure. He shall also receive and discharge patients, superintend repairs and improvements, and take care that all moneys entrusted to him are judiciously and economically expended.

Accounts and  
reports of  
superintendent  
*Id.*  
P.D. 118.  
(Const., art 4,  
§24.)

ART. 82. The superintendent shall keep also an accurate and detailed account of all moneys received and expended by him, specifying the sources from which such moneys were received, and to whom and on what account paid out; and on the first days of January and July of each year he shall report the same under oath to the governor.

Same subject.  
(Act Feb. 5,  
1858, p. 116, §7.)  
P.D. 119.

ART. 83. The superintendent shall also keep a register of all patients received into the asylum and discharged therefrom, together with a full record of all the operations of the institution; and on the first day of November of each year he shall report such operations in full to the governor, accompanied with such suggestions and recommendations concerning the management and operations of the asylum as he may deem important.

Annual inven-  
tory.  
*Id.* p. 116, §6.  
P.D. 118.

ART. 84. On the first day of November of each year the superintendent shall cause an inventory of all the personal property belonging to the asylum to be prepared, in which inventory the estimated value shall be set opposite each article, and shall submit the same to the board of managers.

### III. FISCAL MANAGEMENT.

Officer not to  
deal with  
asylum.  
(Act Feb. 5,  
1858, p. 120, §23.)  
P.D. 135.

ART. 85. No manager or other person connected with the asylum shall sell or be in any way concerned in the sale of any merchandise, supplies or other articles to the asylum, or have any interest in any contract therewith.

Asylum money  
to remain in  
the treasury.

ART. 86. The appropriations made from time to time by the legislature for the support and maintenance of the asylum shall remain on deposit in the state treasury and be paid out, as are other public funds, upon the warrant of the comptroller of public accounts.

Board may  
regulate ex-  
penditures.

ART. 87. The board of managers may adopt such regulations as they deem proper and necessary for the payment of expenses other than salaries, the supplies provided for in chapter three of this title and such other expenditures as may be regulated by law; but under such regulations no money appropriated by law shall be drawn from the treasury except upon vouchers specifying in detail the exact purpose for which the same is needed, certified as true and correct by the superintendent and approved by the president of the board of managers.

Funds from  
outside sources  
how disposed  
of.

ART. 88. All funds of every character received into or belonging to the asylum, other than the sums of money appropriated for its support from time to time by the legislature, shall, as soon as received, be paid over to the state treasurer by the superintendent or other person receiving it, and the treasurer shall keep the same separate and apart from all other funds in his hands, and shall pay the same out only on the order of the superintendent, approved by the president of the board of managers.

ART. 89. The order mentioned in the preceding article shall specify on its face the purpose for which it is drawn and shall be deemed a sufficient voucher for the payment of the amount of money therein specified.

Requisites of the order.

ART. 90. The treasurer of the state shall keep an exact account of the moneys received by him belonging to the asylum, from what source received, and to whom paid out and on what account, and to each annual report that he may be required to make by law to the governor or the legislature he shall append a full report of his account with the asylum, showing the receipts and expenditures thereof for the year for which such report is made.

Duties of the treasurer.

#### IV. ADMISSION AND DISCHARGE OF PATIENTS.

ART. 91. The following persons may be admitted into the asylum as patients:

Who may be admitted.  
(Act Feb. 5, 1858, p.117, §13.)  
P.D. 125.

1. All persons who have been adjudged insane by a court of competent jurisdiction in this state and ordered to be conveyed to the asylum. This class shall be known as public patients.

2. All persons who may be certified to be insane by some respectable physician, under the regulations hereinafter prescribed. This class shall be known as private patients.

ART. 92. Before any person can be received as a patient under paragraph two of the preceding articles, the parent or legal guardian of such person, or, in case he has no parent or legal guardian, then some near relative or other person interested in him, must present a written request to the superintendent for his admission, setting forth the name, age and residence of the lunatic, together with such other particulars as may be required by the superintendent or the by-laws of the institution, which written request must be under oath of the party presenting it, and be accompanied with the affidavit of the physician certifying to the insanity that he has made careful examination of the person for whom admission is applied for and verily believes him to be insane.

Procedure for admission of private patients.  
*1b.*

ART. 93. The application referred to in the preceding article must also be accompanied by a certificate from the county judge of the county where the lunatic resides, that the physician certifying to the insanity of the person is a respectable physician in regular practice, which certificate of the county judge must be attested by the seal of the county court of his county.

County judge must certify.  
*1b.*

ART. 94. All indigent public patients shall be kept and maintained at the expense of the state.

Indigent patients at state expense.  
(Act Aug. 15, 1876, p. 139, §4.)

ART. 95. All public patients not indigent shall be kept and maintained at the expense of the state in the first instance, but in such cases the state shall be entitled to reimbursement in the mode pointed out in articles 114 and 115 of this chapter.

Public patients also, but state may be reimbursed.

ART. 96. All private patients shall be kept and maintained at the asylum at their own expense or the expense of their relatives or friends, and for the board of such patients the superintendent may make a special contract at a rate of not less than five dollars per week; and at the time of the admission of any such patient into the asylum his board must be paid in advance for six months, and bond and security given for the prompt payment of all future expenses of such patient as may from time to time be required by the by-laws of the institution.

Private patients at their own expense.  
(Act Feb. 5, 1858, pp. 117-18, §13.)  
P.D. 125.  
(Act Aug. 15, 1876, p. 140, §9.)

ART. 97. If applications be made for the admission of more patients than can be accommodated in the asylum, preference shall be given in all instances to public patients over private patients, and of the former class to cases of less than one year's duration over chronic cases, and to indigent patients over others possessed of property.

Preferences in admissions.  
(Act Feb. 5, 1858, p. 118, §14.)  
P.D. 126.  
(Act Aug. 15, 1876, p.140, §7.)

Idiots, etc., not to be admitted. (Act Feb. 5, 1858, p. 117, §12.) P.D. 124.

Discharge of patients. (Act Feb. 5, 1858, p. 118, §11, 15.) P.D. 123, 127.

Same subject. (Act Feb. 5, 1858, p. 118, §16.) P.D. 128

County to pay expenses of conveying public patients. (Act Aug. 15, 1876, p. 140, §6.)

County to be reimbursed, when.

Transportation home by the state. (Act Aug. 15, 1876, p. 140, §6.)

Escape from asylum. (Act Feb. 5, 1858, p. 119, §21.) P.D. 133.

Fees for apprehending. (Act Feb. 5, 1858, pp. 119-20, §22.) P.D. 134.

Apprehension of lunatics. (Act Aug. 15, 1876, p. 138, §1.)

The writ and its requisites.

Jury to be summoned. (Act Aug. 15, 1876, p. 138, §1.) (Const., art. v. §17.)

ART. 98. No idiot who can be safely kept in the county to which he belonged, nor any person laboring under a contagious or infectious disease, shall be received into the asylum as a patient.

ART. 99. Any patient, except such as are charged with or convicted of some offense and have been adjudged insane in accordance with the provisions of the Code of Criminal Procedure, may be discharged from the asylum at any time upon the recommendation of the superintendent, approved by the board of managers. Any patient coming within the above exception can only be discharged by order of the court by which he was committed.

ART. 100. No patient shall be discharged without suitable clothing and sufficient money to pay his necessary expenses home; and when a patient is discharged uncured, he shall be provided with a suitable guard and conveyed to his friends or to the county from which he was sent.

ART. 101. The expenses of conveying all public patients to the asylum shall be borne by the counties, respectively, from which they are sent, and said counties shall pay the same upon the sworn account of the officer or person performing such service, showing in detail the actual expenses incurred in the transportation.

ART. 102. In case any public patient is possessed of property sufficient for the purpose, or any person legally liable for his support is so possessed of property, the county paying the expenses of such transportation shall be entitled to reimbursement out of the estate of the lunatic or the property of the person legally liable for his support, which may be recovered by the county in an ordinary action in any court of competent jurisdiction.

ART. 103. The expense of conveying to their homes public patients discharged from the asylum, and the necessary clothing furnished them at the time of their discharge, shall be paid by the state.

ART. 104. If any patient confined in the asylum shall escape therefrom, it shall be the duty of any sheriff or peace officer to apprehend and detain him and to report the same to the county judge of the county, and also to the superintendent of the asylum, and upon the order of either to convey such patient back to the asylum.

ART. 105. Any officer who may convey a patient to the asylum in accordance with the provisions of the preceding article shall be paid for such service out of the funds of the asylum, at the rate of ten cents per mile for himself and each necessary guard he may employ, going and returning, and the same for the patient going, the distance to be determined by the superintendent, according to the most direct traveled route.

#### V. OF JUDICIAL PROCEEDINGS IN CASES OF LUNACY.

ART. 106. If information, in writing and under oath, be given to any county judge that any person in his county is a lunatic or *non compos mentis*, and that the welfare of himself or of others requires that he be placed under restraint, and said county judge shall believe such information to be true, he shall forthwith issue his warrant for the apprehension of such person, and shall fix a day for the hearing and determination of the matter.

ART. 107. The warrant provided for in the preceding article shall run in the name of the "State of Texas," shall be directed to the sheriff or any constable of the county, and the officer receiving it shall forthwith take into his custody the person named therein, and at the designated time have him before the county judge for trial and examination.

ART. 108. At the time of issuing the warrant mentioned in the preceding article the county judge shall also issue an order to the sheriff or constable, directing him to summon a jury of six competent jurors of the county to be and appear before such judge at the time and place designated in said order, for the hearing and determination of the matter.

**ART. 109.** The cause shall be docketed on the probate docket of the court in the name of the State of Texas as plaintiff, and of the person charged to be insane as defendant. The county attorney shall appear and represent the state on the hearing, and the defendant shall also be entitled to counsel; and in proper cases the county judge may appoint counsel for that purpose.

Cause to be docketed, etc. (Act Aug. 15, 1876, p. 138, §1.)

**ART. 110.** At the time appointed for the hearing, or at any other time to which the proceeding may have been postponed, the cause shall be called for trial and a jury of six men impaneled, to whom shall be administered the following oath:

Jury impaneled and sworn.

“You and each of you do solemnly swear (or affirm) that upon all the issues about to be submitted to you in the matter of the State of Texas against A B, you will a true verdict render according to the evidence, so help you God.”

**ART. 111.** After the evidence is heard the county judge shall submit the matter to the jury upon the following special issues:

Special issues to be submitted. (Act Aug. 15, 1876, p. 138, §§1, 2)

1. Is A B, the defendant, of unsound mind?
2. If the defendant is of unsound mind is it necessary that he should be placed under restraint?
3. If you answer both the foregoing questions in the affirmative, then what is the age and nativity of the defendant?
4. How many attacks of insanity has he had, and how long has the present attack existed?
5. Is insanity hereditary in the family of defendant or not?
6. Is the defendant possessed of any estate, and if so of what does it consist and its estimated value?
7. If the defendant is possessed of no estate are there any persons legally liable for his support? If yea, name them.

**ART. 112.** The jury shall return plain answers in writing to the issues named in the preceding article, but if they find either the first or second issue in the negative, they need not determine further, and the defendant shall be discharged.

Verdict.

**ART. 113.** Upon return of a verdict finding that the defendant is of unsound mind, and that it is necessary that he be placed under restraint, judgment shall be entered adjudging the defendant to be a lunatic, and ordering him to be conveyed to the lunatic asylum for restraint and treatment.

Judgment.

**ART. 114.** The special issues submitted to the jury, with the answers thereto, shall be incorporated in the judgment, and if it be found that the defendant is possessed of property, or that some other person is legally liable for his support, the county judge may, from time to time, upon request of the superintendent of the lunatic asylum, cite the guardian of such lunatic, or other person legally liable for his support, to appear at some regular term of the county court for civil business, then and there to show cause why the state should not have judgment for the amount due it for the support and maintenance of such lunatic, and if sufficient cause be not shown judgment may be entered against such guardian or other person for the amount found to be due the state, which judgment may be enforced as in other cases.

Reimbursement to the state from lunatics not indigent.

**ART. 115.** The state, in cases provided for in the preceding article, shall in no instance recover more than five dollars per week for the support of any lunatic, and the certificate of the superintendent of the lunatic asylum as to the amount due shall be sufficient evidence to authorize the court to render judgment.

Limitation as to amount and procedure.

**ART. 116.** The county attorney shall appear and represent the state in all cases provided for in the two preceding articles.

County attorney to represent state.

**ART. 117.** Immediately after any person is adjudged a lunatic, the county judge shall communicate with the superintendent of the asylum, and, if notified by the latter that there is a vacancy in the institution or that the patient can be accommodated, he shall issue his warrant to the

Warrant to convey lunatic to asylum. (Act Aug. 15, 1876, p. 138, §3.)

sheriff or some other suitable person, directing him to convey the lunatic to the asylum without delay, which warrant shall prescribe the number of guards to be allowed, in no case to exceed two, and shall be executed with all convenient dispatch.

Relative or friend may give bond, etc. (Act Aug. 15, 1876, p. 138, §1.)

ART. 118. No warrant to convey a lunatic to the asylum shall issue if some relative or friend of the lunatic will undertake, before the county judge, his care and restraint, and will execute a bond in a sum to be fixed by the county judge, payable to the state, with two or more good and sufficient sureties to be approved by the county judge, conditioned that the party giving such bond will restrain and take proper care of the lunatic so long as his mental unsoundness continues, or until he is delivered to the sheriff of the county or other person, to be proceeded with according to law; which bond shall be filed with and constitute a part of the record of the proceeding, and may be sued and recovered upon by any party injured, in his own name.

Record made up and forwarded. (Act Aug. 15, 1876, pp. 138-9, §§1, 3.)

ART. 119. The proceedings in any inquisition of lunacy shall be entered of record in the probate minutes of the county court by the clerk thereof, and before any patient is sent to the asylum the county judge shall cause a complete transcript of the proceedings to be made up and certified by the clerk of the county court under the seal of said court, which transcript he shall forward by mail to the superintendent of the asylum.

Suitable clothing to be provided. (Act Aug. 15, 1876, p. 139, §3.)

ART. 120. Before sending any patient to the asylum, the county judge shall take care that the patient is provided with two full suits of substantial summer clothing and one full suit of substantial winter clothing.

## CHAPTER TWO.

### OF THE DEAF AND DUMB AND THE BLIND ASYLUM.

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#### I. BOARDS OF TRUSTEES.

Boards of trustees. (Acts Aug. 16 and 26, 1856.) P.D. 98, 104. (Act March 6, '876, p. 66, §1.)

ARTICLE 121. The general control, management and direction of the affairs, property and business of the deaf and dumb asylum, and of the blind asylum, shall be vested in a board of managers for each, to be styled "the board of trustees of the deaf and dumb asylum" and "the board of trustees of the blind asylum," respectively.

Boards, how constituted. (Act March 6, 1875, p. 66, §1.)

ART. 122. Each board of trustees shall consist of five persons, citizens of this state, to be appointed by the governor. They shall hold their offices for the term of two years, shall serve without compensation, and in cases of vacancy in either of said boards the appointment shall be for the unexpired term.

Organization of the boards.

ART. 123. Each board of trustees shall choose one of its members as president, and the superintendent of the asylum to which it pertains shall be *ex officio* the secretary of the board, and shall keep a true record of all its acts and proceedings. A majority of each board shall constitute a quorum for the transaction of any business.

Meetings of the boards.

ART. 124. The boards of trustees shall hold quarterly meetings at their respective asylums, and at such other times as they may be called together by their president, or the by-laws of the institution may prescribe.

ART. 125. The boards of trustees shall have power—

Powers of the boards.  
(Act March 6, 1875, p. 66, §2.)

1. To examine and pass upon all accounts and expenditures of the superintendent, and to approve or disapprove the same.
2. To make all contracts and necessary arrangements for the erection of any buildings, or the making of any improvements, upon the grounds of the asylum.

ART. 126. All moneys appropriated by the legislature for the erection of buildings, or the making of other improvements upon the grounds of either asylum, shall be subject to requisition by the board of trustees of such asylum, for the actual amount necessary to pay for such buildings or improvements; but no money shall be drawn from the treasury for such purpose until the work is completed and finally accepted by the board of trustees.

Shall control appropriation for improvements.  
*Ib.* §3.

ART. 127. In cases provided for in the preceding article the board of trustees shall file with the comptroller a statement of the work done, together with an itemized account of the cost of the same, and thereafter the comptroller shall draw his warrant upon the treasurer, in favor of such board of trustees, for the amount specified.

Itemized acc't to be filed.  
*Ib.*

ART. 128. The board of trustees shall take receipts in duplicate for all moneys paid out under the two preceding articles, one of which shall be filed with the comptroller of public accounts.

Duplicate receipts to be taken.  
*Ib.*

ART. 129. On the first day of November of each year the boards of trustees shall report in writing to the governor the general operations of their respective asylums for the year, and accompany the same with such suggestions as they may deem important to the welfare of the institution.

Report of trustees.

II. THE SUPERINTENDENT.

ART. 130. The governor shall appoint, by and with the advice and consent of the senate, a superintendent of each of said asylums, who shall hold his office, unless sooner removed, for the term of two years, and in case of vacancy, the appointment shall only be made for the unexpired term, and terms of such officers shall, in any event, expire with the term of the governor making such appointment.

Superintendent, his term, etc.  
(Act March 6, 1875, p. 66, §1.)  
(Acts 1879, ch. 94, p. 103.)

ART. 131. The superintendent of each of said asylums shall, within twenty days after notification of his appointment, enter into bond in the sum of ten thousand dollars, payable to the state, with two or more good and sufficient sureties to be approved by the governor, conditioned for the faithful performance of all the duties of said office; and he shall also take the oath prescribed by the constitution, which oath and bond shall be filed in the office of the secretary of state.

Oath and bond.

ART. 132. The superintendent of either asylum may be removed from office by the governor, at any time, when he deems the public interest demands it, and, in case of such removal, the governor shall report such fact, together with his reason therefor, to the next succeeding session of the legislature.

Removal.  
(Act March 6, 1875, pp. 67-8, §6.)  
(Acts 1879, ch. 94, p. 103.)

ART. 133. The superintendent shall be the administrative head of the asylum for which he is appointed, and shall have the power—

Powers of superintendent.  
(Act March 6, 1875, p. 67, §§4,5)

1. To establish such rules and regulations for the government of the institution as, in his judgment, will best promote the interest and welfare of all who may be placed in his charge.
2. Where not otherwise provided by law, to appoint the subordinate officers, the necessary number of teachers and all other employes, and, subject to the approval of the board of trustees, to fix their salaries.
3. To remove at his discretion any officer, teacher or employe who does not discharge his duty, or whose conduct may be such as to endanger the morals of the pupils or the best interests of the asylum.

ART. 134. The superintendent shall also have the care and custody of the buildings, grounds, furniture and other property pertaining to the asylum, and shall act as the general financial and purchasing agent of the

Same subject  
*Ib.*



asylum for all supplies not furnished by contract in accordance with the provisions of chapter three of this title.

Report of receipts and expenditures. *Ib.*

ART. 135. At each regular meeting of the board of trustees the superintendent shall present an itemized account of all receipts and expenditures by him on account of the asylum, which account shall be verified by his own affidavit; and for any expenses other than the supplies provided for in chapter three of this title the comptroller shall not draw his warrant upon the treasurer unless the account upon which such warrant is drawn is certified as correct and just by the superintendent and is approved by the president of the board of trustees.

Reports of superintendent (Const., art. 4, §24.)

ART. 136. On the first days of January and July of each year the superintendent of each asylum shall report to the governor, under oath, a full statement of all moneys and choses in action received by him and disbursed or otherwise disposed of; and on the first day of November of each year he shall make his annual report to the governor, showing in detail the operations of the institution for the year, accompanied with such suggestions and recommendations as he may deem important to the well being of the institution over which he presides.

III. MISCELLANEOUS PROVISIONS.

Oculist to blind asylum. (Act Feb. 6, 1875, pp. 12, 13, §2.)

ART. 137. The governor shall appoint an oculist for the blind asylum, who shall be skilled in his profession and who shall attend regularly at the asylum and administer treatment to all cases of blindness among its pupils deemed curable.

His term and salary. *Ib.*

ART. 138. The oculist at the blind asylum shall hold his office for the term of two years, unless sooner removed by the governor, and shall receive such salary or compensation as may be provided by law.

Deaf and dumb pupils to learn printing. (Act March 13, 1875, pp. 91-2, §§1, 2.)

ART. 139. A certain number of the pupils at the deaf and dumb asylum to be designated by the superintendent and trustees of that institution, shall each year receive instruction in the art of printing in all its branches, and the studies of such pupils shall be so arranged as not to interfere with such instruction and the execution of any public printing by them for the state.

Instructor, how appointed. *Ib.* §1.

ART. 140. The board of public printing shall employ some competent practical printer as an instructor at said asylum in the art of printing, and the person so employed shall, in addition, discharge such other duties as may be required of him by such board.

His salary and removal. *Ib.*

ART. 141. The instructor provided for in the preceding article may be paid a compensation not to exceed one thousand dollars annually, and may be discharged at any time by the board of public printing.

Public printing at asylum. *Ib.* (Act June 27, 1876, p. 35, §7.)

ART. 142. Any public printing for the state may be executed at the deaf and dumb asylum, without regard to any contract with an individual to do the public printing thereof.

CHAPTER THREE.

OF THE MODE OF FURNISHING CERTAIN SUPPLIES TO THE ASYLUMS.

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Advertisement for proposals, (Act Aug. 10, 1876, p. 218, §1.)

ARTICLE 143. The comptroller shall, on the first day of August of each year, and quarterly thereafter, advertise for sealed proposals for furnishing to the superintendents of the lunatic, deaf and dumb and blind asylums certain supplies, as hereinafter named, for two weeks in a daily

newspaper published in the cities of Austin and Galveston, prior to the day of opening said bids. Said advertisements shall state the articles for which bids shall be received, and bids shall be made separately as hereinafter named.

ART. 144. Each bid shall be secured with such bond as the comptroller may require, with two or more good and sufficient sureties, payable to the state, conditioned that the party to whom any contract may be awarded shall faithfully carry out the terms of his contract, and shall be liable to the state for any default of the same.

Bidders must give bond.  
*Ib.* §2.

ART. 145. On the day named for opening said bids the comptroller shall open the same in the presence of the board of trustees, or such of them as may be present, and shall award to the lowest responsible bidder the contract or contracts for which he may have bid.

Opening of bids.  
*Ib.* §3.

ART. 146. All bids shall be made for the term of three months, beginning September first of each year and quarterly thereafter.

All bids for three months  
*Ib.* §4.

ART. 147. All supplies shall be furnished in accordance with contract, beginning September first and quarterly thereafter; and it shall be the duty of the superintendents of the several asylums herein named, on the first day of August, November, February and May of each year, to make out detailed estimates of such supplies as they will require for the ensuing three months, beginning on the first day of the following month, and to submit the same in duplicate to the board of trustees of their respective asylums. It is hereby made the duty of said board to immediately examine said estimates and to approve the same, or any part thereof, as they may think necessary.

Superintendents to furnish detailed estimates.  
*Ib.* §5.

ART. 148. Bids shall be made for the articles hereinafter named separately, to wit: Bids for fresh beef; bids for bacon and lard; bids for flour; bids for rice, peas, beans, grits and hominy; bids for soap, coarse and fine salt, vinegar, starch, soda, pepper and baking powders; bids for coffee and tea; bids for white and brown sugar; bids for molasses; bids for mackerel, prunes and dried apples, krout, brooms, candles and oil, canned goods, alcoholic stimulants and tobacco; bids for dry goods, hats, hose, shoes and undershirts; bids for wood; *provided*, that the party to whom may be awarded the contract for wood may deliver the amount required for a year, under such regulations as the board of trustees may direct.

Bids for what articles.  
*Ib.* §6.

ART. 149. The superintendents of the several asylums shall give an itemized receipt for all the articles delivered by the contractors of the same, and when approved by the board of trustees the comptroller shall draw his warrant upon the treasurer for the amount, which amount shall be charged to the appropriate appropriations for the asylums furnished.

Contractors, how paid.  
*Ib.* §7.

ART. 150. The superintendents of the several asylums shall furnish to the comptroller a copy of the estimates that they may require for the ensuing three months, which shall be kept by him for the inspection of the public. Said estimates shall be itemized, stating the quantity and quality of articles needed, and as far as practicable the brands. The estimates for dry goods shall state the brands; for shoes, the quality and sizes needed; and for undershirts, the quality.

Itemized estimates to be filed with comptroller.  
*Ib.* pp. 218-19, §8

ART. 151. The comptroller, in advertising for bids, shall specify the quality of the articles required and, as near as can be, shall specify the brands. If the board of trustees of said asylums, or any of them, shall find that a sufficient quantity of any articles, not enumerated in article 148, shall be needed to justify its purchase by contract, it shall be their duty to report the fact to the comptroller, who shall add said item or items to any bid, as required in said article, as he may deem best.

Other articles to be purchased by contract, when.  
*Ib.* 219, §9.

TITLE IX.

Attachment and Garnishment.

CHAPTER ONE.

ORIGINAL ATTACHMENT.

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Attachments may be issued by whom.

In what cases. (Act Dec. 16, 1863, p. 37.) P.D. 142.

ARTICLE 152. The judges and clerks of the district and county courts and justices of the peace, may issue writs of original attachment, returnable to their respective courts, upon the plaintiff, his agent or attorney, making an affidavit in writing, stating—

1. That the defendant is justly indebted to the plaintiff and the amount of the demand; and
2. That the defendant is not a resident of the state, or is a foreign corporation or is acting as such; or
3. That he is about to remove permanently out of the state, and has refused to pay or secure the debt due the plaintiff; or
4. That he secretes himself so that the ordinary process of law can not be served on him; or
5. That he has secreted his property for the purpose of defrauding his creditors; or
6. That he is about to secrete his property for the purpose of defrauding his creditors; or
7. That he is about to remove his property out of the state, without leaving sufficient remaining for the payment of his debts; or
8. That he is about to remove his property, or a part thereof, out of the county where the suit is brought, with intent to defraud his creditors; or
9. That he has disposed of his property, in whole or in part, with intent to defraud his creditors; or
10. That he is about to dispose of his property with intent to defraud his creditors; or
11. That he is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors; or
12. That the debt is due for property obtained under false pretences.

ART. 153. The affidavit shall further state—

1. That the attachment is not sued out for the purpose of injuring or harrassing the defendant; and
2. That the plaintiff will probably lose his debt unless such attachment is issued.

What facts must further appear. (Act Dec. 16, 1863, p. 37.) P.D. 142.

ART. 154. No such attachment shall issue until the suit has been duly instituted, but it may be issued in a proper case either at the commencement of the suit or at any time during its progress.

Not to issue until suit begun. (Act March 11, 1848.) P.D. 105.

ART. 155. The writ of attachment above provided for may issue, although the plaintiff's debt or demand be not due, and the same proceedings shall be had thereon as in other cases, except that no final judgment shall be rendered against the defendant until such debt or demand shall become due.

Attachment may issue on debt not yet due, but no judgment until debt becomes due. (Act March 11, 1848.) P.D. 154.

ART. 156. Before the issuance of any writ of attachment the plaintiff must execute a bond, with two or more good and sufficient sureties, payable to the defendant, in a sum not less than double the debt sworn to be due, conditioned that the plaintiff will prosecute his suit to effect, and will pay all such damages and costs as shall be adjudged against him for wrongfully suing out such attachment.

Plaintiff must give bond with security. (Act March 11, 1848.) P.D. 143.

ART. 157. Such bond shall be delivered to and approved by the officer issuing the writ, and shall, together with the affidavit, be filed with the papers of the cause.

Bond to be approved and filed.

ART. 158. The following form of bond may be used:

"THE STATE OF TEXAS, }  
 "County of..... }"

Form of bond. (Act March 11, 1848.) P.D. 163.

"We, the undersigned, A B,.....as principal, and..... and .....as sureties, acknowledge ourselves bound to pay to C D the sum of.....dollars, conditioned that the above bound A B, plaintiff in attachment against the said C D, defendant, will prosecute his said suit to effect, and that he will pay all such damages and costs as shall be adjudged against him for wrongfully suing out such attachment. Witness our hands this.....day of....., 18.....

" A B,  
 " E F,  
 " G H."

ART. 159. Every original attachment issued without affidavit and bond as herein provided, shall be abated on motion of the defendant; but such affidavit and bond shall not be void for want of form, provided they contain all essential matters.

Attachment abated for want of affidavit or bond. (Act March 11, 1848.) P.D. 147-8.

ART. 160. Upon the execution of such affidavit and bond, it shall be the duty of the judge or clerk, or justice of the peace, as the case may be, immediately to issue a writ of attachment, directed to the sheriff or any constable of any county where property of the defendant may be supposed to be, commanding him to attach so much of the property of the defendant as shall be sufficient to satisfy the demand of the plaintiff and the probable costs of the suit.

Upon execution of affidavit and bond, writ to issue instantly. (Act March 11, 1848.) P.D. 145.

ART. 161. Several writs of attachment may, at the option of the plaintiff, be issued at the same time, or in succession, and sent to different counties, until sufficient property shall be attached to satisfy the writ.

Several writs.

ART. 162. The following form of writ may be issued:

Form of the writ. *Id.* P.D. 163.

"THE STATE OF TEXAS,  
 "To the sheriff or any constable of.....county, greeting:

"We command you that you attach forthwith so much of the property of C D, if to be found in your county, repleviable on security, as shall be of value sufficient to make the sum of.....dollars, and the probable costs of suit, to satisfy the demand of A B, and that you keep and secure in your hands the property so attached, unless replevied, that the same may

be liable to further proceedings thereon, to be had before our court in ..... , in the county of ..... , on the ..... day of ..... , 18..... , when and where you shall make known how you have executed this writ."

Writ to be dated, tested and lodged with sheriff, etc.

ART. 163. The writ of attachment shall be dated and tested as other writs, and may be delivered to the sheriff or constable by the officer issuing it, or he may deliver it to the plaintiff, his agent or attorney, for that purpose.

Duty of sheriff, etc.

P.D. 145.

ART. 164. The sheriff or constable receiving the writ shall immediately proceed to execute the same by levying upon so much of the property of the defendant subject to the writ, and found within his county, as may be sufficient to satisfy the command of the writ.

May demand indemnity.

P.D. 151.

ART. 165. Whenever an officer shall levy an attachment it shall be at his own risk; and such officer may, for his own indemnification, require the plaintiff in attachment to execute and deliver to him a bond of indemnity to secure him, if it should afterward appear that the property levied upon by him does not belong to the defendant.

Property subject to attachment.

ART. 166. The writ of attachment may be levied on such property, and none other, as is or may be by law subject to levy under the writ of execution.

Levy, how made.

ART. 167. The writ of attachment shall be levied in the same manner as is or may be the writ of execution upon similar property.

Personal property to remain in the hands of officer, unless.

P.D. 145.

ART. 168. When personal property is attached the same shall remain in the hands of the officer attaching until final judgment, unless a claim be made thereto and bond be given to try the right to the same, or unless the same be replevied or be sold as provided by law.

Claimant's bond and affidavit.

P.D. 5310.

ART. 169. Any person other than the defendant may claim the personal property so levied on, or any part thereof, upon making the affidavit and giving the bond required by the provisions of the title relating to the trial of the right of property.

Replevy by the defendant.

P.D. 150.

ART. 170. At any time before judgment, should the property not have been previously claimed or sold, as provided in this chapter, the defendant may replevy the same, or any part thereof, by giving bond, with two or more good and sufficient sureties, to be approved by the officer who levied the writ, payable to the plaintiff, in double the amount of the plaintiff's debt, or, at the defendant's option, for the value of the property replevied, to be estimated by the officer, conditioned that should the defendant be condemned in the action he shall satisfy the judgment which may be rendered therein, or shall pay the estimated value of the property, with lawful interest thereon, from the date of the bond.

Sale of perishable property, etc.

P.D. 155.

ART. 171. Whenever personal property which has been attached shall not have been claimed or replevied as above provided, the judge or justice of the peace out of whose court the writ was issued may, either in term time or in vacation, order the same to be sold, when it shall be made to appear that such property is in danger of serious and immediate waste or decay, or that the keeping of the same until the trial will necessarily be attended with such expense or deterioration in value as greatly to lessen the amount likely to be realized therefrom.

Procedure for sale of perishable property, etc.

ART. 172. In ascertaining the facts which authorize the making of such order of sale under the preceding article, the judge or justice of the peace, as the case may be, may require or dispense with notice to the parties, and may act upon such information, by affidavit, certificate of the attaching officer, or other proof as may seem to him necessary to protect the interest of the parties.

Sales of perishable property, how made.

P.D. 155.

ART. 173. Such sale shall be conducted in the same manner as sales of personal property under execution, except as to the time of advertisement, which may be fixed by the judge or the justice for a shorter period, according to the exigency of the case.

ART. 174. The proceeds of such sale shall, within five days thereafter, be paid over by the officer making the sale to the clerk of the court or justice of the peace, as the case may be, accompanied by a statement in writing, signed by such officer officially, to be filed with the papers, stating the time and place of the sale, the name of the purchaser, and the amount received, with an itemized account of the expenses attending the sale.

Return of sale of perishable property, etc. P.D. 155.

ART. 175. If the personal property be not replevied or claimed or sold under the several provisions of this chapter, the judge or justice of the peace, as the case may be, may, either in term time or in vacation, make such order for the preservation or use of the same as shall appear to be to the interest of the parties.

Judge may make necessary orders for the preservation, etc., of property not replevied.

ART. 176. The officer executing the writ of attachment shall return the writ, with his action indorsed thereon or attached thereto, signed by him officially, to the court from which it issued, on or before the first day of the next term thereof.

Return of the writ.

ART. 177. Such return shall describe the property attached with sufficient certainty to identify it, and shall state when the same was attached, and whether any personal property attached remains still in his hands, and if not, the disposition made of the same; and when personal property has been replevied he shall deliver the replevy bond to the clerk to be filed with the papers of the cause.

Requisites of the return.

ART. 178. When the property levied on is claimed, replevied or sold, or otherwise disposed of, after the writ has been returned, the officer having the custody of the same shall immediately make a report in writing, signed by him officially, to the clerk or justice of the peace, as the case may be, showing such disposition of the property; and such report shall be filed among the papers of the cause.

Report of disposition of property, made after return of original writ.

ART. 179. The execution of the writ of attachment upon any property of the defendant subject thereto, unless the writ should be quashed or otherwise vacated, shall create a lien from the date of such levy on the real estate levied on and on such personal property as remains in the hands of the attaching officer, and on the proceeds of such personal property as may have been sold.

Attachment creates a lien.

ART. 180. Should the plaintiff recover in the suit, such attachment lien shall be foreclosed as in case of other liens, and the court shall direct the proceeds of the personal property sold to be applied to the satisfaction of the judgment, and the sale of personal property remaining in the hands of the officer and of the real estate levied on, to satisfy the judgment.

Judgment of foreclosure.

ART. 181. When personal property has been levied on as hereinbefore provided, the judgment shall also be against the defendant and his sureties on his replevy bond for the amount of the judgment, interest and costs, or for the value of the property replevied and interest, according to the terms of such replevy bond.

Judgment when property is replevied.

ART. 182. Should the attachment be quashed or otherwise vacated, or should judgment be for the defendant, the court shall make the necessary order restoring the property to the defendant or discharging the claim or replevy bond, as the case may be.

Order of court restoring property to defendant, when, etc.

CHAPTER TWO.

GARNISHMENT.

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Writ of garnishment, who may issue and when.  
 P.D. 157.  
 P.D. 3785.  
 (Act April 20, 1874, p. 113, §1.)

ARTICLE 183. The clerks of the district and county courts and justices of the peace may issue writs of garnishment, returnable to their respective courts, in the following cases:

1. Where an original attachment has been issued as provided in the foregoing chapter.
2. Where the plaintiff sues for a debt and makes affidavit that such debt is just, due and unpaid, and that the defendant has not, within his knowledge, property in his possession, within this state, subject to execution, sufficient to satisfy such debt; and that the garnishment applied for is not sued out to injure either the defendant or the garnishee.

3. Where the plaintiff has a judgment and makes affidavit that the defendant has not, within his knowledge, property in his possession within this state, subject to execution, sufficient to satisfy such judgment.

Bond when no attachment has issued and no judgment has been rendered.  
 (Act April 20, 1874, p. 113, §1.)

ART. 184. In the case mentioned in subdivision two of the preceding article, the plaintiff shall execute a bond, with two or more good and sufficient sureties, to be approved by the officer issuing the writ, payable to the defendant in the suit, in double the amount of the debt claimed therein, conditioned that he will prosecute his suit to effect and pay all damages and costs that may be adjudged against him for wrongfully suing out such garnishment.

Application for the writ, etc.

ART. 185. Before the issuance of the writ of garnishment the plaintiff shall make application therefor in writing, under oath, signed by him, stating the facts authorizing the issuance of the writ, and that the plaintiff has reason to believe, and does believe, that the garnishee, stating his name and residence, is indebted to the defendant, or that he has in his hands effects belonging to the defendant, or that the garnishee is an incorporated or joint stock company, and that the defendant is the owner of shares in such company or has an interest therein.

Case shall be docketed, etc.  
 P.D. 157.

ART. 186. When the foregoing requisites have been complied with the judge, or clerk, or justice of the peace, as the case may be, shall docket the case in the name of the plaintiff as plaintiff, and of the garnishee as defendant; and shall immediately issue a writ of garnishment, directed to the sheriff or any constable of the county where the garnishee is alleged to reside or be, commanding him forthwith to summon the garnishee to appear before the court out of which the same is issued, on the first day of the ensuing term thereof, to answer upon oath what, if any-

thing, he is indebted to the defendant, and was when such writ was served, and what effects, if any, of the defendant he has in his possession, and had when such writ was served, and what other persons, if any, within his knowledge, are indebted to the defendant or have effects belonging to him in their possession.

ART. 187. Where it appears from the plaintiff's affidavit that the garnishee is an incorporated or joint stock company, in which the defendant is the owner of shares, or is interested therein, the writ of garnishment shall further require the garnishee to answer upon oath what number of shares, if any, the defendant owns in such company, or owned when such writ was served, and what interest, if any, he has in such company, or had when such writ was served.

Requisites when writ is against incorporated or joint stock co. to subject shares, etc. (Act March 13, 1875, p. 102, §§1, 2)

ART. 188. The following form of writ may be used:

Form of writ.

"THE STATE OF TEXAS,

"To the sheriff or any constable of.....county, greeting:

"Whereas, in the.....court of.....county [*if a justice's court, state also the number of the precinct*], in a certain cause wherein A B is plaintiff and C D is defendant, the plaintiff, claiming an indebtedness against the said C D of.....dollars, besides interest and costs of suit, has applied for a writ of garnishment against E F, who is alleged to be a resident of your county [or to be within your county, as the case may be]; therefore you are hereby commanded forthwith to summon the said E F, if to be found within your county, to be and appear before the said court at the next term thereof, to be held at....., in said county, on the.....day of....., 18....., then and there to answer upon oath what, if anything, he is indebted to the said C D, and was when this writ was served upon him, and what effects, if any, of the said C D he has in his possession, and had when this writ was served, and what other persons, if any, within his knowledge, are indebted to the said C D, or have effects belonging to him in their possession [*and if the garnishee be an incorporated or joint stock company, in which the defendant is alleged to be the owner of shares or interested therein, then the writ shall proceed: and further to answer what number of shares, if any, the said C D owns in such company, and owned when such writ was served*]. Herein fail not, but of this writ make due return as the law directs."

ART. 189. The writ of garnishment shall be dated and tested as other writs, and may be delivered to the sheriff or constable by the officer who issued it, or he may deliver it to the plaintiff, his agent or attorney, for that purpose.

Writ to be dated, tested and delivered to the sheriff, etc.

ART. 190. The sheriff or constable receiving the writ of garnishment shall immediately proceed to execute the same by delivering a copy thereof to the garnishee, and shall make return thereof as of other citations.

Sheriff, etc., to execute and return writ forthwith.

ART. 191. From and after the service of such writ of garnishment it shall not be lawful for the garnishee to pay to the defendant any debt or to deliver to him any effects, nor shall the garnishee, if an incorporated or joint stock company, in which the defendant is alleged to be the owner of shares or to have an interest, permit or recognize any sale or transfer of such shares or interest; and any such payment, delivery, sale or transfer shall be void and of no effect as to so much of said debt, effects, shares or interest as may be necessary to satisfy the plaintiff's demand.

Effect of service of the writ. (Act March 13, 1875, p. 104, §6.)

ART. 192. The answer of the garnishee shall be under oath, in writing, and signed by him, and shall make true answers to the several matters inquired of in the writ of garnishment.

Answer to the writ must be in writing, under oath and signed.

ART. 193. Should it appear from the answer of the garnishee that he is not indebted to the defendant, and was not so indebted when the writ of garnishment was served on him, and that he has not in his possession

Garnishee to be discharged on his answer, when.



any effects of the defendant and had not when the writ was served; and when the garnishee is an incorporated or joint stock company in which the defendant is alleged to be the owner of any shares of stock or interested therein, if it shall further appear from such answer that the defendant is not and was not when the writ was served the owner of any of such shares, or interested in such company; and should the answer of the garnishee not be controverted as hereinafter provided, the court shall enter judgment discharging the garnishee.

Judgment by  
default, when.  
P.D. 159.

ART. 194. Should the garnishee, being a resident of the county where the proceeding is pending, fail to make answer to the writ, it shall be lawful for the court, at any time after judgment shall have been rendered against the defendant, and on or after default day, to render judgment by default against such garnishee for the full amount of such judgment against the defendant, with all accruing interest and costs.

When gar-  
nishee residing  
in another  
county fails to  
answer, com-  
mission to  
issue.  
P.D. 167.

ART. 195. If the garnishee resides in some other county than that in which the proceeding is pending, and fails to make answer to the writ, the court shall, on motion of the plaintiff, issue a commission addressed to the clerk of the district court, the county judge, the clerk of the county court, or any notary public of the county in which the garnishee is alleged to reside or be, requiring him to cite such garnishee to answer the writ of garnishment.

Form of com-  
mission.

ART. 196. The following form of commission may be used:

“THE STATE OF TEXAS,

“*To the clerk of the district court, the county judge, clerk of the county court, or any notary public of.....county, greeting:*

“Whereas, on the.....day of.....,....., in a certain cause pending in this court, wherein A B is plaintiff and C D is defendant, the plaintiff claiming an indebtedness against the said C D of.....dollars, besides interest and costs of suit, a writ of garnishment was issued by this court against E F, of your county, which was afterwards returned duly served on the.....day of....., 18.....; and whereas the said E F has failed to make answer to the said writ, now, therefore, you are hereby commanded forthwith to summon the said E F before you, to answer upon oath what, if anything, he is indebted to the said C D and was when the said writ of garnishment was served upon him, and what effects, if any, of the said C D he has in his possession and had when the said writ was served, and what other persons, if any, within his knowledge, are indebted to the said C D, or have effects belonging to him in their possession; [*and if the garnishee be an incorporated or joint stock company, in which the defendant is alleged to be the owner of shares, or interested therein, the commission shall proceed:* and further to answer what number of shares, if any, the said C D owns in such company and owned when the said writ was served, and what interest, if any, he has in said company and had when the said writ was served]. Herein fail not, but of this commission make return forthwith.”

Tested, how.

ART. 197. The commission shall be dated and tested as writs usually are.

Duty of officer  
receiving com-  
mission.  
P.D. 167.

ART. 198. Upon the receipt of such commission, by any of the officers named in the preceding article, he shall immediately issue a citation, directed to the sheriff or any constable of his county, commanding him forthwith to summon the garnishee to appear before him at a time and place to be named in the citation, to answer upon oath as directed in article 196.

Form of writ  
to be issued by  
commissioner  
for garnishee  
residing in an-  
other county.

ART. 199. The following form of writ may be used in such cases:

“THE STATE OF TEXAS,

“*To the sheriff or any constable of.....county, greeting:*

“Whereas, in a certain cause pending in the..... court of..... county [*if a justice's court state the number of the precinct*], wherein A

B is plaintiff and C D is defendant, wherein the plaintiff claims of the said defendant the sum of ..... dollars, besides interest and costs of suit, a writ of garnishment was issued against E F of your county, which was duly served upon him on the ..... day of ....., 18....., requiring him to answer thereto before the said court at its late term; and, whereas, the said garnishee has failed to answer as required by said writ; and whereas a commission has been issued by the said court and lodged in my hands, whereby I am commanded to summon the said E F before me to make such answer: Therefore, you are hereby commanded forthwith to summon the said E F, if to be found within your county, to be and appear before me, at my office in ....., on the ..... day of ....., 18....., then and there to answer upon oath what, if anything, he is indebted to the aforesaid C D, and was when the aforesaid writ of garnishment was so served upon him, and what effects, if any, of the said C D, he has in his possession and had when the said writ was so served; and what other persons, if any, within his knowledge, are indebted to the said C D, or have effects belonging to him in their possession; [*and if the garnishee is an incorporated or joint stock company, in which the defendant is alleged to be the owner of shares, or interested therein, the writ shall proceed*: and further, to answer what number of shares, if any, the said C D owns in such company and owned when the said writ was served, and what interest, if any, he has in such company, and had when the said writ was served]. Herein fail not, but of this writ make return forthwith."

ART. 200. The writ shall be dated and tested by the officer issuing it, with his official signature and seal of office.

Writ to be dated and tested, how.

ART. 201. The sheriff or constable receiving such writ shall immediately proceed to execute the same by delivering a copy thereof to the garnishee, and shall make return thereof without delay to the officer who issued it.

Sheriff, etc., to execute and return writ forthwith.

ART. 202. Should the garnishee appear and answer, in obedience to the writ, the officer executing the commission shall return the same, together with the answer of the garnishee, duly certified under his hand and seal of office, to the clerk of the court or justice of the peace who issued it; whereupon like proceedings shall be had as provided in cases of answers of a garnishee residing in the county.

Duty of commissioner when garnishee in another county appears and answers.  
P.D. 167.

ART. 203. Should the garnishee fail to appear in obedience to the writ, or having appeared, should he fail or refuse to answer, or to answer fully, the officer holding such commission shall return the same, together with the citation for the garnishee issued by him, and the service indorsed thereon, and a statement duly certified by him under his hand and seal of office of such failure or refusal, to the clerk of the court or justice of the peace who issued the commission.

Duty of commissioner when he fails to appear and answer.  
P.D. 167.

ART. 204. Upon the return of such commission with the citation for the garnishee, and the return thereon, and the certificate of such failure or refusal of the garnishee to answer, as mentioned in the preceding article, it shall be lawful for the court at any time after judgment shall have been rendered against the defendant, and on or after default day to render judgment against such garnishee for the full amount of such judgment against the defendant, with all accruing interest and costs, unless the defendant shall have previously filed a full and complete answer to the writ, and shall have also shown some good and sufficient excuse for his failure to appear and answer before the officer holding such commission.

Proceedings on return of certificate of such refusal to answer.  
P.D. 167.

ART. 205. Should it appear from the answer of the garnishee, made in either of the modes provided for in this chapter, or should it be otherwise made to appear as hereinafter provided, that the garnishee is indebted to the defendant in any amount, or was so indebted when the writ of garnishment was served, the court shall render judgment for the plaintiff against the garnishee, for the amount so admitted, or found to be due to the defendant from the garnishee, unless such amount shall exceed the amount

Judgment against the garnishee when he is indebted.  
P.D. 157.

of the plaintiff's judgment against the defendant, with interest and costs, in which case it shall be for the amount of such judgment, interest and costs.

Judgment against the garnishee for effects.  
P.D. 157.

ART. 206. Should it appear from the garnishee's answer, or otherwise, that the garnishee has in his possession, or had when the writ was served, any effects of the defendant liable to execution, the court shall render a decree requiring the garnishee to deliver up to the sheriff or any constable presenting an execution in favor of the plaintiff against the defendant, such effects or so much of them as may be necessary to satisfy such execution.

Remedy when garnishee refuses to deliver effects found to be in his possession.

ART. 207. Should the garnishee be adjudged to have effects of the defendant in his possession as provided in the preceding article, fail or refuse to deliver them to the sheriff or constable on such demand, the officer shall immediately make return of such failure or refusal, whereupon, on motion of the plaintiff, the garnishee shall be cited to show cause at the next term of the court why he should not be attached for contempt of court for such failure or refusal; and should the garnishee fail to show some good and sufficient excuse for such failure or refusal, he shall be fined for such contempt and imprisoned until he shall deliver such effects.

Judgment against incorporated companies, etc., for shares of stock or interest.  
(Act March 13, 1875, p. 103, §3.)

ART. 208. Where the garnishee is an incorporated or joint stock company, and it appears from the answer, or otherwise, that the defendant is, or was when the writ of garnishment was served, the owner of any shares of stock in such company, or any interest therein, the court shall render a decree, ordering the sale under execution in favor of the plaintiff against the defendant of such shares, or interest of the defendant in such company, or so much thereof as may be necessary to satisfy such execution.

Sales of shares of stock, etc., how made.  
(Act March 13, 1875, p. 103, §5.)

ART. 209. The sale so ordered shall be conducted in all respects as other sales of personal property under execution, and the sheriff or constable making such sale shall execute a transfer of such shares or interest to the purchaser, with a brief recital of the judgment of the court under which the same was sold.

Effect of such sale.  
(Act March 13, 1875, p. 104, §3.)

ART. 210. Such sale shall be valid and effectual to pass to the purchaser all the right, title and interest which the defendant had in such shares of stock, or in such company, and the proper officers of such company shall enter such sale and transfer on the books of the company in the same manner as if the same had been made by the defendant himself.

Plaintiff may traverse answer of garnishee.  
P.D. 161.

ART. 211. If the plaintiff should not be satisfied with the answer of any garnishee, he may controvert the same by an affidavit in writing, signed by him, stating that he has good reason to believe, and does believe, that the answer of the garnishee is incorrect, stating in what particular he believes the same is incorrect.

Defendant may traverse the answer.  
P.D. 160.

ART. 212. The defendant may also, in like manner, controvert the answer of the garnishee.

Trial of issue on controverted answer.  
P.D. 161.

ART. 213. If the garnishee whose answer is controverted, as provided in the two preceding articles, is a resident of the county in which the proceeding is pending, an issue shall be formed under the direction of the court and tried as other cases.

Trial of issue on controverted answer when garnishee resides in another county.  
P.D. 161.

ART. 214. If the garnishee whose answer is so controverted be a resident of some county other than that in which the proceeding is pending, the plaintiff may file in any court of the county where the garnishee may reside, having jurisdiction of the amount of the judgment in the original suit, a duly certified copy of such original judgment and of the proceedings in garnishment, including the plaintiff's application for the writ and the answer of the garnishee and the affidavit controverting the same.

Case to be docketed, and notice to issue.  
P.D. 161.

ART. 215. It shall be the duty of the clerk of such court or the justice of the peace, as the case may be, on receiving such certified copies, to docket the case in the name of the plaintiff as plaintiff, and of the garnishee as defendant, and to issue a notice to the garnishee, stating that

his answer has been so controverted, and that the issue between him and the plaintiff will stand for trial at the next term of the court.

ART. 216. Such notice shall be directed to the sheriff or any constable of the county, and shall be dated and tested as other process from such court, and shall be served by delivering a copy thereof to the defendant.

Notice, to whom directed and how executed.

ART. 217. Upon the return of such notice served, an issue shall be formed under the direction of the court and tried as other cases.

Issue tried as other cases. P. D. 161.

ART. 218. No current wages for personal service shall be subject to garnishment; and where it appears upon the trial that the garnishee is indebted to the defendant for such current wages, the garnishee shall nevertheless be discharged as to such indebtedness.

Current wages not subject to garnishment. (Const., art. 16, §28.)

ART. 219. Where the garnishee is discharged upon his answer the costs of the proceeding, including a reasonable compensation to the garnishee, shall be taxed against the plaintiff; where the answer of the garnishee has not been controverted and the garnishee is held thereon, such costs shall be taxed against the defendant and included in the execution provided for in this chapter; where the answer is contested the costs shall abide the issue of such contest.

Costs.

ART. 220. It shall be a sufficient answer to any claim of the defendant against the garnishee founded on any indebtedness of such garnishee, or on the possession by him of any effects, or where the garnishee is an incorporated or joint stock company in which the defendant was the owner of shares of stock or other interest therein, for the garnishee to show that such indebtedness was paid, or such effects were delivered, or such shares of stock or other interest in such company were sold under the judgment of the court in accordance with the provisions of this chapter.

Garnishee discharged from liability to defendant.

TITLE X.

Attorney at Law.

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Temporary license, how obtained. (Act May 12, 1846, p. 245.) P.D. 169.

ARTICLE 221. Any person who, in vacation, wishes to be allowed to practice as an attorney and counselor at law shall make application to the judge of the district court, or to a judge of the supreme court, and shall produce a certificate from the county commissioners' court of the county in which he resides that he has been a resident of the state at least six months, that he is twenty-one years of age, and that he has a good reputation for moral character and honorable deportment; whereon the judge shall proceed to examine the applicant, and if satisfied of his legal attainments shall give him a certificate of the same; under which, if given by a judge of the district court, he shall be authorized to practice in the district court and inferior courts of that district, until the next succeeding term of the district court of the county in which the applicant resides; and if given by a supreme judge, he shall be authorized to practice in the supreme court and court of appeals until the next regular term.

Permanent license, how obtained. Ib. §2. P.D. 170.

ART. 222. During the term of any district court, or of the supreme court, upon application in writing of any person desiring to obtain a permanent license to practice as attorney and counselor at law in the courts of the state, accompanied with a certificate from the county commissioners' court of the character specified in the preceding article, the court shall, as soon as convenient, appoint a committee of three or more practicing attorneys of good standing, and set a day for the examination of the applicant, on which day the committee so appointed shall, in open court, proceed to examine the applicant, and if they, or a majority of them, and the court are satisfied of his legal qualifications, a report of that fact shall on the next day be made by the committee, and recorded by the clerk, and thereon the court shall order the clerk to make out a license for the applicant, which shall be signed by the court and tested by the clerk, under the seal of the court; under which, when delivered, if granted by the district court, the party shall be authorized to practice in any district, county or inferior court of the state, and if by the supreme court, then in any court of the state.

Immigrant attorneys, how licensed. Ib. §3. P.D. 171.

ART. 223. Any person who immigrates to this state from any other state of the Union, with a view of permanently residing therein, may be admitted to practice as attorney and counselor at law, upon producing a license from any circuit or district court, or supreme court of the state from which he emigrated, and also producing satisfactory evidence to the

judge or court to whom he applies that he is a man of good reputation for moral character and honorable deportment, and shall not be subject to the requisites of residence prescribed in article 221.

ART. 224. Every person heretofore or that may hereafter be licensed as an attorney and counselor at law by any of the district courts of this state, may make his application in writing to the clerk of the supreme court for a license to practice therein; and upon furnishing to said clerk satisfactory evidence that he has been licensed by the district court, and that he is a practicing attorney in good standing, and the oath as required of attorneys of the supreme court, made before any officer authorized to administer oaths, and certified to by him with his seal of office, the said clerk shall enter the name of such party upon the roll of attorneys of said court, and shall also furnish such party a certificate of the fact, which shall authorize him to appear and plead in said supreme court or the court of appeals of this state as an attorney thereof; but nothing herein contained shall be so construed as to require the personal presence of the party making the application.

How admitted in the supreme court and court of appeals. (Act April 18, 1873, p. 39.) P.D. 5836f.

ART. 225. Every person admitted to practice law shall, before receiving license, take an oath that he will support the constitution of the United States and of this state; that he will honestly demean himself in the practice of the law, and will discharge his duty to his client to the best of his ability; which oath shall be indorsed upon his license, subscribed by him and attested by the officer administering the same.

Oath of attorneys. (Act Jan 13, 1860, p. 25.) P.D. 172.

ART. 226. No person convicted of a felony shall receive license as an attorney at law; or if licensed any court of record in which such person may practice shall, on proof of a conviction of any felony, supersede his license and strike his name from the roll of attorneys.

Persons convicted of felony shall not be licensed. (Act May 12, 1846, p. 245.) P.D. 173.

ART. 227. Each attorney at law shall be subject to fine or imprisonment by any court in which he may practice for misbehavior or for contempt offered to such court; but no attorney shall be suspended or stricken from the rolls for contempt unless it involve fraudulent or dishonorable conduct or malpractice.

Misbehavior or contempt, how punished. (Act Jan. 18, 1860, p. 25.) P.D. 177.

ART. 228. Any attorney at law who shall be guilty of any fraudulent or dishonorable conduct, or of any malpractice, or of contempt, involving fraudulent or dishonorable conduct or malpractice, may be suspended or his license may be revoked by the district court of the county in which such attorney resides, or of the county where such conduct or malpractice occurred in manner and form as hereinafter provided.

May be suspended or license revoked, when. *Id.* P.D. 177.

ART. 229. If any district court observes any fraudulent or dishonorable conduct or malpractice by any attorney at law, or if complaint be made to the district court of such conduct or malpractice by a judge of any court, a practicing attorney, a county commissioner or justice of the peace, such court shall order the attorney to be cited to show cause why his license shall not be suspended or revoked.

Shall be cited to show cause, etc., when.

ART. 230. Such complaint shall be made in writing, shall be subscribed and sworn to by the prosecutor and filed with the clerk of the court. If the citation be ordered upon the observation of the court the charge and the grounds thereof shall be set out distinctly in the order of the court.

Complaint, how made, etc.

ART. 231. The citation shall be issued in the name of the State of Texas and in manner and form as in other cases; and the same shall be served upon the defendant at least five days before the trial day.

Citation, how issued and when served.

ART. 232. Upon the return of said citation executed, if the defendant appear and deny the charge, the cause shall be docketed for trial and conducted in the name of the State of Texas against the defendant, and the state shall be represented by the county or district attorney. A jury of twelve men shall be impaneled unless waived by the defendant, and the cause shall be tried in like manner as other cases.

Trial, how conducted.

ART. 233. If the attorney be found guilty, or if he fail to appear and deny the charge after being cited as aforesaid, the said court, by proper

Judgment of the court.

order entered on the minutes, may suspend his license for a time or revoke it entirely, and may also give proper judgment for costs.

Penalty for refusing to pay over money. (Act May 12, 1846, p. 245, §11) P.D. 178.

ART. 234. Each attorney who receives or collects money for his client and refuses to pay over the same when demanded, may be proceeded against by motion of the party injured or his attorney before the district court of the county in which such attorney usually resides, or in which he resided when he collected or received the money, notice of which motion with a copy thereof shall be served on such party at least five days before the trial thereof; and in case the motion be sustained judgment shall be rendered against the defendant for the amount by him collected or received with legal interest, and also not less than ten nor more than twenty per cent. damages on the principal sum.

Allowed to inspect papers. 16. §12.

ART. 235. Each attorney at law, practicing in any court, shall be allowed at all reasonable times to inspect the papers and records relating to any suit or other matter in which he may be interested without being required to take copies thereof; but no person whatever shall be allowed to take any papers out of the office to which they belong without the permission of the clerk or keeper of the records; and the party withdrawing said papers shall leave a descriptive receipt for the same.

Officers not allowed to appear as attorney. (Act Aug. 19, 1876, p. 216.) 16. §§. P.D. 174.

ART. 236. No judge of the supreme court or court of appeals or district court, sheriff or deputy sheriff, clerk or deputy clerk of any court, or constable, shall be allowed to appear and plead as an attorney in any court of record in this state; nor shall any county judge be allowed to appear and practice as an attorney at law in any of the county courts or courts of the justices of the peace in this state.

Attorney for plaintiff may be required to show his authority as such.

ART. 237. Any defendant in any suit or proceeding pending in any court of this state may, by motion in writing under oath, stating that such defendant believes that such suit or proceeding was instituted against him or is being prosecuted against him without authority on the part of the plaintiff's attorney, cause such attorney to be cited to appear before such court and show by what authority he instituted or by what authority he prosecutes such suit or proceeding, notice of which motion shall be served upon such attorney at least five days before the trial of such motion.

Proceeding upon his failure to show authority.

ART. 238. Upon the hearing of the motion provided for in the preceding article the burden of proof shall devolve upon the defendant therein to show sufficient authority from the plaintiff in such suit or proceeding to institute or prosecute the same, and upon his failure to show such authority the court shall refuse to permit such attorney to appear in said cause, and if no person who is authorized to prosecute said cause shall appear the same shall be dismissed.

Cause shall not be continued or delayed by motion.

ART. 239. The trial of the cause in which the motion provided for in the two preceding articles has been filed shall not be continued or delayed for the hearing of such motion; but such motion may be heard and determined at any time before the parties to the cause have announced ready for trial.

TITLE XI.

Attorneys—District and County.

CHAPTER ONE.

DISTRICT ATTORNEYS.

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Districts in which district attorneys shall be elected.....	241	Failure to attend court, shall forfeit, etc.....	243
		Vacancy in office of, how filled, etc.....	244

ARTICLE 240. The legislature may provide for the election of district attorneys in such districts as may be deemed necessary, and they shall hold office for the term of two years and until their successors are qualified, and shall be commissioned by the governor.

Legislature may provide for election of, etc. (Const., art. 5, §21.)

ART. 241. The following judicial districts in this state shall each respectively elect a district attorney, viz.: The first, the second, the third, the fourth, the fifth, the seventh, the eighth, the ninth, the twelfth, the seventeenth, the eighteenth, the twentieth, the twenty-third, the twenty-fourth, the twenty-fifth, and the counties of Galveston and Harris.

In what districts shall be elected. (Act July 31, 1876, p. 77.) (Acts 1879, ch. 83, p. 94.)

ART. 242. Each district attorney, before entering on the duties of his office, shall give a bond payable to the governor and his successors in office in the sum of five thousand dollars, with two or more good and sufficient sureties, to be approved by the district judge of their respective districts, conditioned that such district attorney will faithfully pay over, in the manner prescribed by law, all money which he may collect or which may come to his hands for the state or for any county; and he shall take and subscribe the oath of office prescribed by the constitution of the state, which bond and oath shall be deposited in the office of the comptroller of public accounts.

Bond and oath of. (Act May 13, 1846.) P.D. 181.

ART. 243. When any district attorney shall fail to attend any term of the district court of any county in his district, the clerk of the district court of such county shall certify the fact of such failure under his official seal to the comptroller of public accounts, and unless some satisfactory reason for such failure is shown to the comptroller such district attorney shall receive no salary for the time that he has so failed to attend.

Failure to attend courts shall forfeit, etc. *Ib.* P.D. 183.

ART. 244. When a vacancy occurs in the office of district attorney the governor shall appoint a qualified person, resident of the district, to fill the same, and the person so appointed shall take the oath and give the bond required of district attorneys, and shall hold the office until the next general election and until his successor is qualified.

Vacancy in office of, how filled, etc.

CHAPTER TWO.

COUNTY ATTORNEYS.

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ARTICLE 245. A county attorney for counties in which there is not a resident district attorney shall be elected by the qualified voters of each county, who shall be commissioned by the governor and hold his office for the term of two years.

Election and term of office. (Const., art. 5, §21.)



Vacancy in office of, how filled. *Ib.*

ART. 246. In case of vacancy in such office, the county commissioners court of the county shall have power to appoint a county attorney until the next general election.

Shall be no county attorney where there is a resident district attorney.

ART. 247. When a district attorney is elected and has qualified, and there is in the county of his residence a county attorney, such county attorney shall cease to perform the functions of such office, and there shall be no county attorney in such county during the time that there may be a resident district attorney therein.

Joint duties of county and district attorneys.

NOTE.—Section 1, chapter 83, acts 1879, after creating the office of district attorney in certain judicial districts, provides—

“That in counties where there is a county attorney it shall be his duty to attend the terms of the county and other inferior courts of his county, and to represent the state in all criminal cases under examination or prosecution in said county, and also to attend the terms of the district court, and to represent the state in all cases in said court during the absence of the district attorney, and to aid the district attorney, when so requested; and, when representing the state alone, he shall be entitled to and receive the fees allowed by law to the district attorney; and when, at the request of the district attorney, he shall aid him in the prosecution of any case in behalf of the state, he shall receive one-half of the fee allowed by law and the district attorney the remainder.”—L.

Bond and oath of. (Act Aug. 7, 1876, p. 86, §11.)

ART. 248. Each county attorney, before he enters upon the discharge of the duties of such office, shall take and subscribe the oath of office prescribed by the constitution of the state, and shall execute a bond with at least two good and sufficient sureties, payable to the governor and his successors in office, in the sum of twenty-five hundred dollars, to be approved by the county commissioners' court of his county, conditioned that he will faithfully pay over, in the manner prescribed by law, all moneys which he may collect, or which may come to his hands for the state or any county; which bond and oath shall be recorded in the office of the clerk of the county court of his county, and deposited in the comptroller's office.

CHAPTER THREE!

GENERAL PROVISIONS APPLICABLE TO BOTH DISTRICT AND COUNTY ATTORNEYS.

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Shall report collections for state, etc.....	255		

Shall be licensed attorneys. (Act Aug. 7, 1876, p. 85, §2.) Duties and powers of.

ARTICLE 249. District and county attorneys shall be attorneys at law, duly licensed to practice in the district courts of this state, and no person who is not so licensed shall be eligible to either of said offices.

Residence of. *Ib.* §1.

ART. 250. The duties and powers of district and county attorneys shall be such as are prescribed in this title and in the Code of Criminal Procedure of this state.

Shall notify atty-gen'l and comptroller of residence, etc. *Ib.* §1.

ART. 251. District attorneys shall severally reside in the districts for which they were elected, and county attorneys shall severally reside in the county for which they were elected.

Shall give opinion, etc., to officers. *Ib.* §3.

ART. 252. District and county attorneys shall notify the attorney-general and comptroller of public accounts of the county of their residence and of their post-office address, respectively, as soon after their election and qualification as practicable.

ART. 253. The district and county attorney shall give to the assessor of taxes, the collector of taxes, or the treasurer of a county within his district or county, upon request, an opinion in writing touching their

duties concerning the revenue of the state or county, and shall also give such advice in writing to the clerks, sheriff or other officer of his district or county as he may deem necessary to insure the prompt collection of all money for which judgments may have been rendered in favor of the state or of a county.

NOTE.—See chapter 13, acts 1879, extra session, and also, appendix, for duties required of county attorneys as to the purchase of property at sales on executions in favor of their counties.—L.

ART. 254. It shall be the duty of a district or county attorney, upon the collection of any money for the use of the state, or of any county, to deliver to the person paying the same a receipt therefor.

To purchase property for county.

Shall give receipt for money collected.

*Ib.* §4.  
(Act May 13, 1846.)

P.D. 188.  
Shall report collections for state, etc.  
(Act Aug. 7, 1876, p. 86, §5.)

ART. 255. Each district or county attorney shall, on or before the last day of August of each year, file in the office of the comptroller of public accounts an account in writing, verified by the affidavit of such attorney, of all money received by him, by virtue of his office, during the preceding year, payable into the state treasury.

ART. 256. Such attorney shall also, on or before the last day of August of each year, file with the county treasurer of each county for which money has been collected by him, an account in writing, verified by his affidavit, of all moneys received by him, by virtue of his office, during the preceding year, payable into the treasury of such county.

Shall report collections for county.

*Ib.* §6.

ART. 257. Whenever a district or county attorney has collected money for the state, or for any county, he shall, within thirty days after receiving the same, pay it into the treasury of the state, or of the county to which it belongs, after deducting therefrom and retaining the commissions allowed him thereon by law.

Shall pay over money collected in 30 days.

*Ib.* §§5, 6.

ART. 258. Each district and county attorney shall keep in proper books, to be procured by them for that purpose at their own expense, a register of all their official acts and reports, and all actions or demands prosecuted or defended by them as such attorneys, and of all proceedings had in relation thereto, and shall deliver such books to their successors in office, and the same shall at all times be open to the inspection of any person appointed by the governor, or by the county commissioners' court of a county, to examine the same.

Shall keep register of official acts, etc.

*Ib.* §8.

ART. 259. A district or county attorney shall not take any fee, article of value, compensation, reward or gift, or any promise thereof, from any person whomsoever, to prosecute any case which he is required by law to prosecute; nor shall he take any fee, article of value, compensation, reward or gift, or any promise thereof, from any person whomsoever, in consideration of, or as a testimonial for his services in any case which he is required by law to prosecute, either before or after such case has been tried and finally determined.

Shall not receive fee, etc., to prosecute case.

*Ib.* §21.

ART. 260. When it shall come to the knowledge of any district or county attorney that any officer in his district or county, entrusted with the collection or safe-keeping of any public funds, is in any manner whatsoever neglecting or abusing the trust confided in him, or is in any way failing to discharge his duties under the law, he shall institute such proceedings as are necessary to compel the performance of such duties by such officer and to preserve and protect the public interests.

Shall institute proceeding against officers, when, etc.  
(Act Aug. 7, 1876, p. 86, §9.)

NOTE.—As to their duty to file information in the nature of a *quo warranto*, under certain circumstances, see acts 1879, extra session, chapter 48, and see appendix for the act in full.—L.

Duty in *quo warranto*.

ART. 261. No admission made by the district or county attorney, in any suit or action in which the state is a party, shall operate to prejudice the rights of the state.

Admission made by, shall not prejudice the state.  
(Act May 1, 1846, p. 295, §19)  
P.D. 193.

TITLE XII.

Bills, Notes and other Written Instruments.

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Liability of drawer, etc., how fixed by suit in district or county court (Act May 20, 1848, p. 187, §1.) P.D. 229.

ARTICLE 262. The holder of any bill of exchange or promissory note assignable or negotiable by law, may secure and fix the liability of any drawer or indorser of such bill of exchange, and every indorser of such promissory note, without protest or notice, by instituting suit against the acceptor of such bill of exchange, or against the maker of such promissory note, before the first term of the district or county court to which suit can be brought, after the right of action shall accrue; or by instituting suit before the second term of said court, after the right of action shall accrue, and showing good cause why suit was not instituted before the first term next after the right of action accrued.

How fixed by suit in justice's court. *Ib.* §2. P.D. 230.

ART. 263. Whenever the amount of such bill of exchange or promissory note shall be within the jurisdiction of a justice of the peace, the holder thereof may secure and fix the liability of any drawer or indorser, by instituting suit against the acceptor or maker within sixty days next after the right of action shall accrue.

Drawer of bill liable on non-acceptance. *Ib.* §3. P.D. 231.

ART. 264. The drawer of any bill of exchange which shall not be accepted when presented for acceptance shall be immediately liable for the payment thereof; and the holder of such bill may secure and fix the liability of any indorser thereof, by instituting suit against such drawer, within the time and in the manner prescribed by this title.

Assignee may sue in his own name. (Act June 25, 1840, p. 144, §2.) P.D. 231.

ART. 265. Any person to whom any of the said negotiable instruments may have been assigned, may maintain any action in his own name which the original obligee or payee might have brought; but he shall not only allow all just discounts against himself, but, if he obtained the same after it became due, he shall also allow all just discounts against the assignor before notice of the assignment was given to the defendant; but should he obtain such instrument before its maturity, by giving for it a valuable consideration, and without notice of any discount or defense against it, then he shall be compelled to allow only the just discounts against himself.

Non-negotiable instruments may be assigned. *Ib.* §3. P.D. 232.

ART. 266. The obligee, or assignee, of any written instrument not negotiable by the law merchant, may transfer to another, by assignment, all the interest which he may have in the same.

Assignee of non-negotiable instrument may sue in his own name. *Ib.*

ART. 267. The assignee of any instrument mentioned in the preceding article may maintain an action thereon in his own name, but he shall allow every discount and defense against the same which it would have been subject to in the hands of any previous owner before notice of the assignment was given to the defendant; and in order to hold the assignor as surety for the payment of the instrument, the assignee shall use due diligence to collect the same.

Waiver of diligence not to be shown by parol (Act Jan. 25, 1840, p. 144, §7.) P.D. 235.

ART. 268. Parol testimony shall be inadmissible to prove that the assignor, drawer, or indorser of any of the aforesaid instruments, has released the holder thereof from his obligation to use due diligence to collect the same.

ART. 269. The assignee of any instrument not negotiable by the law merchant shall be entitled to recover from any previous assignor thereof; but in any suit brought against a remote assignor of such instrument, he shall be subject only to such recovery, and shall have the benefit of all defenses which he would have been entitled to had the suit been instituted by any intermediate assignee.

Assignor liable to assignee.  
*Ib.* §4.  
P.D. 223.

ART. 270. Assignors, indorsers, and other parties not primarily liable upon any of the instruments named in this title, may be jointly sued with their principal obligors, or may be sued alone in the cases provided for in articles 1207 and 1208.

Assignor, indorser, etc., may be sued alone, when.  
*Ib.* §5.  
P.D. 225.  
(Act to adopt and establish R.C.S., passed Feb. 21, 1879.)

ART. 271. When a suit shall be instituted by any assignee or indorsee of any written instrument, the assignment or indorsement thereof shall be regarded as fully proved, unless the defendant shall deny in his plea that the same is genuine, and moreover shall file, with the papers in the cause, an affidavit stating that he has good cause to believe, and verily does believe, that such assignment or indorsement is forged.

Assignment, how put in issue.  
*Ib.* §5.  
P.D. 224.

ART. 272. The defendant in any action that may be instituted upon any written instrument may plead a want or failure, or partial failure of consideration, where such written instrument shall remain in the possession of the original payee or obligee; or when it shall have been transferred or assigned after the maturity thereof; or when the defendant may prove a knowledge of such want or failure of consideration on the part of the holder prior to such transfer.

Consideration, failure of, when it constitutes a defense.  
*Ib.* §7.  
P.D. 227.

ART. 273. The holder of any bill of exchange or promissory note assignable or negotiable by the law merchant, may also secure and fix the liability of any drawer or indorser of such bill of exchange or promissory note, for the payment thereof, without suit against the acceptor, drawer, or maker, by procuring such bill or note to be regularly protested by a notary public for non-acceptance or non-payment, and giving notice of such protest to such drawer or indorser, according to the usage and custom of merchants.

Liability of drawer, etc., fixed by protest (Act March 20, 1848, p. 187, §4.)  
P.D. 232.

ART. 274. It shall be the duty of any notary public who shall protest any bill of exchange or promissory note, for non-acceptance or non-payment, to set forth in his protest and in his notarial record a full and true statement of what shall have been done by him in relation thereto, according to the facts, by specifying therein whether demand was made of the sum of money in such bill or note specified, of whom, and when and where such demand was made. It shall also be his duty to make the requisite notices of protest for the drawers and indorsers who are sought to be made liable, and when any such notice shall be served by him, he shall note in his protest and notarial record on whom and when such notice was served; and when such notice shall be deposited in the post-office by him, he shall specify when and where mailed, and to whom and where directed; and such protest, or a copy of such notarial record, certified under the hand and seal of such notary public, shall be admitted in all the courts of this state as evidence of the facts therein set forth.

Protest, how made, and evidence of.  
*Ib.* §5.  
P.D. 233.

ART. 275. The holder of any protested draft or bill of exchange, drawn by a merchant within the limits of this state upon his agent or factor living beyond the limits of this state, shall, after having fixed the liability of the drawer or indorser of any such draft or bill of exchange, be entitled to recover and receive ten per cent. on the amount of such draft or bill as damages, together with interest and costs of suit thereon accruing.

Damages on protested bill recoverable, when.  
(Act Dec. 24, 1851, p. 23, §1.)  
P.D. 236.

ART. 276. Three days of grace shall be allowed on all bills of exchange and promissory notes assignable or negotiable by law.

Days of grace allowed on all bills and notes (Act Jan. 11, 1862, p. 43, §1.)  
P.D. 234.

TITLE XIII.

Carriers.

CHAPTER ONE.

DUTIES AND LIABILITIES OF CARRIERS.

	Article		Article
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Carriers can not limit their responsibilities..	278	Diligence as to delivery .....	282
Bound to convey goods, when.....	279	Shall forward in good order, etc.....	283
Must give bill of lading.....	280	Shall feed and water live stock, unless, etc..	284

Common law shall govern, except, etc.

ARTICLE 277. The duties and liabilities of carriers in this state shall be the same as are prescribed by the common law, and the remedies against them shall be the same, except where otherwise provided by this title.

Carriers can not limit their responsibility. (Act Dec. 4, 1863 P.D. 452.

ART. 278. Railroad companies and other common carriers of goods, wares and merchandise, for hire, within this state, on land or in boats or vessels on the waters entirely within the body of this state, shall not limit or restrict their liability as it exists at common law, by any general or special notice, or by inserting exceptions in the bill of lading or memorandum given upon the receipt of the goods for transportation, or in any other manner whatever, and no special agreement made in contravention of the foregoing provisions of this article shall be valid.

Bound to carry goods, when. *Ib.* §453.

ART. 279. Upon the tender of the legal or customary rates of freight on goods offered for transportation, to any common carrier whatever, such carrier shall receive and transport such goods, provided his vehicle or vessel has capacity safely to carry the goods so offered on the trip or voyage then pending, and such goods are of the kind usually carried upon such vehicle or vessel, and are offered at a reasonable time. Any common carrier refusing to transport goods, as above provided, taking in the same in the order presented, shall be liable to the party injured for all damages sustained by reason of his refusal, and shall also be liable to a penalty of not less than five nor more than five hundred dollars, to be recovered in each case by the owner of the goods in any court having jurisdiction in the county where the wrong is done or where the common carrier resides.

Must give bill of lading. (Act Feb. 4, 1860) *Ib.* 454.

ART. 280. Common carriers are required, when they receive goods for transportation, to give to the shipper, when it is demanded, a bill of lading or memorandum in writing, stating the quantity, character, order and condition of the goods; and such goods shall be delivered, in the manner provided by common law, in like order and condition to the consignee, the unavoidable wear and tear and deterioration in due course of transportation only excepted; and in case such common carrier shall fail to deliver goods as above required, they shall be liable to the party injured for his damages, as at common law; and in case of their refusal to execute and deliver a bill of lading or memorandum in writing, as above required, they shall be liable to a penalty of not less than five nor more than five hundred dollars, to be recovered as in the preceding article.

ART. 281. Railroad companies, and other common carriers having depots or warehouses for storing goods, shall be liable as warehousemen are at common law for goods and the care of the same, stored in such depots or warehouses before the commencement of the trip or voyage on which said goods are to be transported; but shall be liable as common carriers from the commencement of the trip or voyage until the goods are delivered to the consignee at the point of destination.

Liability as warehousemen, etc.  
*Ib.* 455.

ART. 282. If the carrier at the point of destination shall use due diligence to notify the consignee, and the goods are not taken by the consignee, and have in consequence to be stored in the depots or warehouses of the common carriers, they shall thereafter only be liable as warehousemen.

Diligence as to delivery.  
*Ib.*

ART. 283. Where common carriers receive goods for transportation into their warehouses or depots, they shall forward them in the order in which they are received, the first received to be first forwarded, without giving the preference to one over another, and in case they shall fail to do so, they shall be liable, absolutely, for all losses occurring while the goods remain, and for all damages occasioned or in any wise resulting from the delay; *provided*, that the trip or voyage shall be considered as having commenced from the time of the signing of the bill of lading, and the liability of the common carrier shall attach, as at common law, from and after such signing.

Shall forward in good order, etc.  
*Ib.*

ART. 284. It shall be the duty of a common carrier who conveys live stock of any kind to feed and water the same during the time of conveyance and until the same is delivered to the consignee or disposed of as provided in this title, unless otherwise provided by special contract, and any carrier who shall fail to so feed and water said live stock sufficiently shall be liable to the party injured for his damages, and shall be liable also to a penalty of not less than five nor more than five hundred dollars, to be recovered by the owner of such live stock in any court having jurisdiction in any county where the wrong is done or where the common carrier resides.

Shall feed and water live stock.

## CHAPTER TWO.

### DISPOSITION OF UNCLAIMED OR PERISHABLE PROPERTY BY CARRIERS.

	Article		Article
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Notice of such sale	286	Carrier may sell live stock, when	288
		Carriers shall sell perishable property, when	289

ARTICLE 285. When any freight or baggage has been conveyed by a common carrier to any point in this state, and shall remain unclaimed for the space of three months at the office or depot nearest or most convenient to destination, and the owner, whether known or unknown, fails within that time to claim such freight or baggage, or to pay the proper charges if any there be against it, then it shall be lawful for such common carrier to sell such freight or baggage at public auction, offering each box, bale, trunk, valise or other article separately as consigned or checked.

Unclaimed freight may be sold, when and how.  
(Act May 2, 1874, p. 203.)  
P.D. 5884a.

ART. 286. Thirty days' notice of the time and place of sale, and a descriptive list of the packages to be sold, with names and numbers or marks found thereon, shall be posted up in three public places in the county where the sale is to be made, and on the door of the depot or warehouse, if any, where the goods are, and shall also give notice in at least one newspaper in the county, if any be published therein, for thirty days before sale; and out of the proceeds of such sale the carrier shall deduct the proper charges on such freight or baggage, including costs of storing and costs of sale, and hold the overplus, if any, to the order of

Notice of such sale.  
*Ib.*  
P.D. 5884b.

the owner at any time within five years, on proof of ownership made by the claimant or his duly authorized agent or attorney.

Carrier shall keep an acc't of sales, etc.

*Ib.*

P.D. 5885c.

Carrier may sell live stock, when.

*Ib.*

P.D. 5884d.

ART. 287. The carrier shall keep an account of sales, copy of the notice, a copy of the sale bill, and the expense thereof proportioned to each article sold.

ART. 288. Should any live stock remain unclaimed for the space of forty-eight hours after its arrival at the place of its destination, the carrier may sell the same at public auction after giving five days' notice of the time and place of such sale, as prescribed in article 286, and apply the proceeds as prescribed in said article, after deducting reasonable expenses for keeping, feeding and watering said live stock from the time of its arrival at the place of its destination until disposed of as herein provided, and such carrier shall also keep an account of any such sale, copy of the notice, copy of the sale bill and an account of all expenses.

Carrier shall sell perishable property, when

*Ib.*

P.D. 5884d.

ART. 289. Should any perishable property remain unclaimed after arrival at its place of destination until in danger of depreciation, it shall be the duty of the carrier to sell the same at public auction, after giving five days' notice of the time and place of sale, as prescribed in article 286, and apply the proceeds as prescribed in said article, and keep an account of such sale, copy of the notice, copy of the sale bill and an account of all expenses.

TITLE XIV.

Certiorari.

CHAPTER ONE

CERTIORARI TO THE COUNTY COURT.

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Certiorari to county court issued, when.....	290	Writ to issue, to contain what.....	294
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Shall be granted on execution of bond.....	292	Citation as in ordinary cases.....	296
Not to operate as supersedeas, unless bond		Trial <i>de novo</i> , judgment to be certified below	297
given.....	293	Appeals and writs of error, allowed.....	298

ARTICLE 290. Any person interested in the estate of a decedent or ward may have the proceedings of the county court therein revised and corrected at any time within two years after such proceedings were had, and not afterward; *provided*, that persons *non compos mentis*, infants and *femmes-couvertes*, shall have two years after the removal of their respective disabilities, within which to apply for such revision and correction.

Certiorari to county court, issued when. (Act March 16, 1848, p. 106, §§7, 9.) P.D. 480, 482.

ART. 291. All applications for the writ of certiorari to the county court shall be made to the district court, or a judge thereof. It shall state the names and residences of the parties adversely interested, and shall distinctly set forth the error in the proceeding sought to be revised.

Application for. *Ib.* P.D. 480.

ART. 292. The writ of certiorari shall in all cases be granted upon the application of a party therefor, upon the applicant entering into bond in such sum as shall be required by the judge, sufficient to secure the costs of the proceeding.

Shall be granted on execution of bond.

ART. 293. A writ of certiorari shall not operate as a supersedeas of the judgment of the county court, unless the applicant therefor shall enter into bond with two or more good and sufficient sureties, in such sum as shall be fixed by the order of the district judge, payable to the adverse party and conditioned for the performance of the judgment of the district court in case such judgment shall be against the applicant.

Not to operate as supersedeas unless bond given. *Ib.* P.D. 480.

ART. 294. The writ of certiorari shall be issued by the clerk of the district court upon the compliance of the party with the order of the district court or the judge thereof. It shall be directed to the sheriff or any constable of the proper county, and shall command him to cite the clerk of the county court to make out a certified transcript of the proceedings designated in the writ, and transmit the same to the district court to which the writ is returnable, on or before the return day of the next succeeding term thereof.

Writ to issue to contain what.

ART. 295. When an order for a supersedeas has been made, it shall also require the clerk and all officers of said court to stay further proceedings on the judgment specified in said writ.

When supersedeas granted.

ART. 296. Whenever a writ of certiorari has been issued, the clerk shall forthwith issue a citation as in ordinary cases for the party named in the application as being adversely interested in the proceedings sought to be revised.

Citation as in ordinary cases.

ART. 297. The cause shall be tried *de novo* in the district court, but the issues shall be confined to the grounds of error specified in the application for the writ. The judgment shall be certified to the county court for observance.

Trial *de novo* judgment to be certified below. (Act May 13, 1846, p. 363, §80) P.D. 1460.



Appeals and writs of error allowed.

ART. 298. Appeals and writs of error to the supreme court, from the judgments of the district courts in cases of certiorari, shall be allowed, and shall be governed by the same rules as in other cases.

CHAPTER TWO.

CERTIORARI TO JUSTICES' COURTS.

Article	Article		
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Justice shall stay proceedings and make return.....	308		

Certiorari to justices' courts

ARTICLE 299. After final judgment in a court of a justice of the peace in any cause, except in cases of forcible entry and detainer, the cause may be removed for trial anew to the county court by writ of certiorari in the manner hereinafter directed.

Cause removed to district court, when,

NOTE.—Chapter 114, acts 1879, provides—  
 "That in all counties in which the civil and criminal jurisdiction, or either, of county courts has been transferred to the district courts, appeals and writs of certiorari may be presented to remove a cause, tried before a justice of the peace, to the district court, in the same manner and under the same circumstances under which appeals and writs of certiorari are allowed by general law to remove causes to the county court."—L.

On order of the county court or judge.

ART. 300. The writ of certiorari shall be issued by order of the county court or the judge thereof.

Requisites of the writ. (Act March 20, 1848, p. 163, §67.) P.D. 468.

ART. 301. It shall command the justice of the peace to make and certify a copy of the entries in the cause on his docket, and transmit the same, with the papers in his possession, to the county court on or before the first day of the next term thereof; but if there is not time for such transcript and papers to be filed at such term, then they shall be so filed at the next succeeding term of said court.

Affidavit of sufficient cause.

ART. 302. The writ shall not be granted unless the party applying for the same, or some person for him having knowledge of the facts, shall make affidavit in writing, setting forth sufficient cause to entitle him thereto.

*Ib.*

What application for certiorari must show

ART. 303. In order to constitute a sufficient cause, the facts stated must show either that the justice of the peace had not jurisdiction, or that injustice was done to the applicant by the final determination of the suit or proceeding, and that such injustice was not caused by his own inexcusable neglect.

*Ib.*

Within what time granted.

ART. 304. Such writ shall not be granted after ninety days from the final judgment of the justice of the peace.

*Ib.*

Bond with sureties required.

ART. 305. The writ shall not be issued unless the party applying therefor shall first cause to be filed a bond with two or more good and sufficient sureties, to be approved by the clerk, payable to the adverse party, in such sum as the judge shall direct, to the effect that the party applying therefor will perform the judgment of the county court, if the same shall be against him.

*Ib.*

Bond, affidavit and order to be filed.

ART. 306. The bond and affidavit, with the order of the judge when made in vacation, shall be filed with the clerk of the county court.

Writ to issue instant. (Act May 10, 1850, p. 60, §2.) P.D. 470.

ART. 307. As soon as such affidavit, order of the judge and bond shall have been filed, the clerk shall issue a writ of certiorari, as directed in article 301.

- ART. 308. Upon service of such writ of certiorari being made upon the justice of the peace, he shall stay further proceedings on the judgment and forthwith comply with said writ; but if there be not time for the transcript and papers to be filed at such first term, then they shall be so filed at the next succeeding term of said court. Justice shall stay proceedings and make return. *Ib.* §87. P.D. 468.
- ART. 309. Whenever a writ of certiorari has been issued the clerk shall forthwith issue a citation, as in ordinary cases, for the party adversely interested. Citation as in other cases.
- ART. 310. The action shall be docketed in the name of the original plaintiff as plaintiff, and of the original defendant as defendant. Cause to be docketed, and how.
- ART. 311. At the first term of the court to which the certiorari is returnable the adverse party may move to dismiss the certiorari for want of sufficient cause appearing in the affidavit, or for want of a sufficient bond. Motion to dismiss at first term.
- ART. 312. No amendment of the affidavit or bond shall be made in the county court, nor shall a new affidavit or bond be filed. No amendment of bond or oath.
- ART. 313. If the certiorari be dismissed the judgment shall direct the justice of the peace to proceed with the execution of the judgment below. Judgment of dismissal.
- ART. 314. No pleading other than that required by law in the justice's court shall be necessary, except in cases of amendment as hereinafter provided. Pleading same as in justice's court, except, etc.
- ART. 315. When no pleadings have been filed in justices' courts, and none were necessary, the issues shall be made up under the direction of the court. Issues made up under direction of the court.
- ART. 316. Either party may plead any new matter in the county court which was not presented in the court below; but no new cause of action shall be set up by the plaintiff, nor shall any set-off or counter claim be set up by the defendant which was not pleaded in the court below; and in all such cases the pleadings shall be in writing and filed in the cause before the parties have announced themselves ready for trial. New matter may be pleaded, etc.
- ART. 317. The cause shall be tried *de novo*, in the county court, and judgment shall be rendered as in cases of an appeal from justices' courts. Trial *de novo*. (Act to establish R.C.S., passed Feb. 21, 1879.)
- ART. 318. Appeals and writs of error from the judgments of the county court, in cases of certiorari from justices' courts, shall be allowed, subject to such rules and limitations as apply in cases appealed from justice courts. Appeals and writs of error in certiorari cases.

## TITLE XV.

## Cession of Lands to the United States.

	Article	Article
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U. S. may acquire lands for certain purposes.  
(Const., art. 16, §34.)  
(Act Dec. 19, 1849, p. 12.)  
(Act April 4, 1871, p. 18.)  
P. D. 5446, 7693.  
4th ed. 7810.

ARTICLE 319. The United States may purchase, acquire, hold, own, occupy and possess such lands within the limits of this state as they shall deem expedient and may seek to occupy and hold as sites on which to erect and maintain light-houses, forts, military stations, magazines, arsenals, dock-yards, custom-houses, post-offices and all other needful public buildings, within the purview of the eighteenth clause of the eighth section of the first article of the constitution of the United States; and the consent of the legislature of the State of Texas is hereby expressly given to any such purchase or acquisition made in accordance with the provisions of this title.

Purchases, how made.  
(Act Dec. 19, 1849, p. 12.)  
P. D. 5446.

ART. 320. All purchases of land by the United States for any of the purposes mentioned in the preceding article shall be effected either by contract with the owner of such land or by judicial proceedings as hereinafter prescribed.

Judicial proceedings if the owner will not sell.  
(Act Nov. 28, 1871, p. 44.)  
P. D. 7697.  
4th ed. 7811.

ART. 321. If the executive officer or other agent employed by the United States to make any purchase of lands in this state for any of the purposes aforesaid, and the owner of said land can not agree for the sale and purchase thereof, such officer or agent may file his petition in the district court of the county in which such lands or a portion thereof may be situated, describing the land and stating the purposes for which it is desired by the United States government, and praying that the value of such land be ascertained judicially, and a decree be passed vesting title thereto in the United States upon payment of the value so ascertained.

The owner to be cited.  
*Ib.*

ART. 322. Upon the filing of any such petition the clerk of the court shall issue a citation to the owner of the land, as in other civil cases, which citation shall be served and returned as in civil cases; and the cause shall be entered on the civil docket of the court in its regular order, in the name of the United States of America as plaintiff and the owner of the land as defendant.

Jury to ascertain the value only.  
*Ib.*

ART. 323. At the first term of the court after service of citation upon the owner, as provided in the preceding article, the cause shall be tried by a jury upon the single issue as to the value of the land, and the decision of any such jury shall in all cases be final and conclusive.

Parties may select three persons, instead of a jury.  
*Ib.*

ART. 324. Nothing in the preceding article contained shall be construed to prevent the parties from waiving a jury and selecting by agreement three persons to ascertain the value of the land in question, under their oaths and the direction of the court, and the finding and decision of such persons shall in all cases be final and conclusive.

ART. 325. When the value of the land has been ascertained in either of the modes above prescribed, and the court is satisfied with such valuation, it shall enter a decree vesting the title in such land in the United States of America, to be held, owned, possessed and enjoyed by said United States for the purposes hereinbefore recited and none other.

Title to be  
decreed.  
*Ib.*

ART. 326. No such decree shall be entered until the value of the land so ascertained, together with all reasonable costs and expenses of the owner in attending such proceeding, shall be paid to him, or into court for his benefit and subject to his order, such costs and expenses to be assessed by the court before which any such proceeding is had.

Value to be  
paid before  
decree.  
*Ib.*

ART. 327. If the United States government shall desire to purchase any land in this state for any of the purposes mentioned in the first article of this title, and such land is not situated within the limits of any county, upon the application of any authorized officer or agent of said government, it shall be the duty of the governor of this state to designate by proclamation the district court of some organized county nearest to the land as the court having jurisdiction of the matter; and thereupon like proceedings may be had in the district court so designated for the condemnation and sale of said land to the United States as are prescribed in the foregoing articles for the acquisition by said government of land in any county.

Acquisition of  
land not in any  
county.  
*Ib.*

ART. 328. If the United States government shall desire to purchase or acquire any land in this state, and the real owner of such land can not be definitely ascertained, the authorized officer or agent of said government may file a petition in the district court of the county in which such land is situate, or in the district court designated by proclamation of the governor, in accordance with the provisions of the preceding article, if such land be situated outside of any county, which petition shall describe the land and state the purpose for which it is desired, as in other cases.

Acquisition, if  
the owner is  
unknown,  
(Act Dec. 19,  
1849, p. 13.)  
P. D. 5448.

ART. 329. The clerk of the court in which any petition may be filed under the provisions of the preceding article shall issue a citation directed to the sheriff or any constable of the county, commanding him to summon all persons interested in such land to appear at a term of the court named in such citation, then and there to answer said petition. Such citation shall conform as near as may be practicable to citations by publication in civil cases, and shall be published for eight consecutive weeks before the return day thereof in some newspaper published in the county, if there be one; or in case no newspaper be published in the county, then in the newspaper published nearest to said county.

Citation by  
publication to  
persons  
interested.  
*Ib.*

ART. 330. At the return term of such citation like proceedings may be had for the condemnation and acquisition of such land as is hereinbefore provided for the acquisition of land in any county when the owner of such land is known; and if no person appears on the trial and establishes his ownership of such land to the satisfaction of the court, the value of such land, when ascertained, shall be paid into the treasury of the state, subject to the order of the owner when ascertained.

Procedure on  
such trial.  
*Ib.*

ART. 331. When the State of Texas may be the owner of any land desired by the United States for any of the purposes specified in this title, the governor may sell such land to the United States, and upon payment of the purchase money therefor into the treasury of the state, it shall be the duty of the commissioner of the general land office, upon the order of the governor, to issue a patent to the United States for such land in like manner as other patents are issued.

Acquisition of  
public land  
by U. S.  
(Act Feb. 13,  
1851, p. 102.)  
P. D. 5450,

ART. 332. All deeds of conveyance, decrees, patents, or other instruments vesting title in lands lying within this state in the United States, shall be recorded in the land records of the county in which such lands or a part thereof may be situate, or in the county to which such county may be attached for such purpose; and until filed for record in the proper

Titles to U. S.  
to be recorded.  
(Act April 4,  
1871, p. 19.)  
P. D. 7693,  
4th ed. 7810.

county, they shall not take effect as to subsequent purchasers in good faith, for a valuable consideration, and without notice.

Governor may  
cede jurisdic-  
tion.  
(Act Dec. 19,  
1849, p. 12.)  
P.D. 5449.

ART. 333. Whenever the United States shall acquire any lands in this state, for any of the purposes and in either of the modes authorized by this title, and shall desire to acquire constitutional jurisdiction over such lands for said purposes, it shall be lawful for the governor of this state, in the name and behalf of the state, to cede to the United States exclusive jurisdiction over any lands so acquired, when application may be made to him for that purpose, which application shall be in writing and accompanied with the proper evidence of such acquisition, duly authenticated and recorded, containing or having annexed thereto an accurate description by metes and bounds of the lands sought to be ceded.

State to retain  
concurrent  
jurisdiction.  
*Ib.*

ART. 334. No such cession of jurisdiction shall ever be made, except upon the express condition that the State of Texas shall retain concurrent jurisdiction with the United States over the lands so ceded, and every portion thereof, so far, that all process, civil or criminal, issuing under the authority of this state, or any of the courts or judicial officers thereof, may be executed by the proper officers of this state, upon any person amenable to the same, within the limits of the land so ceded, in like manner and with like effect as if no such cession had taken place; and such condition shall be always inserted in any instrument of cession under the provisions of this title.

U. S. lands to  
be exempt  
from taxation.  
(Act April 4,  
1871, p. 19.)  
*Ib.*

ART. 335. The United States shall be secure in their possession and enjoyment of all lands acquired under the provisions of this title, and such lands and all improvements thereon shall be exempt from any taxation under the authority of this state so long as the same are held, owned, used and occupied by the United States for the purposes expressed in this title, and not otherwise.

## TITLE XVI.

### Change of Name.

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Minors apply, by guardian.....	337	In divorce suits, name may be changed.....	339

ARTICLE 336. When any person shall desire to change either his christian or surname, or both, and to adopt another name instead thereof, he shall file his application in the district court of the county of his residence, setting forth the causes which induce him to desire a change of name and to adopt another; whereupon the judge of the said court, if in his opinion it should be for the interest or benefit of the applicant to change his name and to adopt another, shall by a judgment of said court order that the adopted name of the party shall be substituted for the original name.

Application for change of name to district court. (Act Feb. 5, 1856.) P.D. 32.

ART. 337. Whenever it shall be to the interest of any minor under the age of twenty-one years to change his name and to adopt another name instead of the original name, the guardian or next friend of said minor shall file his application in the district court of the county of the said minor's residence, setting forth the causes which induce the minor to desire to change the original name, accompanied with the full name which the minor wishes to adopt; whereupon the judge of said court, if the facts contained in the application shall satisfy him that it will be for the benefit and interest of the minor to change his name and to adopt another, shall grant authority to change his original name and to adopt another instead thereof.

Minors by guardian. *Ib.* P.D. 33.

ART. 338. Whenever any person shall change his original name and adopt another instead thereof, it shall not operate so as to release the person from any responsibility which he may have incurred by the original name, nor shall it operate by said change of name to defeat or destroy any rights of property or action which the person had or held in his original name.

Not to injure third persons. *Ib.* P.D. 34.

ART. 339. In suits for divorce the court may, in its discretion, on the final disposition of the case, enter a decree changing the name of either party to said suit, if such change of name is specially prayed for in the pleadings of such party.

In divorce suits name may be changed.

TITLE XVII.

Cities and Towns.

CHAPTER ONE.

GENERAL PROVISIONS RELATING TO CITIES.

	Article	Article
City of one thousand inhabitants or over may accept the provisions of this title....	340	General powers of the corporation..... 342
Provisions of this title do not apply until accepted.....	341	Limits of the corporation to remain the same until extended, etc..... 343

City of 1000 inhabitants or over may accept the provisions of this title.  
(Const., art. 11, §4.)  
(Act March 15, 1875, p. 113, §1.)

ARTICLE 340. Any city within the limits of this state containing one thousand inhabitants or over may accept the provisions of this title in lieu of any existing charter, by a two-thirds vote of the city council of such city, which action by the city council shall be held at a regular meeting thereof and entered upon the journal of their proceedings, and a copy of the same, signed by the mayor and attested by the city clerk or secretary under the corporate seal, filed and recorded in the office of the clerk of the county court of the county in which such city is situated; and the provisions of this title shall be in force, and all acts theretofore passed incorporating such city, which may be in force by virtue of any existing charter, shall be repealed from and after the filing of the said copy of their proceedings as aforesaid.

Provisions of this title do not apply until accepted.  
(Act March 15, 1875, p. 156, §157)

ART. 341. The provisions of this title shall not apply to any city until such provisions have been accepted by the city council in accordance with the preceding article.

General powers of the corporation.  
*Ib.* §2.

ART. 342. All the inhabitants of each city so accepting the provisions of this title shall continue to be a body corporate, with perpetual succession, by the name and style by which such city was known before the acceptance of the provisions of this title, and as such they and their successors by that name shall have, exercise and enjoy all the rights, immunities, powers, privileges and franchises possessed and enjoyed by said city at the time of the acceptance of the provisions of this title and those herein granted and conferred, and shall be subject to all the duties and obligations pertaining to or incumbent on said city as a corporation at the time of the acceptance of the provisions of this title, and may ordain and establish such acts, laws, regulations and ordinances not inconsistent with the constitution and laws of this state, as shall be needful for the government, interest, welfare and good order of said body politic, and under the same name shall be known in law, and be capable of contracting and being contracted with, suing and being sued, impleading and being impleaded, answering and being answered unto, in all courts and places, and in all matters whatever, may take, hold and purchase, lease, grant and convey such real and personal or mixed property or estate as the purposes of the corporation may require, within or without the limits thereof; and may make, have and use a corporate seal and change and renew the same at pleasure.

ART. 343. The bounds and limits of said city shall be and remain the same as fixed and defined by the provisions of the act of incorporation substituted by the provisions of this title; *provided*, that said limits of said corporation may be hereafter extended by adding additional territory to the same whenever the majority of the qualified electors of said territory shall indicate a desire to be included within the limits of said corporation.

Limits of corporation to remain the same until extended, etc.  
Ib. §2.

## CHAPTER TWO.

### OFFICERS AND THEIR ELECTION.

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Municipal government to consist of certain officers to be elected, etc.....	344	Who are eligible to the offices of mayor and alderman.....	351
Manner of electing officers.....	345	Special election to fill vacancy.....	352
Election and term of office of mayor and aldermen.....	346	Election to fill vacancies may be ordered by county judge, when.....	353
Time of holding election and returns thereof.....	347	Election in such case, etc., how conducted, etc.....	354
Who are qualified voters for city officers.....	348	City council composed of mayor and aldermen, etc.....	355
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ARTICLE 344. The municipal government of the city shall consist of a city council composed of the mayor and two aldermen from each ward, a majority of whom shall constitute a quorum for the transaction of business, except at called meetings or meetings for the imposition of taxes, when two-thirds of a full board shall be required, unless herein otherwise specified. The other officers of the corporation shall be a treasurer, an assessor and collector, a secretary, a city attorney, a marshal and city engineer, and such other officers and agents as the city council may from time to time direct. The above-named officers shall be elected by the qualified electors of said city, as hereinafter provided for, and shall hold their offices for two years and until the election and qualification of their successors.

Municipal government to consist of certain officers to be elected, etc.  
Ib. §3.

ART. 345. An election shall be held in each of the wards of said city, on the first Tuesday in April next after the acceptance of the provisions of this title, annually thereafter, at such place or places as the city council may direct, and of which thirty days' previous notice shall be given by publication in one or more newspapers of said city. Said election shall be ordered by the city council, and in case of their failure to order the same the mayor of the city may make such order. For the purpose of holding said election and others ordered, the city council shall appoint annually, in May or earlier, in each ward, some competent and suitable person who shall be the presiding officer at all elections held in his ward. The presiding officer of each ward shall appoint two judges and two clerks who, together with the presiding officer, shall be managers of elections. The presiding officers and judges must be qualified voters in the city. The city council shall provide for their compensation, and by ordinance regulate and define their powers and duties. The mayor, whenever an election is ordered, shall give the required notice and issue to the presiding officers a writ of election; and every published notice of election shall state the officer or officers to be elected, the place where the election will be held and the name of the presiding officer thereat. In case the officer so appointed is unable, fails, refuses or neglects to act, the mayor shall make another appointment, and in case no appointed presiding officer appears to open the polls, the qualified electors may appoint such officer, who shall perform the same duties and have like power and authority to act as the first appointee; but in such case the managers, in their returns or otherwise, shall certify that the presiding officer failed to attend or neglected to act, and that the person acting as such was duly chosen by the electors present.

Manner of electing officers, etc.  
Ib. §4.



Election and term of office of mayor and aldermen.  
Ib. §5.

ART. 346. At the first election under this title there shall be elected by the qualified voters of said city, voting by ballot, a mayor, who shall hold his office for one year from the date of his election, and until said successor shall be elected and qualified; and at said first election under this title there shall be elected by the qualified voters of each ward, respectively, two aldermen, one of whom shall hold his office for one year and the other for two years from the date of their election; and the term for which each shall hold his office shall be determined at the first regular meeting after said election by lot; *provided*, that there shall be one alderman for the long term and one for the short term from each of the wards respectively; *and provided further*, that at each annual election thereafter there shall be elected one alderman from each ward, who shall hold his office for two years and until his successor is duly elected and qualified.

Time of holding election and returns thereof.  
Ib. §6.

ART. 347. At all elections under this title the ballots of each ward shall be taken separately, the polls being opened in each ward for one day only, from eight o'clock A. M. until six o'clock P. M., with the privilege of a recess of one hour from twelve to one o'clock. Should the polls not be promptly opened for the reception of votes by eight o'clock A. M., the time thus lost shall be extended beyond the hour of six P. M., so as to secure the full period of nine hours for voting purposes. On closing the polls, the managers of election shall immediately proceed to count and cast up the votes for each candidate, and certify and sign the returns in duplicate, one of which shall be sealed up and retained by the presiding officer for future use as a reference, in case of a contested election; the other copy shall be sealed up, with the name of the presiding officer written across the seals, and by the presiding officer, or in his absence or inability by one of the judges or clerks, delivered in open session to the city council on the next day, or as soon thereafter as practicable. The officer so delivering the same shall make oath before the mayor or one of the aldermen that the returns by him delivered have not been altered or opened since being signed and sealed as aforesaid. As received the city council shall immediately open the returns from each ward, casting up the votes of the wards for mayor, city attorney, tax assessor and collector, treasurer, city marshal, city engineer and secretary, and entering the same in tabular form on the journals of the council. The person thus receiving the highest number of votes for mayor, city attorney, tax assessor and collector, treasurer, city marshal, city engineer and secretary, shall be declared elected; and in like manner the votes for aldermen in each ward shall be entered on the journals, and the person receiving the highest number of votes for alderman in the ward in which he is a candidate shall be declared elected alderman; *provided*, that at said first election under this title the two persons receiving the highest number of votes in the ward in which they are candidates shall be declared elected aldermen. The newly elected officers may enter upon their duties on the fifth day thereafter, Sundays excepted; *provided*, that any officer elect may qualify at any time within thirty days, otherwise the office shall be deemed vacant and a new election held to fill the same. It shall be the duty of the city secretary to notify all persons elected or appointed to office of their election or appointment; and the city council elect shall meet at the usual place of meeting on the fifth day, Sundays excepted, after their election, or as soon thereafter as possible, and be installed under the provisions of this title.

Who are qualified voters for city officers.  
Ib. §7.

ART. 348. Every person not disqualified by law, who shall have attained the age of twenty-one years, and is entitled to vote for members of the legislature of this state, and is duly registered, and shall have resided within the corporate limits of said city for six months next preceding the election, shall be entitled to vote for the officers of said city; *provided, nevertheless*, that no person belonging to the regular army of the United States shall be so entitled.

ART. 349. The managers of election shall be sworn well and truly to conduct the election without partiality or prejudice, and agreeably to law, and according to the best of their skill and understanding, which oath shall be administered by the mayor or any justice of the peace. The presiding officer and judges thus qualified shall have power to administer oaths necessary to the performance of their official duties. When any person offering a vote shall be objected to by any one qualified to vote at such election, the managers shall examine him on oath touching the points objected to, and if he fail in establishing his qualification to their satisfaction, his vote shall be rejected.

Managers of election shall be sworn; their powers and duties.  
*Ib.* §8.

ART. 350. Whenever it so happens in any election that there is a tie between two or more candidates for the same office, all of whom can not be elected, the city council shall declare such election void as between such candidates only, and immediately order a new election for the office, first giving not less than five days' notice thereof. In the event of a failure to meet on the part of the city council to examine the election returns and declare the result, the mayor shall discharge that duty.

Proceedings in case of a tie vote, etc.  
*Ib.* §9.

ART. 351. No person shall be eligible to the office of mayor unless he possesses the qualifications of an elector, and shall have resided twelve months next preceding the election within the limits of the city; and no person shall be eligible to the office of alderman unless in addition to the above qualifications he be a resident of the ward from which he may be elected at the time of the election; *provided*, that if any alderman shall remove from the ward in which he was elected, his office shall be deemed vacant and a new election ordered to fill the same.

Who are eligible to the office of mayor and alderman.  
*Ib.* §10.

ART. 352. In case of a vacancy in the office of mayor or alderman, or other elective office, by refusal to accept, or failure to qualify, or by death, resignation or otherwise, the city council shall order a new election to fill such vacancy, and all special elections shall be conducted as is herein provided for in the annual election; *provided*, that in all special elections to fill vacancies ten days' notice shall be deemed sufficient.

Special election to fill vacancy.  
*Ib.* §11.

ART. 353. Whenever a vacancy occurs by resignation or otherwise in the municipal offices of any incorporated town or city in this state, so that such vacancies can not be filled under the charter of said town or city or under the laws of this state, now in force; then, and in that event, it shall be the duty of the county judge in the county in which such city or town is situated, upon the petition of not less than ten of the principal taxpayers, citizens of said town or city, at once to order an election to fill such vacancies, giving notice of not less than ten days in the usual manner provided for such elections.

Election to fill vacancies may be ordered by county judge, when.  
*Ib.*

ART. 354. Said election shall in all things be carried on as required by law in similar elections, and the officers so elected shall in like manner be qualified and installed into office.

Election, etc., in such case, how conducted, etc.  
*Ib.* §2.

ART. 355. The city council shall be composed of the mayor and aldermen provided for by this title. The mayor shall be president of the council, and in case of a tie on any question he shall give the casting vote. At the first meeting of each new council, or as soon thereafter as practicable, one of the aldermen shall be elected president *pro tem.*, who shall hold his office for one year. In case of the failure, inability or refusal of the mayor to act, the president *pro tem.* shall perform the duties and receive the fees and compensation of the mayor.

City council composed of mayor and aldermen, etc.  
*Ib.* §12.

CHAPTER THREE.

DUTIES AND POWERS OF OFFICERS.

	Article		Article
Officers shall take official oath.....	356	Right of trial before jury.....	362
Duties of mayor.....	357	Duties and powers of the marshal.....	363
Mayor may summon citizens to act as a special force, etc.....	358	Duties of the secretary.....	364
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Recorder may be appointed, how, and his jurisdiction, duties and powers, etc.....	361	Powers of city council over officers.....	367

Officers shall take official oath.  
*Ib.* §13.

ARTICLE 356. Every person elected by the voters of said city to fill any office, or by the city council, under this title, shall, before entering on the duties of his office, take and subscribe the official oath prescribed in the constitution of this state, and the city council may, by ordinance, require such additional oath as they may deem best calculated to secure faithfulness in the performance of their duties by such officers.

Duties of mayor.  
*Ib.* §14.

ART. 357. The mayor of the city shall be the chief executive officer of said corporation, and shall be vigilant and active at all times in causing the laws and ordinances for the government of said city to be duly executed and put in force. He shall inspect the conduct of all subordinate officers in the government thereof, and, as far as it may be in his power, shall cause all negligence, carelessness and positive violations of duty to be prosecuted and punished. He shall have power, whenever in his judgment the good of the city may require it, to summon meetings of the city council; and he shall, from time to time, communicate to that body all such information, and recommend all such measures as may tend to the improvement of the finances, the police, health, security, cleanliness, comfort, ornament and good government of said city. The mayor shall also be the chief judicial magistrate of the city until the election and qualification of recorder as hereinafter provided.

Mayor may summon citizens to act as a special police force, etc.  
*Ib.* §15.

ART. 358. Whenever the mayor shall deem it necessary, in order to enforce the laws of the city, or to avert danger, or protect life or property, in case of riot or any outbreak or calamity or public disturbance, or when he has reason to fear any serious violation of law or order, or any outbreak, or any other danger to said city or the inhabitants thereof, he shall summon into service, as a special police force, all, or as many of the citizens as in his judgment and discretion may be necessary and proper, and such summons may be by proclamation, or order addressed to the citizens generally, or those of any ward of the city, or subdivision thereof, or such summons may be by personal notification; such special police force, while in service, shall be subject to the orders of the mayor, shall perform such duties as he may require, and shall have the same power while on duty as the regular police force of said city; and any person so summoned, and failing to obey or appearing and failing to perform any duty that may be required by this title, shall be fined in a sum not exceeding one hundred dollars.

Powers of the mayor.  
*Ib.* §16.

ART. 359. The mayor shall have like power with a justice of the peace to administer oaths of office. He shall possess and execute, in the city, in criminal cases, all the powers and duties of a justice of the peace. He shall have authority in case of a riot, or any unlawful assemblage, or with a view to preserve peace and good order in said city, to order and enforce the closing of any theater, ball-room, grog-shop, tippling-house, bar-room or other place of resort, or public room, or building, and may order the arrest of any person violating, in his presence, the laws of the state, or any ordinance of the city, and he shall perform such other duties and possess and exercise such other power and authority as may be prescribed and conferred by the city council.

ART. 360. All ordinances and resolutions adopted by the council shall, before they take effect, be placed in the office of the city secretary; and if the mayor approve thereof he shall sign the same, and such as he shall not sign he shall return to the city council with his objections thereto; upon the return of any ordinance or resolution by the mayor, the vote by which the same was passed shall be reconsidered, and if, after such reconsideration, a majority of the whole number of aldermen agree to pass the same, and enter their votes on the journal of their proceedings, it shall be in force; and if the mayor shall neglect to approve, or object to any such proceedings, for a longer period than three days after the same shall be placed in the secretary's office as aforesaid, the same shall go into effect.

Ordinances and resolutions adopted shall not take effect until, etc.  
Ib. §17.

ART. 361. The city council may, at any time after the acceptance of the provisions of this title, by ordinance establish the office of recorder of said city, and appoint a suitable person to fill the same, and when so appointed he shall be the chief judicial magistrate of the city, and shall hold his office until the installation of a new city council, unless the council shall sooner discontinue the office by ordinance; and as such shall hold a court within said city, by the name of the recorder's court of the city of....., which said court shall have jurisdiction and cognizance of all misdemeanors, breaches of the peace, infractions of the ordinances, and all other causes arising under the laws of said city, and shall be deemed always open for the trial of said causes. The said court shall have full power, authority and jurisdiction, in all cases arising under the ordinances of said corporation and over any breaches and violations thereof, and of any and all persons thus offending, and to try and determine all suits, actions and complaints charging a violation of any ordinance of said city, and may grant new trials, on motion in writing, showing sufficient cause and duly sworn to; and all prosecutions, trials and proceedings had in said court under this title, shall be governed by the laws and rules regulating trials, prosecutions and proceedings in justices' courts in force at the time, and shall be entitled to the same fees that justices of the peace are allowed for similar services, and to such additional compensation as may be allowed by the by-laws and ordinances of the corporations. The recorder may require of any person arrested under the provision of this title, a bond for his good behavior, and to keep the peace, with two good and sufficient sureties, which bond shall be payable to the city of..... He shall have full power and authority to issue subpoenas for witnesses, and to compel their attendance by process of attachment. He may punish all contempts, by fine and imprisonment, or either; may issue subpoenas, attachments, writs of *capias*, warrants of arrest, search warrants, executions, and all other process known to the law, which a justice of the peace of this state may lawfully issue; and all of said writs and process shall be issued, served and executed under the same forms and in the same manner as the like process would be when issued by a justice of the peace, unless herein otherwise provided. He shall also have full power and authority to administer official oaths, and all oaths and affirmations in trials before him. The recorder shall be *ex-officio* justice of the peace, and he shall possess and execute in the city, in criminal cases, all the powers and duties of such officer, and shall have the same authority and like powers with justices of the peace in the prevention and suppression of crime; but he shall in no case entertain jurisdiction in civil suits. The city council may determine what costs, if any, shall be charged in proceedings in and for all process issued in said court, and shall allow the judge thereof, for his services, such salary or fees, or either, or both, as they deem necessary; and the recorder shall perform such other duties as may be prescribed by any ordinance of said corporation that may properly and lawfully be required of said officer, as the judge of said court, and are not inconsistent with the laws and constitution of this state; *provided*, that all moneys collected from fines, of what-

Recorder may be appointed, how; and his jurisdiction, duties and powers, etc.  
Ib. §18.

ever character imposed by the recorder, shall be paid into the city treasury for the use of the city; *and provided further*, that until the said office of recorder is established and a recorder is elected by the city council, or when the same is discontinued, or a vacancy occur therein, the mayor of the city shall possess and execute all the powers and duties of recorder, holding a court which shall be known as the mayor's court, as set forth in this section and that may be imposed by ordinance of the city, and shall receive for his services the same fees and compensation.

Right of trial  
before jury.  
*Ib.* §19.

ART. 362. Every person brought before the mayor or recorder, to be tried for an offense for which the penalty may be fine or imprisonment, or both, shall be entitled, if he shall demand it, to be tried by a jury of six legal voters of the city, who shall be summoned, impaneled and qualified as jurors in justices' courts under the laws of the state.

Duties and  
powers of the  
marshal.  
*Ib.* §20.

ART. 363. The marshal of the city shall be *ex officio* chief of police, and may appoint one or more deputies, and shall either in person or by deputy attend upon the recorder's or mayor's court while said court is in session, and shall promptly and faithfully execute all writs and process issued from said court. He shall have like power with the sheriff of the county to execute the writ of search warrant. He shall be active in quelling riots, disorder and disturbances of the peace within the limits of said city, and shall take into custody all persons so offending against the peace of the city, and shall have authority to take suitable and sufficient bail for the appearance before the recorder's or mayor's court, of any person charged with an offense against the ordinance or laws of the city. It shall be his duty to arrest without warrant all violators of the public peace, and all who obstruct or interfere with him in the execution of the duties of his office, or who shall be guilty of any disorderly conduct or disturbance whatever. To prevent a breach of peace, or preserve quiet and good order, he shall have authority to close any theater, bar-room, ball-room, drinking-house, or any other place or building of public resort; and in the prevention and suppression of crime and arrest of offenders he shall have, possess and execute like power, authority and jurisdiction as the sheriff of a county under the laws of the state. He shall receive a salary or fees of office, or both, to be fixed by the city council. The marshal shall give such bond for the faithful performance of his duties as the city council may require, and he shall perform such other duties and possess such other powers, rights and authority as the city council may by ordinance require and confer, not inconsistent with the constitution and laws of this state.

Duties of the  
secretary.  
*Ib.* §21.

ART. 364. It shall be the duty of the city secretary to attend every meeting of the city council, and keep accurate minutes of the proceedings thereof in a book to be provided for that purpose, and to engross and enroll all laws, resolutions and ordinances of the city council; to keep the corporate seal; to take charge of and preserve and keep in order all the books, records, papers, documents and files of said council; to countersign all commissions issued to the city officers and licenses issued by the mayor, and to keep a record or register thereof; and to make out all notices required under any regulation or ordinance of the city. He shall draw all warrants on the treasurer, and countersign the same, and keep an accurate account thereof in a book provided for the purpose. He shall be the general accountant of the corporation, and shall keep, in books, regular accounts of the receipts and disbursements for the city, and separately, under proper heads, each cause of receipt and disbursement; and also accounts with each person, including officers who have money transactions with the city, crediting amounts allowed by proper authority and specifying the particular transaction to which such entries apply. He shall also keep a register of bonds and bills issued by the city, and all evidence of debt due and payable to it, noting the particulars thereof, and all facts connected therewith, as they occur. He shall carefully keep all contracts

made by the city council, and he shall do and perform all such other duties as may be required of him by law, ordinance, resolution or order of the city council. He shall receive for his services an annual salary, payable at stated periods, and such additional fees as may be allowed by the city council.

ART. 365. The treasurer of said city shall give bond in favor of the city in such amount, and in such form as may be required by the city council, and with sufficient security, to be approved by the city council, conditioned for the faithful discharge of his duties. He shall receive and securely keep all moneys belonging to the city, and make all payments for the same upon the order of the mayor, attested by the secretary under the seal of the corporation; *provided*, that no order shall be paid unless the said order shall show upon its face that the city council has directed its issuance, and for what purpose. He shall render a full and correct statement of his receipts and payments, to the city council at their first regular meeting in every quarter, and whensoever, at other times, he may be required by them so to do; at the end of every half year he shall cause to be published at the expense of the city, a statement, showing the amount of receipts and expenditures for the six months next preceding, and the general condition of the treasury; and he shall do and perform such other acts and duties as the city council may require; and for his services he shall receive such compensation as shall be fixed by the city council.

Treasurer shall give bond; his duties, etc.  
*Id.* §22.

ART. 366. The assessor and collector shall make up the assessment of all property taxed by the city, and make duplicate rolls thereof, and on completion of the rolls shall deliver one of them to the city secretary. He shall collect all taxes due the city, and in the event of non-payment of any taxes, shall proceed to sell property to raise the amount of taxes so due; and shall in the performance of his duties observe the provisions of this title, and the ordinances of the city relating thereto. He shall give bond, in such amount and in such form as the city council may prescribe, with good and sufficient sureties, and the city council may require a new bond whenever, in their opinion, the existing bond is insufficient; and whenever such bond is required, he shall perform no official act until said bond shall be given and approved. He shall at the expiration of every week pay to the treasurer all money by him collected, and shall report to the city council, at the first meeting in every month, all moneys so collected and paid; and he shall perform all such other duties, and in such manner and according to such rules and regulations as the city council may prescribe. The assessor and collector is authorized to require the owners of all property subject to taxation to render a correct account of the same, under oath, to be administered by him. The assessor and collector shall receive such fees and commissions for his services as may be allowed by the ordinances of the city.

Assessor and collector shall give bond, and his duties, etc.  
*Id.* §23.

ART. 367. The city council shall have power from time to time to require other and further duties of all officers whose duties are herein prescribed, and to define and prescribe the powers and duties of all officers appointed or elected to any office under this title, whose duties are not herein specially mentioned, and fix their compensation. They may also require bonds to be given to the said corporation by all officers for the faithful performance of their duties. The city council shall provide for filling vacancies in all offices, not herein provided for, and in all cases of vacancy, the same shall be filled only for the unexpired term.

Powers of city council over officers.  
*Id.* §24.

CHAPTER FOUR.

GENERAL POWERS AND DUTIES OF THE CITY COUNCIL.

	Article		Article
City council, who shall preside over it, etc.	368	May prevent horse-racing, abuse of animals, etc.	398
Shall hold stated meetings, may call special meetings, petitions, etc., to, etc.	369	May punish vagrants, etc.	399
Shall control the finances and property	370	May establish public pounds, etc.	400
Power to appropriate money, etc.	371	May tax, etc., dogs.	401
Power to provide special fund for special purposes, etc.	372	May prohibit, etc., the firing of arms, etc., the use of velocipedes, ringing of bells, etc.	402
May make health and quarantine regulations.	373	May abate nuisances.	403
May provide the city with water, establish wells, pumps, etc.	374	May do, etc., to promote health and suppress disease.	404
Power on streets, alleys, grounds, etc., of city.	375	May co-operate with county authorities, 404, Note	405
May establish, etc., and keep in repair, bridges, etc.	376	May direct the location of certain establishments, etc.	406
May provide lights for the city.	377	May regulate the burial of the dead, etc.	407
May establish market, etc.	378	May define nuisances and punish persons guilty thereof, etc.	408
May improve public grounds, cemeteries, etc.	379	May establish, etc., work-houses, etc.	409
May establish hospitals, etc.	380	May compel convicts to labor on streets, etc.	410
May regulate the carrying of weapons.	381	May prevent trespasses, etc., and punish offenders.	411
May prevent the incumbering of the streets, etc., and cause unsafe buildings to be removed, etc.	382	May prevent and punish the keeping of disorderly houses, etc.	412
May license, tax, etc., certain occupations.	383	May require owner of drain, sink, etc., to fill up, cleanse, etc., the same, and punish for failure to do so.	413
May license, etc., peddlers, theaters, etc.	384	May control laying of railroad track, etc.	414
May license, etc., circuses, etc.	385	May tax and regulate street railroads.	415
May license, etc., hackmen, and provide their compensation, etc.	386	May prevent, etc., dead animals, etc., being deposited within city limits.	416
May license, etc., billiard tables, etc.	387	May prevent, etc., the driving of animals into or through the city.	417
May authorize proper officers to grant license, etc.	388	Power to pass, etc., ordinances, etc., and other powers.	418
May establish a free library.	389	May pass ordinances to fund debt, etc.	419
May restrain, etc., the sale of intoxicating liquors.	390	Power over the finances of the city.	420
May close drinking houses, etc., on Sundays.	391	City bonds shall specify what, etc.	421
May prevent sale of liquor in certain places.	392	Bonds shall be signed, etc., and payable, where and when.	422
May regulate butchers, etc.	393	Bonds shall be registered in comptroller's office.	423
May regulate inspection, etc., of provisions, etc.	394	Mayor shall furnish statement to comptroller. Duties of comptroller.	424
May regulate weight and quality of bread.	395		
May create and regulate police.	396		
May suppress, etc., riots, etc.	397		

City council, who shall preside over it, etc.  
*Ib.*, §25.

Shall hold stated meetings; may call special meetings; petitions, etc., to, etc.  
*Ib.*, §26.

Shall control the finances and property.  
*Ib.*, §27.

Power to appropriate money, etc.  
*Ib.*, §28.

Power to provide special fund for special purposes, etc.  
*Ib.*, §29.

ARTICLE 368. The mayor and aldermen shall constitute the city council of the city. The city council shall meet at such times and places as they shall by resolution direct. The mayor when present shall preside at all meetings of the city council, and shall in all cases have a casting vote, except in elections. In his absence and absence of president *pro tem.*, any one of the aldermen may be appointed to preside.

ART. 369. The city council shall hold stated meetings, and the mayor, of his own motion, or on the application of three aldermen, may call special meetings, by notice to each of the members of said council, the secretary and city attorney, served personally or left at their usual place of abode. Petitions and remonstrances may be presented to the council in writing only, and the council shall determine the rules of its proceedings, and be the judge of the election and qualifications of its own members, and have the power to compel the attendance of absent members, and punish them for disorderly conduct.

ART. 370. The city council shall have the management and control of the finances and other property, real, personal and mixed, belonging to the corporation.

ART. 371. The city council shall have power to appropriate money, and provide for the payment of debts and expenses of the city.

ART. 372. To provide by ordinance special funds for special purposes, and to make the same disbursable only for the purpose for which the fund was created; and any officer of the city misappropriating said special fund shall be deemed guilty of malfeasance in office, and shall, on complaint of any one interested in said funds misappropriated, be

removed from office, and be incapable thereafter to hold any office in said city.

ART. 373. To make regulations to prevent the introduction of contagious disease into the city, to make quarantine laws for that purpose, and to enforce them within the city and within ten miles thereof.

May make health and quarantine regulations.  
*Ib.* §30.

ART. 374. To provide, or cause to be provided, the city with water, to make, regulate and establish public wells, pumps and cisterns, hydrants and reservoirs, in the streets or elsewhere, within said city, or beyond the limits thereof, for the extinguishment of fires and the convenience of the inhabitants, and to prevent the unnecessary waste of water.

May provide the city with water, establish wells, pumps, etc.  
*Ib.* §31.

ART. 375. To have the exclusive control and power over the streets, alleys and public grounds and highways of the city, and to abate and remove encroachments or obstructions thereon; to open, alter, widen, extend, establish, regulate, grade, clean, or otherwise improve said streets; to put drains or sewers therein, and to prevent the incumbering thereof, in any manner, and to protect the same from any encroachment or injury; and to regulate and alter the grade of premises, and to require the filling up and raising of the same.

Power over streets, alleys, public grounds etc., of city.  
*Ib.* §32.

ART. 376. To establish, erect, construct, regulate and keep in repair bridges, culverts, and sewers, sidewalks and crossways, and to regulate the construction and use of the same, and to abate and punish any obstructions or encroachments thereon; and the cost of construction of sidewalks shall be defrayed by the owner of the lot, or part of lot or block, fronting on the sidewalk; and the cost of any sidewalk constructed by the city shall be collected, if necessary, by the sale of the lot, or part of lot or block on which it fronts, together with the cost of collection, in such a manner as the city council may by ordinance provide; and a sale of any lot or part of lot or block to enforce collection of costs of sidewalks shall convey a good title to the purchaser, and the balance of proceeds of sale, after paying the amount due the city and costs of sale, shall be paid by the city to the owner.

May establish, etc., and keep in repair bridges, etc.  
*Ib.* §33.

ART. 377. To provide for lighting the streets and erecting lamp-posts and lamps therein, and regulating the lighting thereof, and from time to time create, alter or extend lamp districts; to exclusively regulate, direct and control the laying and repairing of the gas pipes and gas fixtures in the streets, alleys, sidewalks and elsewhere.

May provide light and gas for the city.  
*Ib.* §34.

ART. 378. To establish or erect, or cause to be established or erected, markets and market-houses, designate, control and regulate market places and privileges, inspect and determine the mode of inspecting meat, fish, vegetables and all produce and every article and thing therein brought for sale.

May establish market, etc.  
*Ib.* §34.

ART. 379. To provide for the inclosing, regulating and improving all public grounds and cemeteries belonging to the city, and to direct and regulate the planting and preserving of ornaments and shade trees in the streets, sidewalks or public grounds.

May improve public grounds, cemeteries, etc.  
*Ib.* §36.

ART. 380. To erect or establish one or more hospitals, and control and regulate the same; and to prohibit or to permit and regulate the establishment of private hospitals.

May establish hospitals, etc.  
*Ib.* §37.

ART. 381. To regulate the carrying of weapons, and to prevent the carrying of the same concealed.

May regulate the carrying of weapons.  
*Ib.* §38.

ART. 382. To prevent the encumbering of the streets, alleys, sidewalks and public grounds, with carriages, wagons, carts, hacks, buggies, or any vehicle whatsoever, boxes, lumber, timber, firewood, posts, awnings, signs, or any other substance or material whatever, or in any other manner whatever; to compel all persons to keep all weeds, filth and any kind of rubbish from the sidewalks and streets and gutters in front of the premises occupied by them; to require and compel the owners of property to fill up, grade, gravel, and otherwise improve the sidewalks in front of

May prevent the encumbering of streets, etc., and cause unsafe buildings to be removed, etc.  
*Ib.* §39.



and adjoining their property; also to inspect the construction of buildings, and to cause unsafe buildings to be made safe or to be removed, and to prohibit the use of materials deemed unsafe.

May license, tax, etc., certain occupations.  
*Ib.* §40.

ART. 383. To license, tax, and regulate merchants, commission merchants, hotel and inn-keepers, drinking-houses or saloons, bar-rooms, beer saloons, and all places or establishments where intoxicating or fermented liquors are sold; brokers, money brokers, real estate agents, insurance agents, insurance brokers, and auctioneers, and all other trades, professions, occupations, and callings, the taxing of which is not prohibited by the constitution of the state, which tax shall not be construed to be a tax on property.

May license, etc., peddlers, theaters, etc.,  
*Ib.* §41.

ART. 384. To license, tax, and regulate, or suppress and prevent hawkers, peddlers, pawnbrokers, and keepers of theatrical or other exhibitions, shows and amusements.

May license, etc., circuses, etc.  
*Ib.* §42.

ART. 385. To license, tax, and regulate, or prohibit theaters, circuses, the exhibitions of common showmen, and of shows of any kind, and the exhibition of natural or artificial curiosities, caravans, menageries and musical exhibitions and performances.

May license, etc., hackmen and prescribe their compensation, etc.  
*Ib.* §43.

ART. 386. To license, tax, and regulate hackmen, draymen, omnibus drivers and drivers of baggage-wagons, porters, and all others pursuing like occupations, with or without vehicles, and prescribe their compensation, and provide for their protection, and make it a misdemeanor for any person to attempt to defraud them of any legal charge for services rendered, and to regulate, license and restrain runners for railroads, stages and public houses.

May license, etc., billiard tables, etc.  
*Ib.* §44.

ART. 387. To license, tax, and regulate billiard-tables, pin alleys, ball alleys; to suppress and restrain disorderly houses, tipping-shops and groceries, gambling and gaming-houses, lotteries, and all fraudulent devices and practices, and prohibit bawdy houses and houses of prostitution or assignation within the limits of the city.

May authorize proper officer to grant license etc.  
*Ib.* §45.

ART. 388. To authorize the proper officer of the city to grant and issue licenses, and to direct the manner of issuing and registering thereof, and the fees and charges to be paid therefor; no license shall be issued for a longer period than one year, and shall not be assignable except by permission of the city council.

May establish, etc., a free library.  
(Act Feb. 26, 1874, p. 13, §1.)

ART. 389. Any incorporated city or town in this state is authorized to establish a free library in such city or town, and to adopt rules and regulations for the proper management thereof, and to appropriate such part of the revenues of such city or town for the management and increase of such free library as the municipal government of such city or town may determine.

May restrain, etc., the sale, etc., of intoxicating liquors.  
*Ib.* 46.

ART. 390. To restrain, regulate and prohibit the selling or giving away indirectly, to evade a tax or penalty, of intoxicating or malt liquors by any person within the city, except by persons duly licensed; to forbid or punish the selling or giving away of any intoxicating or malt liquors to any minor, apprentice, or habitual drunkard.

May close drinking-houses, etc., on Sundays.  
*Ib.* §47.

ART. 391. To close drinking-houses, saloons, bar-rooms, beer saloons, and all places or establishments where intoxicating or fermented liquors are sold on Sundays, and prescribe hours for closing them, and also all places of amusement and business.

May prevent sale of liquors in certain places.  
*Ib.* §48.

ART. 392. The city council shall have full power, by ordinance, to prevent the sale or giving away of any intoxicating liquors in any house or other place where theatrical or dramatic representations are given, and also to prevent intoxicating liquors of any description from being brought into any house or place where such representations are given, under any pretext whatsoever.

May regulate butchers, etc.  
*Ib.* §49.

ART. 393. To make such rules and regulations in relation to butchers as they may deem necessary and proper.

ART. 394. To regulate the inspection of beef, pork, flour, meal, salt and other provisions, whisky and other liquors to be sold in barrels, hogs-heads and other vessels and packages; to appoint weighers, gaugers and inspectors, and prescribe their duties and regulate their fees.

May regulate inspection, etc., of provisions, etc.  
*Ib.* §50.

ART. 395. To regulate the weight and quality of the bread to be sold or used within the city.

May regulate weight and quality of bread.  
*Ib.* §51.

ART. 396. To create, establish and regulate the police of the city; to appoint watchmen and policemen, and prescribe their duties and powers and compensation.

May create and regulate police  
*Ib.* §52.

ART. 397. To suppress and prevent any riot, affray, noise, disturbance or disorderly assembly in any public or private place within the city.

May suppress riots, etc.  
*Ib.* §53.

ART. 398. To prevent, prohibit and suppress horse-racing, immoderate riding or driving in the streets; to prohibit and punish the abuse of animals; to compel persons to fasten their horses or other animals attached to vehicles, or otherwise, while standing or remaining in the streets.

May prevent, etc., horse-racing, abuse of animals, etc.  
*Ib.* §54.

ART. 399. To restrain and punish vagrants, mendicants, street beggars and prostitutes.

May punish vagrants, etc.  
*Ib.* §55.

ART. 400. To establish and regulate public pounds, and to regulate, restrain and prohibit the running at large of horses, mules, cattle, sheep, swine, goats, and to authorize the distraining, impounding and sale of the same for the costs of the proceedings and the penalty incurred, and to order their destruction when they can not be sold, and to impose penalties on the owners thereof for a violation of any ordinance.

May establish pounds, etc.  
*Ib.* §56.

ART. 401. To tax, regulate or restrain and prohibit the running at large of dogs, and to authorize their destruction when at large contrary to ordinances, and to impose penalties on the owners or keepers thereof for violations of such ordinances.

May tax, etc., dogs.  
*Ib.* §57.

ART. 402. To prohibit and restrain the firing of fire-crackers, guns and pistols, use of velocipedes, or use of any pyrotechnic or any other amusement or practices tending to annoy persons passing in the streets or sidewalks, or to frighten horses or teams; to restrain and prohibit the ringing of bells, blowing of horns and bugles, crying of goods, and all other noises, practices and performances tending to the collection of persons on the streets and sidewalks, by auctioneers and others, for the purpose of business, amusement or otherwise.

May prohibit, etc., the firing of arms, etc., the use of velocipedes, ringing of bells, etc.  
*Ib.* §58.

ART. 403. To abate all nuisances which may injure or affect the public health or comfort in any manner they may deem expedient.

May abate nuisances.  
*Ib.* §59.

ART. 404. To do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease.

May do, etc., to promote health and suppress disease.  
*Ib.* §60.

NOTE.—Chapter 12, acts 1879, extra session, provides that the municipal authorities of towns and cities and commissioners' courts of the counties wherein they are situated, may co-operate in making such improvements as may, by such authorities and courts, be deemed necessary to improve the public health, and to promote efficient sanitary regulations, and arrange for the construction of and payment for such improvements.—L.

May co-operate with county authorities.

ART. 405. To compel the owner or occupant of any grocery, soap, tallow or chandler establishment, or blacksmith shop, tannery, stable, slaughter-house, distillery, brewery, sewers, privy, hide houses or other unwholesome or nauseous house or place, to cleanse, remove or abate the same, as may be necessary for the health, comfort and convenience of the inhabitants.

May compel the cleansing of premises.  
*Ib.* §61.

ART. 406. To direct the location of business, tanneries, blacksmith shops, founderies, livery stables and any manufacturing establishment; to direct the location and regulate the management and construction of, restrain, abate and prohibit within the city limits slaughtering establishments and hide houses or establishments for keeping or curing hides, establishments for making soap, for steaming or rendering lard, tallow, offal and

May direct the location of certain establishments, etc.  
*Ib.* §62.

such other substances as may be rendered; and all other establishments or places where any nauseous, offensive or unwholesome business may be carried on.

May regulate the burial of the dead, etc.  
*Ib.* §63.

ART. 407. To regulate the burial of the dead; to purchase, establish and regulate one or more cemeteries; to regulate the registration of deaths, marriages and births; to direct the returning and keeping of bills of mortality.

May define nuisances and punish persons guilty thereof, etc.  
*Ib.* §64.

ART. 408. To abate and remove nuisances and to punish the authors thereof by penalties, fine and imprisonment, and to define and declare what shall be nuisances and authorize and direct the summary abatement thereof.

May establish, etc., work-houses, etc.  
*Ib.* §65.

ART. 409. To erect and establish one or more work-houses or houses of correction within or without the city limits; make all necessary rules and regulations thereof, and appoint all necessary keepers or assistants. In such work-house or house of correction may be confined all vagrants, stragglers, idle, suspicious and disorderly persons who may be committed by the mayor or recorder; and any person who shall fail or refuse to pay the fine, penalty or costs imposed for any misdemeanor or breach of any ordinance of the city may, instead of being committed to jail, be kept therein, subject to labor and confinement.

May compel convicts to labor on streets, etc.  
*Ib.* §66.

ART. 410. To compel and force all offenders against any ordinance of this city, found guilty by the recorder or mayor and sentenced to fine and imprisonment, to labor on the streets and alleys of said city or on any public work, under such regulations as may by ordinance be established.

May prevent trespasses, etc. and punish offenders.  
*Ib.* §67.

ART. 411. To prevent all trespasses, breaches of the peace and good order, assaults and batteries, fighting, quarreling, using abusive, obscene, profane and insulting language, misdemeanors and all disorderly conduct, and punish all persons thus offending.

May prevent and punish the keeping of disorderly houses, etc.  
*Ib.* §68.

ART. 412. To prevent and punish the keeping of houses wherein indecent, loud or immodest dramatic or theatrical representations are given, of houses of prostitution within the city, and to adopt summary measures for the removal or suppression of all such establishments.

May require owner of drain, sink, etc., to fill up, cleanse, etc., the same, and punish for failure to do so.  
*Ib.* §69.

ART. 413. To require the owner of private drains, sinks and privies to fill up, cleanse, drain, alter, relay, repair, fix and improve the same, as may be ordered by any resolution or ordinance of said city; and in the event of any failure, neglect or refusal to comply with any such order, the party so failing shall be liable to fine and imprisonment. In the event of there being no person in the city on whom such order can be served the city may have such work done and such improvements made on account of the owner thereof, and all costs, charges and expenses shall be a lien on the property, on the filing of a memorandum by the mayor, under the seal of the corporation thereof, and recording the same with the clerk of the district court; and the city may enforce said lien and institute suit in the corporate name and obtain judgment against said party for the amount so due as aforesaid in any court having jurisdiction.

May control, etc., the laying of railroad tracks, etc.  
*Ib.* §70.

ART. 414. To direct and control the laying and constructing of railroad tracks, turn-outs and switches, or prohibit the same, in the streets, avenues and alleys, unless the same shall have been authorized by law, and the location of depots within the city; to require that railroad tracks, turn-outs and switches, shall be so constructed as to interfere as little as possible with the ordinary travel and use of streets, avenues and alleys, and that sufficient space shall be left on either side of said track for the safe and convenient passage of teams, carriages and other vehicles, and persons; to require railroad companies to keep in repair the streets, avenues or alleys through which their track may run, and if ordered by the city council to construct and keep in repair suitable crossings at the intersection of streets, avenues and alleys, and ditches, sewers and culverts, when the city council shall deem it necessary; to direct the

use and regulate the speed of locomotive engines in said city, or to prevent and prohibit the use or running of the same within the city; *provided*, that the provisions of this article shall apply to railroads known as steam railroads, and not to city, street or horse railroads.

ART. 415. The city council shall have power to assess and collect the ordinary municipal taxes upon city or horse railroads, and to compel said city railroad companies to keep their roads in repair, and to make them conform to the grades of the streets upon which their tracks may be laid, whenever said streets shall have been graded by the city, and to restrain the rate of speed so as not to exceed seven miles per hour, and to compel said city railroads to supply ample accommodation for the safe and convenient travel of the people on the street where their track may run; the city council may enforce these regulations by proper ordinances, with suitable penalties for any violation of said ordinances.

May tax and regulate street railroads.  
*Ib.* §71.

ART. 416. To prevent any person from bringing, depositing or having within the limits of said city any dead carcass, or any other offensive or unwholesome substance or matter, and to require the removal or destruction, by any person who shall have placed or caused to be placed upon or near his premises, or elsewhere, of any substance or matter, filth, or any putrid or unsound beef, pork or fish, hides or skins of any kind; and on his default to authorize the removal or destruction thereof, by some officer of the city, and require the owner of any dead animal to remove the same to such place as may be designated.

May prevent, etc., dead animals, etc., being deposited within city limits.  
*Ib.* §72.

ART. 417. To prevent, regulate and control the driving of cattle, horses and all other animals, into or through the city.

May prevent, etc., the driving of animals into or through the city.  
*Ib.* §73.

ART. 418. The city council shall have power to pass, publish, amend or repeal all ordinances, rules and police regulations, not contrary to the constitution of this state, for the good government, peace and order of the city, and the trade and commerce thereof, that may be necessary or proper to carry into effect the powers vested by this title in the corporation, the city government, or in any department or officer thereof; to enforce the observance of all such rules, ordinances and police regulations, and to punish violations thereof by fines, penalties and imprisonment in the prison, work-house or house of correction, or to work on the streets or other public works, or either, in the discretion of the court before whom conviction may be had; but no fine or penalty shall exceed one hundred dollars, nor the imprisonment more than fifteen days for any offense, unless a larger fine and longer period of imprisonment is herein allowed; and for any fine, penalty and costs imposed by the mayor or recorder in the trial of any cause or complaint before him, execution may issue to collect such fine and costs, to be levied and executed in the same manner that executions are from the district court. The same shall be issued by the mayor or recorder to the marshal, who, in levying on property and selling, shall have like power and authority as the sheriff of the county in executions issued from the district court; and the laws of the state, so far as applicable, shall apply to and be in full force and effect as to the executions issued from the mayor's or recorder's court; and any person upon whom any fine or penalty is imposed may be committed until the payment of the same, with costs, and in default thereof may be imprisoned in the city prison or work-house or house of correction, or may be required to work on the streets or other public work of the city for such time and in such manner as may be provided by ordinance; *provided*, such imprisonment shall not exceed fifteen days, unless a longer period is herein allowed.

Power to pass, etc., ordinances, etc., and other powers.  
*Ib.* §74.

ART. 419. To pass all necessary ordinances to provide for funding the whole or any part of the existing debt of the city or of any future debt, by canceling the evidences thereof, and issuing to the holders or creditors

May pass ordinances to fund debt, etc.  
*Ib.* §75.

notes, bonds or treasury warrants, with or without coupons, bearing interest at any annual rate not to exceed ten per cent. The council shall also provide by ordinance for issuing the bonds of the city in such sums as may be agreed upon for railroad subsidies heretofore voted, or that may be hereafter voted in accordance with the laws of this state.

Power over the finances of the city.  
*Ib.* §76.

ART. 420. To appropriate so much of the revenues of the city, emanating from whatever source, for the purpose of retiring and discharging the accrued indebtedness of the city, and for the purpose of improving the public markets and streets, erecting and conducting city hospitals, city hall, water works and so forth, as they may from time to time deem expedient; and in furtherance of these objects they shall have power to borrow money upon the credit of the city, and issue coupon bonds of the city therefor in such sum or sums as they may deem expedient, to bear interest not exceeding ten per cent. per annum, payable semi-annually at such place as may be fixed by city ordinance; *provided*, that the aggregate amount of bonds issued by the city council shall, at no time, exceed six per cent. of the value of the property within said city subject to *ad valorem* tax.

City bonds shall specify what, etc.  
*Ib.* §77.

ART. 421. All bonds shall specify for what purpose they were issued, and shall not be invalid if sold for less than their par value; and when any bonds are issued by the city a fund shall be provided to pay the interest and create a sinking fund to redeem the bonds, which fund shall not be diverted nor drawn upon for any other purpose, and the city treasurer shall honor no drafts on said fund except to pay interest upon, or redeem the bonds for which it was provided.

Bonds shall be signed, etc., and payable where and when, etc.  
*Ib.* §78.

ART. 422. Said bonds shall be signed by the mayor and countersigned by the secretary, and payable at such places and at such times as may be fixed by ordinance of the city council, not less than ten nor more than fifty years.

Bonds shall be registered in comptroller's office.  
*Ib.* §79.

ART. 423. It shall be the duty of the mayor, whenever any bond or bonds are issued, to forward the same to the comptroller of public accounts of the state, whose duty it shall be to register said bond or bonds in a book kept for that purpose, and to indorse on each bond so registered his certificate of registration, and to give, at the request of the mayor, his certificate certifying to the amount of bonds so registered in his office up to date.

Mayor shall furnish statement to comptroller. Duties of comptroller, etc.  
*Ib.* §80.

ART. 424. That it shall be the duty of the mayor, at the time of forwarding any of said bonds for registration, to furnish the comptroller with a statement of the value of all taxable property, real and personal, in the city; also, with a statement of the amount of tax levied for the payment of interest and to create a sinking fund. It is hereby made the duty of the comptroller to see that a tax is levied and collected by the city sufficient to pay the interest semi-annually on all bonds issued, and to create a sinking fund sufficient to pay the said bonds at maturity, and that said sinking fund is invested in good interest-bearing securities.

## CHAPTER FIVE.

### TAXATION.

	Article		Article
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Ad valorem tax.  
*Ib.* §81.  
(Const., art. 11, §4.)

ARTICLE 425. The city council shall have power within the city, by ordinance, to annually levy and collect taxes, not exceeding one-fourth of

one per cent. on the assessed value of all real and personal estate and property in the city not exempt from taxation by the constitution and laws of the state.

ART. 426. Cities having more than ten thousand inhabitants may levy, assess and collect such taxes as may be authorized by law, but no tax for any purpose shall ever be lawful for any one year which shall exceed two and one-half per cent. of the taxable property of such city.

Tax of 2½ per cent. may be levied by city of more than 1000 inhabitants. (Const., art. 11, §5.)

ART. 427. No debt shall ever be created by any city unless at the same time provision be made to assess and collect annually a sufficient sum to pay the interest thereon, and create a sinking fund of at least two per cent. thereon.

Debt shall not be created unless provision be made to pay the same. (Const., art. 14, §6.)

ART. 428. The city council shall have power to levy and collect an annual poll tax, not to exceed one dollar, of every male inhabitant of said city over the age of twenty-one years (idiots and lunatics excepted), who is a resident thereof at the time of such annual assessment.

Poll tax. *Ib.* §83.

ART. 429. The city council shall have power to levy and collect taxes, commonly known as licenses, upon trades, professions, callings and other business carried on; and upon carriages, hacks, coaches, buggies, drays, carts, wagons, and other vehicles used in said city, when the same are for public use; and each and every person and firm engaging in the following trades, professions, callings and business, among others, shall be liable to pay such license tax; but this enumeration shall not be construed to deprive the city council of the right and power to levy and collect other license taxes, and from other persons and firms, under the general authority herein granted.

Occupation tax. *Ib.* §83.

ART. 430. Every person and firm engaged in selling goods, wares and merchandise; every person and firm selling liquor in quantities over a quart; every person or firm keeping a grog-shop, tippling-house, bar-room or drinking-saloon; every person or firm keeping a place where spirituous liquors, wines, cordials or beer are sold in quantities less than one quart; every person or firm keeping a billiard table, ball alley, or nine or ten-pin alley, or any similar game; every person or firm keeping a tavern or hotel, or boarding-house; every person or firm keeping a restaurant, eating-house, oyster-shop, oyster-saloon, or place of any description where eating or refreshments are furnished; every person or firm keeping a livery stable, sale stable, feed or other kind of stable; every person or firm selling goods, wares and merchandise at public auction; every person or firm pursuing the occupation of real estate broker or agent, merchandise or cotton broker, or commission business; every person or firm pursuing the occupation of hawker or peddler of goods or any article whatever; every person or firm keeping a brewery, beer-shop or distillery, or fruit stand; every person or firm keeping a storage or a warehouse, or engaging in compressing cotton, keeping an intelligence office; each and every insurance company shall also be liable to pay said city such license tax, and each and every insurance agent in said city shall likewise be subject to said license tax, and such agent shall be held responsible therefor, and for each association, corporation or company of which he is agent.

Occupations that are subject to taxation. *Ib.* §84.

ART. 431. That each and every firm keeping a lumber, wood or coal yard, or any place for sale of the articles aforesaid, or building material, shall be subject to said license tax, and all other persons from whom the city council may require said tax, under the authority in this title granted; *provided*, nothing herein contained shall in any wise prevent or restrain the city council from collecting the license, and each license tax hereinbefore provided for by this title; each establishment shall be liable to said license tax; and any person or firm pursuing occupations, business, avocations or callings subject to said tax shall pay on each, and no license

Same subject *Ib.* §85.

shall extend to more than one establishment, or include more than one occupation, avocation, business or calling.

Power of city council to provide for assessing, etc., taxes.

*Ib.* §86.

ART. 432. The city council shall have power to provide by ordinance for the assessing and collecting of the taxes aforesaid, and to determine when taxes shall be paid by corporations, and when by the individual corporators; *provided*, no tax shall be levied unless by consent of two-thirds of the aldermen elected.

Collection of license tax, etc.

*Ib.* §87.

ART. 433. The license tax shall be collected by the assessor and collector, and shall be paid to that officer by each and every person and firm owing such license and before engaging in any trade, profession, business, calling, avocation or occupation subject to said tax; and if any person shall engage in any business, calling, avocation or occupation which by an ordinance of the said city is subject to a license tax, without first having obtained said license, he, she or they shall, on conviction before the mayor or recorder's court, be liable to imprisonment or a fine of ten dollars, or both imprisonment and such fine, for each day such violation of said ordinance may continue; and this article shall apply to all persons owing any license and failing to pay the same; *provided*, that the city council may collect said license tax by suit in any court having jurisdiction, under such rules and regulations as they may provide by ordinance; said taxes, commonly known as licenses, laid as herein provided, shall not be construed to be a tax on property within the meaning of article 89, or any other article of this title.

Real estate includes what.

*Ib.* §88.

ART. 434. The term real estate or property, as used in this title, shall be construed to include lots, lands and all buildings or machinery and structures of every kind erected upon and affixed to the same.

Personal estate includes what.

*Ib.* §89.

ART. 435. The term personal estate or property, as used in this title, shall be construed to include all household furniture, moneys, goods, capital, chattels, public stocks and stocks of corporations, moneyed or otherwise, and generally all property which is not real.

City council may provide for the exemption of property from taxation, etc.

*Ib.* §90.

ART. 436. The city council may, by ordinance, provide for the exemption from taxation of such property as they may deem just and proper; *provided*, nothing contained in this chapter on taxation shall be construed to prevent the city council from imposing, levying and collecting special taxes and assessments for the improvement of the avenues, streets and alleys, as hereinafter provided.

Taxes for payment of indebtedness. (Const., art. 11, §6.)

ART. 437. The city council may also levy, assess and collect taxes necessary to pay the interest and provide a sinking fund to satisfy any indebtedness heretofore legally made and undertaken; but all such taxes shall be assessed and collected separately from those levied, assessed and collected for current expenses of municipal government, and shall, when levied, specify in the act of levying the purpose therefor, and such taxes may be paid in the coupons, bonds or other indebtedness for the payment of which such tax may have been levied.

CHAPTER SIX.

COLLECTION OF TAXES.

	Article		Article
Power of city council to provide for collection of taxes .....	438	Property of taxpayer shall be levied on and sold for taxes, when .....	446
Power of city council to regulate tax lists, assessment of taxes, etc. ....	439	Assessor and collector shall make deed to purchaser of property sold for taxes. Effect of deed, right of redemption, etc. ....	447
Duty of taxpayers to render inventory of property, etc. ....	440	Sale may take place at any other time than that first advertised, and may be continued from day to day .....	448
Board of appraisal shall be appointed ..	441	Property shall be struck off to city, when ..	449
Duty of assessor and collector to make list of personal property, etc. ....	442	Property of infant, etc., may be redeemed, when .....	450
Unrendered property shall be ascertained, etc., by assessor .....	443	Sale of real estate for taxes .....	451
Assessment for back taxes .....	444	Taxes, etc., collectible in current money only .....	452
Duty of assessor and collector in regard to collection of taxes .....	445		

ARTICLE 438. The city council may and shall have full power to provide by ordinance for the prompt collection of all taxes assessed, levied, and imposed under this title, and due or becoming due to said city, and are hereby authorized, and to that end may and shall have full power and authority to sell or cause to be sold real as well as personal property, and may and shall make all such rules and regulations, and ordain and pass all ordinances as they may deem necessary to the levying, laying, imposing, assessing, and collecting of any of the taxes herein provided.

Power of city council to provide for collection of taxes.  
Ib. §91.

ART. 439. The city council shall have power by ordinance to regulate the manner and mode of making out tax lists or inventories and appraisements of property therein, and to prescribe the oath that shall be administered to each person on such rendition of property, and to prescribe how and when property shall thus be rendered, and to prescribe the number and form of assessment rolls, and fix the duties and define the powers of the assessor and collector, and adopt such measures as they may deem advisable to secure the assessment of all property within the limits of said city, and collect the tax thereupon; and may by ordinance provide that any person, firm, or corporation having property subject to taxation or being liable for any tax under the provisions of this title, and neglecting to render a list, inventory and appraisal thereof, as required by ordinance of said city, shall be liable to fine and imprisonment.

Power of city council to regulate tax lists, assessment of taxes, etc.  
Ib. §92.

ART. 440. Every person, partnership and corporation owning property within the limits of the corporation shall, within two months after published notice, hand in to the assessor and collector of the city a full and complete inventory of the property possessed or controlled by him, her, or them within said limits not exempt from taxation, on the first day of January of the current year, verified as required by ordinance; and any person failing or refusing to comply with the provisions of this article shall be liable to fine and imprisonment, and the city council shall, by ordinance, clearly define the duties of taxpayers herein, and make all necessary rules and regulations to secure the rendition of property and the collection of taxes due thereon.

Duty of taxpayers to render inventory of property, etc.  
Ib. §93.

ART. 441. It shall be the duty of the city council, annually, at such time as they may determine, to appoint three commissioners, each being a qualified voter, who shall be styled the board of appraisal, and whenever the party rendering property for assessment and the assessor and collector can not agree on the valuation of such property, it shall be referred to said board, and their action in appraising the same shall be final; *provided*, that at the meeting of said board the owner of the property shall be heard; said board shall also appraise all property assessed as unknown or unrendered. The city council shall allow said board such compensation for their services as may be just and reasonable.

Board of appraisal shall be appointed. Duties and powers of board of, etc.  
Ib. §94.



No person connected with the city government shall be appointed on said board, and any vacancy shall be filled by the mayor.

Duty of assessor and collector to make lists of property, etc.

*Ib.* §95.

ART. 442. It shall be the duty of the assessor and collector to make out a list of all personal property which has not been given in for assessment according to the provisions of this title, and assess the same in the name of the owner, if he be known; if not, then it shall be assessed by description of the property and as unknown owner, and the value of such property shall be determined by the board of appraisement, and the same may be sold as in other cases, if the tax be not paid in the time prescribed by law.

Unrendered property shall be ascertained, etc., by assessor.

*Ib.* §96.

ART. 443. It shall be the duty of the assessor and collector, at the expiration of the time fixed by ordinance for the rendition of property, to ascertain such property in the city subject to taxation as has not been rendered, and the same shall be by him presented to the board of appraisement for valuation by said board, and the same shall be by him entered in a supplement to the assessment roll as unknown, specifying the year for which said tax is not paid within the time prescribed by law; said property shall be sold at the same time and with like effect as other property.

Assessment for back taxes.

*Ib.* §97.

ART. 444. Whenever the assessor and collector shall ascertain that any taxable property, real or personal, has not been assessed for the past year, he shall assess the same in a supplement to his next assessment roll, at the same rate under which such property should have been assessed for such year, stating the year for which such property should have been assessed, and the taxes thereon shall be collected in the same manner as other assessments. In all cases where any party has omitted to render property for taxation for any former year or years, and such taxes have not been paid, such party shall give such property in for assessment for the years thus omitted and pay such taxes, and the assessor and collector shall enter all such property in a supplement to his next assessment roll, under the head of payments for former years.

Duty of assessor and collector in regard to collection of taxes.

*Ib.* §98.

ART. 445. The assessor and collector, after the completion of the assessment roll, as required by ordinance, shall proceed to collect the taxes therein mentioned within the time, and give such notice as may be prescribed by the city council, and for that purpose shall call once upon every person taxed, or on the agent or attorney of such person at the usual place of his or her residence, office, place of business, or elsewhere, and demand the payment of the tax charged upon his or her person or property, if the person is to be found, and if not, then a written demand, specifying the amount of taxes due, left at the residence with some adult member of the family, shall be a sufficient demand; *provided*, that if any person thus owing taxes has no residence, office, or place of business, and no agent in the city or known to the assessor and collector, then the said demand shall not be necessary, and the ordinary published notice, required by ordinance shall be sufficient.

Property of taxpayer shall be levied on and sold for taxes, when.

*Ib.* §100.

ART. 446. If any person shall fail, neglect or refuse to pay the taxes imposed on him and his property, within the time prescribed by the ordinances of said city, the assessor and collector shall, by virtue of his tax list and assessment roll, levy upon so much property liable to taxation belonging to such person, as may be sufficient to pay his taxes, and the assessor and collector shall give notice of the time and place of sale by advertisement in writing (if not unknown property), the property and amount of taxes, costs and fees due thereupon; such notice shall be published in some newspaper published in said city, and at the expiration of such notice, and on the day therein specified, the assessor and collector shall proceed to sell such property at public auction, in front of the courthouse door of the city, or such building as may be used for such purpose; *provided*, that when real estate is offered for sale the smallest portion of grounds (to be taken from the east side of the premises) shall be sold for which any person will take the same and pay the taxes, costs and fees.

ART. 447. The assessor and collector shall, when any property has been sold for the payment of taxes, make, execute and deliver a deed for said property to the person purchasing the same, and such deed shall be *prima facie* evidence in all controversies and suits in relation to the right of the purchaser, his heirs and assigns, to the premises thereby conveyed, of the following facts:

Assessor and collector shall make deed to purchaser to property sold for taxes; effect of deed, right of redemption, etc.  
*Ib.* §100.

*First*—That the land or lot or portions thereof conveyed was subject to taxation or assessment at the time the same was advertised for sale, and had been listed or assessed in the time or manner required by law.

*Second*—That the taxes or assessment were not paid at any time before he sale.

*Third*—That the land, lot, or portion thereof conveyed, had not been redeemed from the sale at the date of the deed, and shall be conclusive evidence of the following facts:

1. That the land, lot, or portion thereof sold was advertised for sale in the manner and for the length of time required by law.

2. That the property was sold for taxes or assessments as stated in the deed.

3. That the grantee in the deed was the purchaser.

4. That the sale was conducted in the manner prescribed by law; and in all controversies and suits involving the title to land claimed and held under and by virtue of such deed, the person claiming title adverse to the title conveyed by such deed shall be required to prove, in order to defeat the said title, either that the land was not subject to taxation at the date of the sale, that the taxes or assessment had been paid, that the land had never been listed or assessed for taxation and assessment as required by this title or some ordinance of the city, or that the same had been redeemed according to the provisions of this title, and that such redemption was made for the use and benefit of the person having the right of redemption under the law; but no person shall be permitted to question the title acquired by the said deed without first showing that he, or the person under whom he claims title, had title to the land at the time of the sale, or that the title was obtained after the sale, and that all taxes due upon the lands have been paid by such person or the person under whom he claims title as aforesaid; *provided, however*, that the owner of such property shall have the right to redeem the same at any time within two years of the day and date of the sale thereof, upon paying to the purchaser double the amount of taxes for which the same was sold, together with the costs of such sale and double the amount of all taxes paid by the purchaser since such sale. The assessor and collector shall have full power to levy upon any personal property to satisfy any tax imposed by this title; all taxes shall be a lien upon the property upon which they are assessed, and in case any property levied upon is about to be removed out of the city, the assessor and collector shall proceed to take into his possession so much thereof as will pay the taxes assessed and costs of collection.

ART. 448. If from any cause the sale of property levied upon or seized for taxes shall not take place at the time first appointed, the assessor and collector shall appoint some other time, give like notice, and proceed to sell such property in the manner prescribed in the first instance; and in case said property levied upon or seized for taxes can not be sold on the day advertised, such sale may be postponed from day to day until completed, of which postponement the assessor and collector shall give verbal notice at the expiration of sale each day.

Sale may take place at another time than that first advertised, when, and may be continued from day to day.  
*Ib.* §101.

ART. 449. If at any sale of real or personal property or estate for taxes no bid shall be made for any parcel of land or any goods and chattels, the same shall be struck off to the city, and thereupon the city shall receive, in the corporate name, a deed for said property, and shall be vested with the same right as other purchasers at such sale, and shall have power to sell and convey the same.

Property shall be struck off to city, when.  
*Ib.* §102.

Property of infant, etc., may be redeemed when. *Ib.* §103.

Sale of real estate for taxes. *Ib.* §104.

ART. 450. If the real estate of an infant, *femme covert* or lunatic be sold under this title, the same may be redeemed at any time within one year after such disability be removed.

ART. 451. The foregoing provisions of this chapter relating to notices, assessments and collection of taxes on personal property, and all other provisions thereof not inconsistent with this article, shall also apply to real estate, but no sale of real estate shall take place unless by decree of the district court of the county in which said city is situated, at some regular term thereof; and the city counsel may by ordinance enact the mode and manner in which said suits for collection of taxes due and unpaid on land shall be instituted, and may have such other and further forms regulating the forms necessary for the sale of the land as it thinks best, and are not inconsistent with the laws and constitution of this state; *provided*, that no sale shall be made until the owner has thirty days' notice thereof; which notice may be given actually by an officer of the city, or by advertisement for sixty days, which advertisement may merely so describe the property as to designate it, and it shall not be necessary to set out the owner's name unless the same is known; *and, further provided*, that such owner, his agent or attorney, may redeem said property within two years from the day of sale, by paying the purchaser the full amount of his bid and costs of suit, with interest thereon, at the rate of twelve per cent. per annum from day of sale; *and further provided*, the purchaser may apply to the district court at any time after said expiration of two years for confirmation of sale, and which said decree of confirmation shall vest full and absolute title in the purchaser of said property, his heirs or assigns; and said district court shall take and exercise all jurisdiction required to carry this into effect, and such ordinances as may be passed by the city council relative to the subject matter.

Taxes, etc., collectible in current money only. (Const., art. 11, §4.) *Ib.* §105.

ART. 452. Taxes levied to defray the current expenses of the city government, and all license and occupation taxes levied, and all fines, forfeitures, penalties and other dues accruing to cities, shall be collectible only in current money.

## CHAPTER SEVEN.

### FIRE DEPARTMENT.

	Article		Article
City council may regulate and control the erection of wooden buildings.....	453	May control, etc., the storing of gunpowder, etc.....	459
May prohibit, etc., dangerous condition of chimneys, etc.....	454	May regulate, etc., the building of parapets and party-walls.....	460
May prevent the deposit of ashes in improper places.....	455	May compel owners of buildings to have scuttles, etc.....	461
May require inhabitants to keep fire buckets, etc.....	456	May provide regulations for extinguishment of fires.....	462
May regulate carrying on of business dangerous in promoting fires.....	457	Same subject.....	463
May regulate, etc., use of fire-works and fire-arms.....	458	May procure fire engines, etc.....	464
		Buildings may be blown up, etc., when, and the damage in such case.....	465

City council may regulate and control the erection, etc., of wooden buildings.

ARTICLE 453. The city council, for the purpose of guarding against the calamities of fire, may prohibit the erection, building, placing, moving or repairing of wooden buildings within such limits within said city as they may designate and prescribe; and may within said limits prohibit the moving or putting up of any wooden building from without said limits, and may also prohibit the removal of any wooden building from one place to another within said limits, and may direct, require and prescribe that all buildings within the limits so designated and prescribed as aforesaid shall be made or constructed of fire-proof materials, and to prohibit the rebuilding or repairing of wooden buildings within the fire limits when the same shall have been damaged to the extent of fifty per

cent. of the value thereof, and may prescribe the manner of ascertaining such damage; may declare all the dilapidated buildings to be nuisances and direct the same to be repaired, removed or abated in such manner as they shall prescribe and direct; to declare all wooden buildings in the fire limits which they deem dangerous to contiguous buildings, or in causing or promoting fires, to be nuisances, and require and cause the same to be removed in such manner as they shall prescribe.

ART. 454. The city council shall have power to prevent and prohibit the dangerous condition of chimneys, flues, fire-places, stove-pipes, ovens, or any other apparatus used in or about any building or manufactory, and to cause the same to be removed or placed in a secure and safe condition when considered dangerous.

May prohibit, etc., dangerous condition of chimneys, etc.  
*Ib.* §106.

ART. 455. To prevent the deposit of ashes in places where they would be liable to produce fire, or in any wooden box or barrel, or within any wooden building, and to appoint one or more officers to enter into all buildings and inclosures to examine and discover whether the same are in a dangerous state, and to cause such as may be dangerous to be put in a safe condition.

May prevent deposit of ashes in improper places, etc.  
*Ib.* §107.

ART. 456. To require the inhabitants to keep and provide as many fire-buckets and ladders or other means to reach the roof as they shall prescribe, and to regulate the use thereof in times of fire.

May require inhabitants to keep fire buckets, etc.  
*Ib.* §108.

ART. 457. To regulate or prevent the carrying on of manufactories and works dangerous in promoting or causing fires; to prohibit or regulate the building and erection of cotton presses and sheds.

May regulate carrying on of business dangerous in promoting fires.  
*Ib.* §109.

ART. 458. To regulate or prevent and prohibit the use of fire-works and fire-arms.

May regulate, etc., use of fire-works and fire-arms.  
*Ib.* §110.

ART. 459. To direct, control or prohibit the keeping and management of houses or any buildings for the storing of gunpowder and other combustible, explosive or dangerous materials within the city; to regulate the keeping and conveying of the same.

May control, etc., the storing of gunpowder, etc.  
*Ib.* 111.

ART. 460. To regulate and prescribe the manner and to order the building of parapet and party-walls.

May regulate, etc., the building of parapet and party walls  
*Ib.* §112.

ART. 461. To compel the owners or occupants of houses or other buildings to have scuttles in the roofs and stairs or ladders leading to the same.

May compel owners of buildings to have scuttles, etc.  
*Ib.* §113.

ART. 462. To authorize the mayor, officers of fire companies or any officer of said city to keep away from the vicinity of any fire all idle, disorderly and suspicious persons, and arrest and imprison the same, and compel all officers of the city and all other persons to aid in the extinguishment of fires and in the preservation of property exposed to danger thereat, and in preventing goods from being stolen.

May provide regulations for extinguishment of fires.  
*Ib.* §114.

ART. 463. And generally to establish such regulations for the prevention and extinguishment of fires as the city council may deem expedient.

Same subject.  
*Ib.* §115.

ART. 464. The city council may procure fire engines and other apparatus for the extinguishment of fires, and have control thereof, and provide engine-houses for keeping and preserving the same; and shall have power to organize fire, hook and ladder, hose and axe companies and fire brigade; and the companies so organized, with such assistant engineers as may be provided for, and the chief engineer, shall constitute the fire department of the city. Each company shall have the right to elect its own members and officers. The engineers shall be chosen in such manner as said department may determine, subject to the approval of the city council, who shall define the duties of said officers and pass

May procure fire engines, etc.  
*Ib.* §116.

such ordinances as they may deem proper for the interest and welfare of said department and to contribute to the efficiency thereof; all officers so elected and approved shall be commissioned by the mayor, and the said companies, officers and members shall observe and be governed by the ordinances of said city relating to the fire department; said companies shall have power to adopt their own constitution and by-laws, not inconsistent with the provisions of this title and the ordinances of said city; and said department shall take the care and management of the engines and other implements and apparatus provided and used for the extinguishment of fires, and their powers and duties shall be prescribed and defined by the city council.

Building may be torn down or blown up, etc., when, and the damages in such case.

*Ib.* §117.

ART. 465. When any building in the city is on fire it shall be lawful for the chief or acting chief engineer, with the concurrence of the mayor, to direct such building, or any other buildings which they may deem hazardous and likely to take fire and communicate to other buildings, to be torn down or blown up or destroyed, and no action shall be maintained against any person or against the city therefor; but any person interested in any such building so destroyed or injured may within six months, and not thereafter, apply in writing to the city council to assess and pay the damage he has sustained, and if the city council and the claimant can not agree on the terms of adjustment, then the application of such claimant shall be referred to three commissioners, one to be appointed by the claimant, one by the city council, and the third by both. They shall be sworn faithfully to execute their duty according to the best of their ability, shall have power to subpoena and swear witnesses, and shall give all parties a fair and impartial hearing, and give notice of time and place of meeting; said commissioners shall be qualified voters and owners of real estate in the city, shall take into account the probabilities whether the said building would have been destroyed by fire if it had not been so pulled down or destroyed, and the loss of insurance upon said property, if any, caused by pulling down, blowing up or destroying said building, and may report that no damage should equitably be allowed to such claimant.

Damages satisfied, how.

ART. 466. Whenever a report shall be made, and finally confirmed for the appraising of said damages, a compliance with the terms thereof by the city council shall be deemed a full satisfaction of said damages.

## CHAPTER EIGHT.

### SANITARY DEPARTMENT.

	Article		Article
City council may appoint health physician, etc.....	467	Any person liable to punishment, when.....	470
Power to make regulations in regard to pestilence and disease.....	468	Lun-keeper, physician, etc., shall report persons sick with small pox, etc.....	471
Owner, etc., of public conveyance, conveying into city person sick with contagious disease, liable to punishment, when.....	469	Power of council to have city cleansed, etc.....	472
		Health physician may be authorized to do what.....	476

City council may appoint health physician, etc.

*Ib.* §119.

ARTICLE 467. The city council may appoint a health physician, and as many health inspectors as they may deem necessary, and shall prescribe, by ordinance, the powers and duties and compensation of the same.

Power to make regulations in regard to pestilence and disease.

*Ib.* §120.

ART. 468. The city council shall have power to take such measures as they may deem effectual to prevent the entrance of any pestilence, contagious or infectious diseases into the city; to stop, detain and examine, for that purpose, any person coming from any place infected or believed to be infected with that disease; to establish, maintain and regulate pest-houses or hospitals at some place within the city, or not exceeding five miles beyond its bounds; to cause any person who shall be suspected of

being infected with any such disease to be sent to such pest-house or hospital; to remove from the city or destroy any furniture, wearing apparel, or property of any kind which shall be suspected of being tainted or infected with pestilence, or which shall be likely to pass into such a state as to generate or propagate diseases; to abate all nuisances of every description which are or may become injurious to the public health, in any manner that they may deem expedient; and from time to time, do all acts, make all regulations and pass all ordinances which they shall deem expedient for the preservation of health and the suppression of disease in the city.

ART. 469. The owner, driver, conductor or person in charge of any stage, railroad car or public conveyance, which shall enter the city, having on board any person sick of a malignant fever, or pestilential, contagious or infectious disease, unless such person became sick on the way and could not be left, shall be deemed guilty of a misdemeanor, punishable with fine and imprisonment, and such owner, driver, conductor or person in charge, shall, within three hours after the arrival of such sick person, report in writing the facts, and the name of such person and the house where he was put down in the city, to the health physician; and every neglect to comply with these provisions shall be a misdemeanor, punishable by fine and imprisonment, or either.

Owner, etc., of public conveyance conveying into city person sick with contagious disease, liable to punishment, when.  
Ib. §131.

ART. 470. Any person who shall bring, or cause to be brought into the city, any person or property of any kind, tainted or infected with malignant fever, or pestilential or infectious disease, shall be guilty of a misdemeanor, and punishable by fine and imprisonment, or either.

Any person liable to punishment, when.  
Ib. §132.

ART. 471. Every keeper of an inn, hotel, tavern, boarding or lodging-house in the city, in which any inmate thereof shall be sick with small-pox, varioloid, yellow fever, or other infectious or pestilential disease, shall, upon such fact coming to his knowledge, forthwith report the same to the health officer. Every physician in the city shall report under his hand, to the officer above named, the name, residence and disease of every patient whom he shall have sick of any infectious or pestilential disease, within six hours after he shall have visited such patient. A violation of either of the provisions of this section, or any part of either of them, shall be a misdemeanor, punishable by fine and imprisonment, or either.

Inn-keeper physician, etc., shall report persons sick with small-pox, etc.  
Ib. §133.

ART. 472. The city council shall have power to require the filling up, draining and regulating of any lot or lots, grounds or yards, or any other places in the city, which shall be unwholesome, or have stagnant water therein, or from any other cause, be in such condition as to be liable to produce disease; also, to cause all premises to be inspected, and to impose fines on the owners of houses under which such stagnant water may be found, and to pass such ordinances as they may deem necessary for the purpose aforesaid, and for the making, filling up, altering or repairing of all sinks and privies, and directing the mode and material for constructing them in future, and for cleansing and disinfecting the same; and for cleansing of any house building, establishment, lot, yard or ground, from filth, carrion or impure or unwholesome matter of any kind, and to punish any owner or occupant violating the provisions of any ordinance so passed, as aforesaid; and the city council shall, also, in addition to the foregoing remedy, have the power to cause any of the improvements above mentioned to be done at the expense of the city, on account of the owners, and cause expenses to be assessed on the real estate, or lot or lots, benefited thereby; and on filing with the county clerk of the county in which the city is situated a statement, by the mayor, of such expenses, shall have a first and privileged lien on such property, to secure such expenditure, and twelve per cent. interest thereon. For any such expenditures and interest, as aforesaid, suit may be instituted and recovery had in the name of the corporation, in any court having jurisdiction, and the statement so

Power of city council to have city cleansed, etc.  
Ib. §134.

made, as aforesaid, or a certified copy thereof, shall be full proof and satisfactory evidence of the amount expended in any such improvement.

Health physi-  
cian may be  
authorized to  
do what.  
*Ib.* §125.

ART. 473. The health physician may be authorized by the city council when the public interest requires, to exercise for the time being such of the powers and perform such of the duties of the chief of police as the city council may in their discretion direct, and authorized to enter all houses and other places, private or public, at all times, in the discharge of his duties, under this title, having first asked permission of the owners or occupants; the city council shall have power to punish, by fine and imprisonment, or either, any neglect or refusal to observe the orders and regulations of the health physician.

## CHAPTER NINE.

### STREETS AND ALLEYS.

	Article	Article
Power of city council to have streets, etc., graded, etc.	474	Suit against owner of property for improvement tax, when, etc.
Estimate of cost of improvements shall be made, etc.	475	Private property may be taken for street, alley, etc., when, and the proceedings in such case.
Property levied on and sold for improvements, when and how, etc.	476	477 478

Power of city  
council to have  
streets, etc.,  
graded, etc.  
*Ib.* §126.

ARTICLE 474. The city council shall be invested with full power and authority to grade, gravel, repair, pave or otherwise improve any avenue, street or alley, or any portion thereof, within the limits of said city, whenever, by a vote of two-thirds of the aldermen present, they may deem such improvement for the public interest; *provided*, the city council pay one-third and the owner of the property two-thirds thereof, except at the intersection of streets, from lot to lot across the streets either way, shall be paid for by the city alone; and said cost shall be assessed on the property fronting on said street so improved, to be collected in equal annual payments, not less than five in number, and all moneys collected from these assessments shall be appropriated exclusively to the payment of the bonds issued for the payment of the cost of said improvement.

Estimate of  
cost of im-  
provements  
shall be made,  
etc.  
*Ib.* §127.

ART. 475. Whenever the city council shall determine to make any such improvement, they shall cause an estimate to be made of the probable cost thereof by the city engineer, or by some other officer of the city, or by a committee of three aldermen; and such engineer, or other officer or committee shall also report a full list of all lots or fractional lots, giving number and size of the same, and the number of the block in which situated, and the names of the owners thereof, if known, and such other information as may be required by the city council, and if there be any lot or fractional lot the owner of which is not known, the same shall be entered on said list as unknown; it shall be the duty of the officer or committee aforesaid to enter on said list, opposite each lot or fractional lot lying and being on each side of the street, avenue or alley so to be improved as aforesaid, one-third of the estimated expense for such work or improvement on such avenue, street or alley, fronting, adjoining or opposite such lot or fractional lot; and on the acceptance and approval of said report and list by the city council, said amount shall be imposed, levied and assessed as taxes, and shall be a lien upon the property until the payment of the same.

Property lev-  
ied on and  
sold for taxes  
for improve-  
ments, when  
and how, etc.  
*Ib.* §128.

ART. 476. After such action on the part of the city council as above provided for, such officer or committee shall give such notice as may be required by ordinance, of said tax being due and within what time payable, and shall commence forthwith to collect the same. And after the expiration of the period for payment of said tax, said officer or committee

shall levy on so much of any property on said list on which said tax has not been paid as will be sufficient to pay the same, and the same notice of sale as is required in sales for other tax shall be given; and if said tax be not paid before the day of sale, said officer or committee shall sell said property in the name and under the circumstances, and to the extent and subject to the same conditions which are or may be provided by ordinance for the sale of real estate in the city, charged with the payment of taxes imposed by the said corporation; and said officer or committee shall execute a deed to the purchaser at any such sale, and all the provisions of this title in reference to a deed drawn by the assessor and collector shall apply to the deed provided for in this article.

ART. 477. In addition to the power and authority granted to the city council to collect said assessment of taxes as aforesaid, they shall have the further power and additional remedy of instituting suit in the corporate name in any court having jurisdiction for the recovery against any owner of property for the amount due for any such work so made as aforesaid; and the city council shall provide, by resolution or ordinance under the provisions of this title, for carrying out and executing the powers in this chapter conferred, and may adopt such resolutions and enact such ordinances and make such regulations as they may deem necessary.

Suit against owner of property for improvement tax, when, etc. *Ib.* §130.

ART. 478. When it is necessary, such necessity to be determined by the city council to take private property for opening, widening or altering any public street, avenue or alley, the corporation shall make a just compensation therefor to the person whose property is so taken; if the amount of such compensation can not be agreed upon, the city council, upon its own motion or upon the application of the owner whose land has been or is to be taken, shall appoint three disinterested freeholders of the city, who shall appoint a time and place to hear the matter in controversy between the corporation and said owner, to whom reasonable notice shall be given of said time and place; and said freeholders shall, after being sworn faithfully to discharge their duties as appraisers, and after hearing the parties, determine the amount of compensation as aforesaid, and make return of their award to the city council at its next meeting. The rule for ascertaining the amount of such compensation shall be the intrinsic value of the land taken, without reference to the profit or advantage that he may derive from the opening, widening or altering said street, avenue or alley. The owner of the land so taken is also entitled to such damages, if any, as are occasioned to the remainder of the tract of which the land taken was a part, by reason of its appropriation for the purpose for which it was taken. In estimating these damages the benefit and advantage that the remainder of the tract will derive from the opening, widening or altering said street, avenue or alley, are legitimate subjects of consideration, and are to be estimated in determining the true amount of damages that have accrued or will accrue to the owner by the appropriation of his property for the purposes for which it is or has been taken. But this does not affect the claim for the intrinsic value of the land taken. The city council, by tendering to the owner of the land so appraised the amount of the award reported by said appraisers, may at once enter upon and appropriate said land to the purpose of opening, widening or altering said street, etc.

Private property may be taken for street, alley, etc., when, and the proceedings in such cases. *Ib.* §130.



## CHAPTER TEN.

## MISCELLANEOUS PROVISIONS.

Article	Article		
City council may cause dangerous building, etc., to be removed.....	479	Power of city council to remove officers....	493
Writs of mayor, etc., may be executed anywhere in the county.....	490	Outgoing officer shall deliver books, etc., to his successor.....	494
Proceedings when a peace bond, etc., given before mayor, etc., has been forfeited....	481	Member of city council ineligible to other office, and shall not be contractor, surety, etc.....	495
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Occupation license may be suspended or revoked, when.....	483	Power of city council to prescribe duties of officers, remit fines, etc.....	497
Official paper and contract for publishing, etc.....	484	Salaries of officers shall be fixed by city council, etc.....	498
Statement of receipts and expenditures, etc., shall be published annually.....	485	City exempt from giving bond in suits.....	499
Ordinances shall be published, etc.....	486	Cemetery lots exempt from forced sale....	500
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Style of ordinances.....	488	Property, officers, etc., not affected by this title.....	502
Ordinances, etc., remain in force, until, etc.....	489	Adjoining inhabitants may become part of city, how.....	503
Fines, etc., to be paid into city treasury....	490	Rate of interest on city indebtedness.....	504
None but resident voters eligible to office....	491	Incorporated cities may establish libraries..	505
Resignation of officers.....	492		

City council may cause dangerous buildings, etc., to be removed.  
*Ib.* §131.

ARTICLE 479. Whenever, in the opinion of the city council, any building, fence, shed, awning or any erection of any kind or any part thereof, is liable to fall down and endanger persons or property, they may order any owner or agent of the same, or any owner or occupant of the premises on which such building, shed, awning or other erection stands or to which it is attached, to take down and remove the same, or any part thereof, within such time as they may direct; and to punish by fine and imprisonment, or either, any neglect, failure or refusal to comply therewith. The city council shall, in addition, have the power to remove the same at the expense of the city on account of the owner of the property or premises, and assess the expenses on the land on which it stood or to which it was attached; and shall, by ordinance, provide for such assessment, the mode and manner of giving notice and the means of recovering any such expenses.

Writs of mayor, etc., may be executed anywhere in the county.  
*Ib.* §132.

ART. 480. Writs issued by the mayor or recorder of said city for offenses against the laws may be executed, and the accused person or persons arrested by the marshal or his deputies anywhere within the county in which such city is situated.

Proceedings when a peace bond, etc., given before mayor, etc., has been forfeited.  
*Ib.* §133.

ART. 481. Whenever any person has been required by the mayor or recorder to give a peace bond, or a bond for good behavior, or any similar bond under this title, and has complied with such orders, and been guilty of a violation or infraction of such bond, and the same is proved or established to the satisfaction of that officer in any trial or complaint, such party so offending may be fined in the sum of two hundred dollars and imprisoned for two months; and the city in its corporate name may sue in any court having jurisdiction for the recovery of the penalty of such bond.

Wards of city to remain unchanged until, etc.  
*Ib.* §134.

ART. 482. The wards of each city accepting the provisions of this title shall be and remain unchanged by its acceptance; *provided*, that the city council shall have power from time to time to cause a division of said city to be made into as many wards as they may deem necessary, and for the good of the inhabitants of said city, and may change the boundaries of the same; but no such division or change shall be made unless it be done at least three months preceding the city election next ensuing, and said wards so established shall contain as far as practicable an equal number of voters.

Occupation license be suspended or revoked, etc., when.  
*Ib.* §135.

ART. 483. In all cases where, by any provision of this title or by ordinance passed in pursuance thereof, a person is required to obtain a license for any calling, occupation, business, or avocation, and has, on complaint before the mayor or recorder, been adjudged guilty of violating any rule, regulation, or ordinance of the city council in relation thereto, the mayor or recorder, in addition to fine and imprisonment, or either, may suspend or revoke the license so granted.

ART. 484. The city council shall, as soon as may be after the commencement of each municipal year, contract as they may, by ordinance or resolution, determine, with a public newspaper of the city as the official paper thereof, and to continue as such until another is elected, and shall cause to be published therein all ordinances, notices, and other matters required by this title or by the ordinance of the city to be published.

Official paper, and contract for publishing, etc.  
Ib. §136.

ART. 485. The city council shall, at least ten days before the expiration of each municipal year, cause to be published in a city newspaper a correct and full statement of the receipts and expenditures from the date of the last annual report, together with the sources from which the funds were derived, and showing for what purpose disbursed, the condition of the treasury, together with such information as may be necessary to a full understanding of the financial condition of the city.

Statement of receipts and expenditures, etc., shall be published annually.  
Ib. §137.

ART. 486. Every ordinance imposing any penalty, fine, imprisonment, or forfeiture for violation of its provisions, shall, after the passage thereof, be published in every issue of the official paper for ten days, and proof of such publication by the printer or publisher of such newspaper, taken before any officer authorized to administer oaths, and filed with the secretary, or any other competent proof of such publication, shall be conclusive evidence of the legal publication and promulgation of such ordinances in all courts; ordinances passed by the city council and requiring publication shall be in force from and after the publication thereof, unless it be therein otherwise expressly provided; ordinances not requiring publication shall take effect and be in force from and after their passage, unless it shall be therein otherwise expressly provided.

Ordinances shall be published, etc.  
Ib. §138.

ART. 487. All ordinances of the city, where printed and published by authority of the city council, shall be admitted and received in all courts and places without further proof.

Published ordinances admissible in evidence.  
Ib. §139.

ART. 488. The style of all ordinances shall be, "Be it ordained by the city council of the city of ....."  
[inserting the name of the city]; but it may be omitted when published in the form of a book or pamphlet.

Style of ordinances.  
Ib. §140.

ART. 489. All ordinances, regulations or resolutions in force in any city accepting the provisions of this title, and not in conflict with this title, shall remain in force under this title until altered, amended or repealed by the city council, after this title shall take effect.

Ordinances, etc., remain in force until, etc.  
Ib. §141.

ART. 490. All fines, forfeitures and penalties for the breach or violation of this title, or any regulation, order or ordinance of the city council, shall, when collected, be paid into the city treasury for the use and benefit of said city.

Fines, etc., to be paid into city treasury.  
Ib. §142.

ART. 491. No person other than an elector, resident of the city, shall be appointed to any office by the city council.

None but resident voters eligible to office.  
Ib. §143.

ART. 492. Resignations by any officer authorized to be elected or appointed by this title shall be made to the city council in writing, subject to their approval and acceptance; *provided*, that nothing in this article shall apply to appointments by the mayor. Any such appointee wishing to resign shall present his resignation to that officer, in writing, for his action.

Resignation of officers.  
Ib. §144.

ART. 493. The city council shall have power to remove any officer for incompetency, corruption, misconduct or malfeasance in office, after due notice, and an opportunity to be heard in his defense. In addition to the foregoing power of removal, the city council shall have power at any time to remove any officer of the corporation elected by them, by resolution declaratory of its want of confidence in said officer; *provided*, that two-thirds of the aldermen elected vote in favor of said resolution.

Power of city council to remove officers.  
Ib. §145.

ART. 494. Whenever any person shall be removed from any office, or the term for which he was elected or appointed has expired, or he has resigned, or has ceased to act in his official capacity, he shall deliver over to his successor all books, papers and effects in any way appertaining to

Outgoing officer shall deliver books, etc., to his successor, etc.  
Ib. §146.

his office. Every person violating this provision shall be guilty of a misdemeanor, and shall be deemed an offender within the meaning of any law of the state punishing such offenses, and in addition thereto he shall, on conviction before the mayor or recorder, be fined in a sum not exceeding five hundred dollars, and imprisoned for any time not exceeding six months, or either. Any officer who shall have been intrusted with the collection or custody of funds belonging to said city, who shall be in default to said city, besides being liable to criminal prosecution and a civil action for debt, shall thereafter be incapable of holding any office under said city, until the amount of his defalcation shall have been fully paid to said city, with twelve per cent. interest.

Member of city council ineligible to other office, and shall not be contractor, surety, etc.

*Ib.* §147.

ART. 495. No member of the city council shall hold any other employment or office under the city government while he is a member of said council, unless herein otherwise provided, and no member of the city council, or any officer of the corporation, shall be directly or indirectly interested in any work, business or contract, the expense, price or consideration of which is paid from the city treasury, or by an assessment levied by an ordinance or resolution of the city council; nor be the surety of any person having a contract, work or business with said city, for the performance of which security may be required, nor be the surety on the official bond of any officer of the city.

Attendance etc., of officers.

*Ib.* §148.

ART. 496. Each alderman shall be fined three dollars for each meeting which he fails to attend, unless on account of his own sickness or that of his family. Any member of the city council remaining absent for three regular consecutive meetings of the board, unless prevented by sickness, without first having obtained leave of absence at a regular meeting, shall be deemed to have vacated his office, and the mayor shall proceed to fill the vacancy in accordance with the charter.

Power of city council to prescribe duties of officers, remit fines, etc.

*Ib.* §149.

ART. 497. The city council shall have power to prescribe the duties of all officers and persons appointed by them or elected to any office or place whatever subject to the provisions of this title, to remit in whole or in part, and on such conditions as may be deemed proper, by a vote of two-thirds of the members present, any fine or penalty belonging to the city, which may be imposed or incurred under this title, or under any ordinance or resolution passed in pursuance thereof.

Salary of officers shall be fixed by city council, etc.

*Ib.* §150.

ART. 498. The city council shall, on or before the first day of January next, preceding each and every election after the first under this title, fix the salary and fees of office of the mayor to be elected at the next regular election, and shall at the same time establish the compensation or salary to be paid to the officers elected or appointed by the city council, and the compensation or salary so established shall not be changed during the term for which said officers shall be elected or appointed.

City exempt from giving bond in suits.

*Ib.* §151.

ART. 499. It shall not be necessary in any action, suit or proceeding in which the city, accepting the provisions of this title, shall be a party, for any bond, undertaking or security to be executed in behalf of the city; but all such actions, suits and proceedings shall be conducted in the same manner as if such bond, undertaking or security had been given, and for all the purposes of such actions, suits and proceedings, the city shall be liable in the same manner, and to the same extent, as if the bond, undertaking or security in ordinary cases had been duly given and executed.

Cemetery lots exempt from forced sale.

*Ib.* §152.

ART. 500. The cemetery lots which have and may hereafter be laid out and sold for said city for private places of burial shall, with their appurtenances, be forever exempt from taxes, executions, attachments or forced sales.

Rights, actions etc., not affected by this title.

*Ib.* §153.

ART. 501. All rights, actions, fines, penalties and forfeitures in suits or otherwise, which have accrued under the laws heretofore in force, shall be vested in and prosecuted by the corporation hereby created, and no suit pending shall be affected by the passage and acceptance of this title,

but the same shall be prosecuted or defended as the case may be by the corporation hereby created.

ART. 502. All property, real, personal or mixed, belonging to any city accepting the provisions of this title, is hereby vested in the corporation created by this title, and the officers of said corporation in office at the date of its acceptance shall continue in the same until superseded in conformity with the provisions of this title, from and after it takes effect.

Property, officers, etc., not affected by this title.  
*Ib.* §154.

ART. 503. Whenever a majority of the inhabitants qualified to vote for members of the state legislature of any territory adjoining the limits of any city, accepting the provisions of this title, to the extent of one-half mile in width, shall vote in favor of becoming a part of said city, any three of them may make affidavit to the fact, to be filed before the mayor, who shall certify the same to the city council of said city. The said city council may by ordinance receive them as part of said city; from thenceforth the territory so received shall be a part of said city, and the inhabitants thereof shall be entitled to all the rights and privileges of other citizens, and bound by the acts and ordinances made in conformity thereto and passed in pursuance of this title.

Adjoining inhabitants may become part of city, how.  
*Ib.* §155.

ART. 504. No indebtedness of any character whatever hereafter incurred by said corporation shall draw a higher rate of interest than ten per cent. per annum.

Rate of interest on city indebtedness.  
*Ib.* §156.

ART. 505. The incorporated cities in this state are hereby authorized to establish free libraries in such city, to adopt rules and regulations for the proper management thereof, and to appropriate such part of their revenues for the management and increase thereof as such city may determine by the action of the municipal government of the city.

Incorporated cities may establish libraries.  
(Act Feb. 26, 1874, p. 13.)

## CHAPTER ELEVEN.

### TOWNS AND VILLAGES.

	Article		Article
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ARTICLE 506. Where a town or village may contain two hundred inhabitants and less than one thousand inhabitants, it may be incorporated as a town in the manner prescribed in this chapter.

May be incorporated, when.  
(Acts May 26, 1873, p. 98, §1; Jan. 27, 1888.)  
O. & W. p. 433.

ART. 507. If the inhabitants of such town or village desire to be so incorporated, at least twenty residents thereof, who would be qualified voters under the provisions of this chapter, shall file an application for that purpose in the office of the judge of the county court of the county in which the town or village is situated, stating the boundaries of the proposed town or village, and the name by which it is to be known if it be incorporated.

Mode of proceeding.

ART. 508. If satisfactory proof is made that the town or village contains the requisite number of inhabitants it shall be the duty of the county judge to make an order for holding an election on a day therein

County judge to order election to determine, etc.

stated, and at a place designated within the town or village, for the purpose of submitting the question to a vote of the people.

Officers appointed to hold election.

ART. 509. The county judge shall appoint an officer to preside at the election, who shall select two judges and two clerks to assist in holding it; and after a previous notice of ten days, by posting advertisements at three public places in the town or village, the election shall be held in the manner prescribed for holding elections in other cases.

Qualification of electors.

ART. 510. Every free male person who has attained the age of twenty-one years, and who has resided within the limits of the proposed town for the six months next preceding, and is a qualified elector under the laws of the state, shall be entitled to vote at the election.

Tickets, written or printed.

ART. 511. On each ticket the voter must write or cause to be written or printed, "corporation" or "no corporation."

Returns of election.

ART. 512. If a majority of the votes are cast in favor of incorporation the officers holding the election shall make return thereof to the county judge of the county within ten days after the same was held.

Duty of county judge to make an entry, etc., when.

ART. 513. The county judge shall, within twenty days after the receipt of the returns, make an entry upon the records of the commissioners' court that the inhabitants of the town are incorporated within the boundaries thereof, which shall also be designated in the entry, and a certified copy of such entry shall thereupon be recorded in the proper record of deeds of such county.

Powers of corporation.

ART. 514. When the entry mentioned in the preceding article has been made the town shall be invested with all the rights incident to such corporations under this chapter, and shall have power to sue and be sued, plead and be impleaded, and to hold and dispose of real and personal property; *provided*, such real property is situated within the limits of the corporation.

Election of mayor, etc.

ART. 515. The county judge shall immediately order an election for a mayor, a marshal and five aldermen.

Who are eligible for offices.

ART. 516. No person shall be eligible to any of said offices, nor shall any person be qualified to vote at any election to fill any of them unless he possess the requisites provided by article 510.

Commission of mayor, etc.

ART. 517. The county judge shall, immediately after the returns have been made, commission the candidate who received the highest number of votes for the office of mayor, and shall deliver certificates of election to the other officers elected.

Officers—term of office. (Act May 26, 1873, p. 99, §5.)

ART. 518. The mayor, aldermen and all other officers elected at the first election under this chapter, regardless of the time of such first election, shall hold their offices until their successors shall have been duly elected and qualified at the next succeeding annual election, according to the provisions of the succeeding article.

Annual election of officers. *Ib.* §6.

ART. 519. The annual election of officers of all towns and villages incorporated under the provisions of this chapter shall take place on such day as may be fixed by law for municipal elections throughout the towns and cities of the state. Should no such uniform day be fixed, then the elections herein provided for shall take place on the first Tuesday in April of each and every year. The mayor, or in case of his inability or refusal to act, any two aldermen shall order such annual election by notices posted for at least ten days at three public places within the corporate limits. The returns of such election shall be made to the town or village council, and certificates of election given by the mayor, or person acting as such, to the persons elected to the various offices for such corporation.

Quorum may pass by-laws.

ART. 520. The mayor shall be the president of the board of aldermen, and shall, with three of the aldermen, constitute a quorum for the transaction of business; and the quorum shall have power to enact such by-laws and ordinances not inconsistent with the laws and constitution of the state as shall be deemed proper for the government of the corporation.

ART. 521. The board of aldermen shall have and exercise control over the streets and other public places in the corporation; they shall, as far as practicable, prevent any nuisances within the limits of the corporation, and cause such as exist to be removed at the expense of the person by whom they were occasioned, or upon whose property they may be found; they may establish and regulate markets, and may do whatever else may be necessary to give effect to the provisions of this chapter.

May prevent and remove nuisances, regulate markets, etc.

ART. 522. The board of aldermen shall have power to levy taxes on persons and property, real and personal, within the corporation subject to taxation by the laws of the state; but the tax on persons or property shall not in any one year exceed the rate of one-fourth of one per cent. on the one hundred dollars.

May levy a tax annually.

ART. 523. The board of aldermen shall have power to prescribe the fine to be imposed by the mayor for the violation of any by-law or ordinance, which shall in no case exceed one hundred dollars; but no fine shall be imposed except upon the verdict of a jury, should the defendant demand a trial by jury.

Aldermen may prescribe fine, etc.

ART. 524. When a vacancy shall occur in any of the offices created by this chapter, or by the board of aldermen under its provisions, the acting aldermen shall fill such vacancy for the unexpired term.

Vacancies, how filled.

ART. 525. The board of aldermen shall have power to appoint such officers, other than those mentioned in this chapter, as shall be deemed necessary to carry out the provisions of the same, to prescribe their duties and to fix their compensation; and shall also have power to dismiss them at any time, and appoint others in their stead.

Additional officers may be appointed.

ART. 526. The board shall prescribe the bonds and security which the marshal and such other officers as may be appointed shall give; which shall be executed and approved by the mayor, before the marshal or other officer shall enter upon the discharge of his duties. Said bond shall be payable to the corporation.

Board must prescribe amount of bonds, etc.

ART. 527. If the bond required in the preceding article is not given within five days after the marshal is elected, or the officer appointed, the board shall have the power to appoint another marshal or officer in the place of the one so elected or appointed.

If bond is not given in five days after, etc.

ART. 528. The mayor of a town or village incorporated under the provisions of this chapter shall have the same jurisdiction and power, in cases both civil and criminal, that are conferred on justices of the peace, and his judgments and final orders therein may be revised in the manner prescribed for revising such judgments and orders, when made in such cases by a justice of the peace.

Jurisdiction same as justices of the peace.

ART. 529. It shall be the duty of the mayor to enforce and carry into effect such by-laws and ordinances, not inconsistent with the laws of the land, as the board of aldermen may from time to time enact for the better regulation of the police of the corporation.

Shall enforce by-laws.

ART. 530. Where the penalty for the violation of a by-law or ordinance has not been fixed by the board of aldermen, the mayor shall have power to enforce fines not to exceed twenty dollars.

May fix penalty, when.

ART. 531. In any case or proceeding before the mayor of a town or village, any party who will deposit three dollars for paying the jury, or will make an affidavit to the effect that he is too poor to make such deposit, shall have the right to have any question of fact found by a jury.

Party entitled to a jury, when

ART. 532. It shall be the duty of the mayor to cause all fines to be enforced by imprisonment not exceeding fifteen days, and by execution against the property of the persons on whom such fines shall be imposed.

Fines, how enforced.

ART. 533. The mayor shall be entitled to such fees as may be allowed to justices of the peace for similar services, and to such additional compensation as may be allowed by the by-laws and ordinances of the corporation.

Fees of mayor.

Powers, duties and fees of constable.

ART. 534. The marshal shall have the same powers within the town that constables shall have within their precincts, and shall be entitled to the same fees. He shall discharge all other duties that may be prescribed by the by-laws and ordinances, not inconsistent with the laws of the state, and shall receive therefor such fees as may be fixed by the board.

Taxes, by whom collected, etc.; sale of property for, etc.

ART. 535. The corporation tax shall be assessed and collected by the marshal, and if the same be not voluntarily paid he shall have power to make the collection in the same manner and with the like effect as is prescribed in chapter six of this title, for collection of taxes in cities, so far as applicable.

Real estate sold may be redeemed, etc.

ART. 536. Real estate sold for taxes due the corporation may be redeemed as provided in chapter six of this title.

Where purchaser is a non-resident.

ART. 537. Where the purchaser does not reside within the limits of the corporation, the estate may be redeemed by making the payment into the treasury of the corporation for the benefit of the purchaser.

Ordinances not to be enforced until.

ART. 538. No ordinance or by-law shall be enforced until it has been published at least ten days in three public places in the town or in a newspaper, if one be published in the corporation.

Where property is liable for taxes and owner is unknown.

ART. 539. When any property shall be liable to assessment for corporation taxes, and the owner is unknown, such property shall be valued by the marshal and assessed by its description, stating that the owner of the property is unknown; unless the taxes are paid the property shall be sold for the payment thereof, as nearly as may be, in the manner in which such property when duly rendered is required to be sold, and the sale shall be equally valid.

Corporation may be abolished, how.

ART. 540. When fifty of the voters of any incorporated town or village shall desire the abolishment of such corporation, they may petition the county judge to that effect, who shall thereupon order an election to be held in such town or village, as in the case of its incorporation, and if there be a majority of two-thirds of the voters of said corporation voting at such election in favor of abolishing such corporation, the county judge shall declare the corporation abolished, and enter an order to that effect upon the minutes of the commissioners' court, and from and after the date of such order the said corporation shall cease to exist.

Proceedings when corporation is abolished.

ART. 541. When any corporation is abolished, as provided in the preceding article, all the property belonging thereto shall be turned over to the county treasurer of the county, and the commissioners' court of the county shall provide for the sale and disposition of the same and for the settlement of the debts due by the corporation, and for this purpose shall have power to levy and collect a tax from the inhabitants of said town or village, in the same manner as the said corporation would be entitled to do under the provisions of this chapter.

TITLE XVIII.

Commissioner of Deeds.

	Article		Article
Appointment of commissioners, and terms of office.....	542	Force of acknowledgments thus taken.....	545
Oath of commissioner.....	543	Commissioners to take depositions.....	546
Commissioner may administer oath or affirmation—their effect.....	544	Commissioners' seal.....	547

ARTICLE 542. The governor of the State of Texas is hereby authorized to name, appoint, and commission one or more persons in each or any of the other states of the United States, or the District of Columbia, or in each or any of the territories of the United States, upon the recommendation of the executive authority of said states, District of Columbia, or territories, as he may deem expedient, which commissioners shall hold office for two years or until their successors are qualified, and shall have authority to take the acknowledgments and proofs of the execution of any deed, mortgage, or other conveyance of any lands, tenements, or hereditaments, and also to take the privy examination, acknowledgment and declaration of married women as to all such instruments when executed by them.

Commissioners appointed to take acknowledgment of written instruments. (Const., art. 16, §30.) (Act May 8, 1846, §1, p. 187.) P.D. 3762.

ART. 543. Every commissioner, appointed as aforesaid, before he shall proceed to perform any duty under and by virtue of this title, shall take and subscribe an oath or affirmation, before the clerk of any court of record in the city or county in which such commissioner may reside, well and faithfully to execute and perform all the duties of such commissioner, under and by virtue of this title, or the laws of this state; which oath or affirmation, certified to by the clerk, under his hand and seal of office, shall be filed in the office of the secretary of state of this state.

Oath of commissioner. *Ib.* §4. P.D. 3765.

ART. 544. Every commissioner appointed by virtue of this title, shall have full power and authority to administer an oath or affirmation to any person who shall be willing and desirous to make such oath or affirmation before him; and such oath or affirmation, made before such commissioner, shall be, and is hereby declared to be, as good and effectual, to all intents and purposes, as if taken by any officer in this state competent to take the same.

Commissioner may administer oaths or affirmations—their effect. *Ib.* §3. P.D. 3764.

ART. 545. Any contract, letter of attorney, or other writing, to be used or recorded in this state, and such acknowledgment or proof taken or made in the manner directed by the laws of this state, and certified by any one of said commissioners, before whom the same shall be taken or made, under his seal—which certificate shall be indorsed on or annexed to said deed or instrument aforesaid—shall have the same effect, and be as good and valid in law for all purposes, as if the same had been made or taken as now required by law.

Acknowledgments thus taken—their force. *Ib.* §2. P.D. 3763.

ART. 546. Every commissioner, appointed under this title, shall have power and authority to take depositions under a commission issued to him according to law, from any court in this state, to be used as evidence in any cause pending in a court of the same, when returned as prescribed by law.

Commissioners to take depositions. *Ib.* §5. P.D. 3766.

ART. 547. Every commissioner under this title shall provide for himself a seal with a star of five points in the center, and the words "Commissioner of the State of Texas" engraved thereon, which seal shall be used to certify all the official acts of such commissioner, and without the impress of said seal upon any instrument, or to certify any act of such commissioner, said act shall have no validity in this state.

Commissioners' seal. (Act Dec. 31, 1861, p. 21, §5.) P.D. 3771.



TITLE XIX.

Conveyances.

	Article	Article
Conveyances must be in writing, signed and delivered .....	548	Conveyance by sheriff or other officer will pass title.....
Purchaser or creditor, without notice, not to be affected .....	549	Estates <i>in futuro</i> .....
Conveyance of the greater estate passes the less .....	550	Implied covenants.....
An estate deemed a fee simple, when.....	551	"Incumbrances" embraces what.....
Form of conveyance .....	552	Conveyance of the separate lands of the wife, how made .....
Recitals in deeds by tax collectors.....	552—Note	Conveyance of homestead, how made.....
Other forms and clauses valid .....	553	Failing as a conveyance shall be valid as a contract.....
Must be witnessed or acknowledged.....	554	

Conveyances must be in writing, signed and delivered. (Act Feb. 5, 1830.)  
P.D. 997, 3875.

ARTICLE 548. No estate of inheritance or freehold, or for a term of more than one year, in lands and tenements, shall be conveyed from one to another, unless the conveyance be declared by an instrument in writing, subscribed and delivered by the party disposing of the same, or by his agent thereunto authorized by writing.

Purchaser or creditor, without notice, not to be affected.  
*Ib.*  
P.D. 997.

ART. 549. A conveyance, such as is described in the preceding article, shall not be good and effectual against a purchaser in good faith, without notice thereof and for a valuable consideration, nor against any creditor, unless such conveyance be acknowledged by the party who shall have signed and delivered it, or proved, in the manner required by law, and before some officer authorized by law to take such acknowledgment or proof, and be filed for record with the clerk of the county in which the land, or a part thereof, is situated.

Conveyance of the greater estate passes the less.  
*Ib.*  
P.D. 998.

ART. 550. All alienations of real estate, made by any person purporting to pass or assure a greater right or estate than such person may lawfully pass or assure, shall operate as alienations of so much of the right and estate in such lands, tenements, or hereditaments, as such person might lawfully convey; but shall not pass or bar the residue of said right or estate purporting to be conveyed or assured; nor shall the alienation of any particular estate on which any remainder may depend, whether such alienation be by deed or will, nor shall the union of such particular estate with the inheritance by purchase or by descent, so operate as to defeat, impair, or in any wise to affect such remainder.

An estate deemed a fee simple, when.  
*Ib.*  
P.D. 999.

ART. 551. Every estate in lands which shall hereafter be granted, conveyed, or devised to one, although other words heretofore necessary at common law to transfer an estate in fee simple be not added, shall be deemed a fee simple, if a less estate be not limited by express words or do not appear to have been granted, conveyed, or devised by construction or operation of law.

Form of conveyance.  
*Ib.*  
P.D. 1000.

ART. 552. The following form, or the same in substance, shall be sufficient as a conveyance of the fee simple of any real estate with a covenant of general warranty, viz:

"THE STATE OF TEXAS, }  
"County of ..... }

"Know all men by these presents, That I, ....., of the..... [give name of city, town, or county], in the state aforesaid, for and in consideration of ..... dollars, to me in hand paid by ....., have granted, sold and conveyed, and by these presents do grant, sell and convey unto the said..... of the [give name of city, town or county] in the state of

.....all that certain [*describe the premises*]. To have and to hold the above described premises, together with all and singular the rights and appurtenances thereto in any wise belonging, unto the said.....his heirs or assigns forever. And I do hereby bind myself, my heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said.....his heirs and assigns, against every person whomsoever, lawfully claiming or to claim the same, or any part thereof.

“Witness my hand, this.....day of....., A. D. 18.....

“Signed and delivered in }  
 “presence of.....”

NOTE.—Section 6, chapter 70, requires that deeds by tax collectors for land sold for taxes shall specify—

Recitals in deeds by tax collectors.

1. The cause and date of sale;
2. The number of acres sold, if the same can be ascertained;
3. The name of the person, firm, corporation or company in whose name the land was assessed;
4. All such descriptive information as may be necessary to identify the property conveyed.—L.

ART. 553. No person shall be obliged to insert the covenant of warranty, or be restrained from inserting any clause or clauses in conveyances hereafter to be made that may be deemed proper and advisable by the purchaser and seller; and other forms not contravening the laws of the land shall not be invalidated.

Other forms and clauses valid.  
*Ib.*  
 P.D. 1000.

ART. 554. Every deed or conveyance of real estate must be signed or acknowledged by the grantor in the presence of at least two credible subscribing witnesses thereto; or must be duly acknowledged before some officer authorized to take acknowledgments, and properly certified to by him for registration.

Must be witnessed or acknowledged.

ART. 555. Every conveyance of real estate by a commissioner, sheriff or other officer legally authorized to sell, under or by virtue of a decree or judgment of any court within this state, shall be good and effectual to pass the absolute title to such real estate to the purchaser thereof; but nothing herein shall be construed to affect the right, title or interest of any person or persons other than the parties to such conveyance, decree or judgment, and those claiming under them.

Conveyance by sheriff or other officer will pass title, when.  
*Ib.*  
 P.D. 1001.

ART. 556. An estate of freehold or inheritance may be made, to commence, *in futuro*, by deed or conveyance, in like manner as by will.

Estates *in futuro*.  
*Ib.*  
 P.D. 1002.

ART. 557. From the use of the word “grant” or “convey,” in any conveyance by which an estate of inheritance or fee simple is to be passed, the following covenants, and none other, on the part of the grantor for himself and his heirs to the grantee, his heirs and assigns, are implied, unless restrained by express terms contained in such conveyance:

Implied covenants.

1. That previous to the time of the execution of such conveyance the grantor has not conveyed the same estate, or any right, title or interest therein, to any person other than the grantee.

2. That such estate is at the time of the execution of such conveyance free from incumbrances.

Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance.

ART. 558. The term “incumbrances” includes taxes, assessments and all liens upon real property.

Incumbrances include what.

ART. 559. The husband and wife shall join in the conveyance of real estate, the separate property of the wife; and no such conveyance shall take effect until the same shall have been acknowledged by her privily and apart from her husband, before some officer authorized by law to take acknowledgments to deeds for the purpose of being recorded and certified to, in the mode pointed out in chapter two, title lxxxvi.

Conveyance of separate lands of the wife, how made.

Conveyance of  
homestead,  
how made.

ART. 560. The homestead of a family shall not be sold and conveyed by the owner, if a married man, without the consent of the wife. Such consent shall be evidenced by the wife joining in the conveyance, and signing her name thereto; and also by her separate acknowledgment thereof taken and certified to before the proper officer and in the mode pointed out in chapter two, title lxxxvi.

Failing as a  
conveyance,  
shall be valid  
as a contract.

ART. 561. When an instrument in writing, which was intended as a conveyance of real estate, or some interest therein, shall fail either in whole or in part, to take effect as a conveyance by virtue of the provisions of this chapter, the same shall nevertheless be valid and effectual as a contract upon which a conveyance may be enforced, as far as the rules of law will permit.

## TITLE XX.

### Corporations—Private.

[See constitution, article 12.]

#### CHAPTER ONE.

##### PRELIMINARY PROVISION.

Corporations classified.....	Article 562	Private corporations .....	Article 564	Corporations classified. (Act April 23, 1874, p. 120.) P.D. 5932.
Public corporations.....	563			Public corporations. P.D. 5933.

ARTICLE 562. Corporations are either public or private.

ART. 563. A public corporation is one that has for its object the government of a portion of the state.

ART. 564. Private corporations are of three kinds: first, religious; second, corporations for charity or benevolence; and, third, corporations for profit.

#### CHAPTER TWO.

##### CREATION OF CORPORATIONS.

Private corporations may be created.....	Article 565	Corporation shall exist from time of filing charter, etc.....	Article 570	Private corporations may be created. (Act April 23, 1874.) P.D. 5935.
For what purposes .....	566	Charter may be amended, how .....	571	
Charter and what it must set forth.....	567	When amendment shall take effect.....	572	
Charter must be subscribed and acknowledged.....	568	Shall not conflict with constitution or laws.....	573	
Must be filed with secretary of state.....	569	Legislature may alter, reform or amend.....	574	
		Fee for charter.....	574—Note	

ARTICLE 565. Private corporations may be created by the voluntary association of three or more persons for the purposes and in the manner hereinafter mentioned.

ART. 566. The purposes for which private corporations may be formed are—

1. The support of public worship.
2. The support of any benevolent, charitable, educational or missionary undertaking.
3. The support of any literary or scientific undertaking, the maintenance of a library, or the promotion of painting, music or other fine arts.
4. The encouragement of agriculture and horticulture.
5. The maintenance of public parks and of facilities for skating and other innocent sports.
6. The maintenance of a public or private cemetery.
7. The purchase, location and subdivision of lands and the sale and conveyance of the same in lots and subdivisions or otherwise.
8. The construction and maintenance of any species of road, except a railroad, and of bridges in connection therewith.
9. The construction and maintenance of a bridge.
10. The construction and maintenance of a telegraph line.
11. The establishment and maintenance of a ferry.

12. The establishment and maintenance of a line of stages.
13. The building and navigation of steamboats and carriage of persons and property thereon.
14. The supply of water to the public.
15. The manufacture and supply of gas, or the supply of light or heat to the public by any other means.
16. The transaction of any manufacturing, mining, mechanical or chemical business.
17. The transaction of a printing and publishing business.
18. The establishment and maintenance of a hotel.
19. The erection of buildings and the accumulation and loan of funds for the purchase of real property.
20. The improvement of the breed of domestic animals by importation, sale or otherwise.
21. The transportation of goods, wares and merchandise or any valuable thing.
22. The promotion of immigration.
23. The construction and maintenance of sewers.
24. The construction and maintenance of a street railway.
25. The erection and maintenance of market-houses and market-places.
26. The construction and maintenance of canals for the purpose of irrigation or manufacturing purposes.
27. For any other purpose intended for mutual profit or benefit not otherwise especially provided for and not inconsistent with the constitution and laws of this state.

Charter, and what it must set forth.  
P.D. 5937.

- ART. 567. A charter must be prepared setting forth—
1. The name of the corporation.
  2. The purpose for which it is formed.
  3. The place or places where its business is to be transacted.
  4. The term for which it is to exist.
  5. The number of its directors or trustees and the names and residences of those who are appointees for the first year.
  6. The amount of its capital stock, if any, and the number of shares into which it is divided.
  7. The charter of a bridge or ferry company shall also state the stream intended to be crossed by the bridge or ferry.
  8. The charter of a road company must also state—First, the kind of a road intended to be constructed; second, the places from and to which the road is intended to be run; third, the counties through which it is intended to be run; fourth, the estimated length of the road.

Charter must be subscribed and acknowledged.  
*Ib.* §8.  
P.D. 5939.

Must be filed with secretary of state, etc.  
*Ib.* §9.  
P.D. 5940.

Corporation shall exist from time of filing charter, etc.  
*Ib.* §10.  
P.D. 5941.

Charter may be amended, how. (Act April 23, 1874, p. 122.)  
*Ib.* §10.  
P.D. 6011b.

ART. 568. The charter of an intended corporation must be subscribed by three or more persons, two of whom, at least, must be citizens of this state, and must be acknowledged by them before an officer duly authorized to take acknowledgments of deeds.

ART. 569. Such charter shall thereupon be filed in the office of the secretary of state, who shall record the same at length in a book to be kept for that purpose, and retain the original on file in his office. A copy of the charter, or of the record thereof certified under the great seal of the state, shall be evidence of the creation of the corporation.

ART. 570. The existence of the corporation shall date from the filing of the charter in the office of the secretary of state, and the certificate of the secretary of state shall be evidence of such filing.

ART. 571. Any private corporation heretofore organized or incorporated, or which may hereafter be organized or incorporated, for any of the purposes mentioned in this chapter, may amend or change its charter or act of incorporation, by filing, authenticated in the manner required by this chapter as to an original charter of incorporation, such amendments

or changes with the secretary of state; and in case of a corporation created by special act of the legislature, said corporation shall cause the amendments or changes to its charter to be authenticated as required in the case of an original charter of incorporation, and filed with the secretary of state, together with the original charter of such company, and such amendments thereto, or changes therein, if any, as have been made by special act of the legislature, and the same shall be recorded by the secretary of state, followed by the proposed amendments or changes thereof.

ART. 572. The amendments or changes provided for in the preceding article shall take effect and be in force from the date of the filing thereof with the secretary of state, and the certificate of the secretary of state shall be evidence of such filing. When amendments shall take effect. *Id.*

ART. 573. No amendments or changes violative of the constitution or laws of this state, or of any of the provisions of this title, shall be of any force or effect; and no amendments or changes shall be of any force or effect which are not germane to the original purposes or charter of incorporation, and calculated to carry out and effect the same. Shall not conflict with constitution or laws. *Id.*

ART. 574. All charters, or amendments to charters, under the provisions of this chapter, shall be subject to the power of the legislature to alter, reform, or amend the same. Legislature may alter, reform or amend. *Id.*

NOTE.—Chapter 15, acts 1879, provides that the department of state shall charge and collect a fee of five dollars for each charter, or amendment, or supplement thereto of a private corporation created for religious, literary, benevolent or scientific purposes; and a fee of twenty-five dollars for each charter, or amendment, or supplement thereto of a private corporation created for any other purpose (except railway and telegraph companies, which pay a fee of one hundred dollars); fees to be paid on filing charter for record.—L. Fee for charter.

## CHAPTER THREE.

### POWERS AND DUTIES OF PRIVATE CORPORATIONS.

	Article		Article
General powers of a corporation.....	575	Directors shall cause record to be kept, etc..	586
May increase its capital stock, how.....	576	Shall report to stockholders and make	
May borrow money.....	577	dividends.....	587
May open books for subscriptions of stock..	578	Existing corporations may accept provisions	
Quorum and annual elections.....	579	of this title, etc.....	588
President and secretary to be chosen.....	580	Corporation restricted to the objects of its	
By-laws may be adopted, altered, etc.....	581	creation.....	589
May increase number directors or trustees..	582	Stock of corporation is personal estate.....	590
Failure to elect directors shall not dissolve,		Directors may require payment of stock.....	591
etc.....	583	Stock forfeited, when and how.....	592
Trustees to be elected to control religious		Corporation may sue its own members.....	593
corporation.....	584	Directors liable for debts of corporation,	
Directors shall have general management,		when and how.....	594
etc.....	585		

ARTICLE 575. Every private corporation, as such, has power— General power of a corporation. P.D. 5942.

1. To have succession by its corporate name for the period limited in its charter, not to exceed fifty years, and when no period is limited for twenty years.

2. To maintain and defend judicial proceedings.

3. To make and use a common seal.

4. To hold, purchase, sell, mortgage or otherwise convey such real and personal estate as the purposes of the corporation shall require, and also to take, hold and convey such other property, real, personal or mixed, as shall be requisite for such corporation to acquire in order to obtain or secure the payment of any indebtedness or liability due or belonging to the corporation.

5. To appoint and remove such subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable compensation.

6. To make by-laws not inconsistent with existing laws for the management of its property, the regulation of its affairs and the transfer of its stock.

7. To enter into any obligation or contract essential to the transaction of its authorized business.

8. To increase or diminish, by a vote of its stockholders cast as its by-laws may direct, the number of its directors or trustees, to be not less than three nor more than thirteen.

May increase its capital stock, how. *Ib.* §12. P.D. 5943.

ART. 576. Any corporation may increase its capital stock to any amount not exceeding double the amount of its authorized capital, by a vote of the stockholders, in conformity with the by-laws thereof; and if a majority of the stockholders shall vote for the increase of the stock, the same may be increased by the board of directors, trustees or other business managers of such corporation; and upon such increase of stock being made in accordance with the by-laws, the date and amount shall be certified to the secretary of state by the directors or trustees, and from the time such certificate is filed the increase in stock shall become a part of the capital thereof. Such certificate shall be filed and recorded in the same manner as the charter.

May borrow money. *Ib.* §13. P.D. 5944.

ART. 577. Corporations shall have power to borrow money on the credit of the corporation, not exceeding its authorized capital stock, and may execute bonds or promissory notes therefor, and may pledge the property and income of the corporation.

May open books for subscription of stock. *Ib.* §14. P.D. 5945.

ART. 578. Whenever the full amount of the capital stock of a corporation having a capital stock shall not have been already subscribed in good faith, the directors or trustees named in the charter, or a majority of them, may, within three months after the filing of the charter, cause books to be opened for receiving subscriptions to the capital stock of the corporation, at such time or times and at such place or places as they may determine, after having given at least thirty days' notice in a newspaper published or generally circulated in one or more counties where books of subscription are to be opened, of the time and place of opening books, which books may be kept open till the whole amount of capital stock is subscribed.

Quorum and annual elections. *Ib.* §15. P.D. 5946.

ART. 579. A majority of the directors or trustees shall constitute a quorum, and be competent to fill vacancies in the board, and to transact all business of the corporation. An annual election shall be held for directors or trustees at such time and place as the by-laws of the corporation may require.

President and secretary to be chosen. *Ib.* §16. P.D. 5947.

ART. 580. The directors or trustees shall choose one of their number president, and shall appoint a secretary and treasurer and such other officers as they may deem necessary for the corporation.

By-laws may be adopted, altered, etc. *Ib.* §17. P.D. 5948.

ART. 581. The directors or trustees may adopt by-laws for the government of the corporation; but such by-laws may be altered, changed or amended by a majority vote of the stockholders at any election or special meeting ordered for that purpose by the directors or trustees, on a written application of a majority of the stockholders or members.

May increase number of directors or trustees. *Ib.* §18. P.D. 5949.

ART. 582. All corporations heretofore created and now in existence under any law of this state, are hereby authorized to increase the number of directors or trustees of any such corporation.

Failure to elect directors shall not dissolve, etc. *Ib.* §19. P.D. 5950.

ART. 583. In case it should happen that an election for directors or trustees should not be held on the day appointed by the by-laws of any corporation, such corporation shall not for that reason be deemed to be dissolved, but it shall be lawful on any other day to hold a meeting and elect its directors or trustees in such manner as shall be prescribed by the by-laws thereof.

ART. 584. The secular affairs of a religious corporation shall be under the control of a board of trustees to be elected by the members of such corporation, and the title to all property of any such corporation shall vest in such trustees.

Trustees to be elected to control religious corporation.  
*Ib.* §20.  
P.D. 5951.

ART. 585. The directors or trustees shall have the general management of the affairs of the corporation, and may dispose of the residue of the capital stock at any time remaining unsubscribed in such manner as the by-laws may prescribe.

Directors shall have general management, etc.  
*Ib.* §21.  
P.D. 5952.

ART. 586. They shall cause a record to be kept of all stock subscribed and transferred, and of all business transactions, and their books and records shall, at all reasonable times, be open to the inspection of any and every stockholder.

Directors shall cause record to be kept, etc.  
*Ib.* §21.

ART. 587. They shall, also, when required by one-third of the stockholders thereof, present reports in writing of the situation and amount of business of the corporation, and declare and make such dividends of the profits from the business of the corporation as they shall deem expedient, or as the by-laws may prescribe.

Shall report to stockholders and make dividends.  
*Ib.* §21.

ART. 588. Any corporation heretofore organized and now in existence under any general or special law of the Republic or State of Texas may, by a vote of its board of directors, accept any or all the provisions of this title, and have and exercise all the rights, power and privileges conferred by this title, by filing a copy of their acceptance with the secretary of state; whereupon, that portion of its charter inconsistent with this title, or the portion accepted, shall cease to be applicable to such corporation; and it shall have the exclusive right to carry out the objects of said corporation, as described in its act of incorporation, or certificate, filed with the secretary of state, if acting under a general law within the limits or boundaries described in said act of incorporation, or certificate, as the case may be, without any limitation as to time, and shall possess all the privileges and franchises conferred by its act of incorporation or certificate filed with the secretary of state, not abandoned in the copy of acceptance of any or all the provisions of this title.

Existing corporations may accept provisions of this title, etc.  
*Ib.* §22.  
P.D. 5953.

ART. 589. No corporation created under the provisions of this title shall employ its stock, means, assets, or other property, directly or indirectly, for any other purpose whatever, than to accomplish the legitimate objects of its creation.

Corporation restricted to the objects of its creation.  
*Ib.* §23.  
P.D. 5954.

ART. 590. The stock of any corporation created under this title shall be deemed personal estate; and shall be transferable only on the books of the corporation in such manner as the by-laws may prescribe.

Stock of corporation is personal estate.  
*Ib.* §24.  
P.D. 5955.

ART. 591. The board of directors or trustees of any corporation may require the subscribers to the capital stock of the corporation to pay the amount by them respectively subscribed, in such manner and in such installments as may be required by the by-laws.

Directors may require payment of stock.  
*Ib.* §25.  
P.D. 5956.

ART. 592. If any stockholder shall neglect to pay any installment, as required by the board of trustees, the directors or trustees may declare his stock and all previous payments forfeited to the use of the company; but no stock shall be forfeited until the directors or trustees have caused a notice in writing to be served on him personally, or by depositing the same in the post-office, properly directed to him at the post-office nearest his usual place of residence, stating that he is required to make such payment at the time and place specified in said notice, and that if he fails to make the same his stock and all previous payments thereon will be forfeited for the use of the company; which notice may be served, as aforesaid, at least thirty days previous to the day on which such payment is required to be made.

Stock forfeited, when and how.  
*Ib.* §26.  
P.D. 5957.

ART. 593. All bodies corporate may sue for, recover and receive from their respective members, all arrears or other debts, dues or other demands, which now are, or hereafter may be owing to them, in like mode,

Corporation may sue its own members.  
*Ib.* §27.  
P.D. 5958.



manner and form, as they might sue for, recover and receive the same from any person not a member of their body.

Directors liable for debts of corporation, when, and to what extent. *Ib.* §28. P.D. 5959.

ART. 594. If the directors of any corporation shall knowingly declare and pay any dividend when the corporation is insolvent, or any dividend the payment of which would render it insolvent, they shall be jointly and severally liable for all the debts of the corporation then existing, and for all that shall be thereafter contracted, as long as they shall respectively continue in office. The amount for which they shall all be so liable shall not exceed the amount of such dividend; and if any of the directors shall be absent at the time of making the dividend, or shall object thereto at the time such dividend is declared, and shall file their objections in writing with the secretary or other officer of the corporation having charge of the books, they shall be exempted from the said liability.

## CHAPTER FOUR.

### MISCELLANEOUS PROVISIONS.

	Article	Article
When and how stockholders may be made liable on execution.....	595	Corporation may convey lands, how..... 600
Secretary shall furnish names, etc., of stockholders to plaintiffs.....	596	Records of corporation are evidence..... 601
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Misnomer shall not vitiate.....	598	Business firm shall give notice of intention to incorporate..... 603
Existence of corporation shall not be disputed collaterally.....	599	

When and how stockholders may be made liable on execution. P.D. 5960.

ARTICLE 595. If any execution shall have been issued against property or effects of a corporation, except a railway or a religious or charitable corporation, and there can not be found any property whereon to levy such execution, then the execution may be issued against any of the stockholders to an extent equal to the amount of stock unpaid; but no execution shall issue against any stockholder, except upon an order of the court in which the action, suit or other proceeding shall have been brought or instituted, made upon motion in open court, after reasonable notice in writing to the person or persons sought to be charged; and upon such motion, such court may order execution to issue accordingly; or the plaintiff in execution may proceed by action to charge the stockholders with the amount of his judgment, in accordance with the liability of the stockholders.

Secretary shall furnish names, etc., of stockholders to plaintiff. P.D. 5961.

ART. 596. The secretary or other officer having charge of the books of any corporation, on demand of the plaintiff in any execution against the corporation, his agent or attorney, shall furnish such plaintiff, his agent or attorney, with the names and places of residence of the stockholders as far as known, and the amount of stock held by each, as shown by the books of the corporation.

Principal office must be kept in state. P.D. 5962.

ART. 597. Each corporation or joint stock company, of every description, whether organized and acting under a special charter or general law of the state, shall keep its principal office within this state.

Misnomer shall not vitiate. P.D. 5965.

ART. 598. No misnomer of any corporation shall defeat or vitiate any gift, grant, conveyance, device or bequest to the same.

Existence of corporation shall not be disputed collaterally.

ART. 599. No person who assumes an obligation to an ostensible corporation as such, shall resist the enforcement of such obligation on the ground that there was in fact no such corporation, until that fact has been adjudged in a direct proceeding had for the purpose.

Corporation may convey lands, how. P.D. 5966.

ART. 600. Any corporation may convey lands by deed, sealed with the common seal of the corporation, and signed by the president or the presiding member or trustee of said corporation; and such deed, when acknowledged by such officer to be the act of the corporation, or proved in the manner prescribed for other conveyances of lands, may be recorded in like manner and with the same effect as other deeds.

ART. 601. The records of any company incorporated under the provisions of any statute of this state, or copies thereof duly authenticated by the signature of the president and secretary of such company, under the corporate seal thereof, shall be competent evidence in any action or proceeding to which such corporation may be a party.

Records of corporation are evidence.  
P.D. 5967.

ART. 602. All articles of association filed in the state department in accordance with the provisions of an act entitled "An act concerning private corporations," purporting to have been passed December 2, 1871, are hereby validated as fully as if filed under the provisions of this title.

Corporations organized under act of 1871, validated.

ART. 603. Whenever any banking, mercantile, or other business firm desire to become incorporated without a change of the firm name, such firm shall, in addition to the notice of dissolution required at common law, give notice of such intention to become incorporated, for at least four successive weeks, in some newspaper published at the seat of state government, and in the county in which such firm has its principal business office, if there be a newspaper in such county, and if not, then in some newspaper in some adjoining county, and until such notice shall have been so published for the full period above named, no change shall take place in the liability of such firm or the members thereof.

Business firm shall give notice of intention to incorporate, etc.

## CHAPTER FIVE.

### DISSOLUTION OF PRIVATE CORPORATIONS.

	Article		Article
Corporation is dissolved, how.....	604	Liability of stockholders to creditors and to each other.....	608
Dissolved by failure to begin operations in three years.....	605	Stockholders may compel contribution.....	609
Receiver or trustees to close business of, etc.	606	Only liable for unpaid stock.....	610
Trustees responsible to creditors, etc., to what extent.....	607		

ARTICLE 604. A corporation is dissolved—

1. By the expiration of the time limited in its charter.
2. By a judgment of dissolution rendered by a court of competent jurisdiction.

Corporation is dissolved, how.  
P.D. 5968.

ART. 605. Every corporation created under this title, or any general law of this state, shall commence active operations within three years after filing its charter with the secretary of state, and in default thereof said corporation shall be dissolved and its charter become void.

Dissolved by failure to begin operations in three years.  
P.D. 5969.

ART. 606. Upon the dissolution of any corporation already created by or under the laws of this state, unless a receiver is appointed by some court of competent authority, the president and directors or managers of the affairs of the corporation at the time of its dissolution, by whatever name they may be known in law, shall be trustees of the creditors and stockholders of such corporation, with full power to settle the affairs, collect the outstanding debts, and divide the moneys and other property among the stockholders, after paying the debts due and owing by such corporation at the time of its dissolution as far as such money and property will enable them; and for this purpose they may maintain or defend any judicial proceeding.

Receiver or trustees to close business of, etc.  
P.D. 5970.

ART. 607. The trustees mentioned in the preceding article shall be severally responsible to the creditors and stockholders of such corporation to the extent of its property and effects that shall have come into their hands.

Trustees responsible to creditors, etc., to what extent.  
P.D. 5971.

ART. 608. If any corporation created under this title or any general statute of this state, except railway, or charitable or religious corporations, be dissolved, leaving debts unpaid, suit may be brought against any person or persons who were stockholders at the time of such dissolution, without joining the corporation in such suit, and if judgment be rendered and execution satisfied, the defendant or defendants may sue all who were

Liability of stockholders to creditors and to each other.  
P.D. 5972.

stockholders at the time of dissolution for the recovery of the portion of such debt for which they were liable, and the execution upon the judgment shall direct the collection to be made from property of each stockholder respectively; and if any number of stockholders defendants in the case shall not have property enough to satisfy his or their portion of the execution, then the amount of deficiency shall be divided equally among all the remaining stockholders, and collections made accordingly, deducting from the amount a sum in proportion to the amount of stock owned by the plaintiff at the time the company dissolved.

Stockholder may compel contribution. P.D. 5973.

ART. 609. If any stockholder pay more than his due proportion of any debt of the corporation, he may compel contribution from the other stockholders by action.

Only liable for unpaid stock. P.D. 5974.

ART. 610. No stockholder shall be liable to pay debts of the corporation beyond the amount unpaid on his stock.

## CHAPTER SIX.

### MACADAM AND PLANK-ROAD CORPORATIONS.

	Article		Article
May enter upon land, make survey, etc. ....	611	Tolls to be regulated by commissioners' court.....	617
May condemn land, etc. ....	612	Persons exempt from tolls.....	618
If road is out of repair, charter may be forfeited.....	613	Mile-posts and rates of toll.....	619
Shall not collect tolls when road is out of repair.....	614	Any person may complain of non-repairs. Proceedings in such case.....	620
Width of road and how to be constructed ...	615	Travelers practicing fraud, may be sued, etc.	621
No toll-gates permitted in towns, etc.....	616		

May enter upon lands, make surveys, etc. P.D. 5975.

ARTICLE 611. It shall be lawful for any corporation created for the purpose of constructing a macadam or plank-road, by its agents and servants, to enter upon any lands, to make surveys, estimates and locations.

May condemn land, etc. P.D. 5976.

ART. 612. If any such corporation shall require for the construction or repair of its road, or any bridge thereof, any stone, timber, or other material, from land adjoining to or near said road, and can not contract for the same with the owner thereof, such corporation may proceed to have the value of the same assessed, and the same proceedings shall be had therefor as is provided by law to be taken by railway corporations in like cases; and all macadam or plank-road corporations shall have the right also to condemn, in like manner, and occupy any quantity of land, not exceeding one acre at any one place, for the purpose of erecting toll-houses thereon.

If road is out of repair, charter may be forfeited. P.D. 5977.

ART. 613. If any road, or any part thereof, after it shall have been completed, shall be suffered to be out of repair, so as to be impassable for the space of two months, unless when the same is being repaired, the company owning such road shall be liable to forfeit its corporate powers and privileges, and such forfeiture may be enforced by suit, as in other cases of forfeiture of charter by incorporated companies.

Shall not collect tolls when road is out of repair. P.D. 5977.

ART. 614. If such company shall suffer the road to be out of repair, to the injury, hindrance or delay of travelers, for an unreasonable time, such company shall have no right to collect tolls thereon until the same is again repaired.

Width of road and how to be constructed. P.D. 5978.

ART. 615. All macadam or plank roads shall be opened not exceeding sixty feet wide, thirty feet of which shall be cleared of brush and logs, and at least sixteen feet in width shall be made an artificial road, composed of stone, gravel, wood or other convenient material, in such manner as to secure a firm and substantial road.

No toll-gates permitted in town, etc. P.D. 5978.

ART. 616. No company or association of individuals, which has been or may hereafter be incorporated, for the purpose of making such road, shall erect or keep any toll-gate, or receive any toll within the corporate limits of any incorporated city, town or village, or within one-half mile of such limits.

ART. 617. As soon as such road shall have been completed, or any part thereof, not less than five miles together in any part of the road, unless the same is less than five miles long, and so from time to time, as often as five miles in addition shall be completed adjoining any five miles previously constructed, the commissioners' court of the county in which such finished road lies, or, in case the road lies in two or more counties, the commissioners' courts of either of said counties shall, on application of the agent of the company, appoint three judicious householders, who shall, on oath, examine the same, and report their opinion to the court in writing; and if such report shall state that the road, or such part thereof, be completed agreeably to the provisions of this chapter, the court shall by license, in writing, authorize the company to erect gates at suitable distances and demand and receive of persons traveling such road the toll that may be fixed by the commissioners' court.

Tolls to be regulated by commissioners' court.  
P.D. 5979.

ART. 618. Any person or persons going to or from public worship on the Sabbath, common schools and other institutions of learning, funerals, militia muster, the troops of the United States and of this state, may pass any such road free from toll.

Persons exempt from tolls.  
P.D. 5980.

ART. 619. All macadam or plank-road companies shall put up a post or stone at the end of each mile, with the number from beginning of said road, fairly cut or painted thereon; and also in a conspicuous place near each gate shall be placed a board with the rates of toll painted thereon, and no toll shall be demanded unless such rates are kept up.

Mile posts and rates of toll.  
P.D. 5981.

ART. 620. If any macadam or plank-road company shall fail to keep their road in repair for five days successively any person may file a complaint in writing before any justice of the peace of the county, setting forth the nature of the defect complained of, designating the place in the road where it exists; and it shall be the duty of the justice to appoint two disinterested persons as inspectors, to meet at the place complained of within five days, and of the time and place of meeting reasonable notice shall be given to the gate-keeper nearest to the place of meeting, and the inspectors shall then examine into the truth of the matter complained of, and if they shall find the complaint to be true they shall send a certified copy of the complaint and of the finding thereon to the keeper of each of the gates between which such defective place shall be, and thereafter no toll shall be received at such gates for the intermediate distance until the part of the road complained of shall be fully repaired; and the inspectors and justice of the peace shall be entitled to two dollars and a half per day for their services, and shall be paid by the company if the complaint be sustained, and if it shall fail, then by the complainant.

Any person may complain of non-repairs. Proceedings in such case.  
P.D. 5982.

ART. 621. If any person using any part of said road shall, with intent to defraud such company, falsely represent himself to any toll-gatherer as entitled to exemption from paying toll, or shall make any untrue statement as to the distance he has traveled or intends to travel on the road, or shall practice any fraudulent means, and thereby lessen or avoid the payment of tolls, each and every person concerned in any such fraudulent practices shall for every such offense forfeit and pay such company the sum of five dollars, to be recovered by such company in an action of debt before any justice of the peace of the county where the offender may be found.

Travelers practicing fraud may be sued, etc.  
P.D. 5983.

CHAPTER SEVEN.

TELEGRAPH CORPORATIONS.

	Article		Article
May set polls, etc., across public roads, etc.	622	Company may own line in or out of state, and may join with other company.	625
May enter upon lands, etc.	623	Cities, etc., may direct as to posts, etc.	626
One company can not contract to exclude another.	624	Manner of consolidating with another company.	627

May set poles, etc., across public roads. P.D. 5984.

ARTICLE 622. Corporations created for the purpose of constructing and maintaining magnetic telegraph lines are authorized to set their poles, piers, abutments, wires and other fixtures along, upon and across any of the public roads, streets and waters of this state, in such manner as not to incommode the public in the use of such road, streets and waters.

May enter up on lands, etc. P.D. 5985.

ART. 623. Such companies are also authorized to enter upon any lands, whether owned by private persons in fee or in any less estate, or by any corporation, whether acquired by purchase or by virtue of any provision in the charter of such corporation, for the purpose of making preliminary surveys and examinations with a view to the erection of any telegraph lines, and from time to time to appropriate so much of said lands as may be necessary to erect such poles, piers, abutments, wires and other necessary fixtures for a magnetic telegraph, and to make such changes of location of any part of said lines as may from time to time be deemed necessary, and shall have a right of access to construct said line, and, when erected, from time to time as may be required to repair the same, and may proceed to obtain the right of way and to condemn lands for the use of the corporation in the manner provided by law in case of railway corporations.

One company can not contract to exclude another. P.D. 5986.

ART. 624. No corporation shall have power to contract with any owner of land for the right to erect and maintain a telegraph line over his lands to the exclusion of the lines of other companies.

Company may own line in or out of state, and may join with other company. P.D. 5987.

ART. 625. Any corporation created as herein provided may contract, own, use and maintain any line or lines of telegraph, whether wholly within or wholly or partly beyond the limits of this state, and shall have power to lease or attach to the line or lines of such corporation other telegraph lines, by lease or purchase, and may join with any other corporation or association in constructing, leasing, owning, using or maintaining their line or lines, upon such terms as may be agreed upon between the directors or managers of the respective corporations, and may own and hold any interest in such line or lines, or may become lessees thereof on such terms as the respective corporations may agree.

Cities, etc., may direct as to posts, etc. P.D. 5988.

ART. 626. The corporate authorities of any city, town or village through which the line of any telegraph corporation is to pass may, by ordinance or otherwise, specify where the posts, piers or abutments shall be located, the kind of posts that shall be used, the height at which the wires shall be run, and such company shall be governed by the regulations thus prescribed; and after erection of said telegraph lines the corporate authorities of any city, town or village shall have power to direct any alteration in the erection or location of said posts, piers or abutments, and also in the height at which the wires shall run, having first given such company or its agents opportunity to be heard in regard to such alteration.

Manner of consolidating with another company. P.D. 5989.

ART. 627. Any telegraph company now organized, or which may hereafter be organized under the laws of this state, may, at any regular meeting of the stockholders thereof, by vote of persons holding a majority of shares of the stock of such company, unite or consolidate with any other company or companies now organized, or which may hereafter be organized under the laws of the United States, or of any state or territory, by the consent of the company with which it may consolidate or unite; and

such company so formed may hold, use and enjoy, all the rights and privileges conferred by the laws of Texas on companies separately organized under the provisions of this title and be subject to the same liabilities.

CHAPTER EIGHT.

CANAL CORPORATIONS.

Additional powers of.....	Article 628
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ARTICLE 628. Every canal corporation for the purpose of irrigation shall, in addition to the powers heretofore conferred, have power—

1. To cause such examination and survey for its proposed canal to be made as may be necessary to the selection of the most advantageous route, and for such purpose, by its officers, agents or servants, to enter upon the lands or waters of any person.
2. To take and hold such voluntary grant of real and other property as shall be made to it to aid in the construction and maintenance of its canal, ditches and sluices.
3. To construct its canal across, along or upon any stream of water.
4. To furnish water for irrigation at such rates as such organization or corporation may, by its by-laws and regulations, prescribe.
5. To borrow such sums of money as may be necessary for completing and finishing or operating their canal, and to issue and dispose of their bonds for any amount so borrowed, and to mortgage their corporate property and franchises to secure the payment of any debt contracted for the purposes aforesaid; *provided*, that damages for any property appropriated by such corporation shall be assessed and paid for as is provided for in case of railroads.
6. To enter upon and condemn and appropriate any lands of any person or corporation that may be necessary for the uses and purposes of said company; the damages for any property thus appropriated to be assessed and paid for in the same manner as is provided by law in the case of railroads.

CHAPTER NINE.

GAS AND WATER CORPORATIONS.

Privileges of corporations.....	Article 629	May contract with cities, etc.....	Article 630
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ARTICLE 629. Any gas or water corporation shall have full power to manufacture and sell and to furnish such quantities of water or gas as may be required by the city, town or village where located, for public or private buildings, or for other purposes, and such corporation shall have power to lay pipes, mains and conductors for conducting gas or water through the streets, alleys, lanes and squares in such city, town, or village, with the consent of the municipal authorities thereof, and under such regulations as they may prescribe.

ART. 630. The municipal authorities of any city, town or village in which any gas light or water corporation shall exist, are hereby authorized to contract with any such corporation for the lighting or supplying with water the streets, alleys, lots, squares and public places in any such city, town or village.

CHAPTER TEN.

EDUCATIONAL CORPORATIONS.

	Article		Article
Faculty of, and their powers.....	631	May convert property into stock or scholar-	634
Directors, etc., may make by-laws, etc.....	632	ships.....	634
May procure shops, etc., for manual labor		Limitation as to debts, and liability of direct-	
purposes.....	633	ors.....	635
		May change location.....	636

Faculty of, and their powers.  
P.D. 5994.

ARTICLE 631. The president, professors or principals shall constitute the faculty in academy, college or university corporations, and shall have power to enforce the rules and regulations enacted by the directors or trustees for the government and discipline of the students, and to suspend and expel offenders, as may be deemed necessary.

Directors, etc., may make by-laws, etc.  
P.D. 5995.

ART. 632. The directors or trustees named in the charter, as required by this title, of any college, academy, university or other corporation to promote education, and their successors, may make all necessary by-laws, elect and employ officers, provide for filling vacancies, appoint and remove professors, teachers, agents, etc., and fix their compensation, confer degrees, and do and perform any and all necessary acts to carry into effect the objects of the corporation.

May procure shops, etc., for manual labor purposes.  
P.D. 5996.

ART. 633. Such corporations may procure, to be used as a part of the course of education, shops, tools and machinery, land for agricultural purposes, and necessary buildings for carrying on their mechanical and agricultural operations.

May convert property into stock or scholarships.  
P.D. 5997.

ART. 634. Any such corporation may convert its property, except when held upon some special trust, into stock or scholarships, and file a certificate of their action, as required in the case of an increase of capital stock of a corporation. Such conversion can only take place by the consent of a majority of the stockholders.

Limitation as to debts and liability of directors.  
P.D. 5998.

ART. 635. The directors of any such corporation, whose property is held not as stock, but upon trust or by devise, donation, gift or subscription, shall not contract debts beyond the means of the corporation. If they do contract debts to a larger amount, they shall be held individually liable for the same, after the means of the corporation are exhausted.

May change location, etc.  
P.D. 5999.

ART. 636. Any such corporation may, by a vote of three-fourths of the directors, or if the same is owned in shares of stock, then by a vote of three-fourths of the stockholders, change the location and name of the institution, and transfer the effects thereof to where removed, or may apply the property thereof to other purposes of education than those named in the original charter filed with the secretary of state.

CHAPTER ELEVEN.

RELIGIOUS, CHARITABLE AND OTHER CORPORATIONS.

	Article		Article
Powers and privileges of.....	637	Not required to state capital stock in char-	638
		ter.....	

Powers and privileges of.  
P.D. 6000.

ARTICLE 637. Any religious society, military or fire company, literary, social, charitable or benevolent association, other than colleges, universities, academies or seminaries, or any grand or subordinate lodge, or other order of free and accepted Masons, or of the independent order of Odd Fellows, may, by the consent of a majority of its members, become bodies corporate under this title, electing directors or trustees, and performing such things as are directed in the case of other corporations; and, when so organized, shall have all the powers and privileges, and be subject to all the restrictions in this title contained, for the objects named in the charter, and shall have the same power to make by-laws for the regulation of their affairs as other corporations. Such directors or trustees shall not usurp

or exercise the functions of the officers in charge of the spiritual affairs of any society.

ART. 638. No religious, literary, social, scientific, industrial, benevolent or other society, association, company, corporation or institution, that does not have a capital stock, will be required in its charter to make any statement of the amount of capital stock or amount of each share; but such charter, if it contains the other statements therein required, and also an estimate of the value of the goods, chattels, lands, rights and credits owned by the corporation, will be sufficient.

Not required to state capital stock in charter.  
P.D. 6001.

## CHAPTER TWELVE.

### CEMETERY CORPORATIONS.

Powers of.....	Article 639	Owners of lots are members of corporation.	Article 641
May convey lots for purposes of sepulture, etc .....	640		

ARTICLE 639. Cemetery corporations shall have power to divide the land of the cemetery into lots and subdivisions for the purposes of the cemetery, and to tax the property for the purpose of its general improvement.

Powers of.  
P.D. 6002.

ART. 640. Such corporation shall have power to convey, by deed or otherwise, any lot or lots of the cemetery for purposes of sepulture. When such lots shall have been surveyed and platted, the survey and plat shall be recorded in the office of the clerk of the county court of the county wherein the same are situated, and shall not afterward be changed or altered. No lots shall be sold or disposed of until such plat shall have been recorded.

May convey lots for purposes of sepulture.  
P.D. 6003.

ART. 641. All owners of lots purchased of any such corporation shall become members thereof, and be entitled to vote in the election of its officers and upon any other matters to the same extent as stockholders in other corporations.

Owners of lots are members of corporation.  
P.D. 6004.

## CHAPTER THIRTEEN.

### BRIDGE AND FERRY CORPORATIONS.

Bridges and ferries to be six miles apart....	Article 642	Owner liable for damages.....	Article 644
Commissioners' court shall regulate tolls...	643		

ARTICLE 642. Whenever any person or persons shall file with the secretary of state any article of association for the erection and maintenance of a bridge or ferry, it shall not be lawful for any other toll-bridge or toll-ferry to be established on the same stream within the limits specified in said article; *provided*, that said limits shall not extend more than three miles above and three miles below said bridge or ferry; *and provided further*, that this article shall not be so construed as to prohibit bridges and ferries at the crossings of any road on such stream within such limits declared either before or after the erection of such bridge or ferry to be a public road by the commissioners' court of the county in which such crossing is situated.

Bridges and ferries to be six miles apart.  
(Act April 23, 1874, §79.  
P.D. 6011c.

ART. 643. All charges or tolls for crossing any bridge or ferry shall be regulated by the commissioners' court by an order made at a regular term, and spread upon the minutes of said court, as provided in the case of other bridges and ferries.

Commissioners' court shall regulate toll.  
*Ib.* §80.  
P.D. 6011d.

ART. 644. All persons or corporate companies owning any toll-bridge or ferry, shall be liable for all damages caused by neglect, delay, or the insufficiency of their bridge or ferry-boat, which damages may be recovered before any court of competent jurisdiction.

Owner liable for damages.  
*Ib.* §81.  
P.D. 6011e.



TITLE XXI.

Counter Claim.

	Article	Article
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Requisites of the plea.....	646	off against each other..... 649
Judgment in defendant's favor, when.....	647	Matters incident to plaintiff's demand may
Judgment for costs determined, how.....	648	be set off..... 650

Counter claim may be pleaded, when. (Act Feb. 5, 1840, p. 62.) P.D. 3443.

ARTICLE 645. Whenever any suit shall be brought for the recovery of any debt due by judgment, bond, bill or otherwise, the defendant shall be permitted to plead therein any counter claim which he may have against the plaintiff, subject to such limitations as may be prescribed by law.

Requisites of the plea. P.D. 3444.

ART. 646. The plea setting up such counter claim shall state distinctly the nature and the several items thereof, and shall conform to the ordinary rules of pleading.

Judgment over in defendant's favor, when. P.D. 3446.

ART. 647. On the trial of such issue, if the defendant shall establish a demand against the plaintiff exceeding that established against him by the plaintiff, the court shall render judgment for the defendant for such excess.

Judgment for costs, how determined. *Ib.* and act Jan. 2, 1860, p. 5. P.D. 3445-6.

ART. 648. Whenever a counter claim is pleaded under the provisions of this chapter, the party in whose favor final judgment is rendered shall also recover his costs, unless it should be made to appear on the trial that the counter claim of the defendant was acquired after the commencement of the suit, in which case, if the plaintiff establishes a cause of action existing at the commencement of the suit, he shall recover his costs.

Certain and uncertain damages not to be set off against each other. P.D. 3447.

ART. 649. If the plaintiff's cause of action be a claim for unliquidated or uncertain damages, founded on a tort or breach of covenant, the defendant shall not be permitted to set off any debt due him by the plaintiff; and if the suit be founded on a certain demand, the defendant shall not be permitted to set off unliquidated or uncertain damages founded on a tort or breach of covenant on the part of the plaintiff.

Matters incident to plaintiff's cause of action may be set off.

ART. 650. Nothing in the preceding article shall be so construed as to prohibit the defendant from pleading in set off any counter claim founded on a cause of action arising out of, or incident to, or connected with the plaintiff's cause of action.

TITLE XXII.

Counties and County Seats.

CHAPTER ONE.

CREATION OF COUNTIES.

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		Returns of election, how and to whom made.....	665
		Another election for the same purpose shall not be held for five years.....	666

ARTICLE 651. The legislature shall have power to create counties for the convenience of the people, subject to the following provisions of this chapter.

Legislature may create counties. (Const., art. 9, §1.)

ART. 652. In the territory of the state, exterior to the counties now existing, no new county shall be created with a less area than nine hundred square miles, in a square form, unless prevented by pre-existing boundary lines. Should the state lines render this impracticable in border counties, the area may be less.

Must have 900 square miles, unless, etc. *Ib.*

ART. 653. The territory referred to in the preceding article, may at any time, in whole or in part, be divided into counties in advance of population, and attached, for judicial and land surveying purposes, to the most convenient organized county or counties.

Exterior territory may be divided at any time. *Ib.*

ART. 654. Within the territory of any county or counties now existing, no new county shall be created with a less area than seven hundred square miles; nor shall any such county now existing be reduced to a less area than seven hundred square miles.

Counties created out of other counties must have 700 square miles. *Ib.*

ART. 655. No new counties shall be created, so as to approach nearer than twelve miles of the county seat of any county, from which it may in whole, or in part, be taken.

Line of new county shall not approach nearer than 12 miles to an established county seat. *Ib.*

ART. 656. Counties of a less area than nine hundred, but of seven hundred or more square miles, within counties now existing, may be created by a two-thirds vote of each house of the legislature, taken by yeas and nays, and entered on the journals.

Counties with less than 900 square miles may be created, how. *Ib.*

ART. 657. Any county now existing may be reduced to an area of not less than seven hundred square miles by a like two-thirds vote of each house of the legislature, taken by yeas and nays, and entered on the journals.

Existing county may be reduced to 700 square miles, now. *Ib.*

ART. 658. When any part of a county is stricken off and attached to, or created into another county, the part stricken off shall be holden for and obliged to pay its proportion of all the liabilities then existing of the county from which it was taken, in such manner as the law striking off such part of such county shall provide.

New county shall pay its part of the liabilities of the old county. *Ib.*

Part of exist-  
ing county  
shall not be de-  
tached, etc.,  
except, etc.,  
Ib.

ART. 659. No part of any existing county shall be detached from it and attached to another existing county until the proposition for such change shall have been submitted to a vote of the electors of both counties, and shall have received a majority of those voting on the question in each.

Election shall  
be ordered,  
when, etc.

ART. 660. An election for the purpose named in the preceding article shall be ordered by the county judge or county judges of the county or counties from which it is proposed to detach any portion thereof, or to attach any portion thereto, upon the application in writing of not less than fifty qualified voters of said county or counties.

Application  
shall show  
what.

ART. 661. The application provided for in the preceding article shall designate particularly, by metes and bounds, the portion of territory proposed to be detached, and shall show the number of square acres contained within said bounds, and the number of square acres remaining in the county or counties from which it is proposed to detach such part or parts, and the distance on a direct line of the county seat of any such county or counties, from the nearest boundary line of the territory which it is proposed shall be detached.

Notices of such  
election shall  
contain what.

ART. 662. The notices of such election shall contain, substantially, the boundaries and statements contained in the application, and in the order of election.

Question to be  
voted upon.

ART. 663. The question to be voted upon at such election shall be, "For or against the proposition," and the ballots shall be, "For the proposition" or "Against the proposition."

Law governing  
other elections  
shall govern  
this.

ART. 664. Such election shall be governed by the law governing other elections so far as the same may be applicable, and not in conflict with any of the provisions of this chapter.

Returns of  
elections, how  
and to whom  
made.

ART. 665. The returns of such election shall be made to the county judge or county judges of the county or counties in which the election takes place, and such county judge or county judges shall estimate the vote and make duplicate statements of the same, and shall certify to such statements officially, and one of said statements, together with a copy of the application certified to by him officially, he shall seal in an envelope, writing his name across the seal, and indorsing upon the package "Election returns of ..... county," and direct and transmit the same by mail or other safe conveyance to the speaker of the house of representatives at the seat of government, in time for the same to be received at as early a day as practicable during the next session of the legislature.

Another elec-  
tion for same  
purpose shall  
not be held for  
five years.

ART. 666. When any such election has been held in a county, and the proposition to detach a portion thereof has been defeated, no other election for the same purpose shall be ordered or held for the period of five years thereafter.

## CHAPTER TWO.

### ORGANIZATION OF COUNTIES.

Articles	Article
Old county shall organize new one.....	667
Election to be ordered, when and by whom.....	668
County commissioners may act, when.....	669
New county subject to old until organized.....	670
Disorganized county is to be attached to.....	671
County attached to another may be organ- ized, how.....	672
Certificates of election in such cases.....	673
Books, etc., shall be delivered to such officer.....	674
Elections in organized counties.....	675

Old county  
shall organize  
new one.  
(Act March 20,  
1848.)

P.D. 1063.

ARTICLE 667. Whenever any new county shall hereafter be established, it shall be the duty of the county commissioners' court of the county from which the territory of such new county, or the greater part thereof, was taken, at least one month previous to the general election of county officers next after such new county shall have been established, to lay off and divide such new county into convenient precincts for the election of justices of

the peace, county commissioners and constables, defining particularly the boundaries of such precincts; and also to designate convenient places in such new county where elections shall be held; of all which they shall cause a record to be made by the clerk, and a copy thereof shall be transmitted to the county judge of such new county when elected.

ART. 668. It shall be the duty of the county judge of every county from which any new county has been so taken, at least one month previous to the general election of county officers next after such new county has been established, to order an election to be held in such new county, on said general election day, for all county officers authorized to be elected by the people of such new county, and to appoint a presiding officer for each place designated in such new county for holding elections; such order of elections shall specify the number of precincts, their boundaries, and the officers to be elected in such county. Such presiding officers shall hold such elections in accordance with the laws regulating elections, and shall make their returns to the county judge who ordered such election, who shall open and examine such returns and give certificates to the persons elected.

Election to be ordered when and by whom.  
*Ib.*  
P.D. 1064.

ART. 669. In all cases where the office of county judge shall be vacant, any two of the county commissioners shall be authorized to perform all the duties required of the county judge by the provisions of this chapter.

County commissioners may act, when.  
*Ib.*  
P.D. 1065.

ART. 670. Until a new county is organized in accordance with law the territory thereof shall remain in all respects subject to the county from which the same has been taken.

New county subject to old until organized (9 Tex., 336; 12 Tex., 397.)

ART. 671. All legally organized counties that from any cause may have lost, or may hereafter lose their county organization, shall be, for all judicial and surveying purposes, and for the registration of deeds, mortgages and all other instruments that are now or may hereafter be required or permitted by law to be recorded, attached to the organized county whose county seat is nearest to the county seat of such disorganized county, and so remain attached until such disorganized county shall again be legally organized.

Disorganized counties to be attached to other counties, until, etc. (Act Nov. 5, 1836, p. 90.)

ART. 672. When any unorganized or disorganized county has been attached to another county for judicial or other purposes, and desires to be organized or re-organized, a petition expressing such desire, signed by not less than one hundred and fifty qualified voters residing in such unorganized or disorganized county, may be presented to the commissioners' court of the county to which such unorganized or disorganized county is attached, and thereupon it shall be the duty of said court to proceed without delay to the organization or reorganization of such county, as the case may be, in the same manner as hereinbefore provided for the organization of new counties.

County attached to another may be organized, how. (Act May 1, 1874, p. 188, §2.)

ART. 673. It shall be the duty of the county judge of the county conducting the organization of another county to issue the certificates of election to the officers elected in such organized or reorganized county, and to approve the bonds of such officers and administer to them the oath of office in accordance with law.

Certificates of election in such cases shall be issued by whom, and bonds taken, etc. *Ib.* §3.

ART. 674. It shall be the duty of all officers of the county from which any new county has been created, or to which any such newly organized or reorganized county has been attached, and the duty also of all other persons who may have in their possession any books, records, maps or other property belonging to such newly organized or reorganized county, to deliver the same to the proper officers of such newly organized or reorganized county within five days after such officers have been legally qualified as such, and any officer or person who shall willfully fail to make such delivery upon demand made therefor, shall be guilty of a misdemeanor and punished as provided in the Penal Code.

Books, etc., shall be delivered to such officers. *Ib.* §4.

Elections in unorganized counties. (Act March 26, 1848.) P.D. 3624.

ART. 675. In all cases where a county is not organized, and there is no officer in the same authorized by law to organize such county, the county judge of the nearest county which is organized may order elections for county officers in any such disorganized county, and appoint the presiding officers and managers and clerks of election, as prescribed by law in other cases.

CHAPTER THREE.

CORPORATE RIGHTS AND POWERS.

	Article		Article
County a body corporate.....	676	Commissioner to sell real estate of.....	681
Suits against.....	677	Contracts with county valid.....	682
Inhabitants of, may be jurors, etc., in such suits.....	678	Suits on notes, etc., by county.....	683
Execution shall not issue against county.....	679	Agents to contract for county may be appointed.....	684
Deeds, grants, etc., to counties valid.....	680	Costs in suit against county.....	685

County a body corporate. (Act May 11, 1846.) P.D. 1044.

ARTICLE 676. Each county which now exists, or which may be hereafter established, shall be a body corporate and politic.

Suits against. *Ib.* 1045.

ART. 677. No county shall be sued unless the claim upon which such suit is founded shall have first been presented to the county commissioners' court for allowance, and such court shall have neglected or refused to audit and allow the same or any part thereof.

Inhabitants may be jurors, etc., in such suits. *Ib.* 1049.

ART. 678. In all suits instituted by or against any county, the inhabitants of the county so suing or being sued may be jurors or witnesses, if otherwise competent and qualified according to law.

Execution shall not issue against county. *Ib.* 1050.

ART. 679. No execution shall be issued on any judgment against any county; but when a judgment shall be rendered against a county it shall be the duty of the county commissioners' court of such county to settle and pay such judgment in like manner and *pro rata* as other claims of a similar description are settled and paid by said court.

Deeds, grants, etc., to counties valid, etc. *Ib.* 1051.

ART. 680. All deeds, grants and conveyances heretofore made, or which may be hereafter made and duly acknowledged, or proven, and recorded as other deeds of conveyance to any county or to the courts or commissioners of any county, or any other person or persons, by whatever form of conveyance, for the use and benefit of any county, shall be good and valid to all intents and purposes to vest in such county in fee simple or otherwise all such right, title, interest and estate as the grantor in any such deed or conveyance had at the time of the execution thereof in the lands conveyed and was intended thereby to be conveyed.

Commissioners to sell real estate of. *Ib.* P.D. 1052.

ART. 681. The county commissioners' court may, by an order to be entered in the minutes of said court, appoint a commissioner to sell and dispose of any real estate of the county at public auction; and the deed of such commissioner, made in conformity to the order of said court, under his proper hand and seal, for and in behalf of the county, duly acknowledged and proven and recorded, shall be sufficient, to all intents and purposes, to convey to the purchasers all the right, title and interest and estate whatever which the county may have in and to the premises to be conveyed; *provided, however,* that nothing contained in this article shall authorize the county commissioners' court of any county to dispose of any lands given, donated or granted to such county for the purposes of education in any other manner than shall be directed by law.

Contracts with a county valid. *Ib.* 1053.

ART. 682. All notes, bonds, bills, contracts, covenants, agreements or writings, made or to be made, whereby any person is or shall be bound to any county, or to the court or commissioners of any county, or to any other person or persons, in whatever form, for the payment of any debt or duty or the performance of any matter or thing to the use of any county, shall be valid and effectual, to all intents and purposes, to vest in said county

all rights, interests and actions which would be vested in any individual if any such contract had been made directly to him.

ART. 683. Suits may be commenced and prosecuted on such notes, bonds, bills, contracts, covenants, agreements and writings, in the name of such county, or in the name of the person to whom they were made, for the use of the county, as fully and effectually as any person may or can sue on like notes, bills, contracts, covenants, agreements or writings made to him.

Suits on notes, etc., by county. *Ib.* 1054.

ART. 684. The county commissioners' court may appoint an agent or agents to make any contract on behalf of the county for the erection or repairing of any county buildings, and to superintend their erection or repairing, or for any other purpose authorized by law, and the contract or acts of such agent or agents, duly executed and done for and on behalf of the county, and within his or their powers, shall be valid and effectual to bind such county, to all intents and purposes.

Agents to contract for county, may be appointed. *Ib.* 1055.

ART. 685. When the plaintiff in any suit against a county shall fail to recover a greater amount than the county commissioners' court of such county shall have allowed to such plaintiff on the presentation of his claim to such court, such plaintiff shall pay all costs of such suit.

Costs in suit against county. *Ib.* 1056.

## CHAPTER FOUR.

### COUNTY LINES.

When county boundaries are not sufficiently ascertained, etc.	Article	Map of line shall be returned.	Article
ascertained, etc. ....	686	One person may run line when, etc. ....	689
Notice to adjoining county, etc. ....	687	Expenses, how paid. ....	691
Duty of persons appointed to make survey. ....	688		

ARTICLE 686. Whenever it shall appear to the satisfaction of any county commissioners' court that the boundaries of the county are not sufficiently specified and well ascertained, such court shall appoint some competent person to proceed and ascertain, survey and mark such line; and the court, in the order making said appointment, shall specify the line to be run, and the time when the same shall be run, and the place of commencement.

When county boundaries are not sufficiently ascertained, etc. (Act May 12, 1846.) *P.D.* 1057.

ART. 687. It shall be the duty of the court making such order to cause a copy thereof to be presented to the commissioners' court of the adjoining county, or the county interested, at least ten days before the time appointed for the running and marking of such line; whereupon such court, on receiving a copy of such order, shall appoint a competent person, resident in such county, to proceed at the time and place appointed and assist in running and marking such line.

Notice to adjoining county, etc. *Ib.* 1058.

ART. 688. The person so appointed shall proceed at the time and place appointed to ascertain, survey and mark the line designated in such order, and make return thereof to the commissioners' court of their respective counties.

Duty of persons appointed to make survey. *Ib.* 1059.

ART. 689. Each person so appointed shall return to the commissioners' court of his county a map or plat of the line so run and marked.

Map of line shall be returned. *Ib.* 1060.

ART. 690. If either of the persons appointed to run and mark such line shall fail to attend at the time and place appointed, the one in attendance shall proceed alone to perform the duties assigned him, and make his report to the commissioners' court, which being approved by such court shall be recorded as evidence of the line in question, and the line so surveyed and marked shall thereafter be regarded as the true line of the county.

One person may run line, when, etc. *Ib.* 1061.

ART. 691. The expense of running and marking any such line shall be divided and paid equally by the counties interested; and each person

Expenses, how paid. *Ib.* 1062.

appointed to run and mark any such line shall be allowed the sum of two dollars per mile for each mile run; *provided*, in all instances that any line run as above directed shall be made in conformity with the existing laws creating and defining said county boundaries.

CHAPTER FIVE.

COUNTY SEATS.

NOTE.—For other provisions, as to removing and locating county seats, see chapter 76, page 34, acts 1879, which, by section 20, final title of this Code, is the law in so far as it conflicts with the provisions of this chapter. See appendix for the act in full.—L.

	Article	Article
Temporary county seat shall be selected by governor, when.....	692	Returns of election, to whom made..... 698
Governor shall order election for county seat, etc.....	693	Election may be contested..... 699
County seat within five miles of center shall not be removed, except, etc.....	694	County seat shall remain where it is until, etc..... 700
Majority vote may remove, when.....	695	When the judgment is for contestant..... 701
Center, how determined.....	696	When the judgment is for contestee..... 702
Election for removal of county seat to be ordered, when, etc.....	697	No other such election shall be held for five years..... 703
		Courts shall be held at county seat..... 704
		Court-house, jail, etc., to be provided..... 705
		Officers shall keep offices at county seat..... 706

Temporary county seat shall be selected by governor, when. (Act April 30, 1874, p. 179.) P. D. 6039a.

ARTICLE 692. Whenever any county is without a county seat, the governor, upon proper representation being made to him of such fact, shall select a temporary county seat for such county, and the place so selected shall be the county seat of such county until a permanent location of the county seat for such county has been made in accordance with law.

Governor shall order election for county seat, etc. *Ib.*

ART. 693. The governor shall, within one month after he has selected a temporary county seat for any county, order an election to take place in such county to permanently locate the county seat of such county.

County seat in 5 miles of center shall not be removed, except, etc. (Const., art. 9, §2.)

ART. 694. No county seat situated within five miles of the geographical center of the county shall be removed except by a vote of two-thirds of all the electors voting on the subject.

Majority vote may remove, when. *Ib.*

ART. 695. A majority of such electors, however, voting at such election may remove a county seat from a point more than five miles from the geographical center of the county to a point within five miles of such center.

Center, how determined. *Ib.*

ART. 696. In either case mentioned in the two preceding articles the geographical center of the county shall be determined by a certificate from the commissioner of the general land office.

Election for removal of county seat to be ordered, when, etc. (Act June 3, 1873.) P. D. 1068.

ART. 697. When a majority of the taxpayers of any county, who pay taxes upon real estate situated in said county, shall petition the commissioners' court of such county for a removal of the county seat, it shall be the duty of said court to order an election for that purpose, giving due notice thereof; which election shall be held at the same places and conducted in the same manner as elections for state and county officers, and the result of said election shall, unless set aside in accordance with law, establish the county seat of such county.

Returns of election to whom made.

ART. 698. The returns of such election shall be made to the county judge of said county, as in the case of elections for county officers, and he shall count the votes, declare the result and enter the same of record, as in other cases.

Election may be contested.

ART. 699. The election may be contested in the same manner and under the same rules as provided for contesting an election for a county office, and an appeal from the judgment or decision of the county judge may be taken by either party to the court of appeals, as in other cases.

ART. 700. Until the final adjudication of any contest for the removal of a county seat the county seat shall remain at the place antecedently fixed by law.

County seat shall remain where it is until, etc. (Act March 13, 1875, p. 90, §4.)

ART. 701. When the decision of the court upon the trial of any such contest is in favor of the contestant, the judgment shall be that the place contended for by such contestant be established as the county seat of such county, and that the same be recognized and used as such by the officers of the county, and such judgment may be enforced by the court rendering the same, by attachment, fine and imprisonment, against any county officer or officers who may disregard the same, as in other cases of contempt.

When the judgment is for contestant.

ART. 702. When the decision of the court is in favor of the contestee, the judgment shall be that the place contended for by such contestee be established as the county seat of such county, and that the same be recognized as such by the officers of the county, and such judgment may be enforced as provided in the preceding article; and the court shall further adjudge that the contestant or contestants pay all the costs incurred by such contest, and order execution therefor.

When the judgment is for contestee.

ART. 703. When an election shall have heretofore been held, or shall hereafter be held in any county for the removal of the county seat thereof, no other election for such purpose shall be held in such county for the period of five years from the date of such election.

No other such election shall be held for five years. (Act May 1, 1874.) P. D. 6039b.

ART. 704. All terms of the district, county and county commissioners' courts shall be held at the county seat.

Courts shall be held at county seat.

ART. 705. It shall be the duty of the county commissioners' court of each county, as soon as practicable after the establishment of a county seat, or after its removal from one place to another, to provide a court-house and jail for the county, and offices for county officers, at such county seat, and keep the same in good repair.

Court-house, jail, etc., to be provided.

ART. 706. The county judge, sheriff, clerks of the district and county courts, county treasurer, assessor of taxes and collector of taxes, county surveyor and county attorney of the several counties of this state, shall keep their several offices at the county seats of their respective counties.

Officers shall keep offices at county seats. (Act March 16, 1848; act May 13, 1848.) O. & W., 282, 284.



## TITLE XXIII.

## County Boundaries.

NOTE.—For the manner of ascertaining the boundaries of counties, see chapter 129, acts 1879. See also appendix.—L.

	Article		Article
Declaring boundaries.....	707	Fayette county.....	777
Anderson county.....	708	Fisher county.....	778
Andrews county.....	709	Floyd county.....	779
Angelina county.....	710	Fort Bend county.....	780
Aransas county.....	711	Franklin county.....	781
Archer county.....	712	Freestone county.....	782
Armstrong county.....	713	Frio county.....	783
Atascosa county.....	714	Gaines county.....	784
Austin county.....	715	Galveston county.....	785
Bailey county.....	716	Garza county.....	786
Bandera county.....	717	Gillespie county.....	787
Bastrop county.....	718	Goliad county.....	788
Baylor county.....	719	Gonzales county.....	789
Bee county.....	720	Gray county.....	790
Bell county.....	721	Grayson county.....	791
Bexar county.....	722	Greer county.....	792
Blanco county.....	723	Gregg county.....	793
Borden county.....	724	Grimes county.....	794
Bosque county.....	725	Guadalupe county.....	795
Bowie county.....	726	Hale county.....	796
Brazoria county.....	727	Hall county.....	797
Brazos county.....	728	Hamilton county.....	798
Briscoe county.....	729	Hansford county.....	799
Brown county.....	730	Hardeman county.....	800
Burleson county.....	731	Hardin county.....	801
Burnet county.....	732	Harris county.....	802
Caldwell county.....	733	Harrison county.....	803
Calhoun county.....	734	Hartley county.....	804
Callahan county.....	735	Haskell county.....	805
Cameron county.....	736	Hays county.....	806
Camp county.....	737	Hemphill county.....	807
Carson county.....	738	Henderson county.....	808
Cass county.....	739	Hidalgo county.....	809
Castro county.....	740	Hill county.....	810
Chambers county.....	741	Hockley county.....	811
Cherokee county.....	742	Hood county.....	812
Childress county.....	743	Hopkins county.....	813
Clay county.....	744	Houston county.....	814
Cochran county.....	745	Howard county.....	815
Coleman county.....	746	Hunt county.....	816
Collin county.....	747	Hutchinson county.....	817
Collingsworth county.....	748	Jack county.....	818
Colorado county.....	749	Jackson county.....	819
Comal county.....	750	Jasper county.....	820
Comanche county.....	751	Jefferson county.....	821
Concho county.....	752	Johnson county.....	822
Cooke county.....	753	Jones county.....	823
Coryell county.....	754	Karnes county.....	824
Cottle county.....	755	Kaufman county.....	825
Crockett county.....	756	Kendall county.....	826
Crosby county.....	757	Kent county.....	827
Dallam county.....	758	Kerr county.....	828
Dallas county.....	759	Kimble county.....	829
Dawson county.....	760	King county.....	830
Deaf Smith county.....	761	Kinney county.....	831
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Denton county.....	763	Lamar county.....	833
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Encinal county.....	773	Live Oak county.....	843
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Falls county.....	775	Lubbock county.....	845
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	Article		Article
Madison county.....	847	San Augustine county.....	891
Marion county.....	848	San Jacinto county.....	892
Martin county.....	849	San Patricio county.....	893
Mason county.....	850	San Saba county.....	894
Matagorda county.....	851	Scurry county.....	895
Maverick county.....	852	Shackelford county.....	896
McCulloch county.....	853	Shelby county.....	897
McLennan county.....	854	Sherman county.....	898
McMullen county.....	855	Smith county.....	899
Medina county.....	856	Starr county.....	900
Menard county.....	857	Stephens county.....	901
Milam county.....	858	Somervell county.....	902
Mitchell county.....	859	Stonewall county.....	903
Montague county.....	860	Swisher county.....	904
Montgomery county.....	861	Tarrant county.....	905
Moore county.....	862	Taylor county.....	906
Morris county.....	863	Terry county.....	907
Motley county.....	864	Throckmorton county.....	908
Nacogdoches county.....	865	Titus county.....	909
Navarro county.....	866	Tom Green county.....	910
Newton county.....	867	Travis county.....	911
Nolan county.....	868	Trinity county.....	912
Nueces county.....	869	Tyler county.....	913
Ochiltree county.....	870	Upshur county.....	914
Oldham county.....	871	Uvalde county.....	915
Orange county.....	872	Van Zandt county.....	916
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Panola county.....	874	Walker county.....	918
Parker county.....	875	Waller county.....	919
Parmer county.....	876	Washington county.....	920
Pecos county.....	877	Webb county.....	921
Folk county.....	878	Wharton county.....	922
Potter county.....	879	Wheeler county.....	923
Presidio county.....	880	Wilbarger county.....	924
Rains county.....	881	Williamson county.....	925
Randall county.....	882	Wilson county.....	926
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Refugio county.....	884	Wise county.....	928
Roberts county.....	885	Wood county.....	929
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Rockwall county.....	887	Young county.....	931
Rusk county.....	888	Zapata county.....	932
Sabine county.....	889	Zavala county.....	933

ARTICLE 707. The boundaries of the counties hereinafter named, are as follows: Declaring boundaries.

ANDERSON COUNTY.

ART. 708. Beginning at a place in the county of Houston, known as Houston's mound, about one mile north of Murchison's prairie; thence westwardly, by a direct line running through the old Ionia village on the north Elkhart creek, to the east boundary line of Samuel C. Boxe's head-right league; thence south with said line to the southeast corner of said league; thence westwardly with the south boundary line of said league, to the Trinity river; thence beginning again at Houston's mound, continuing said line eastwardly to the Neches river; thence up said river, with the meanders thereof, to the northeast corner of John Ferguson's league of land; thence by a direct line parallel to the first above named line to the Trinity river; thence down said river, with the meanders thereof, to the intersection of said first named line with the Trinity river. Anderson county. (Act Jan. 26, 1850, p. 80, and act March 24, 1846, p. 20.) P.D. 274.

ANDREWS COUNTY.

ART. 709. Beginning at the southwest corner of Gaines county in the 103d meridian; thence east to the southeast corner of Gaines county; thence south thirty miles; thence west to the 103d meridian; thence north with said meridian to the place of beginning. Andrews county. (Act Aug. 21, 1876, p. 234.)

ANGELINA COUNTY.

ART. 710. Beginning where the Jasper county line corners on the Angelina river; thence up said Angelina river to the southern boundary line of Cherokee county, at the lower end of Juan Cruz's island; thence south 50° west with said line to the Neches river; thence down said Neches river to the Jasper county line; thence with said line north 80° east to the place of beginning. Angelina county. (Act April 23, 1846, p. 120.) P.D. 275.

## ARANSAS COUNTY.

Aransas  
county.  
(Act Sept. 18,  
1871, p. 1.)  
P.D. 5843.

ART. 711. Beginning at the boundary of the state on the gulf of Mexico, opposite the center of the channel of Aransas Pass, between the islands of St. Joseph and Mustang; thence with the line between the counties of San Patricio and Refugio to the center of Aransas river; thence down the center of said stream to Copano bay; thence with the channel of said bay parallel with the shore to the east end of the same at the mouth of Copano creek; thence up said creek to the mouth of Alamita creek; thence in a direct line to the southeast corner of J. C. Solberg's survey on Espiritu Santo bay; thence in a direct line to Cedar bayou; thence through said bayou to the boundary of the state, on the gulf of Mexico; thence with said boundary of the state to the place of beginning.

## ARCHER COUNTY.

Archer county.  
(Act Jan. 22,  
1858, p. 58, §5.)  
P.D. 276.

ART. 712. Beginning at the northeast corner of Young county; thence with the north line of said county thirty miles to its northwest corner; thence due north thirty miles; thence due east thirty miles to the west line of Clay county; thence due south with said line and the west line of Jack county thirty miles to the beginning.

## ARMSTRONG COUNTY.

Armstrong  
county.  
(Act Aug. 21,  
1876, p. 234.)

ART. 713. Beginning at the northeast corner of Randall county, and southeast corner of Potter county, and southwest corner of Carson county; thence east thirty miles to the southeast corner of Carson county and southwest corner of Gray county; thence south thirty miles; thence west thirty miles to southeast corner of Randall county; thence north thirty miles to the place of beginning.

## ATASCOSA COUNTY.

Atascosa  
county.  
(Act Jan. 25,  
1856, p. 25.)  
P.D. 277.

ART. 714. Beginning at a point on the east line of Medina county five miles south of the Medina river; thence south along the east line of Medina and Frio counties to the southeast corner of Frio county and the northwest corner of McMullen county; thence east with the north line of said county twenty-eight miles to its northeast corner; thence south to the corner of Live Oak county on the old San Patricio county line; thence along the north boundary line of old San Patricio county north line of Live Oak county, north 50° east to the southwest boundary line of Karnes county; thence along said line and the southwest boundary line of Wilson county to the west corner of said county; thence north 39° west fifteen miles; thence in a direct line to the place of beginning.

## AUSTIN COUNTY.

Austin county.  
(Acts May 24,  
1858, p. 2; Mar.  
24, 1846, p. 15;  
April 28, 1873.)  
P.D. 278.

ART. 715. Beginning at the mouth of Caney creek on the western side of the Brazos river; thence up the meanders of said creek to Mrs. Foster's crossing of the same; thence up the longest source of said creek to Andy Miller's crossing; thence to the junction of the southwestern source; thence to the southwest corner of Harmon Hensley's league of land, so as to include Stephen Williams and Robert Armstead in the county of Washington, to a league of land granted to David Shelby; thence in a direct line to a league of land granted to Samuel G. Pettus, including said land; thence in a direct line to the head of San Bernard, and down the same to the lower corner of Gabriel Cole's land (see act of March 24, 1846), it being part of a league originally granted to Charles Baird; thence along the lower line of said land to its southeast corner; thence in a direct line to the source of Sixteenth Mile creek; thence down said creek to its mouth; thence up Brazos river, with its meanders, to the place of beginning.

## BAILEY COUNTY.

Bailey county.  
(Act Aug. 21,  
1876, p. 234.)

ART. 716. Beginning at the northwest corner of Lamb county; thence west to the 103d meridian, at the southwest corner of Parmer county; thence south with the 103d meridian to a point due west of the

southwest corner of Lamb county; thence east to the southwest corner of Lamb county; thence north to the place of beginning.

## BANDERA COUNTY.

ART. 717. Beginning at the northwest corner of survey No. 78, in the name of Daniel Arnold, on the Medina river; thence in a direct line to the corner of Kerr county, on the Balcones creek on the west boundary line of A. Gayton's survey; thence with the south boundary of Kerr county to its southwest corner; thence due west eleven miles; thence due south to the north line of Uvalde county; thence due east with the boundary of Uvalde and Medina counties to the place of beginning.

Bandera county.  
(Acts Jan. 26, 1856, p. 31; Feb. 2, 1856, p. 72.)  
P.D. 279.

## BASTROP COUNTY.

ART. 718. Beginning at Grasmeyer's ferry on the Colorado; thence in a northeasterly direction at right angles with the general course of the river Colorado to the line of Lee county, which is a straight line between the southwest corner of David G. Green's survey in Fayette county and a point on the (old) Burleson county line, nearest the east corner of Elias Marshall's survey; thence with the line of Lee county (or old Burleson county), which is a direct line between the southeast corner of a league and labor survey for John Vashney (Voshary) and the southeast corner (northeast) of a third of a league survey, the headright of Thomas Rinds, to the northeast corner of the said Rinds' survey; thence with the northeastern boundary line of said Rinds' survey to the southeast corner (northeast corner) of Joseph Martin's survey, and in the same direction with a survey made for E. Harris and Isaac Carsniers (Cassners) to the northeast (northwest) corner of said Carsniers' survey on the line of Travis county; thence on a direct line to the lower corner of a league granted to M. Duty on the Colorado river; thence across said river in the direction where the (old) dividing line between Bastrop and Gonzales counties intersects the road leading from Nacogdoches to San Antonio to the intersection of the eastern boundary line of a league of land granted to Jane S. Montgomery; thence with the south line of Caldwell county south 45° east to the intersection of the south boundary of Bastrop county (see act of January 26, 1850), which is a line running from the northeast corner of a quarter of a league granted to Stiffler, in a northeasterly direction from the beginning, so as to leave Grassmeyers' in the county of Mina (Bastrop); thence with said line to the beginning.

Bastrop county.  
(Acts Dec. 14, 1837, p. 91; July 28, 1856, p. 7; April 14, 1874, p. 72; May 2, 1874, p. 202; Jan. 25, 1840, p. 222; Jan. 22, 1860, p. 53; Jan. 3, 1838, p. 4.)  
P.D. 285.

## BAYLOR COUNTY.

ART. 719. Beginning at the northwest corner of Archer county; thence due west for thirty miles; thence due south thirty miles, to the northwest corner of Throckmorton county; thence with the north line of Throckmorton to the corner of Throckmorton, Young and Archer counties; thence due north with the west line of Archer to the beginning.

Baylor county.  
(Act Feb. 1, 1853, p. 87.)  
P.D. 231.

## BEE COUNTY.

ART. 720. Beginning on the Blanco creek, at the southwest corner of Goliad and Refugio counties, as defined in this bill; thence up the Blanco creek with its meanders, to where the Helena and San Patricio road crosses the same; thence in a direct line to the southwest corner of J. Johnson's survey, on the Medio creek; thence up the Medio to the lower line of the G. Childers' survey; thence north 70° west eleven miles, following the lines of the Gill and Igam's surveys; thence south 27° east to the lower line of Live Oak county; thence in a direct line to a point three miles south 36° west from the mouth of Papelote creek; thence in a direct line to the mouth of said creek; thence in a direct line to the beginning.

Bee county.  
(Act Dec. 5, 1857, p. 11.)  
P.D. 232

## BELL COUNTY.

ART. 721. Beginning at the northern line of Williamson county at a point south 19° west from the southeast corner of the Jesse Mumford league; thence north 19° east to said corner and with said Mumford's east line to Little river, and in the same course to a point south 60° west from

Bell county.  
(Acts April 4, 1861; Aug. 5, 1856, p. 89; Jan. 22, 1857; Feb. 4, 1859, p. 44;

Feb. 1, 1856, P. 41; Feb. 15, 1852; Feb. 7, 1853, p. 33; March 13, 1848, p. 26.)

the southwest corner of Falls county; thence north 60° east to the southwest corner of Falls county; thence with the line of Falls county north 30° west to the south line of McLennan county; thence with the line of McLennan county south 60° west six miles to the southwest corner of McLennan county (see act of August 30, 1856); thence north 30° west with the line of McLennan county to a point bearing north 30° west thirty-two miles from another point bearing south 60° west from the northwest corner of league number eight, on the west bank of the Brazos river in the name of S. Frost, said point being the east corner of Coryell county; thence south 60° west with the southeast line of said county thirty-two miles to its south corner; thence in a direct line with Lampasas county to the northeast corner of Burnet county; thence with the line of Burnet county south 30° east to a point on the bank of the Lampasas where the lower line of W. P. Reese's survey number twelve, of three hundred and twenty acres, crosses the same; thence in a direct line to a point on the Salado lying northeast 51° of the beginning; thence south 65° east to the beginning. [The beginning is the point of intersection of a line running from the southeast corner of a survey of nineteen and three-fourths labors known as the Post Oak island survey, north 71° east eight miles; thence north 19° west twenty miles; thence north 65° west to a point lying south 19° west from the southeast corner of Jesse Mumford's league.]

#### BEXAR COUNTY.

Bexar county. (Acts April 3, 1873, p. 32; Jan. 10, 1862, p. —; Feb. 13, 1860, p. 106; July 25, 1856, p. 25; Feb. 12, 1848, p. 26.) P.D. 284.

ART. 722. Beginning on the southwest bank of Medina river where the eastern boundary line of Medina county intersects said river; thence north crossing the Medina river to intersect the boundary line between the counties of Bexar and Bandera; thence with said line to the corner of Kendall county on the Balcones creek in the west boundary line of A. Gayton's survey, number four hundred and eight; thence down the Balcones creek to its mouth; thence down the Cibola with line of the counties Comal and Guadalupe to the mouth of Martinez creek; thence on a straight line to the northeast corner of Atascosa county; thence with the line of Atascosa county to a point on the east line of Medina county, five miles south of Medina river; thence north five miles to the point of beginning, being the upper corner of a league survey number twenty-five, made for Wm. E. Howth, assignee of Maria Jesusa Hernandez, and the lower corner of survey number twenty-six, in the name of Julia Coutes.

#### BLANCO COUNTY.

Blanco county. (Act Jan. 10, 1862, p. 33.) P.D. 285.

ART. 723. Beginning at the southeast corner of Gillespie county; thence south 27° east, to the west line of Comal county; thence following the west line of Comal county to the south line of Hays county; thence in a direct course across the Perdinales, to the southwest corner of Travis county; thence following the west line of Travis to the southeast corner of Burnet county; thence with the south boundary line of Burnet county to the southeast corner of Llano county; thence with the south boundary line of Llano county to the northeast corner of Gillespie county; thence with the east boundary line of Gillespie county to the place of beginning.

#### BORDEN COUNTY.

Borden county. (Act Aug. 21, 1876, p. 284.)

ART. 724. Beginning at the northwest corner of Scurry county; thence west thirty miles; thence south thirty miles; thence east thirty miles to the southwest corner of Scurry county; thence north thirty miles to the place of beginning.

#### BOSQUE COUNTY.

Bosque county. (Act Feb. 4, 1856, p. 46.) P.D. 286.

ART. 725. Beginning on the Brazos river at the upper corner of a league of land in the name of William B. Wilson; thence south 60° west twenty-five miles to the corner of Hamilton county; thence with the line of said county south 30° east to the upper line of Coryell county, which upper line is to be run parallel to and thirty miles above the north

boundary of Bell county proper; thence with said upper or north boundary line of Coryell county north 60° east to its northeast corner, which is to be established in the direction of the present west line of McLennan county; thence south 30° east to the northwest corner of McLennan county, which is to be established in a direction south 60° west from the north line of McLennan county, as now established east of the Brazos river; thence north 60° east to the Brazos river; thence up the Brazos, with its meanders, to the beginning.

## BOWIE COUNTY.

ART. 726. Beginning on Red river at Hugh B. Shaw's ferry; thence running due south to the Sulphur fork of Red river; thence down the middle of Sulphur fork to the boundary between the United States (Arkansas) and Texas; thence with said line north to Red river and up said river, with its meanders, to the place of beginning.

Bowie county.  
(Acts Dec. 17,  
1840, p. 97; Jan.  
16, 1843, p. 37;  
April 25, 1846,  
p. 155; May 11,  
1846, p. 60.)  
P.D. 287.

## BRAZORIA COUNTY.

ART. 727. Beginning at the entrance of Cedar lake into the gulf of Mexico; thence up said lake to the upper line of the league of land granted to G. Harrison; thence west to Lynville bayou; thence up said bayou to its source; thence in a direct line to the northwest corner of a league of land granted to Carson; thence along the upper line of said league to the southwest corner of a league of land granted to Shipman & Charles; thence up the back line of said league to its northwest corner; thence along the upper line of said league to the southwest corner of a league of land granted to Garrett; thence up the back line of said league to its northwest corner; thence along the upper line of said league to the San Bernard river; thence up said river to the northwest corner of the league of land on the east bank of said river granted to Prater; thence along the upper line of said league to its northeast corner; thence down the back line of said league to the northwest corner of the league of land granted to A. Durst; thence along the upper line of said league to its northeast corner; thence in a direct line to the head of the south prong of Cow creek; thence down said creek to its mouth, crossing the Brazos river; thence up the east bank of said river to the northwest corner of a league of land granted to Bingham; thence along the upper line of said league to its northeast corner; thence in a direct line to a point where Clear creek, near its source, crosses the upper line of a tract of land granted to W. R. Perry; thence down Clear creek to a point where it crosses the lower line of a league of land granted to W. D. C. Hall; thence in a direct line to the head of Dickenson's bayou; thence to a point on West bay, at an equal distance between Chocolate bayou and Highland bayou; thence following with the bay and through the pass dividing San Louis and Galveston islands, to the gulf of Mexico; thence westwardly along the shore of the gulf to the place of beginning.

Brazoria  
county.  
(Act March 24,  
1846, p. 18.)  
P.D. 288.

## BRAZOS COUNTY.

ART. 728. Beginning mid-channel of the Brazos river at the junction of the Navasoto river with the same, and running thence up said Navasoto, along the mid-channel of the same, to the crossing of the old San Antonio road, or road leading from Nacogdoches to San Antonio; thence westwardly with said road to a point to be selected on the same due south of the late residence of Leander Harl, deceased; thence on a direct line to the crossing of the Brazos river at or near Tenoxticlan; thence down said river, following the mid-channel of the same to the place of beginning.

Brazos county.  
(Acts Jan. 30,  
1841, p. 86; Jan.  
28, 1842,  
changing  
name.)  
P.D. 289.

## BRISCOE COUNTY.

ART. 729. Beginning at the northwest corner of Hall county; thence west thirty miles; thence south thirty miles; thence east thirty miles; thence north thirty miles to the place of beginning.

Briscoe county  
(Act Aug. 21,  
1876, p. 234.)

## BROWN COUNTY.

**Brown county.** ART. 730. Beginning at the mouth of Pecan bayou, on the Colorado river; thence due east to the line of Hamilton county; thence north 30° west with the lines of Hamilton and Comanche counties, to the northwest corner of Comanche county, as established at the present session of the legislature; thence due west sixteen miles; thence due south to the Colorado river, and down said river, with its meanders, to the beginning.

(Act Feb. 5, 1858, p. 122.)  
P.D. 290.

## BURLESON COUNTY.

**Burleson county.** ART. 731. Beginning on the Brazos river with the northeast corner of a league of land in the name of H. E. Davis, known on the map of Milam county as league number six, below Nashville; running from thence south 60° west to the first Yegua on the corner of Lee county; thence down the first Yegua with the line of Lee county to its mouth; thence down the Yegua to its junction with the Brazos; thence up the Brazos with the boundaries of the counties of Brazos and Robertson to the beginning.

(Acts March 24, 1846, p. 16; April 14, 1874, p. 94.)  
P.D. 291.

## BURNET COUNTY.

**Burnet county.** ART. 732. Beginning at the west corner of John Carothers' league number six, on the north fork of the San Gabriel river; thence south 26° west to the Colorado river; thence across and down the same to the northeast corner of A. Williams' survey number nineteen; thence south to its southeast corner; thence south 30° west to a point four miles south of Colorado river; thence on the line of Blanco county in a direct line to the southeast corner of Llano county; thence with line of Llano county due north five miles to the mouth of Slickrock creek, on the Colorado river; thence up said river, with its meanders, to the upper corner of Sallie House's (widow of James House) league number fourteen; thence east to a point north 30° west from the point on the Lampasas where the lower line of W. P. Reese's survey number twelve, of three hundred and twenty acres, crosses the same; thence south 30° east to that point, and continuing in the same course to a point north 45° east from the place of beginning; thence south 45° west to the place of beginning.

(Acts Feb. 5, 1852, p. 49; Feb. 12, 1858.)  
P.D. 292.

## CALDWELL COUNTY.

**Caldwell county.** ART. 733. Beginning at the mouth of Plum creek, on the San Marcos river; thence in a direct line to the southwest corner of Bastrop county, as defined by the act to extend the eastern boundary of Caldwell county; thence with the southwest line of Bastrop county north 45° west to a point on the east line of James S. Montgomery's league, lying north 45° east of the point where the (old) line between Bastrop and Gonzales counties intersects the road leading from Nacogdoches to San Antonio; thence south 45° west to said point; thence with said San Antonio road to the San Marcos river; thence with the said river to the beginning.

(Acts March 6, 1848, p. 53, Jan. 26, 1850, p. 82.)  
P.D. 293.

## CALHOUN COUNTY.

**Calhoun county.** ART. 734. Beginning at the west corner of the survey of Valentine Garcia, at the western extremity of Lavaca bay; thence to the north corner of a survey known as the Juan Nepomuceno Sisneros league; thence with the northwest boundary of said league to the Guadalupe river; thence down said river to its mouth; thence around with the northern and western margin of the Esperitu Santa bay to a point bearing northwest from Cedar pass or bayou (which divides Matagorda from St. Joseph island); thence southeast to said Cedar bayou, and with the aforesaid Cedar bayou to the gulf; thence with said gulf and southeast margin of Matagorda and Pelican islands to the division line between the counties of Calhoun and Matagorda, as heretofore established; and thence with the line of Calhoun county, as now defined, to the place of beginning.

(Act Feb. 11, 1860, p. 196.)  
P.D. 294.

## CALLAHAN COUNTY.

**Callahan county.** ART. 735. Beginning at the southwest corner of Stephens county and the southeast corner of Shackelford county; thence west thirty miles;

(Act Aug. 21, 1876, p. 213.)  
P.D. 295.

thence south thirty miles; thence east thirty miles; thence north thirty miles to the place of beginning.

## CAMERON COUNTY.

ART. 736. Beginning at the mouth of the Rio Grande and running up said river to the southeast corner of a track of land called Llano Grande, the corner of Hidalgo county; thence running due north until it strikes the southerly line of Nueces county (which is a direct line running from the southwest corner of Encinal county to the mouth of Olmos creek); thence with said line to a point where said Olmus creek empties into the Laguna Madre; thence due east across the Laguna Madre and the island Padde (Padre) Balli to the gulf of Mexico; thence down the gulf of Mexico and the island Paddie (Padre) Balli to the place of beginning.

Cameron county.  
(Acts July 26, 1870, p. 40; Dec. 8, 1851; Feb. 4, 1853; April 26; 1871.)  
P.D. 296.  
(See acts 1879, ch. 61.)

## CAMP COUNTY.

ART. 737. Beginning at a point twelve miles due north from the town of Gilmer; thence west to the Wood county line, and from said point twelve miles north of the town of Gilmer; thence due east to Big Cypress, the east boundary line of the county of Upshur; thence north with the meanderings of said stream, the same being the county line of said Upsher county, to the northeast corner of said county of Upshur; thence northwest with the meanderings of said stream to the northwest corner of said county; thence south with the west boundary line of said Upshur county to the point where the due west line from the point twelve miles north of the town of Gilmer intersects the Wood county line.

Camp county.  
(Act April 6, 1874, p. 65.)

## CARSON COUNTY.

ART. 738. Beginning at the northwest corner of Gray county and southwest corner of Roberts county and southeast corner of Hutchinson county; thence south thirty miles; thence west thirty miles; thence north thirty miles; thence east thirty miles to the place of beginning.

Carson county.  
(Act August 21, 1856, p. 234.)

## CASS COUNTY.

ART. 739. Beginning on the north line of Marion county, where the old line run by Sidaour (Sidicum), dividing the (old) counties of Bowie and Red River, crossed the same; thence due north to the Sulphur fork of Red river; thence down the middle of Sulphur fork to the old United States line; thence due south with the said line to the northeast corner of Marion county, being thirteen miles north of the original southeast corner of Cass county; thence with the north line of said county west to the beginning.

Cass county.  
(Acts April 25, 1846, p. 135; Feb. 8, 1860, p. 57.)  
P.D. 309.

## CASTRO COUNTY.

ART. 740. Beginning at the northwest corner of Swisher county; thence west thirty miles; thence south thirty miles; thence east thirty miles to southwest corner of Swisher county; thence north thirty miles to the place of beginning.

Castro county.  
(Act August 21, 1876, p. 234.)

## CHAMBERS COUNTY.

ART. 741. Beginning on the gulf of Mexico, at the east boundary of Galveston county; thence along the northern and eastern boundaries of Galveston and Harris counties, to mouth of Cedar bayou; thence up said bayou to a point from which a line due east will cross the Trinity river, twelve miles below the court-house of Liberty county; thence due east to a point five miles east from the boundary line between the counties of Liberty and Jefferson; thence due south to the gulf of Mexico; and thence along the gulf shore to the beginning.

Chambers county.  
(Act Feb. 11, 1858, pp. 192, 193.)  
P.D. 297.

## CHEROKEE COUNTY.

ART. 742. Beginning at a point on the Neches river due west from the southwest corner of the Neches saline survey; then east with the southern boundary line of said saline survey to the southeast corner thereof; thence due east to the western boundary line of Rusk county; thence south along said county line to the southwest corner thereof; thence east along the southern boundary line of said county to the Angelina river; thence south

Cherokee county.  
(Act April 11, 1846, pp. 63, 293.)  
P.D. 298.



down the said river, with its meanderings, to the lower end of Juan Cruz's survey of an island in said Angelina river, to a point opposite said lower end of said island on the west bank of said river; thence running south 50° west of the Neches river; thence north up said river, with its meanderings, to the beginning.

## CHILDRESS COUNTY.

Childress county.  
(Act August 21,  
1876, p. 234.)

ART. 743. Beginning at the southeast corner of Collingsworth county, at the twelfth mile post, on the 100th meridian; thence west twenty-three miles; thence south thirty miles; thence east about thirty-five miles, to the new west line of Hardeman county; thence north to Prairie Dog Town river; thence up said river to the initial monument on the 100th meridian; thence north to the twelfth mile post at the beginning.

## CLAY COUNTY.

Clay county.  
(Act Dec. 24,  
1857, p. 83.)  
P.D. 299.

ART. 744. Beginning at the southwest corner of the county of Montague; thence west with the north boundary line of the county of Jack to the northwest corner of said county; thence north to Red river; thence down said stream to the northwest corner of Montague county; thence south with the western boundary line of said last-named county to the place of beginning.

## COCHRAN COUNTY.

Cochran county.  
(Act August 21,  
1876, p. 234.)

ART. 745. Beginning at the southwest corner of Bailey county in the 103d meridian; thence east to the southeast corner of Bailey county and southwest corner of Lamb county; thence south thirty miles; thence west to the 103d meridian; thence north with said meridian to the place of beginning.

## COLEMAN COUNTY.

Coleman county.  
(Act Feb. 1,  
1858, p. 87.)  
P.D. 300.

ART. 746. Beginning at the southwest corner of Brown county, on the bend of the Colorado river; thence due north with the west line of said county to its northwest corner; thence due west thirty miles; thence due south to the Colorado river; thence down said river, with its meanderings, to the beginning.

## COLLIN COUNTY.

Collin county.  
(Acts April 3,  
1846, p. 26; Jan.  
24, 1848, p. 13;  
Jan. 12, 1848,  
p. 9; Jan. 24,  
1862.)  
P.D. 301.

ART. 747. Beginning at the southeast corner of Grayson county, on the west line of Fannin county, twenty-two miles south of the mouth of Choctaw bayou; thence south to the southwest corner of Fannin county; thence with the south line of said county; thence north 80° east five miles to the northwest corner of Hunt county; thence south with the west line of said county to the south line of Fannin county, twenty-five miles west of the southeast corner (as established November 28, 1839), being the northeast corner of Rockwall county; thence with said Fannin county line, on the north line of Rockwall and Dallas counties west to the southeast corner of Denton county; thence north with the east line of said county to the corner of Grayson county; thence east twenty-five miles to the place of beginning.

## COLLINGSWORTH COUNTY.

Collingsworth county.  
(Act August 21,  
1876, p. 234.)

ART. 748. Beginning at the northeast corner of Donley county, and southeast corner of Gray county and southwest corner of Wheeler county; thence east thirty miles to the southeast corner of Wheeler county, at the forty-second mile post on the 100th meridian; thence south thirty miles; thence west thirty miles to the southeast corner of Donley county; thence north thirty miles to the place of beginning.

## COLORADO COUNTY.

Colorado county.  
(Acts Dec. 14,  
1837, p. 25;  
April 16, 1846,  
p. 57; April 3,  
1846, p. 57.)  
P.D. 302.

ART. 749. Beginning at a point in the Austin county line where a line running from the southwest corner of a league of land granted to Wm. Burnett, to the upper corner of J. Duty's league crosses the same; thence southwestwardly with said line to said corner of J. Duty, and continuing in the direction of the upper corner of Wm. Ponton's league on Lavaca river, to the Lavaca county line; thence with said line down the Navidad

river, with its meanders, to the upper corner of A. W. Breedlove's survey on the east bank of said river; thence with the upper or north line of said Breedlove's survey east four thousand six hundred varas to a point on said line; thence south 39° east forty thousand seven hundred varas to the east corner of Lavaca county; thence to the northwest corner of Wharton county; thence with the Wharton county line to the lower corner of Cartwright's league of land on the east side of the Colorado river; thence along the lower line of said league to the northeast corner; thence north 45° east to the main San Bernard river; thence up said river, with its meanders, being the county line of Austin county, to its head, and thence with the line of Austin county to the beginning.

## COMAL COUNTY.

ART. 750. Beginning at the mouth of Balcones creek, on the Cibolo river, thence down the Cibolo with its meanders to the lower line of N. Michele's league number one hundred and fourteen, being the present corner of said Comal county; thence in a direct line, as now existing, to the southwest corner of survey number twenty-one, in the name of John Thompson; thence with the south line of said league, north 65° east, to its lower corner on the Guadalupe river; thence north 50° east seven miles; thence north 14° west to the Hays county line; thence with said line to the corner of Blanco county, on the little Blanco creek; thence with the line of Blanco county to the beginning.

Comal county.  
(Act Feb. 8,  
1871, p. 4.)  
P.D. 303, 5847.

## COMANCHE COUNTY.

ART. 751. Beginning at the southwest corner of Erath county, which is eleven miles south 60° west from the northwest corner of Bosque county; thence with the western and southwestern boundaries of Erath county, to the northwest corner of Erath county; thence south 60° west twenty-five miles; thence south 30° east, with the original line of Comanche county to the northwest corner of Hamilton county; thence north 60° east thirty miles, with the line of Hamilton county; thence north 30° west six miles to the beginning.

Comanche  
county.  
(Act Jan. 20,  
1858, p. 54.)  
P.D. 304.

## CONCHO COUNTY.

ART. 752. Beginning on the west line of McCulloch county at the northwest corner of Menard county; thence due west with the north line of Menard county to its northwest corner; thence due north thirty-three miles; thence due east to the west line of Coleman county; thence down said line and the Colorado river, with its meanders, to the northwest corner of McCulloch county; thence due south with the west line of McCulloch county to the beginning.

Concho county  
(Act Feb. 1,  
1858, p. 87.)  
P.D. 305.

## COOKE COUNTY.

ART. 753. Beginning on Red river at the northwest corner of Grayson county; thence south to the north line of Denton county; thence with said line and the line of Wise county west to a point six miles west of the northwest corner of Denton county; thence due north to Red river; thence down said river, with its meanders, to the beginning.

Cooke county.  
(Acts March 20,  
1848, p. 183;  
Dec. 24, 1857.)  
P.D. 306.

## CORYELL COUNTY.

ART. 754. Beginning at the northwest corner of Bell county proper, in the southwest line of McLennan county; thence north 30° west, with McLennan county and Bosque county lines thirty miles, to a corner of the latter; thence south 60° west thirty-two miles; thence south 30° east thirty miles to the upper line of Bell county proper; thence north 60° east thirty-two miles with the northwest line of Bell county proper to the beginning.

Coryell county.  
(Act Feb. 4,  
1854, p. 45.)

## COTTLE COUNTY.

ART. 755. Beginning at the southeast corner of Childress county in the new west line of Hardeman county; thence west thirty miles; thence south to a point due west of the southwest corner of Hardeman county;

Cottle county.  
(Act August 21,  
1876, p. 334.)

thence east thirty miles to the new southwest corner of Hardeman county; thence north to the place of beginning.

## CROCKETT COUNTY.

Crockett county.  
(Act Jan. 22,  
1875, p. 2, §2.)

ART. 756. Beginning at the southwest corner of Concho county; thence due west with the southern boundary of the county of Tom Green to the Pecos river; thence down the middle of the Pecos river to its junction with the Rio Grande; thence down the middle of the Rio Grande with the line between this state and the Republic of Mexico to the mouth of the San Pedro river; thence up the middle of said river, with its meanderings, to the northwest corner of Kinney county; thence due east with the north line of Kinney county to the southwest corner of Edwards county; thence due north with the west line of Edwards, Kimble and Menard counties to the southwest corner of Concho county to the place of beginning.

## CROSBY COUNTY.

Crosby county.  
(Act August 21,  
1876, p. 234.)

ART. 757. Beginning at the northeast corner of Lubbock county; thence east thirty miles to the southeast corner of Floyd county and southwest corner of Motley county; thence south thirty miles; thence west thirty miles to the southeast corner of Lubbock county; thence north thirty miles to the place of beginning.

## DALLAM COUNTY.

Dallam county  
(Act August 21,  
1876, p. 234.)

ART. 758. Beginning at the one hundred and twentieth mile-post at the northwest corner of Sherman county; thence west about forty-seven miles to the 103d meridian, and to a monument; thence south thirty miles; thence east forty-seven miles to the southwest corner of Sherman county; thence north thirty miles to the place of beginning.

## DALLAS COUNTY.

Dallas county.  
(Act March 30  
1846, p. 26.)  
P.D. 308.

ART. 759. Beginning on the southern boundary line of Fannin county, three miles east of the eastern boundary of Peters' colony grant, thence south thirty miles; thence west thirty miles; thence north thirty miles to Fannin county line; thence east with said line to the beginning.

## DAWSON COUNTY.

Dawson county  
(Act August 21,  
1876, p. 234.)  
P.D. 310.

ART. 760. Beginning at the northwest corner of Borden county; thence west thirty miles; thence south thirty miles; thence east thirty miles to the southwest corner of Borden county; thence north thirty miles to the place of beginning.

## DEAF SMITH COUNTY.

Deaf Smith county.  
(Act August 21,  
1876, p. 234.)

ART. 761. Beginning at the southwest corner of Oldham county on the 103d meridian; thence east about forty-seven miles to the southeast corner of Oldham county and southwest corner of Potter county; thence south thirty miles; thence west about forty-seven miles to the 103d meridian; thence north thirty miles to the place of beginning.

## DELTA COUNTY.

Delta county.  
(Act July 29,  
1870, p. 40.)  
P.D. 5848.  
(Act to adopt  
and establish  
R.C.S., passed  
Feb. 21, 1879.)

ART. 762. Beginning in the county of Hopkins at a point at the center of the confluence of the north and south prongs of Sulphur creek; thence with the meanderings of said south prong of said Sulphur creek to a point where the center of the stream of said south prong of said Sulphur creek intersects the east boundary line of Hunt county; thence north, and with the east boundary lines of Hunt and Fannin counties to a point where the said east boundary line of Fannin county crosses the center of the stream of the north prong of Sulphur creek; thence following the meanderings of said north prong of said Sulphur creek, through Lamar county, to a point where the center of the stream of the said north prong of said Sulphur creek crosses the south boundary line of Lamar county; thence east, and with said south boundary line of Lamar county, to the southeast corner of Lamar county; thence south, and with the east boundary line of Hopkins county, to the place of beginning.

## DENTON COUNTY.

ART. 763. Beginning at the southwest corner of Collin county, as now established; thence north with the west boundary line of said county of Collin to the corner of Grayson county; thence north with the boundary line of that county to the northeast corner of Denton county, as established by the county of Grayson, a distance in all of twenty-nine miles and twenty-seven chains (four pole chains); thence west, following the line of Grayson county and passing its southwest corner, in all thirty-one miles; thence south to a point due west of the northwest corner of Dallas county, as now established by law; thence east to said corner of Dallas county; thence with the north boundary line of said county of Dallas, eastward to the beginning.

Denton county.  
(Act Jan. 24,  
1852, p. 32.)  
P.D. 311.

## DE WITT COUNTY.

ART. 764. Beginning at the lower corner of a survey of one-fourth of a league of land granted to Jesse McCoy, standing on the northeast bank of Guadalupe river in Gonzales county; thence running north 51° east, seven thousand three hundred varas; thence running south 39° east, forty-seven thousand varas; thence running south 51° west, to the intersection of the Coleta creek; thence up the Coleta to the intersection thereof by the district line of Gonzales district; thence south 51° west to a point that will be south 51° west, to a point that will be south 51° west, seventy-seven thousand varas from the northeast boundary line of said county; thence north 39° west, to the intersection of a line running south 51° west from the one-fourth of a league of land granted to Jesse McCoy; thence north 51° east to the place of beginning.

DeWitt county,  
(Act Feb. 28,  
1848, p. 40.)  
P.D. 312.

## DICKENS COUNTY.

ART. 765. Beginning at the northeast corner of Crosby county; thence east thirty miles; thence south thirty miles; thence west thirty miles to southeast corner of Crosby county; thence north thirty miles to the place of beginning.

Dickens county  
(Act Aug. 21,  
1876, p. 234.)

## DIMMIT COUNTY.

ART. 766. Beginning at the southwest corner of Frio county, being also the corner of La Salle and Zavala counties; thence west with the south line of Zavala to its southwest corner line, a point due south of the southwest corner of Edwards county; thence due south thirty miles; thence due east to the west line of La Salle county; thence due north with said west line to the beginning.

Dimmit county  
Acts Feb. 1,  
1858, p. 87;  
Sept. 29, 1868,  
p. 18.)  
P.D. 313, 5849.

## DONLEY COUNTY.

ART. 767. Beginning at the northeast corner of Armstrong county, and southeast corner of Carson county, and southwest corner of Gray county; thence south thirty miles; thence east thirty miles; thence north thirty miles to place of beginning.

Donley county.  
(Act Aug. 21,  
1876, p. 234.)

## DUVAL COUNTY.

ART. 768. Beginning at the southeast corner of McMullen county; thence due east six miles; thence south to the northeast line of Starr or Hidalgo county; thence following the northeast line of Starr to a point due south of the southwest corner of McMullen county; thence in a direct line north to the southeast corner of La Salle and the southwest corner of McMullen counties; thence with the boundaries of McMullen, and due east to the beginning.

Duval county.  
(Act Feb. 1,  
1858, p. 87.)  
P.D. 314.  
(See Acts 1879,  
chapter 41.)

## EASTLAND COUNTY.

ART. 769. Beginning at the southwest corner of Stephens county and southeast corner of Shackelford county, and northeast corner of Callahan county; thence south thirty miles to the southeast corner of Eastland county and southeast corner of Callahan county; thence with the north lines of Brown, Comanche and Erath counties to the south corner of Palo Pinto county; thence with the northwest line of Erath county five miles; thence due north to a point due east of the southwest corner of Buchanan

Eastland  
county.  
(Acts Aug. 21,  
1876, p. 234;  
Feb. 1, 1858,  
p. 87.)  
P.D. 315.

county; thence due west to said corner; and thence with the south line of Buchanan to the beginning.

## EDWARDS COUNTY.

Edwards county.  
(Act Feb. 1,  
1858, p. 87.)  
P.D. 316.

ART. 770. Beginning at the northwest corner of Kerr county on the south line of Kimble county; thence west with the line of Kimble to its south west corner; thence due south to the north line of Dawson county, with the boundaries of Dawson, Uvalde, Bandera and Kerr, to the beginning.

## ELLIS COUNTY.

Ellis county.  
(Act July 31,  
1876, p. 77.)

ART. 771. Beginning on the west bank of the Trinity river, at a point which, by the meanderings of said river, will be one mile northwardly from Robert H. Porter's house; thence on a straight line to Chambers' creek at a point opposite the mouth of Mill creek; thence south 60° west to a point thirty-seven miles from the place of beginning; thence north 30° west to the southeast corner of Johnson county; thence north to a point directly west of the southwest corner of Dallas county; thence east to the said southwest corner of Dallas county; thence with the southern boundary line of said Dallas county to the Trinity river; thence down said river, with the meanderings thereof, to the place of beginning.

## EL PASO COUNTY.

El Paso county  
(Act May 2,  
1871, p. 70.)  
P.D. 5852, 318.

ART. 772. Beginning at a point on the east bank of the Rio Grande, established as the boundary line between the State of Texas and the territory of New Mexico; that is, the point where the thirty-second parallel of north latitude crosses the Rio Grande; thence due east along said thirty-second parallel of north latitude to where it crosses the river Pecos; thence following down the western bank of the river Pecos to the south bank of Delaware creek, at its point of junction with the river Pecos; thence in a southwesterly direction to San Martin springs in the Apache mountains; thence in a southwesterly direction to the east bank of the Rio Grande, where it is crossed by the 105th parallel of longitude west of Greenwich; thence following up the east bank of said Rio Grande to the place of beginning.

## ENCINAL COUNTY.

Encinal county  
(Acts Feb. 1,  
1858, p. 87; April  
28, 1871, p. 62.)  
P.D. 319, 3198,  
5897.  
(See acts 1879,  
chapter 41.)

ART. 773. Beginning at the northwest corner of Duval county; thence due west with the south line of La Salle to its southwest corner; thence due south to the line (old) of Webb and Zapata counties; thence running in the direction of the mouth of the Olmos creek to a point due south of the beginning; thence due north to the beginning.

## ERATH COUNTY.

Erath county.  
(Acts Nov. 2,  
1866, p. 20; Feb.  
4, 1854; Feb. 14,  
1860, p. 121; Jan.  
25, 1856, p. 27;  
Feb. 1, 1858, p. 87)  
P.D. 5854, 320.

ART. 774. Beginning at the southeast corner of Palo Pinto county; thence in a direct line to a point where the north line of Bosque county crosses the East Bosque; thence south 60° west to a point thirty-eight and one-half miles south 60° west from the northeast corner of Bosque county; thence north 30° west to a point north 30° west thirty-five miles from the upper line of Coryell county; thence south 60° west five miles; thence north 30° west to a point sixty-five miles north 30° west from said upper line of Coryell county; thence north 60° east to a point due south of the southeast corner of Stephens county; thence north 60° east five miles; thence due north to the south line of Palo Pinto county; thence east with said south line to the beginning.

## FALLS COUNTY.

Falls county.  
(Act Jan. 28,  
1856, p. 87; special  
act Dec. 15,  
1863, p. 18.)  
P.D. 321.

ART. 775. Beginning at the upper corner of league number five on the west bank of Brazos river, in the name of L. B. Franks; thence north 60° east fourteen miles; thence south 30° east to the northwest boundary of Robertson county; thence along said line to the Brazos river and across the same; thence up the west bank of said river to the northeast corner of league number eight, in the name of S. Frost; thence south 60° west to a point which bears south 30° east from another point on the south line of

McLennan county six miles north 60° east from its southwest corner; thence north 30° west to said point; thence north 60° east to the beginning (see acts of January 28, 1850).

## FANNIN COUNTY.

ART. 776. Beginning on Red river at the mouth of Bois d'Arc creek; thence up said creek, with the meanders thereof, to the crossing at the residence of Carter Cliffs, deceased; thence south with the line established by John D. Black, county surveyor of Fannin county, to a point thirty miles due south of the beginning point; thence south 80° west to a point due south of the mouth of Choctaw bayou; thence north to Red river at the mouth of said bayou; thence down Red river to the beginning.

Fannin county.  
(Act March 14,  
1846, p. 6.)  
P.D. 322.

## FAYETTE COUNTY.

ART. 777. Beginning at Grassmeyer's ferry on the Colorado; thence in a northeasterly direction, at right angles with the general course of the river Colorado to the intersection of the line of Lee county, being a line running from a point where the Bastrop and old Burleson line is nearest to the east corner of Elias Marshall's survey to the southwest corner of David G. Green's survey; thence with said line to David G. Green's southwest corner; thence in a direct line to the west corner of A. J. P. Thompson's survey; thence with the northwest boundary lines of Thompson, Wood, Taylor and DeWitt's surveys, to the divide between the waters of Colorado and Brazos rivers; thence down said divide to the northwest line of David Shelby's league on the line of Austin county; thence in a direct line to a league of land granted to Samuel G. Pettus, including said land, to the crossing of a line running from the southwest corner of a league granted to Wm. Burnett to the upper corner of J. Duty's league; thence running southwestwardly with said line to said corner of J. Duty's, and continuing in the direction of the upper corner of Wm. Ponton's league on Lavaca river to the Lavaca county line; thence with said line west to Lavaca river; thence up said river to its head at the northeast corner of John Morris's survey; thence in a direct line to the northeast corner of a quarter of a league granted to Stiffler; thence in a northeasterly direction to the beginning, so as to have Grassmeyer's in the county of Mina (Bastrop).

Fayette  
county.  
(Acts Dec. 14,  
1837, p. 35;  
April 14, 1874, p.  
94; March 24,  
1846, p. 15; Dec.  
14, 1837, p. 35;  
May 3, 1838, p. 4)  
P.D. 323.

## FISHER COUNTY.

ART. 778. Beginning at the northwest corner of Jones county, new corner; thence west thirty miles; thence south thirty miles; thence east thirty miles; thence north thirty miles to the place of beginning.

Fisher county  
(Act Aug. 21,  
1876, p. 234.)

## FLOYD COUNTY.

ART. 779. Beginning at the northwest corner of Motley county; thence west thirty miles; thence south to a point thirty miles due west of the southwest corner of Motley county; thence east thirty miles to the southwest corner of Motley county; thence north to the place of beginning.

Floyd county.  
Id.

## FORT BEND COUNTY.

ART. 780. Beginning on Buffalo bayou, at the old crossing where the counties of old Austin and Harris corner; thence in a direct line to the southeast corner of Wm. Cooper's tract of land; thence along the said line until it intersects the line of Wm. Wade's land; thence south along said line to the southeast corner of the same; thence along the said Wade's line a due west course to the Brazos river; thence across said river and up its right bank to the mouth of Sixteen Mile creek; thence up said creek to its source; thence in a direct line to the southeast corner of Gabriel Cole's land, it being part of the league originally granted to Charles Baird; thence along the lower line of said land to the San Bernard river; thence down said river to the northwest corner of the league of land on the east bank of the Bernard river, granted to Prater; thence along the upper line of said league to its northeast corner; thence

Fort Bend  
county.  
(Acts March 13,  
1848, p. 75;  
March 24, 1846,  
pp. 15, 18.)  
P.D. 324

down the back line of said league to the northwest corner of the league of land granted to A. Durst; thence along the upper line of said league to its northeast corner; thence in a direct line to the head of the south prong of Cow creek; thence down said creek to its mouth, crossing the Brazos river; thence up the east bank of said river to the northwest corner of the league of land granted to F. Bingham; thence along the upper line of said league to its northeast corner; thence in a direct line to a point where Clear creek, near its source, crosses the upper line of a tract of land granted to W. R. Perry; thence to the head of Bray's bayou; thence in a direct line to the place of beginning.

## FRANKLIN COUNTY.

Franklin county.  
(Act March 8,  
1875, p. 95.)

ART. 781. Beginning at a point nine miles west of the town of Mt. Pleasant, in the county of Titus, on the road leading from the town of Mt. Pleasant to the town of Sulphur Springs, in the county of Hopkins, and running thence north to the north line of said county; thence west with the said north line to the northwest corner of said county; thence south with the west line of said county to the southwest corner of the county; thence east with the south line of said county to a point on said line opposite the point of beginning; thence north to the place of beginning.

## FREESTONE COUNTY.

Freestone county.  
(Act Nov. 30,  
1850, p. 30.)  
P.D. 325.

ART. 782. Beginning at the northeast corner of Leon county; thence running with the northwest boundary of said county twenty-nine miles; thence north 30° west to the southeast boundary of Navarro county; thence with the same north 60° east to the Trinity river; thence down the channel of the same to the place of beginning.

## FRIO COUNTY.

Frio county.  
(Act May 22,  
1871, p. 122.)  
P.D. 5355.

ART. 783. Beginning at the southeast corner of Medina county; thence south with the western boundary line of Atascosa county to the northwest corner of McMullen county; thence west with the northern boundary line of La Salle county to the northeast corner of Dimmit county; thence north with the eastern boundary line of Zavala county to the southeast corner of Uvalde county; thence east with the southern boundary line of Medina county to the place of beginning; and all the territory within the said limits shall constitute the county of Frio.

## GAINES COUNTY.

Gaines county.  
(Act Aug. 21,  
1876, p. 234.)

ART. 784. Beginning at the northwest corner of Dawson county; thence west to the southwest corner of Yoakum county on the 103d meridian; thence south with the said meridian thirty miles; thence east to the southwest corner of Dawson county; thence north thirty miles to the place of beginning.

## GALVESTON COUNTY.

Galveston county.  
(Act Jan. 28,  
1841, p. 80.)  
P.D. 327.

ART. 785. Beginning on the shores of the gulf of Mexico, at the southeast corner of Martin Dunman's league of land; thence due north to East bay bayou; thence down said bayou to East bay; thence following the shores of said East bay to Red Fish bar; thence following said bar, from east to west, to the western shores of Galveston bay; thence in a northerly direction, with the shores of said bay, to the mouth of Clear creek; thence up said creek to the crossing of the road leading from Lynchburg to Dr. Moore's place on Chocolate bayou; thence from said crossing, by a direct southerly line, to the head of Dickenson's bayou; thence in a southerly direction to a point on West bay, at equal distance between Chocolate bayou and Highland bayou; thence following with the bay, and through the pass dividing Galveston island and San Louis; thence eastwardly along the gulf shores to the place of beginning.

## GARZA COUNTY.

Garza county.  
(Act Aug. 21,  
1876, p. 234.)

ART. 786. Beginning at the northwest corner of Kent county; thence west thirty miles; thence south thirty miles; thence east thirty miles; thence north thirty miles to the place of beginning.

## GILLESPIE COUNTY.

**ART. 787.** Beginning at a point on the dividing line between the (old) counties of Bexar and Travis lying 18,000 varas south 17° west from where said line crosses Colorado river; thence due north with the line of Blanco county to the south line of Llano county, being a line running due west from a point five miles due south of the mouth of Sandy creek; thence due west with said line and the south line of Mason county 77,000 varas; thence due south to a point lying due west from the beginning; thence due east 77,000 varas to the beginning.

Gillespie county.  
(Acts Feb. 23, 1848, p. 35; Feb. 10, 1858, p. 147.)  
P.D. 328.

## GOLIAD COUNTY.

**ART. 788.** Beginning on a stone pillar on San Antonio river at the lower corner of the Gertrudes Berrera (or Saviago) tract of land; thence up the river, with its meanders, to the intersection of said river by the line of Refugio district, as run by Willard Richardson, deputy surveyor of Refugio county; thence running in a straight line to the mouth of the Perdido creek; thence up Coletto creek, with its meanders, to the intersection thereof by the district line of Gonzales district; thence south 51° west with the line of DeWitt and Karnes counties, to the east line of Bee county; thence with the east line of Bee county, and down Blanco creek to a point lying south 49° west from the beginning; thence north 49° east to the place of beginning.

Goliad county.  
(Acts Dec. 8, 1857, p. 10; Feb. 12, 1848, p. 26; April 5, 1861, p. 33; Feb. 26, 1848, p. 40; Feb. 4, 1854, p. 44.)  
P.D. 329.

## GONZALES COUNTY.

**ART. 789.** Beginning at the mouth of Plum creek, on the San Marcos river; thence in a direct line with the boundary of Caldwell county, in the direction of the southwest corner of Bastrop county, as defined by the act to extend and define the eastern boundary line of Caldwell county, to the intersection of a line running from the northeast corner of a quarter of a league granted to Stiffler, to the northeast corner of a league of land granted to J. Morris, on the head of Lavaca river; thence with said line to the northeast corner of J. Morris' league; thence down said stream to the north line of Lavaca county; thence with said line south 81° west to the southwest corner of D. Burket's league number seven, in class number four; thence southwest five miles; thence due south to a point where it intersects a line running from said D. Burket's southwest corner to another point lying north 51° east seven thousand three hundred varas from the lower corner of one-fourth league of land, granted to Jesse McCoy, on the east bank of the Guadalupe river; thence with said line to said point, and thence south 51° west seven thousand three hundred varas to said lower corner of Jesse McCoy, and continuing said course with the line of DeWitt county to the intersection of the (old) district line between Goliad and Gonzales; thence with said line north 41° west to the southeast line of Guadalupe county; thence with said line north 34° east to the mouth of Nash's creek, and continuing the same course to San Marcos river; thence down said river to the place of beginning.

Gonzales county.  
(Acts Jan. 25, 1850, p. 82; March 8, 1850, p. 142; April 6, 1844, p. 49; April 21, 1856, p. 2; Feb. 4, 1854, p. 78; March 30, 1846.)  
P.D. 330.

## GRAY COUNTY.

**ART. 790.** Beginning at the northwest corner of Wheeler county and the southwest corner of Hemphill county; thence west thirty miles; thence south thirty miles; thence east thirty miles to the southwest corner of Wheeler county; thence north thirty miles to the place of beginning.

Gray county.  
(Act August 21, 1876, p. 334.)

## GRAYSON COUNTY.

**ART. 791.** Beginning on Red river at the mouth of Choctaw bayou, thence south twenty-two miles; thence west twenty-five miles to the eastern boundary of Denton county; thence north one and a half miles to the northeast corner of Denton county; thence west six and a half miles; thence north to Red river; thence down the same, with its meanders, to the beginning; that the southwest corner of Grayson county shall be at a point in the north boundary line of Denton county, five miles and seven-eighths of a mile west of the northeast corner of said Denton county, and

Grayson county.  
(Acts Jan. 12, 1848, p. 9; Feb. 2, 1856, p. 49.)  
P.D. 331.



the said point to be the southeast corner of Cooke county, and the division line between said counties shall be run due north to Red river from said corner.

## GREER COUNTY.

Greer county.  
(Act Feb. 8,  
1860, p. 133.)  
P.D. 332.

ART. 792. Beginning at the confluence of Red river and Prairie Dog river; thence running up Red river, passing the mouth of South fork, and following Main or North Red river to its intersection with the 23° of west longitude; thence due south across Salt fork, and to Prairie Dog river; and thence following that river to the place of beginning.

## GREGG COUNTY.

Gregg county.  
(Acts April 13,  
1874, p. 37;  
April 30, 1874,  
p. 179.)  
P.D. 5882c,  
5882d.

ART. 793. Beginning at the southeast corner of Upshur county, in the center of Sabine river; thence north to Little Cypress; thence up said Cypress to the mouth of Glade creek; thence up said creek to the road running from Marshall to Gilmer; thence direct to the corner of Rusk and Smith counties on the Sabine river; thence down said river, with its meanderings, to the place of beginning.

## GRIMES COUNTY.

Grimes county  
(Acts April 28,  
1873, p. 49; Jan.  
27, 1853, p. 10;  
April 6, 1846, p.  
50.)  
P.D. 5882v, 333,  
P.D. 333.

ART. 794. Beginning at a point where the west line of Montgomery county crosses Mill creek; thence westwardly to the mouth of Beason's creek on the Brazos; thence up said stream to the mouth of the Navasota, and up the Navasota to the northwest corner of a tract of land in the name of B. Q. Hadley; thence in a direct line to where a line running from the northwest corner of a six hundred and forty acres survey made for L. G. Clipper, to the northwest corner of a two-third league survey made for James H. Collard crosses the Main Bedias; thence with the line of Walker county to said James H. Collard's corner; thence in a southerly direction to the northeast corner of a league of land granted to W. Montgomery; thence to the southeast corner of the same; thence due south to the beginning.

## GUADALUPE COUNTY.

Guadalupe  
county.  
(Acts Feb. 12,  
1858, p. 198;  
Feb. 8, 1871,  
p. 4; March 13,  
1874, p. 21;  
March 30, 1846,  
p. 33.)  
P.D. 334.

ART. 795. Beginning at the upper corner of league number nineteen, in the name of B. and G. Fulcher, on the San Marcos river; thence with the northwest boundary of said survey and survey number sixty-two, in the name of Andrew Mitchell, to said Mitchell's western corner; thence in a straight line to the southeast corner of Comal county; thence with the line of Comal county south 50° west seven miles to the lower corner of survey number twenty-one, in the name of John Thompson, on the Guadalupe river; thence with the south line of said league south 65° west to the southwest corner of the same; thence in a direct line to where the lower line of N. Michelis' league, number one hundred and fourteen, crosses Cibola river; thence down Cibola river to the northwest line of Manuel Ximenes' survey; thence with said line to where it crosses Elm creek; thence on a direct line to the north corner of Austin Clements' survey; thence with the northeast line of said survey to a point lying south 34° west from the mouth of Nash's creek on the northeast bank of Guadalupe river; thence north 34° east to said point, and continuing the same course to the San Marcos river; thence up the river San Marcos, with its meanders, to the point of beginning.

## HALE COUNTY.

Hale county.  
(Act August 21,  
1876, p. 234.)

ART. 796. Beginning at the northwest corner of Floyd county; thence west thirty miles; thence south to a point thirty miles due west of the southwest corner of Floyd county; thence east thirty miles to the southwest corner of Floyd county; thence north to the place of beginning.

## HALL COUNTY.

Hall county.  
(Act August 21,  
1876, p. 234.)

ART. 797. Beginning at the northwest corner of Childress county; thence west thirty miles; thence south thirty miles; thence east thirty miles to the southwest corner of Childress county; thence north thirty miles to the place of beginning.

## HAMILTON COUNTY.

ART. 798. Beginning on the south line of Bosque and the north line of Coryell at a point two and a half miles northeasterly of the intermediate southwest corner of Bosque county; thence in a direct line parallel with and two and a half miles from the west line of Bosque to the south line of Erath county; thence with said south line of Erath south 60° west to the southwest corner of Erath; thence south 30° east six miles; thence south 60° west to the east line of Brown county; thence south 30° east to a point south 60° west from the northwest corner of Coryell county; thence north 60° east to the northwest corner of Coryell county; thence following the north line of Coryell county to the beginning.

Hamilton county.  
(Acts Jan. 22,  
1858, p. 63.)  
P.D. 335.

## HANSFORD COUNTY.

ART. 799. Beginning at the northwest corner of Ochiltree county; thence west thirty miles to the ninetieth mile post; thence south thirty miles; thence east thirty miles to the southwest corner of Ochiltree county; thence north thirty miles to the place of beginning.

Hansford county.  
(Act August 21,  
1876, p. 234.)

## HARDEMAN COUNTY.

ART. 800. Beginning at the southwest corner of Wilbarger county; thence west thirty miles; thence north to the Prairie Dog Town river; thence down said river to the western boundary line of Wilbarger county; thence south with said line to the place of beginning.

Hardeman county.  
(Acts Feb. 1,  
1858, p. 87;  
Aug. 21, 1876,  
p. 234.)  
P.D. 336.

## HARDIN COUNTY.

ART. 801. Beginning on Big Sandy creek where the east line of Polk county crosses the same; thence due east to the Neches river; thence down said river, with its meanders, to the mouth of Pine Island bayou; thence up said bayou and its southern branch to the east line of Liberty county; thence west nine miles; thence on a direct line to a point on the southern line of Polk, twelve miles westerly of its southeast corner; thence with the line of Polk county to the beginning.

Hardin county.  
(Act Jan. 22,  
1858, p. 58.)  
P.D. 337.

## HARRIS COUNTY.

ART. 802. Beginning at the entrance of Clear creek into Galveston bay; thence running up said creek with the line of Galveston and Brazoria counties to where it crosses the upper line of a tract of land granted to W. R. Perry; thence to the head of Bray's bayou; thence in a direct line to the old crossing of Buffalo bayou; thence with the line of Waller county in a straight line to the head of Spring creek; thence down the same, with its meanders, to the San Jacinto; thence north 50° east to the western line of Liberty county; thence with said line to the head of Cedar bayou; thence down said bayou to its mouth; thence to Morgan's point, and with the meanders of the bay to the beginning.

Harris county.  
(Acts March  
24, 1846, p. 18;  
Jan. 25, 1840,  
p. 232; Dec. 18,  
1837, p. 33.)  
P.D. 338.

## HARRISON COUNTY.

ART. 803. Beginning on the twenty-ninth mile post on the line dividing the State of Texas from the State of Louisiana; thence in a direct line to the mouth of Eight mile creek on the Sabine river; thence across and up said river, with its meanders, to a place due south of the southwest corner of George Martin's and north corner of R. M. Watkins' surveys on Big Cypress bayou; thence due north to a point the southwest corner of Marion county; thence easterly on a line parallel with the general course of Big Cypress bayou to the southwest corner of R. Maulding's survey; thence down Little Cypress to its mouth; thence down with Ferry and Caddo lake to the southeast corner of Marion county; thence south with the line of the State of Louisiana to the beginning.

Harrison county.  
(Acts Mar. 30,  
1846, p. 31; Feb.  
4, 1858, p. 87;  
April 30, 1874.)  
P.D. 339.

## HARTLEY COUNTY.

ART. 804. Beginning on the 103d meridian and the southwest corner of Dallam county; thence east about forty-seven miles to the southwest corner of Sherman county and southeast corner of Dallam county; thence south thirty miles; thence west forty-seven miles; thence north thirty miles to the place of beginning.

Hartley county  
(Act August 21,  
1876, p. 234.)

## HASKELL COUNTY.

Haskell county  
(Acts Aug. 21,  
1876, p. 234;  
Feb. 1, 1858,  
p. 87.)  
P.D. 340.

ART. 805. Beginning at the southwest corner of Throckmorton county; thence west thirty miles; thence north thirty miles; thence east thirty miles to the southwest corner of Baylor county and the northwest corner of Throckmorton county; thence south thirty miles to the place of beginning.

## HAYS COUNTY.

Hays county.  
(Acts Feb. 12,  
1858, p. 196;  
Jan. 10, 1862,  
p. 33; March 1,  
1848, p. 48.)  
P.D. 341.

ART. 806. Beginning at the upper corner of league number nineteen, in the name of B. and G. Fulcher, on the San Marcos river; thence with the northwest boundary of said survey and survey number sixty-two, in the name of Andrew Mitchell, to Mitchell's western corner; thence in a straight line to the southeast corner of Comal county; thence with the line of Comal county north 14° west to a point lying north 50° west from the south corner of Musgrove's survey; thence north 50° west to the crossing of Little Blanco, being a corner of Comal, Blanco and this county; thence in a direct course across the Perdinales to the southwest corner of Travis county; thence south 50° east with the Travis county line to the old San Antonio and Bastrop road; thence with said road to San Marcos river; thence down the main stream of said river to the beginning.

## HEMPHILL COUNTY.

Hemphill  
county.  
(Act August 21,  
1876, p. 234.)

ART. 807. Beginning at the northeast corner of Roberts county and the southeast corner of Ochiltree county and southwest corner of Lipscomb county; thence east thirty miles to the southeast corner of Lipscomb county to the one hundred and second mile post on the 100th meridian; thence south thirty miles to the seventy-second mile post; thence west thirty miles to the southeast corner of Roberts county; thence north thirty miles to the place of beginning.

## HENDERSON COUNTY.

Henderson  
county.  
(Act Jan. 1850,  
p. 88.)  
P.D. 342.

ART. 808. Beginning at the northwest corner of Anderson county; thence with the upper boundary of said county of Anderson to the northeast corner thereof; thence up the Neches river to the southeast corner of A. Sidney Johnston's twelve hundred and [eighty] acre survey; thence west to the Trinity river; thence down said river, with its meanders, to the place of beginning.

## HIDALGO COUNTY.

Hidalgo county  
(Acts July 26,  
1876, p. 40;  
April 26, 1871,  
p. 62.)  
P.D. 343, 5856,  
5357.  
(See Acts 1879,  
chapter 41.)

ART. 809. Beginning on the left margin of the Rio Grande, at the southeast corner of a tract of land known as "Llano Grande;" thence due north to the south line of Nueces county; thence with the line of Nueces (running from the mouth of Olmos creek to the southwest corner of Encinal county) to the northeast corner of Starr county; thence with the east line of Starr county south 25° west to the point formerly dividing the jurisdiction of the towns of Reynoso and Camargo at the rancho Los Cuevas on the margin of the Rio Grande; thence down said river, with its meanders, to the place of beginning.

## HILL COUNTY.

Hill county.  
(Acts Jan. 28,  
1850, p. 86;  
Feb. 15, 1858,  
p. 218; Feb. 5,  
1850, p. 112.)  
P.D. 344.

ART. 810. Beginning at the northeast boundary of McLennan county, thirty-eight and one-half miles north 30° west from the east corner of Falls county; thence north 60° east, to a point bearing south 30° east from another point on the southeast line of Ellis county, three miles north 60° east from the south corner of said county; thence north 30° west to said point; thence south 60° west three miles to the south corner of Ellis county; thence north 30° west to a point on the Ellis county line, bearing south 30° east twenty-two miles to the west corner of Ellis county, as established by act of January 28, 1850; thence south 75° west to Brazos river; thence down that river, with its meanders, to the northwest line of McLennan county; thence with said line north 60° east to its north corner; thence south 30° east to the place of beginning.

## HOCKLEY COUNTY.

ART. 811. Beginning at the northeast corner of Cochran county, southeast corner of Bailey county and southwest corner of Lamb county; thence east thirty miles to the southeast corner of Lamb county and southwest corner of Hale county; thence south thirty miles; thence west thirty miles to the southeast corner of Cochran county; thence north to the place of beginning.

Hockley county.  
(Act Aug. 21,  
1876, p. 234.)

## HOOD COUNTY.

ART. 812. Beginning at the northwest corner of Somervell county, on a straight line running from the crossing of east Bosque by the north line of Bosque county, to the southeast corner of Palo Pinto county; thence with said line to the southeast corner of Palo Pinto county; thence north to the southwest corner of Parker county; thence east with the south line of said county to a point lying due north from the upper corner of a three hundred and twenty acres survey, in the name of J. Lyon, and the lower corner of A. Farquhar's three hundred and twenty acre survey, on the northeast bank of Brazos river; thence due south to the northeast corner of Somervell county, being a point due east from the northeast corner of W. B. Smith's survey on Squaw creek; thence due west to said corner; thence south 60° west to the Erath county line, and to the place of beginning.

Hood county.  
(Acts Nov. 2,  
1866, p. 83;  
March 13, 1875,  
p. 99.)  
P.D. 5858.

## HOPKINS COUNTY.

ART. 813. Beginning at a point, the center of confluence of the north and south prongs of Sulphur creek; thence with the meanders of said south prong of Sulphur creek to a point where the center of said stream intersects the eastern boundary line of Hunt county; thence due south to the intersection of the McMillan boundary line between Wood and Hopkins counties, being the north line of Rains county; thence east to the northeast corner of Rains county; thence with the east line of said county in a southerly direction, to the intersection of the line known as the D. O. Norton line; thence with said line due east to a point lying due south of the southeast corner of Lamar county; thence due north with the west line of Franklin county to the Sulphur creek, and with the same to the beginning.

Hopkins county.  
(Acts July 29,  
1870, p. 42;  
May 2, 1840,  
p. 205; March  
25, 1846, p. 24.)  
P.D. 345.

## HOUSTON COUNTY.

ART. 814. Beginning at the northwest corner of Trinity county, on the east bank of Trinity river, at the lower corner of Henry Golmon's survey of nine hundred and eighty acres thence north 51½° east to the Neches river; thence up the Neches river with its meanders to the southeast corner of Anderson county; thence with the south line of said county to Trinity river; thence down the same, with its meanders, to the place of beginning.

Houston county.  
(Acts Feb. 11,  
1850, p. 301;  
Jan. 26, 1850,  
p. 80.)  
P.D. 346.

## HOWARD COUNTY.

ART. 815. Beginning at the northeast corner of Martin county and the southeast corner of Dawson county; thence east thirty miles to the southeast corner of Borden county; thence south thirty miles; thence west thirty miles to the southeast corner of Martin county; thence north thirty miles to the place of beginning.

Howard county.  
(Act Aug. 21,  
1876, p. 234.)

## HUNT COUNTY.

ART. 816. Beginning at the southwest corner of Lamar county; thence south to the north line of Rains county; thence with said line west four miles; thence in a southwestern direction to Hooker's mill, on the east branch of Sabine river; thence down the same, with its meanders, to a point on said river lying south thirty-eight and a half miles and west from the beginning; thence west to a point thirty-eight and a half miles south and twenty-five miles west from the beginning; thence north to the southeast corner of Collin county, and with the east line of said county to the south boundary line of Fannin county; thence north 80° east to the beginning.

Hunt county.  
(Acts June 9,  
1870, p. 2;  
April 11, 1846,  
p. 58.)  
P.D. 347.

## HUTCHINSON COUNTY.

Hutchinson  
county.  
(Act Aug. 21,  
1876, p. 234.)

ART. 817. Beginning at the northeast corner of Moore county; thence east thirty miles; thence south thirty miles; thence west thirty miles; thence north thirty miles to the place of beginning.

## JACK COUNTY.

Jack county.  
(Act Feb. 2,  
1858, p. 97.)  
P.D. 348.

ART. 818. Beginning at the southwest corner of Wise county; thence west to the eastern boundary line of Young county; thence north with the eastern boundary line of Young county, thirty miles; thence east to the northwest corner of Wise county; thence south with the west boundary line of Wise county to the place of beginning.

## JACKSON COUNTY.

Jackson  
county.  
(Act April 2,  
1846, p. 37.)  
P.D. 349.

ART. 819. Beginning at the northeast corner of a survey made for J. Hughson, fronting on Matagorda and Carancahua bays; thence running with the north line of Hughson's survey west to its northwest corner, standing on Carancahua bay; thence running up said bay, with its meanders, to the upper corner of S. Houston's survey, standing on the west side of said Carancahua bay; thence with the line dividing S. Houston's and Keller's survey to the northwest corner of said Houston's survey; thence running in a direct line to the northeast corner of Dimmit's survey; thence with the north line of Dimmit's survey, in a west direction, to Lavaca bay; thence around said Lavaca bay, with its meanders, to the entrance of the Garcitas creek; thence running up said creek, with its meanders, to the mouth of Aronoso creek; thence running up said Aronoso creek, with its meanders, to a point where the north line of A. Dunlap's survey crosses the same; thence running in a direct line to the southwest corner of Lavaca county; thence with the south line of Lavaca county north 51° east to the west line of Wharton county; thence with the west line of Wharton county to its southwest corner; thence in a direct line to the beginning.

## JASPER COUNTY.

Jasper county.  
(Acts Feb. 5,  
1852, p. 48;  
Feb. 16, 1852,  
p. 133.)  
P.D. 350.

ART. 820. Beginning at the north of Big Alabama or Big Sandy creek, the northwest corner of Orange county; thence east to the line running from the southwest corner of survey number one, in the name of Jasper Harding, northwardly to the eastern corner of George B. Brownrigg's labor; thence with said line to said corner of Brownrigg's labor; thence northwardly to the northeast corner of Thomas E. Heninton's six hundred and forty acre survey; thence in a northwardly and direct line to McKim's old place on the Sabine county line; thence in a direct line to Jones' bridge, on Big Bear creek; thence down said creek to its mouth; thence in a direct line to old Fort Teran, on Neches river; thence down said river, with its meanders, to the beginning.

## JEFFERSON COUNTY.

Jefferson  
county.  
(Acts Jan. 22,  
1858, p. 58;  
Feb. 21, 1837,  
p. 110; Feb. 11,  
1858, p. 193;  
Feb. 5, 1852,  
p. 48.)  
P.D. 351.

ART. 821. Beginning at the mouth of Pine Island bayou; thence up said bayou and its southern branch to the east line of Liberty county, being a line running north and south through Wolf point; thence south to the north line of Chambers county; thence east five miles to the northeast corner of said county; thence due south to the gulf of Mexico; thence along the gulf of Mexico to the mouth of Sabine lake, and up the same to the mouth of Neches river; thence up said river, with its meanders, to the place of beginning.

## JOHNSON COUNTY.

Johnson  
county.  
(Acts Nov. 2,  
1866, p. 83;  
Feb. 7, 1853,  
p. 37; March  
25, 1871, p. 71.)  
P.D. 352, 5859,  
5860.

ART. 822. Beginning at the northeast corner of Hood county; thence south with east line of said county and the county of Somervell to the upper corner of J. Lyon's three hundred and twenty acre survey on the Brazos river; thence with the Brazos to the northwest corner of Hill county; thence with the Hill county line north 75° east to the west line of Ellis county (said point lies south 30° east twenty-two miles from the west corner of Ellis county, as established January 28, 1850); thence due

north to the south line of Tarrant county; thence west to the place of beginning.

## JONES COUNTY.

ART. 823. Beginning at the southwest corner of Shackelford county and northwest corner of Callahan county; thence west thirty miles; thence north thirty miles; thence east thirty miles; thence south thirty miles to the place of beginning.

Jones county.  
(Act August 21,  
1876, p. 334.)  
P.D. 353.

## KARNES COUNTY.

ART. 824. Beginning at a point five thousand varas north 51° east from the most westerly corner of De Witt county; thence north 39° west to the intersection with the northwest boundary of De Witt county; thence with said line of De Witt county north 51° east to the district line between Goliad and Gonzales; thence with said district line north 41° west to a point lying four miles and three-quarters south 41° east from the most northerly corner of Goliad land district; thence with the line of Wilson county south 51° west to the southeast line of Atascosa county; thence south 40° east with said line and the line of Live Oak county to the northwest corner of B. J. Ijams' survey; thence north 70° east with the line of Ijams, Gill and G. Childers to Medio creek; thence down the Medio with the line of Bee county to a point lying south 51° west from the beginning; thence north 51° east to the place of beginning.

Karnes county.  
(Acts Feb. 26,  
1848, p. 40;  
Feb. 4, 1854,  
p. 44; Feb. 13,  
1866, p. 106;  
Dec. 8, 1857,  
p. 11.)  
P.D. 354.

## KAUFMAN COUNTY.

ART. 825. Beginning at the southwest corner of Rockwall county; thence east to the southeast corner of said county; thence north two miles to the southwest corner of Hunt county; thence east with the south boundary of said county thirteen and a half miles; thence south to the north boundary of Henderson county (it being a line running west from the southeast corner of A. Sidney Johnston's one thousand two hundred and eighty acre survey on Neches river); thence west to the Trinity river; thence up said river, with its meanders, to the south boundary of Dallas county; thence east with said boundary to the southeast corner of said county; thence north with the east boundary of said county to the beginning.

Kaufman  
county.  
(Act Feb. 7,  
1850, p. 153.)  
P.D. 355.

## KENDALL COUNTY.

ART. 826. Beginning at the southeast corner of Gillespie county; thence west to a point on the south line of said county, from which a line running due south will cross the Guadalupe river, one mile above the public square of the town of Comfort, for the northwest corner of Kendall county; thence south about twenty-five and a half miles to the northeast boundary line of Bandera county; thence with said boundary line to the head of Balcones creek, where the west boundary line of survey number four hundred and eight, in the name of A. Gayton, crosses the same; thence down with the meanders of Balcones creek to its mouth; thence in a direct course with the northwest boundary line of Comal county to the mouth of Curry's creek, being about fourteen miles north 45° east; thence with the east course of the northwest line of Comal county five miles; thence in a direct course about twenty miles north 27° west to the place of beginning.

Kendall  
county.  
(Act Jan. 10,  
1862, page 32.)  
P.D. 356.

## KENT COUNTY.

ART. 827. Beginning at the northwest corner of Stonewall county; thence west thirty miles; thence south thirty miles; thence east thirty miles to the southwest corner of Stonewall county; thence north thirty miles to the place of beginning.

Kent county.  
(Act August 21,  
1876, p. 334.)

## KERR COUNTY.

ART. 828. Beginning at a point on the south line of Gillespie county, from which a line running due south will cross the Guadalupe river one mile above the public square of the town of Comfort; thence south to the north boundary line of Bandera county; thence with the north line of Bandera county in a direct line to the southwest corner of survey number

Kerr county.  
(Acts Jan. 26,  
1856, p. 30;  
Jan. 10, 1862,  
p. 33.)  
P.D. 357

ninety-eight, in the name of T. E. Bettner; thence in the same course four miles; thence westerly to the north corner of survey number one hundred and fifty-seven, in the name of J. R. Bowles, on the head of Wallace creek; thence due west to the northwest corner of Bandera county; thence north twenty-six miles to the south boundary line of Kimble county; thence east about twenty-nine miles to the southeast corner of Kimble county; thence with the west line of Gillespie county to its southwest corner; thence east with the south line of Gillespie county to the place of beginning.

## KIMBLE COUNTY.

Kimble county.  
(Act Jan. 22,  
1858, p. 58.)  
P.D. 358.

ART. 829. Beginning on the west line of Gillespie county, where the north line of Kerr county terminates on the same; thence due west with said line, and in the same course, to a point due south of the southwest corner of Menard county; thence due north to said corner of Menard county; thence due east with the south line of said county to the west line of Mason county; thence with the lines of Mason and Gillespie counties, to the beginning.

## KING COUNTY.

King county.  
(Act August 21,  
1876, p. 234.)

ART. 830. Beginning at the northeast corner of Dickens county; thence east thirty miles to the southeast corner of Cottle county; thence south thirty miles to the southwest corner of the new line of Knox county; thence west thirty miles to the southeast corner of Dickens county; thence north thirty miles to the place of beginning.

## KINNEY COUNTY.

Kinney county  
(Act Oct. 5,  
1866, p. 21.)  
P.D. 5862, 359.

ART. 831. Beginning at the southwest corner of Edwards county, and running due south with the western line of Uvalde county to the southwest corner of said county; thence due west to the Rio Grande river, forming the south line of the said county of Kinney, and running due west from the point of beginning to the San Pedro or Devil's river, and with said river to the Rio Grande; thence with the meanders of the Rio Grande to the south line of said county.

## KNOX COUNTY.

Knox county.  
(Acts Feb. 1,  
1858, p. 87;  
Aug. 21, 1870,  
p. 234.)  
P.D. 360.

ART. 832. Beginning at the southwest corner of Baylor county and the northwest corner of Throckmorton county; thence west thirty miles; thence north thirty miles; thence east thirty miles to the southwest corner of Wilbarger county and northwest corner of Baylor county; thence south thirty miles to the place of beginning.

## LAMAR COUNTY.

Lamar county.  
(Acts July 23,  
1870, p. 42;  
Mar. 14, 1846,  
p. 42; Dec. 17,  
1840, p. 97;  
Nov. 17, 1871,  
p. 30.)  
P.D. 5863, 361.

ART. 833. Beginning at a point where the east boundary of Fannin county crosses the center of the north prong of Sulphur creek; thence north with the Fannin county line to the crossing of Bois d'Arc creek, at the late residence of Carter Clifts; thence down said creek to its mouth; thence down Red river, with its meanders, to the mouth of Upper Pine creek; thence due south to the center of Sulphur creek; thence up with the meanderings of the north prong of Sulphur creek to the place of beginning.

## LAMB COUNTY.

Lamb county.  
(Act August 21,  
1876, p. 234.)

ART. 834. Beginning at the northwest corner of Hale county; thence west thirty miles; thence south to a point thirty miles due west of the southwest corner of Hale county; thence east thirty miles to the southwest corner of Hale county; thence north to the place of beginning.

## LAMPASAS COUNTY.

Lampasas  
county.  
(Acts Feb. 5,  
1832, p. 49;  
Feb. 1, 1856,  
p. 41; Feb. 5,  
1858, p. 101.)  
P.D. 362.

ART. 835. Beginning at the upper corner of Sallie House's (widow of James House) league number fourteen, on the Colorado river; thence east to a point north 30° west from the point on the bank of the Lampasas where the lower line of W. P. Reese's survey crosses the same; thence on a direct line to the southwest corner of Coryell county; thence north 30° west with the west line of Coryell county thirty miles to the north-

west corner of said county; thence south 60° west to the southwest corner of Hamilton county; thence with the southwest line of said county to a point due east from the mouth of Pecan bayou, on the Colorado river; thence due west to the mouth of said bayou; thence down the Colorado, with its meanders, to the place of beginning.

## LA SALLE COUNTY.

ART. 836. Beginning at the southwest corner of Frio county, being also the corner of Zavala and Dimmit counties; thence with the east line of Dimmit, and due south forty-two miles; thence due east to the southwest corner of McMullen county; thence with the west line of McMullen and the south line of Frio to the beginning.

La Salle county  
(Act Feb. 1,  
1858, p. 87.)  
P.D. 363.

## LAVACA COUNTY.

ART. 837. Beginning seven thousand three hundred varas north 51° east from the lower corner of a quarter league of land granted to Jesse McCoy; thence in a northern direction to the southwest corner of D. Burket's league survey number seven, in class number four, to a point lying southwest five miles and due south from said D. Burket's southwest corner; thence north to a point five miles southwest from said Burket's corner; thence northeast five miles to said Burket's corner; thence north 81° east to Lavaca creek; thence up said creek to a point lying due west of the upper corner of Marmaduke Sandifer's survey on the west bank of the Navidad river; thence due east to said corner of Sandifer's survey; thence down said river with its meanders to the upper or northwest corner of A. W. Breedlove's survey; thence with the upper or north line of A. W. Breedlove's survey, east four thousand six hundred varas, to a point on said line; thence running south 39° east, forty thousand seven hundred varas; thence running south 51° west to a point south 39° east of the place of beginning; thence running north 39° west to the place of beginning.

Lavaca county  
(Acts April 6,  
1846, p. 49;  
Aug. 21, 1856,  
p. 2; Feb. 11,  
1854, p. 78.)  
P.D. 364.

## LEE COUNTY.

ART. 838. Beginning in Washington county, at the north corner of the most northwestern DeWitt survey; thence on a direct line to the junction of Alligator and Turkey creek; thence down Turkey creek to its junction with Cedar creek; thence down Cedar creek to its confluence with the Yegua; thence up the Yegua to the mouth of the East Yegua; thence up the East Yegua to the point where said stream is crossed by the Milam and Burleson county line; thence with said line to the point where it intersects the northeast boundary line of the Richard Ross survey; thence in a direct line to the point where the third Yegua crosses the Burleson and Bastrop county line on the John Tom league; thence with said county line to the point in said lines nearest the east corner of the Elias Marshall survey; thence in a direct line to the southwest corner of the David G. Green survey in Fayette county; thence in a direct line to the west corner of the A. J. Thompson survey; thence with the northwest boundary line of the same and with the northwest boundary line of the Wood Taylor and the most northwestern DeWitt survey to the place of beginning; that all the territory now forming a portion of the county of Burleson, and comprised and embraced within the boundaries herein described, to wit: Beginning at the most northern northwest corner of the county of Lee, at the point where the dividing line between Burleson and Milam county crosses the northeast boundary line of the Richard Ross survey; thence with the Burleson county line to the most western corner of Burleson county in the northeast boundary line of Bastrop county; thence with the dividing line between Bastrop and Burleson county to the point where said line crosses the third Yegua, which is the most western northwestern corner of Lee county; thence with the direct line designating the boundary line of Lee county, as provided in the bill to which this is a supplement, to the place of beginning, be and the same are hereby detached from Burleson county, and added to and declared a part of Lee county.

Lee county.  
(Acts April 14,  
1874, p. 95;  
May 2, 1874,  
p. 302.)



## LEON COUNTY.

Leon county.  
(Act Mar. 17,  
1846, p. 8.)  
P.D. 365.

ART. 839. Beginning at the southwest corner of Alec Garrett's survey on the San Antonio road; thence on a direct line to the northeast corner of Hiram Walker's survey on the west bank of Trinity river; thence up the west bank of said river, to the northeast corner of A. W. Gook's, and the southeast corner of D. M. Brown's survey, as represented on the map of the county of Robertson; thence south  $61\frac{1}{2}^{\circ}$  west to the Navasota river; thence down the east bank of said river, with its meanderings, to the point where the San Antonio road crosses the same; thence with said road, with its meanderings, to the place of beginning.

## LIBERTY COUNTY.

Liberty county  
(Acts Feb. 11,  
1858, p. 193;  
June 12, 1837,  
p. 270; Dec. 16,  
1837, p. 39;  
Aug. 13, 1870,  
p. 79; April 8,  
1874, p. 71;  
Dec. 21, 1837,  
p. 110.)  
P.D. 366.

ART. 840. Beginning on Trinity river twelve miles below the courthouse of Liberty county on the north line of Chambers county; thence with said line due west to Cedar bayou; thence up said bayou to its head; thence in the direction of a point lying on a line running from the mouth of Big Pine creek on Neches river to Trinity river, two leagues above the mouth of Kickapoo creek, and continuing said line nine miles with the line of Harris and Montgomery counties to the intersection of the southeast line of San Jacinto county (being a line running from where the lower line of R. S. Pace's survey crosses Peach creek on Elmore spring branch to the mouth of Menard's creek); thence with said line to the channel of Trinity river at the mouth of Menard's creek, being the southwest corner of Polk county; thence with the south line of Polk county to the corner of Hardin county; thence with the line of Hardin county to a point lying nine miles west from the northwest corner of Jefferson county; thence east nine miles to the northwest corner of Jefferson county; thence south on a line running through Wolf Point, with the Jefferson county line, to the north line of Chambers county; thence with the north line of Chambers county due west to the beginning.

## LIMESTONE COUNTY.

Limestone  
county.  
(Acts Feb. 5,  
1850, p. 112;  
Nov. 2, 1866,  
p. 83; Mar. 11,  
1846, p. 11.)  
P.D. 367.

ART. 841. Beginning at the east corner of Falls county; thence with the northeast boundaries of Falls and McLennan counties north  $30^{\circ}$  west thirty-eight and one-half miles; thence north  $60^{\circ}$  east to a point bearing south  $30^{\circ}$  east from the southwest corner of Ellis county and continuing the same course three miles to the southwest corner of Navarro county, the southeast corner of Hill county, and north corner of Limestone county; thence in a direct line to the west corner of Freestone county; thence with the line of said county south  $30^{\circ}$  east to the northwest line of Leon county, being south  $61\frac{1}{2}^{\circ}$  west twenty-nine miles from Trinity river; thence with the line of Leon county south  $61\frac{1}{2}^{\circ}$  west to the Navasota river; thence up said river to the north corner of Robertson county; thence south  $60^{\circ}$  west with the northwest boundary of Robertson county to the place of beginning.

## LIPSCOMB COUNTY.

Lipscomb  
county.  
(Act August 21,  
1876, p. 234.)

ART. 842. Beginning at a monument on the intersection of the 100th meridian and the  $36\frac{1}{2}^{\circ}$  of latitude, one thousand six hundred and twenty-nine feet north of the one hundred and thirty-second mile post on the 100th meridian; thence west thirty miles to the thirtieth mile post on the  $36\frac{1}{2}^{\circ}$  of latitude; thence south thirty miles and one thousand six hundred and twenty-nine feet; thence east thirty miles to the one hundred and second mile post; thence north thirty miles and one thousand six hundred and twenty-nine feet to beginning.

## LIVE OAK COUNTY.

Live Oak  
county.  
(Acts May 19,  
1871, p. 109;  
Dec. 8, 1857,  
p. 10; Dec. 14,  
1863, p. 5.)  
P.D. 368.

ART. 843. Beginning at the northeast corner of Duval county; thence due east to Nueces river; thence up the Nueces to the west corner of San Patricio county; thence north  $51^{\circ}$  east to the corner of Bee county; thence with the Bee county line north  $27^{\circ}$  west to another corner of Bee county; thence north  $71^{\circ}$  east to the corner of Karnes county; thence north

40° west to the east corner of Atascosa county, on the old San Patricio county line; thence with said line south 50° west to the intersection of the east line of McMullen county; thence south to the southeast corner of McMullen county; thence east with the north line of Duval county to the place of beginning.

## LLANO COUNTY.

ART. 844. Beginning at the mouth of Slick Rock creek on the south side of the Colorado river; thence due south five miles, thence in a direct line to a point five miles due south of the mouth of Sandy creek; thence due west thirty-three miles to a point which is also the southeast corner of Mason county; thence due north to the south line of San Saba county as established at the present session of the legislature; thence due east with said line to the mouth of Fall creek on the Colorado river, and down said river, with its meanders, to the beginning.

Llano county.  
(Act Feb. 10,  
1858, p. 147.)

## LUBBOCK COUNTY.

ART. 845. Beginning at the northeast corner of Hockley county; thence east thirty miles; thence south thirty miles; thence west thirty miles to the southeast corner of Hockley county; thence north to the place of beginning.

Lubbock  
county.  
(Act August 21,  
1876, p. 234.)

## LYNN COUNTY.

ART. 846. Beginning at the northwest corner of Garza county; thence west thirty miles to the southwest corner of Lubbock county; thence south thirty miles; thence east thirty miles; thence north thirty miles to the place of beginning.

Lynn county.  
(Act August 21,  
1876, p. 234.)

## MADISON COUNTY.

ART. 847. Beginning at the mouth of Bedias creek, on the Trinity river, and running up the main Bedias to a point where the line between the counties of Grimes and Walker crosses the same; thence by a direct line to the northwest corner of a tract of land in the name of B. Q. Hadley on the Navasota river; thence up said stream to where the San Antonio road crosses the same; thence running with the south boundary of Leon county to the southwest corner of Alec Garrett's survey; thence on a direct line to the southeast corner of Hiram Walker's survey on the west bank of the Trinity river; and thence down the river to the place of beginning.

Madison  
county.  
(Act Jan. 27,  
1858, p. 10.)  
P.D. 370.

## MARION COUNTY.

ART. 848. Beginning at the southeast corner of Cass county, and running thence north with the east boundary line of said county of Cass thirteen miles; thence due west to Big Cypress bayou; thence with the meanders of said bayou to the old northwest corner of Harrison county; thence south to the present northwest corner of Harrison county (being the intersection of a line running parallel with the general course of Big Cypress bayou from the southwest corner of R. Moulding's survey); thence with the line of Harrison county, parallel with the general course of Big Cypress bayou, easterly to the southwest corner of R. Moulding's survey; thence down Little Cypress bayou, with its meanders, to its mouth; thence with the line of Harrison county to the place of beginning.

Marion county  
(Acts April 26,  
1846, p. 135 ;  
Feb. 8, 1860,  
p. 57; April  
30, 1874, p. 178.)  
P.D. 371.

## MARTIN COUNTY.

ART. 849. Beginning at the northeast corner of Andrews county and the southeast corner of Gaines county; thence east thirty miles to the southeast corner of Dawson county; thence south thirty miles; thence west thirty miles to the southeast corner of Andrews county; thence north thirty miles to the place of beginning.

Martin county.  
(Act August 21,  
1876, p. 234.)

## MASON COUNTY.

ART. 850. Beginning at the southeast corner of McCulloch county; thence south to southwest corner of San Saba county; thence east with the south line of San Saba to the northwest corner of Llano county; thence with the west line of Llano county to its southwest corner; thence west

Mason county.  
(Act Jan. 22,  
1858, p. 53.)  
P.D. 372.

thirty-one miles; thence north to the south line of McCulloch county; thence east to the beginning.

## MATAGORDA COUNTY.

Matagorda county.  
(Acts March 24, 1846, p. 18; Feb. 18, 1848, p. 31; April 3, 1846, p. 10; Feb. 11, 1860, p. 196.)  
P.D. 373.

ART. 851. Beginning at the entrance of Cedar lake into the gulf of Mexico; thence up said lake to the upper line of the league of land granted to G. Harrison; thence west to Lynnville bayou; thence up said bayou to its source; thence in a direct line to the northwest corner of a league of land granted to Carson; thence along the upper line of said league to the southwest corner of a league of land granted to Shipman & Charles; thence up the back line of said league to its northwest corner; thence along the upper line of said league to the southwest corner of a league of land granted to Garrett; thence up the back line of said league to its northwest corner, on the lower line of league number twelve, granted to S. Ingram; thence with the lower line of said league and the league granted to Edwards to the southwest corner of the league last mentioned; thence in a direct line with the line of Wharton county south 60° west forty-five thousand varas; thence in a direct line with the line of Jackson county to the northeast corner of a survey made for J. Hughson, fronting on the Matagorda or Carancahua bay; thence to the southeast corner of J. Hughson's league survey; thence in a line so as to include all the peninsula; thence eastwardly around the shore of the gulf of Mexico to the place of beginning.

## MAVERICK COUNTY.

Maverick county.  
(Act Oct. 5, 1866, p. 22.)  
P.D. 5865, 374.

ART. 852. Beginning at the southwest corner of Uvalde county and running due west to the Rio Grande, for the north boundary, and running due south from said beginning corner to the southwest corner of Dimmit county, and thence due west to the Rio Grande.

## M'ULLOCH COUNTY.

McCulloch county.  
(Act August 27, 1856, p. 69.)  
P.D. 375.

ART. 853. Beginning at the upper corner of San Saba county, on the west or south bank of the Colorado river; thence south along the west boundary of San Saba county to a point thirty-five miles from the starting point; thence west thirty miles to a corner; thence north to the Colorado river; thence down said river to the beginning.

## M'LENNAN COUNTY.

McLennan county.  
(Acts Jan. 22, 1850, p. 62; Feb. 4, 1854, p. 45.)  
P.D. 376.

ART. 854. Beginning at the upper corner of L. B. Frank's league number five on the south side of Brazos river; thence south 60° west twenty-three miles; thence north 30° to a point on the southeast line of Bosque county, lying south 60° west from a point on Brazos river fifteen miles above Waco village; thence north 60° east with the Bosque county line to the said point; thence north 60° east sixteen miles; thence south 30° east to a point north 60° east from the beginning; thence south 60° west to the place of beginning.

## M'MULLEN COUNTY.

McMullen county.  
(Act Dec. 14, 1863, p. 5.)  
P.D. 377.

ART. 855. Beginning at the southeast corner of Frio county; thence running due south forty-two miles; thence due east twenty-eight miles; thence north forty-two miles; thence west twenty-eight miles to the beginning.

## MEDINA COUNTY.

Medina county  
(Acts Feb. 12, 1848, p. 27; April 2, 1873, p. 32.)  
P.D. 378, 5882m.

ART. 856. Beginning on the south bank of Medina river, at the upper corner of a league survey, number twenty-five, made for William E. Howth, assignee of Maria Jesusa Hernandez, being the lower corner of survey number twenty-six, in the name of Julia Coates; thence south sixteen miles; thence west thirty-six miles; thence north thirty-six miles; thence east to the Medina river; thence down the Medina to the northwest corner of survey number seventy-eight, in the name of Daniel Arnold; thence with the line of Bandera county to a point due north of the beginning; thence due south to the place of beginning.

## MENARD COUNTY.

ART. 857. Beginning on the west line of McCulloch county, ten miles north of its southwest corner; thence due west thirty miles; thence due south twenty-six miles; thence due east to the west line of Mason county; thence north with said line to the south line of McCulloch county; thence with the south and west lines of McCulloch county to the beginning.

Menard county  
(Act Jan. 22,  
1858, p. 58.)  
P.D. 379.

## MILAM COUNTY.

ART. 858. Beginning on the Brazos river, at the northeast corner of H. E. Davis' league of land number six; thence south 60° west with the line of Burleson county and Lee county to the divide between the waters of Brazos and Colorado rivers; thence up said divide to the corner of Williamson county, at the southeast corner of a survey of nineteen and three-quarter labors, known as the Post Oak island survey; thence north 71° east eight miles; thence north 19° west twenty miles; thence north 65° west with the line of Williamson county to a point bearing south 19° west from the southeast corner of the Jesse Mumford league; thence north 19° east to said corner and with Jesse Mumford's east line to Little river, and in the same course to a point bearing south 60° west from the southwest corner of Falls; thence north 60° east with the lines of Bell and Falls counties to the northeast corner of league number eight, in the name of S. Frost, on the west bank of the Brazos river; thence down the Brazos river, with its meanders, to the place of beginning.

Milam county.  
(Acts March 24,  
1846, p. 16;  
March 13, 1848,  
p. 75; April 4,  
1861, p. 29;  
Jan. 28, 1850,  
p. 87.)  
P.D. 330.

## MITCHELL COUNTY.

ART. 859. Beginning at the northeast corner of Howard county and southeast corner of Borden county; thence east thirty miles to the southeast corner of Scurry county; thence south thirty miles; thence west thirty miles to the southeast corner of Howard county; thence north thirty miles to the place of beginning.

Mitchell  
county.  
(Act August 21,  
1876, p. 234.)

## MONTAGUE COUNTY.

ART. 860. Beginning six miles west of the northeast corner of Wise county; thence west with the north line of Wise and Jack counties to a point four miles west of the northeast corner of Jack county; thence due north to Red river; thence down said river, with its meanders, to a point due north of the beginning; thence due south to the place of beginning.

Montague  
county,  
(Act Dec. 24,  
1877, p. 31.)  
P.D. 381.  
(Acts 1879,  
extra session,  
ch. 47.)

## MONTGOMERY COUNTY.

ART. 861. Beginning on the bank of Spring creek, due south of the southeast corner of W. Montgomery's league of land; thence with the meanders of said creek down to San Jacinto river; thence north 50° east to the western line of Liberty county; thence along said line to the southeast line of San Jacinto county; thence with said line to where the lower line of R. S. Pace's survey crosses Peach creek (known as the Elmore spring branch); thence up the channel of said Peach creek to where the old Montgomery and Walker county line crosses the same; thence with said line of Walker county due west to a point on San Jacinto three miles below the mouth of East Sandy creek; thence by a straight line to the northwest corner of James H. Collard's two-third league survey; thence in a southwardly direction to the northeast corner of W. Montgomery's league of land; thence to the southeast corner of the same; thence due south with the lines of Grimes and Waller counties to the place of beginning.

Montgomery  
county.  
(Acts Jan. 25,  
1840, p. 222;  
April 8, 1874,  
p. 71; April 6,  
1846, p. 10.)  
P.D. 332.

## MOORE COUNTY.

ART. 862. Beginning at the northeast corner of Hartley county and southwest corner of Sherman county; thence east thirty miles to the southwest corner of Hansford county; thence south thirty miles; thence west thirty miles to the southeast corner of Hartley county; thence north thirty miles to the place of beginning.

Moore county.  
(Act August 21,  
1876, p. 234.)

## MORRIS COUNTY.

**Morris county.** ART. 863. Beginning at the nine mile post due east of Mt. Pleasant, in said county; thence north to the Sulphur fork of Red river; thence east along the meanderings of said stream to the northeast corner of the county of Titus; thence south along the line now dividing the counties of Titus and Cass to the western extremity of Marion county on the Big Cypress; thence up the meanderings of said stream to a point opposite and south of the beginning point; thence in a direct line north to the place of beginning.

(Act March 13, 1875, p. 97.)

## MOTLEY COUNTY.

**Motley county.** ART. 864. Beginning at the northwest corner of Cottle county; thence west thirty miles; thence south to a point thirty miles due west of the southwest corner of Cottle county; thence east thirty miles to the southwest corner of Cottle county; thence north thirty miles to the place of beginning.

(Act Aug. 21, 1876, p. 234.)

## NACOGDOCHES COUNTY.

**Nacogdoches county.** ART. 865. Beginning at the southeast corner of Rusk county, in the Attoyac river; thence down said river, with its meanders, to its junction with the Angelina river; thence up the said Angelina river, with its meanders, to the southern boundary line of Rusk county; thence east with the said line to the place of beginning.

(Act April 18, 1846, p. 93.)  
P.D. 383.

## NAVARRO COUNTY.

**Navarro county.** ART. 866. Beginning on the west bank of the Trinity river, at a point one mile north of Robert H. Porter's house; thence on a straight line to Chambers' creek, at a point opposite the mouth of Mill creek; thence south 60° west to a point thirty-four miles from the place of beginning; thence south 30° east with the line of Hill county to a point north 30° west thirty-eight and a half miles and north 60° east from the east corner of Falls county; thence in a direct line with the line of Limestone county to the northwest corner of Freestone county; thence with the line of Freestone county north 60° east to the Trinity river; thence up the channel of the same to the beginning.

(Acts Jan. 28, 1850, p. 86; Feb. 15, 1858, p. 218; Nov. 30, 1850, p. 30.)  
P.D. 384.

## NEWTON COUNTY.

**Newton county.** ART. 867. Beginning at McKims or McKine's old place; thence in a direct line with the line of Sabine county to Bevil's ferry on the Sabine; thence with the meanders down said river to the northeast corner of Orange county, being a point due east from the mouth of big Alabama creek; thence west with said Orange county line to the intersection of a line running from the southwest corner of Jasper Hardings' survey, number one, to the eastern corner of George B. Brownrigg's labor; thence with the line of Jasper county northwardly to said corner of Brownrigg's labor; thence northwardly to the northeast corner of Thomas E. Hewinton's six hundred and forty acre survey; thence northwardly and in a direct line to the place of beginning.

(Acts Dec. 14, 1837, p. 55; Feb. 5, 1852, p. 49; Feb. 16, 1852, p. 133.)  
P.D. 385.

## NOLAN COUNTY.

**Nolan county.** ART. 868. Beginning at the northeast corner of Mitchell county and the southeast corner of Scurry county; thence east thirty miles to the southeast corner of Fisher county and the new southwest corner of Jones county, and the new northwest corner of Taylor county; thence south thirty miles to the new southwest corner of Taylor county; thence west thirty miles to the southeast corner of Mitchell county; thence north to the place of beginning.

(Act Aug. 21, 1876, p. 234.)

## NUECES COUNTY.

**Nueces county.** ART. 869. Beginning on the gulf of Mexico on Padre Balle island, due east of the mouth of Olmos creek; thence due west to the mouth of said creek; thence in a straight line in the direction of the southwest corner of Encinal county to the southeast corner of Duval county; thence due north with the line of Duval county to the northeast corner of said

(Acts April 26, 1871, p. 62; May 19, 1871, p. 109; Feb. 3, 1853, p. 105.)  
P.D. 386.  
(See acts 1873, ch. 61.)

county; thence due east to Nueces river; thence down said river with its meanders to its mouth; thence, including all of Corpus Christi and Aransas bays, to the southeast corner of Samuel Highland's survey on the main land; thence in a direct line to a point in the middle of the channel opposite the landing at St. Joseph's island; thence along the middle of said channel to the gulf of Mexico, including Mustang and the various small islands in said waters, south and west of said line; thence with the gulf of Mexico to the place of beginning.

## OCHILTREE COUNTY.

ART. 870. Beginning at the northwest corner of the county of Lipscomb; thence west thirty miles to the sixtieth mile post; thence south thirty miles; thence east thirty miles to the southwest corner of Lipscomb county; thence north thirty miles to the place of beginning.

Ochiltree county.  
(Act Aug. 21,  
1876, p. 284.)

## OLDHAM COUNTY.

ART. 871. Beginning at the northwest corner of Potter county, and southwest corner of Moore county and southeast corner of Hartley county; thence west about forty-seven miles to the southwest corner of Hartley county, on the 103d meridian; thence south thirty miles; thence east about forty-seven miles to the southwest corner of Potter county; thence north thirty miles to the place of beginning.

Oldham county.  
(Act Aug. 21,  
1876, p. 284.)

## ORANGE COUNTY.

ART. 872. Beginning at the mouth of Big Alabama creek; thence east with the line of Jefferson and Jasper counties to the Sabine river; thence down said river, with its meanders, to Sabine lake; thence west to the mouth of the Neches river; thence up said river, with its meanders, to the place of beginning.

Orange county.  
(Act Feb. 5,  
1852.)  
P.D. 387.

## PALO PINTO COUNTY.

ART. 873. Beginning on the southwest corner of Parker county; thence with the west line of Parker county to the northwest corner of said county; thence west with the south boundary of Jack county to the east boundary line of Young county; thence south to the southeast corner of Young county; thence west with the south boundary of Young county to a point which will make thirty miles west from the west line of Parker county; thence south to the southeast corner of Stephens county; thence east with the north line of Eastland and Bosque counties to a point due south of the beginning on the northeast corner of Bosque county; thence north to the beginning.

Palo Pinto county.  
(Acts Feb. 5,  
1858, p. 123;  
Nov. 20, 1866,  
p. 82.)  
P.D. 388.

## PANOLA COUNTY.

ART. 874. Beginning at the twenty-seventh mile post on the line dividing the State of Texas from the State of Louisiana; thence in a direct line to the mouth of Eight Mile creek on the Sabine river; thence across and up said river, with its meanders, to the Trammel trace; thence with said trace to where it crosses the west boundary line of J. W. Adams' league of land; thence in a direct line to the old line that divided Harrison from Shelby county before the passage of an act entitled "An act to alter and establish the eastern boundary line of Rusk county, and for other purposes," approved December 31, 1844; thence with the line dividing the counties of Harrison and Shelby to the line dividing the States of Texas and Louisiana; thence with said line to the point of beginning.

Panola county.  
(Act March 30,  
1846, p. 31.)  
P.D. 389.

## PARKER COUNTY.

ART. 875. Beginning at the northwest corner of Tarrant county; thence south with the western boundary line of Tarrant county thirty miles to the southwest corner of Tarrant county; thence west with the northern boundary of Johnson county thirty miles; thence north thirty miles; thence east thirty miles to the place of beginning.

Parker county.  
(Act Dec. 12,  
1855, p. 3.)  
P.D. 390.

## PARMER COUNTY.

Parmer county  
(Act Aug. 21,  
1876, p. 234.)

ART. 876. Beginning at the northwest corner of Castro county; thence west to the 103d meridian and the southwest corner of Deaf Smith county; thence south with the 103d meridian thirty miles; thence east with the southwest corner of Castro county; thence north thirty miles to the place of beginning.

## PECOS COUNTY.

Pecos county.  
(Act May 8,  
1871, p. 79.)  
P.D. 5869.

ART. 877. Beginning at a point on the Rio Grande where the river San Francisco empties into the Rio Grande; thence in a northwesterly direction to Varela springs; thence northwest to San Martin springs, in the Apache mountains; thence northeast to the mouth of Delaware creek, where it empties into the river Pecos; thence down the river Pecos to its mouth, where it empties into the Rio Grande; thence up the Rio Grande to the place of beginning.

## POLK COUNTY.

Polk county.  
(Acts March 30,  
1846, p. 27;  
March 11, 1875,  
p. 81; Aug. 13,  
1870, p. 79.)  
P.D. 391.

ART. 878. Beginning on the east side of Trinity river at the mouth of Menard's creek, and running from thence east eighteen miles; thence in a northerly direction to the old south boundary line of Houston county (running from the mouth of Big Pine creek to a point on Trinity river two leagues above the mouth of Kickapoo creek), crossing the road leading from Swartout to Bell's ferry two miles west of Peter Cauble's; thence with said line to the mouth of Big Pine creek; thence up said creek with its meanders, to the mouth of Bull creek; thence in a direct line to a point on Trinity river where the former Polk or old Houston county line touches the same (two leagues above the mouth of Kickapoo creek); thence down the channel of Trinity river, with its meanders, to the place of beginning.

## POTTER COUNTY.

Potter county.  
(Act Aug. 21,  
1876, p. 234.)

ART. 879. Beginning at the northwest corner of Carson county and southwest corner of Hutchinson county, and southeast corner of Moore county; thence west thirty miles to southwest corner of Moore county and southeast corner of Hartley county; thence south thirty miles; thence east thirty miles to the southwest corner of Carson county; thence north thirty miles to the place of beginning.

## PRESIDO COUNTY.

Presidio  
county.  
(Act May 12,  
1871, p. 86.)  
P.D. 392, 5872.

ART. 880. Beginning at a point on the Rio Grande where it is crossed by the 105th parallel of longitude west of Greenwich; thence northeast to the San Martin springs in the Apache mountains; thence southeast to Varela springs; thence in a southeasterly direction to the mouth of the San Francisco river, where it empties into the Rio Grande; thence up said river to the place of beginning.

## RAINS COUNTY.

Rains county.  
(Act June 9,  
1870, p. 2.)  
P.D. 5873.

ART. 881. Beginning on the north bank of Sabine river, at Collins' ferry, known as Mud bridge; thence in a northern direction through a tract of land known as the Jim Bridges tract, to the McMillan boundary line between Wood and Hopkins counties; thence west with said line four miles into Hunt county; thence about southwest in a direct line to Hooker's mill, on the east branch of Sabine river; thence down Sabine river, with its meanderings, to the place of beginning.

## RANDALL COUNTY.

Randall  
county.  
(Act Aug. 21,  
1876, p. 234.)

ART. 882. Beginning at the northeast corner of Deaf Smith county, and southeast corner of Oldham county, and southwest corner of Potter county; thence east thirty miles to the southeast corner of Potter county and southwest corner of Carson county; thence south thirty miles; thence west thirty miles to the southeast corner of Deaf Smith county; thence north thirty miles to the place of beginning.

## RED RIVER COUNTY.

ART. 883. Beginning at the mouth of Upper Pine creek above the Pine hills on Red river; thence due south to the Sulphur fork of Red river; thence down the middle of said stream to a point due south of Hugh B. Shaw's ferry on Red river; thence north with the west line of Bowie county to said Shaw's ferry; thence up Red river, with its meanders, to the place of beginning.

Red River county.  
(Acts Dec. 17, 1840, p. 97; May 11, 1846, p. 198; Jan. 16, 1843, p. 37.)  
P.D. 393.

## REFUGIO COUNTY.

ART. 884. Beginning at a stone pillar on the San Antonio river, at the lower corner of the Gertrudes Berrera or Saviago tract of land; thence with the line of Goliad county south 49° west to the Blanco creek; thence with the line of Bee county in the direction of a point lying three miles south 36° west from the mouth of Papelote creek to Aransas river; thence down said river, with its meanders, to its mouth; thence with the channel of Copano bay, parallel with the shore, to the east end of the same at the mouth of Copano creek; thence up said creek to the mouth of Alamita creek; thence in a direct line to the southeast corner of J. C. Solberg's, on Espiritu Santo bay; thence around the western and northern margin of said bay to the mouth of Guadalupe river; thence up said river and San Antonio river, with their meanders, to the place of beginning.

Refugio county  
(Act Dec. 8, 1857, p. 11; Sept. 18, 1871, p. 1.)  
P.D. 394.

## ROBERTS COUNTY.

ART. 885. Beginning at the northeast corner of Hutchinson county, and the southeast corner of Hansford county and the southwest corner of Ochiltree county; thence east thirty miles to the southeast corner of Ochiltree county and southwest corner of Lipscomb county; thence south thirty miles; thence west thirty miles to southeast corner of Hutchinson county; thence thirty miles north to the place of beginning.

Roberts county.  
(Act Aug. 21, 1876, p. 234.)

## ROBERTSON COUNTY.

ART. 886. Beginning at the northwest corner of Brazos county, on the Brazos river; thence up said river twenty-five hundred varas above the northwest corner of a survey made for John Welch, as represented on the county map of Robertson county; thence north 60° east to the Navasota; thence down said river to the line of Brazos county; and thence with said line to the place of beginning on the Brazos river.

Robertson county.  
(Act April 11, 1846, p. 60.)  
P.D. 395.

## ROCKWALL COUNTY.

ART. 887. Beginning at the northeast corner of Dallas county; thence east along the south boundary line of Collin county to the southeast corner of same; thence south along the west boundary line of Hunt county to the southwest corner of said Hunt county; thence continuing south two miles to a stake; thence west to the east boundary line of Dallas county; thence north along the east boundary line of Dallas county to the place of beginning.

Rockwall county.  
(Act March 1, 1873, p. 10.)  
P.D. 393a.

## RUNNELS COUNTY.

ART. 888. Beginning on the west line of Coleman county, at the northeast corner of Concho county; thence due west with the north line of Concho county thirty miles to its northwest corner; thence due north thirty miles; thence due east to the northwest corner of Coleman county; thence due south with the west line of Coleman county to the beginning.

Runnels county.  
(Act Feb. 1, 1853, p. 37.)  
P.D. 396.

## RUSK COUNTY.

ART. 889. Beginning at a point due north sixteen miles from Nacogdoches; thence due east to the Attoyac creek; thence due west (retracing the last line) thirty miles; thence due north to the Sabine river; thence down the Sabine river to the crossing of Trammel's trace; thence with said trace to where it crosses the west boundary line of J. W. Adams' survey; thence in a direct line to the old line that divided Harrison and Shelby counties (this line runs according to survey south); thence east to a point due north of the head or source of Attoyac river; thence south to

Rusk county.  
(Acts Jan. 16, 1843, p. 39; Mar. 30, 1846, p. 27; Dec. 14, 1837, p. 48; Jan. 28, 1839, p. 59.)  
P.D. 397.



the source of Attoyac river; thence down said river, with its meanders, to the place of beginning.

## SABINE COUNTY.

Sabine county.  
(Acts Dec. 14,  
1837, p. 53;  
Feb. 16, 1852,  
p. 133.)  
P.D. 398.

ART. 890. Beginning at the mouth of the small bayou which empties into the Sabine river just below the town of Hamilton (Martinez bayou), and running up that bayou to the crossing of the road leading from Hamilton to San Augustine; thence on that road to a point opposite Buckley's; thence on a direct line, excluding Buckley's house, to a house lately built by J. Rowe; thence to the crossing of the road over Pollygotch (Palogatho) bayou near Mr. Sneed's; thence on a direct line to Mr. Pressnell's; thence southwest to the road leading from San Augustine to Zavala; thence on that road to the line of Jasper, being at Jones' bridge on Big Bear creek; thence on a direct line to McKine's old place; thence in a direct line to Bevil's ferry on the Sabine; thence up Sabine river, with its meanders, to the beginning.

## SAN AUGUSTINE COUNTY.

San Augustine  
county.  
(Act Dec. 14,  
1837, p. 53.)  
P.D. 399.

ART. 891. Beginning at Kerr's ferry on Attoyac river; thence on a direct line to a point on the road leading from J. M. Bradley's to San Augustine, one and a half miles distant from said Bradley's; thence on a direct line, including Bradley's house, to a house lately built by J. Rowe; thence to the crossing of the road over Pollygotch or Pologatho bayou, near Mr. Sneed's; thence on a direct line to Pressnell's; thence southwest to the road leading from San Augustine to Zavala; thence with said road to Jones' bridge on Big Bear creek; thence with the Jasper county line down said creek to its mouth; thence on a line running to old fort Teran to the crossing of Angelina river; thence up said river to the mouth of Attoyac, and up said stream, with its meanders, to the place of beginning.

## SAN JACINTO COUNTY.

San Jacinto  
county.  
(Acts Aug. 13,  
1870, p. 73;  
April 8, 1874,  
p. 73.)  
P.D. 5874.

ART. 892. Beginning in the channel of Trinity river, at a point opposite the mouth of Carolina creek in Walker county; thence running in a direct line to a point five hundred varas east of D. F. Campbell's store-house in the town of old Waverly, in Walker county; thence in a due line to the point where the old Montgomery county line crosses Peach creek (known as the Elmore Spring branch); thence down the channel of said Peach creek to where the lower line of R. S. Pace's survey crosses said creek; thence on a due line through one corner of Liberty county to the channel of Trinity river, at the same point where the southern line of Polk county crosses the channel of said Trinity river; from thence up the channel of said Trinity river, with its meanderings, to the place of beginning.

## SAN PATRICIO COUNTY.

San Patricio  
county.  
(Acts Dec. 8,  
1857, p. 11;  
Jan. 23, 1858,  
p. 65.)  
P.D. 400.

ART. 893. Beginning at the Nueces river, on the southeast line of Live Oak county; thence with said line north 51° east to the corner of Bee county; thence with said line to a point three miles south 36° west from the mouth of Papeote creek; thence on a direct line to the mouth of said creek; thence down Aransas river, with its meanders, to its mouth; thence with the western margin of Copano bay to the south corner of survey number thirteen, in the name of Larkin Martin; thence in a direct line to the northeast corner of survey number five, in the name of John N. Seguin; thence with the east line of said survey to the Nueces bay; thence up said bay and the river of the same name, with their meanders, to the beginning.

## SAN SABA COUNTY.

San Saba  
county.  
(Act Feb. 10,  
1858, p. 148.)  
P.D. 401.

ART. 894. Beginning at the mouth of Fall creek, on the Colorado river; thence due west thirty-eight miles; thence due north to the Colorado river; thence down said river, with its meanders, to the place of beginning.

## SCURRY COUNTY.

ART. 895. Beginning at the northwest corner of Fisher county; thence west thirty miles; thence south thirty miles; thence east thirty miles; thence north thirty miles to the place of beginning.

Scurry county.  
(Act Aug. 21,  
1876, p. 234.)

## SHACKELFORD COUNTY.

ART. 896. Beginning at the northwest corner of Buchanan (Stephens) county, on the south line of Throckmorton county; thence due west thirty miles; thence due south thirty miles; thence due east to the southwest corner of said Buchanan county; thence north with the west line of said county to the beginning.

Shackelford  
county.  
(Act Feb. 1,  
1858, p. 87.)  
P.D. 403.

## SHELBY COUNTY.

ART. 897. Beginning at the mouth of the small bayou which empties into the Sabine river just below the town of Hamilton, and running up that bayou to the crossing of the road leading from Hamilton to San Augustine; thence on that road to a point opposite Buckley's; thence on a direct line, including Buckley's house, to a house lately built by J. Rowe; thence on a direct line to a point on the road leading from J. M. Bradley's to San Augustine, one and a half miles distant from said Bradley's; thence on a direct line to Kerr's ferry, on the Attoyac river; thence up that river to its source; thence north to the south line of Panola county, being the old line that divided Harrison from Shelby county; thence with said line east to Sabine river and down the same, with its meanders, to the place of beginning.

Shelby county.  
(Act Dec. 14,  
1837, p. 48.)  
P.D. 404.

## SHERMAN COUNTY.

ART. 898. Beginning at the ninetieth mile post, the northwest corner of Hansford county; thence west thirty miles to the one hundred and twentieth mile post; thence south thirty miles; thence east thirty miles to the southwest corner of Hansford county; thence north thirty miles to the place of beginning.

Sherman  
county.  
(Act Aug. 21,  
1876, p. 234.)

## SMITH COUNTY.

ART. 899. Beginning at a point on the Neches river, due west of the southwest corner of the Neches saline survey; thence east along the southern boundary line of said survey to the southeast corner thereof; thence due east to the western boundary line of Rusk county; thence north with said western boundary of said county of Rusk to the northwest corner thereof; thence up the Sabine river, with its meanderings, to a point thirty-six miles on a direct line from the corner of said Rusk county, on the Sabine river; thence due south to the Cherokee boundary line; thence south 45° east with the said line to the Neches river; thence down said river, with its meanderings, to the beginning.

Smith county.  
(Act April 11,  
1846, p. 55.)  
P.D. 405.

## STARR COUNTY.

ART. 900. Beginning on the margin of the Rio Grande, at a point known as "Noche Buena," formerly dividing the jurisdictions of Mier and Guerrero; thence north 55° east five leagues to the back line of the Porcions of Guerrero; thence north 25° east to intersect the south line of Duval county; thence with said line (being a line running from the southwest corner of Encinal county to the mouth of Olmos creek) to a point lying north 25° east from a point at the rancho "Las Cuevas," formerly dividing the jurisdictions of the towns of Reynoso and Camargo; thence south 25° west to said point on the Rio Grande; thence up said river, with its meanders, to the place of beginning.

Starr county.  
(Acts April 26,  
1871, p. 62;  
July 26, 1870,  
p. 40.)  
P.D. 5375, 406.  
(See acts 1879,  
ch. 61.)

## STEPHENS COUNTY.

ART. 901. Beginning at the northwest corner of Palo Pinto on the south line of Young county; thence with the south line of Young county and due west thirty miles; thence due south thirty miles; thence due east thirty miles to the boundary of Palo Pinto county; thence due north with the west line of Palo Pinto county thirty miles to the beginning.

Stephens  
county.  
(Act Jan. 22,  
1858, p. 53.)  
P.D. 407.

## SOMERVELL COUNTY.

Somervell county.  
(Acts Mar. 13, 1875, p. 99; Aug. 15, 1876, p. 152.)

ART. 902. Beginning at a point on the west boundary line of Johnson county, where a line due west would strike the northeast corner of the W. B. Smith survey on Squaw creek; thence south 60° west to the Erath county line; thence with the said line to the southeast corner of Erath county; thence with the division line of Hood and Bosque counties to the Brazos river; thence crossing said Brazos river to the line of Johnson county, and with said line of Johnson county to the place of beginning.

## STONEWALL COUNTY.

Stonewall county.  
(Act August 21, 1876, p. 234.)

ART. 903. Beginning at the southeast corner of King county; thence west thirty miles to the southwestern corner of Cottle county and southwest corner of Dickens county; thence south thirty miles; thence east thirty miles to southwest corner of new line of Haskell county; thence north thirty miles to the place of beginning.

## SWISHER COUNTY.

Swisher county  
(Act August 21, 1876, p. 234.)

ART. 904. Beginning at the northwest corner of Briscoe county; thence west thirty miles; thence south thirty miles; thence east thirty miles to southwest corner of Briscoe county; thence north thirty miles to the place of beginning.

## TARRANT COUNTY.

Tarrant county  
(Dec. 20, 1849, p. 14.)  
P.D. 408.

ART. 905. Beginning at the southwest corner of Dallas county; thence running north with the Dallas county line to the northwest corner of Dallas county; thence due west thirty miles; thence due south thirty miles; thence east thirty miles to the place of beginning—subject, however, to bear with the southwest and northwest corners of Dallas county should said corners of Dallas county be found to be incorrect, upon a final re-survey of said county of Dallas.

## TAYLOR COUNTY.

Taylor county.  
(Act August 21, 1876, p. 234; Feb. 1, 1858, p. 87.)  
P.D. 409.

ART. 906. Beginning at the northwest corner of Callahan county and the southwest corner of Shackelford county and the southeast corner of Jones county; thence west thirty miles to the southwest corner of Jones county; thence south thirty miles; thence east thirty miles to the southwest corner of Callahan county; thence north thirty miles to the place of beginning.

## TERRY COUNTY.

Terry county.  
(Act Aug. 21, 1876, p. 234.)

ART. 907. Beginning at the northwest corner of Lynn county; thence west thirty miles; thence south thirty miles; thence east thirty miles to southwest corner of Lynn county; thence north thirty miles to the place of beginning.

## THROCKMORTON COUNTY.

Throckmorton county.  
(Act Jan. 13, 1858, p. 36.)  
P.D. 410.

ART. 908. Beginning at the southwest corner of Young county; thence west thirty miles; thence north thirty miles; thence east to the northwest corner of Young county; thence south with the line of Young county to the beginning.

## TITUS COUNTY.

Titus county.  
(Acts Mar. 18 1875, p. 97; May 11, 1846, p. 198.)  
P.D. 410.

ART. 909. Beginning at a point nine miles west of the town of Mount Pleasant in the county of Titus, on the road leading from the town of Mount Pleasant to the town of Sulphur Springs, in Hopkins county; thence north to the Big Sulphur fork of Red river; thence down the middle of said stream to a point due north of a post nine miles due east of Mount Pleasant; thence due south with line of Morris county to the Big Cypress; thence up said stream, with its meanders, to a point due south from the beginning; thence due north with the east line of Franklin county to the place of beginning.

## TOM GREEN COUNTY.

Tom Green county.  
(Act Mar. 13, 1874, p. 21.)

ART. 910. Beginning at the southwest corner of Concho county; thence west to the east bank of the Pecos river; thence up said river, with its

meanders, to the south boundary line of New Mexico at a post on said river where the northeast corner of El Paso and Pecos counties join; thence due east with the said south boundary line of New Mexico to the southeast corner of Andrews county; thence with the south lines of Andrews, Martin, Howard, Mitchell and Nolan counties to the southeast corner of Taylor county; thence south with the west lines of Taylor, Runnels and Concho counties to the beginning.

## TRAVIS COUNTY.

ART. 911. Beginning at the northwest corner of a league of land granted to Isaac Casner on the dividing line between Bastrop and Milam counties; thence with the divide between the waters of the Brazos and Colorado rivers up with the line of Williamson county to the intersection of the southeast line of Burnet county, being a point south 26° west from the west corner of John Carothers' league number six, on the west fork of San Gabriel river; thence south 26° west to the Colorado river; thence across and down the same to the northeast corner of A. Williams' survey number nineteen; thence south to its southeast corner; thence south 30° west to the northeast line of Hays county; thence with the northeast line of Hays county south 50° east to the intersection of a line running from the lower corner of M. Duty's league on the Colorado river to the point where the old dividing line between Bastrop and Gonzales counties intersects the road from Nacogdoches to San Antonio; thence on a direct line to the lower corner of said Duty's league; thence on a direct line to the place of beginning.

Travis county.  
(Acts Jan. 25,  
1846, p. 254;  
Mar. 13, 1848,  
p. 218; Feb. 5,  
1852, p. 49;  
Feb. 12, 1858,  
p. 198; Jan. 25,  
1840, p. 255.)  
P.D. 412.

## TRINITY COUNTY.

ART. 912. Beginning on the east bank of Trinity river, at the lower corner of Henry Golman's survey of nine hundred and eighty acres; thence north 51½° east to a point lying due north of the mouth of Chalk creek for the beginning corner of Trinity county line; thence north 51½° east with the southeast line of Houston county to the Neches river; thence down said river, with its meanders, to the mouth of Big Piney creek; thence up said creek with the Polk county line to the mouth of Bull creek; thence on a direct line to the point where the old Polk county line crosses Trinity river (being a point two leagues above the mouth of Kickapoo creek); thence up said river, with its meanders, to the mouth of Chalk creek; thence due north to the beginning.

Trinity county.  
(Acts Jan. 2,  
1858, p. 54;  
Feb. 11, 1850,  
p. 201; Mar. 11,  
1875, p. 81.)  
P.D. 413.

## TYLER COUNTY.

ART. 913. Commencing on the west side of the Neches river, where the old Houston county line strikes the same (at the mouth of Big Piney creek); thence along said line to the corner of Polk county; thence on a direct line to a point eighteen miles east of the mouth of Menard creek, crossing the road from Swartwout to Bell's ferry, two miles west of Peter Cauble's, to the intersection of Big Sandy creek; thence with the line of Hardin county due east to the Neches river; thence up the same, with its meanderings, to the place of beginning.

Tyler county.  
(Acts April 3,  
1846, p. 42;  
Mar. 30, 1846,  
p. 27; Jan. 22,  
1858, p. 58.)  
P.D. 414.

## UPSHUR COUNTY.

ART. 914. Beginning on Sabine river, one mile above the mouth of Harris creek; thence due north with the Wood county line to the southwest corner of Camp county; thence with the south line of said county east through a point twelve miles due north of Gilmer to Big Cypress; thence down the same to the southwest corner of George Martin's and north corner of R. M. Watkins' surveys; thence down said stream to the lower corner of said Watkins' survey; thence with the northeast line of said survey to the east corner thereof; thence with the southeast line of the same to a point due south of the north corner of said Watkins' survey; thence due south with the line of Marion and Harrison counties to Little Cypress creek; thence up the same to the mouth of Glade creek; thence up the same to the crossing of the road from Marshall to Gilmer; thence

Upshur county  
(Acts Feb. 4,  
1858, p. 105;  
April 12, 1873,  
p. 37.)  
P.D. 415.

on a direct line to the corner of Smith and Rusk counties on Sabine river (provided said line shall not approach nearer than twelve miles of Gilmer); thence up said river to the place of beginning.

## UVALDE COUNTY.

Uvalde county.  
(Acts Feb. 6,  
1856, p. 72;  
Sept. 29, 1866,  
p. 18.)  
P.D. 416.

ART. 915. Beginning at the southwest corner of Medina county; thence north with the west line of said county thirty-six miles to its northwest corner; thence west with the south line of Bandera and Edwards counties to the southwest corner of Edwards county; thence south with the line of Kinney county thirty-six miles to its southeast corner; thence east with the north line of Zavala county to the place of beginning.

## VAN ZANDT COUNTY.

Van Zandt  
county.  
(Act Jan. 29,  
1850, p. 91.)  
P.D. 417.

ART. 916. Beginning on the Neches river, at the southeast corner of A. Sidney Johnston's twelve hundred and eighty acre survey; thence west to the southeast corner of Kaufman county; thence north with the eastern boundary line of said Kaufman county to the southern boundary of Hunt county; thence east to the southeast corner of said Hunt county; thence south to the Sabine river; thence across said river and down, with its meanders, to the northwest corner of Smith county; thence south with the western boundary line of said Smith county to the Neches river; thence across said river and down, with its meanders, to the place of beginning.

## VICTORIA COUNTY.

Victoria  
county.  
(Acts Mar. 31,  
1846, p. 85;  
April 5, 1861,  
p. 33; Feb. 11,  
1860, p. 196.)  
P.D. 418.

ART. 917. Beginning at the mouth of Garcitas creek, on Lavaca bay; thence up said creek with the line of Jackson county to the junction of Arenosa creek; thence up said creek to the point at which the northern line of A. Dunlap's survey crosses it; thence in a direct line to the southwest corner of Lavaca; thence with the line of said county to the southeast corner of De Witt county; thence with the southern line of said county to Coletto river; thence down said river to the mouth of Perdido creek; thence on a straight line to the corner of Goliad county, on the north bank of San Antonio river; thence down said river to its junction with the river Guadalupe; thence up said river to the corner of Calhoun county, which is the point where the northwest boundary line of Juan Nepomuceno Sisneros' league touches said river; thence with the northwest boundary of said league to its north corner; thence to the west corner of Valentine Garcia's survey, at the western extremity of Lavaca bay, and place of beginning.

## WALKER COUNTY.

Walker county  
(Acts Jan. 27,  
1853, p. 62;  
Mar. 6, 1848,  
p. 53; April 8,  
1874, p. 54; Jan.  
20, 1858.)  
P.D. 419.

ART. 918. Beginning at the mouth of Bedais creek on the Trinity river, and running up the main Bedais with the line of Madison county to the northeast corner of Grimes county; thence with said county line (being a line running from the northwest corner of L. G. Clipper's six hundred and forty acre survey) to the northwest corner of James H. Collard's two-third league survey; thence by a straight line to a point on the San Jacinto, three miles below the mouth of East Sandy creek; thence east to the west boundary of San Jacinto county, on the bank of Peach creek; thence in a due line to a point five hundred varas east of D. F. Campbell's storehouse, in the town of old Waverly; thence in a direct line to the channel of Trinity river, opposite the mouth of Carolina creek; thence up said river, with its meanders, to the mouth of Chalk creek; thence due north to the Houston county line; thence with said line to its corner on Trinity river; thence down said river to the beginning.

## WALLER COUNTY.

Waller county.  
(Act Jan. 26,  
1875, p. 3.)

ART. 919. Beginning at the mouth of Beason's creek, on the Brazos river; thence in a direct line north 87° east to the western boundary line of Montgomery county, thirty-one thousand nine hundred and thirty-nine varas, where the said Montgomery line crosses Mill creek; at a point north 3° 46 minutes east eight hundred and eighty-two varas from the southeast

corner of the Robert O. Lusk survey, on the west line of the Robert Watson survey, which corner is also the northeast corner of the one hundred and sixty acre survey now occupied by William Rogerson as a homestead, a linn tree marked with the letter "G," a pine marked "M," an elm marked "W," a box-alder marked "G," and a "box-alder "W;" thence south with said boundary line to the corner of Montgomery county on Spring creek; thence running in the bed of Spring creek, with the Grimes and Harris county lines, to the corner of Grimes, Austin and Harris counties; thence running with the Harris and Austin county lines to the corner of Fort Bend, Harris and Austin counties; thence with the boundary lines of Fort Bend and Austin counties to the Brazos river; thence up said river, with its various meanderings, to the place of beginning.

## WASHINGTON COUNTY.

ART. 920. Beginning at the mouth of Caney creek, on the western side of the Brazos river; thence up, with its meanders, to Mrs. Foster's crossing of the same; thence up the longest source of said creek to Andy Miller's crossing; thence to the junction of the southwestern source; thence to the southeast corner of the Harmon Hensley league of land, so as to include Stephen Williams and Robert Armstead in the county of Washington; thence to a league granted to David Shelby; thence with said league to the ridge dividing the waters of Cummings' creek of the Colorado and the waters of New Years and Yegua creeks of the Brazos; thence along said ridge with the eastern boundary of Fayette to the intersection of the southeast line of Lee county and northwest line of the most northern DeWitt survey; thence with said line to the north corner of said survey; thence in a direct line to the junction of Alligator and Turkey creeks, thence down Turkey creek to its junction with Cedar creek; thence down the same to the Yegua; thence down the Yegua with the Burleson county line to its junction with the Brazos; thence down the Brazos, with its meanders, to the place of beginning.

Washington county.  
(Acts Feb. 1, 1844, p. 58; May 24, 1838, p. 49; Dec. 14, 1837, p. 49; April 14, 1874, pp. 94, 202.)  
P.D. 420.

## WEBB COUNTY.

ART. 921. Beginning on the left margin of the Rio Grande river at a point called El Cañon de San Andres, being the lower line of the ancient jurisdiction of the town of Laredo; thence following the lower line of Webb county to the southwest corner of Encinal county; thence due north with the west line of Encinal and La Salle counties, to the southeast corner of Dimmit county; thence west with the south line of Dimmit and Maverick counties to the Rio Grande, and down the same, with its meanders, to the place of beginning.

Webb county.  
(Acts April 26, 1871, p. 62; Jan. 28, 1848, p. 18.)  
P.D. 421.  
(See acts 1870, ch. 61.)

## WHARTON COUNTY.

ART. 922. Beginning at the southeast corner of the league of land number twelve, granted to S. Ingram, on the San Bernard river; thence along the lower line of said league, and along the lower line of a league granted to Edwards, to the southwest corner of the league last mentioned; thence in a direct line south 60° west to the distance of forty-five thousand varas, crossing the Colorado river; thence in a direct line north 45° west to the distance of fifty-two thousand eight hundred varas; thence in a direct line to the lower corner of Cartwright's league of land on the east side of the Colorado river; thence along the lower line of said league to its northeast corner; thence north 45° east to the main San Bernard river; thence down said river to the place of beginning.

Wharton county.  
(Act April 3, 1846, p. 38.)  
P.D. 422.

## WHEELER COUNTY.

ART. 923. Beginning at the seventy-second mile post on the 100th meridian, the southeast corner of Hemphill county; thence west thirty miles to the southwest corner of Hemphill county and the southeast corner of Roberts county; thence south thirty miles; thence east thirty miles

Wheeler county.  
(Act Aug. 21, 1876, p. 234.)

to the forty-second mile post on the 100th meridian; thence north thirty miles to the place of beginning.

## WILBARGER COUNTY.

Wilbarger county.  
(Act Feb. 1,  
1858, p. 87.)  
P.D. 424.

ART. 924. Beginning at the northwest corner of Archer county; thence due west with the north line of Baylor county thirty miles; thence due north to Prairie Dog river; thence down said river and Red river, with their meanders, to the northwest corner of Wichita county; thence due south with the west line of Wichita county to the beginning.

## WILLIAMSON COUNTY.

Williamson county.  
(Acts Mar. 13,  
1848, p. 76;  
Feb. 7, 1853,  
p. 63.)  
P.D. 425.

ART. 925. Beginning on the dividing waters of the Colorado and Brazos rivers, at the southeast corner of a survey of nineteen and three-quarter labors, known as the Post Oak island survey; thence north 71° east eight miles; thence north 19° west twenty miles; thence north 65° west to the Salado; thence in a straight line to the most eastern corner of Burnet county; thence following the boundary line of Burnet county to the dividing ridge between the Brazos and Colorado waters; thence down said dividing ridge, with the meanders of the same, to the beginning.

## WILSON COUNTY.

Wilson county.  
(Act Mar. 13,  
1874, p. 21.)  
P.D. 5832, 4262.

ART. 926. Beginning on the west bank of the Cibolo creek, at the mouth of the Martinez creek; thence on a straight line to the northeast corner of Atascosa county; thence south 39° east with the Atascosa county line to the northwest corner of Karnes county, as at this time established; thence north 51° east to the southwest boundary line of Gonzales county; thence north 39° west with the line of Gonzales county to the southeast boundary line of Guadalupe county; thence with the said southeast line of Guadalupe county to the northeast line of the Austin Clement survey; thence with the said northeast line of Clement's survey to the north corner of the same; thence on a direct line to the point where the northwest line of the Manuel Ximene survey crosses Elm creek; thence with the said northwest line of the Ximene survey to the Cibolo creek; thence up said Cibolo creek to the place of beginning.

## WICHITA COUNTY.

Wichita county.  
(Act Feb. 1,  
1858, p. 87.)  
P.D. 423.

ART. 927. Beginning at the northeast corner of Archer county; thence west with the north line of said county to its northwest corner; thence due north to Red river; thence down said river, with its meanders, to the northwest corner of Clay county; thence south with the west line of Clay county to the beginning.

## WISE COUNTY.

Wise county.  
(Act Jan. 28,  
1856, p. 28.)  
P.D. 427.

ART. 928. Beginning at the southwest corner of Denton county; thence north with the west boundary line of said county thirty miles; thence west thirty miles; thence south thirty miles; thence east to the place of beginning.

## WOOD COUNTY.

Wood county.  
(Acts May 11,  
1846, p. 198;  
Jan. 9, 1870,  
p. 2; May 2,  
1874, p. 205.)  
P.D. 428.

ART. 929. Beginning at the southwest corner of Upshur county, one mile above the mouth of Harris creek; thence north with the west boundary of said Upshur and Camp counties to Big Cypress; thence up Big Cypress bayou to the mouth of the Dry fork of the same, and up said Dry fork to a point due east of the southeast corner of Hopkins county; thence west to and with the line of Hopkins county, as defined by the act of May 2, 1874, to the east line of Rains county; thence with said line in a southern direction through Jim Bridges' tract to Collins' ferry, known as Mud bridge, on Sabine river; thence down said river, with its meanders, to the place of beginning.

## YOAKUM COUNTY.

Yoakum county.  
(Act August 21,  
1876, p. 234.)

ART. 930. Beginning at the northwest corner of Terry county; thence west to the southwest corner of Cochran county, on the 103d meridian; thence south thirty miles with said meridian; thence east to the

southwest corner of Terry county; thence north thirty miles to the place of beginning.

## YOUNG COUNTY.

ART. 931. Beginning at a point six miles east from the southeast corner of lower Brazos Indian reserve, as surveyed by English measure; thence north thirty miles; thence west thirty miles; thence south thirty miles; thence east to the place of beginning.

Young county.  
(Act Aug. 10,  
1856, p. 41.)  
P.D. 480.

## ZAPATA COUNTY.

ART. 932. Beginning on the Rio Grande river at a point called El Cañon de San Andres, being the lower line of the ancient jurisdiction of the town of Laredo; thence down the Rio Grande, with its meanders, to a point called "La Noche Buena," formerly dividing the jurisdiction of Mier and Guerrero; thence north 55° east five leagues to the back line of the Porcions of Guerrero; thence north 25° east to the south line of Duval county; thence with the south line of Duval and Encinal counties (on a line running from the mouth of Olmos creek to the southwest corner of Encinal county) to the southwest corner of Encinal county; thence on a direct line to the place of beginning.

Zapata county.  
(Acts Jan. 22,  
1858, p. 58;  
July 26, 1870,  
p. 40; April 26,  
1871, p. 62.)  
P.D. 431.  
(See acts 1873,  
ch. 61.)

## ZAVALA COUNTY.

ART. 933. Beginning at the southwest corner of Medina county; thence due west to the point due south of the southwest corner of Edwards county; thence due south thirty miles; thence due east to a point due south of the beginning; thence due north thirty miles to the place of beginning.

Zavala county  
(Acts Feb. 1,  
1858, p. 87;  
Sept. 29, 1866,  
p. 19.)  
P.D. 432.



TITLE XXIV.

County Finances.

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County attorney shall make report, etc.	955	Duty of such committee.	981
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		Warrants issued against county by judge or court shall be attested by clerk, etc.	986

Duty of commissioners' court to procure ledger, etc

ARTICLE 934. The several county commissioners' courts shall each procure a well-bound ledger and index, and shall cause to be entered in said book a full, complete and orderly statement of the condition of the finances of the county.

Duty of county clerk to keep accounts.

ART. 935. It is hereby made the duty of the clerk of the county court to open and keep in said book an account with each and every officer of the county, district or state, who is now or may be hereafter authorized or required by law to receive or collect any money or other property for the use of or belonging to the county. The clerk shall also keep such other accounts as may be required by law, or as may be necessary to carry out the purposes of this title.

Accounts shall be opened how, and shall be indexed.

ART. 936. Said accounts shall be opened by stating at the top of the page the name of the officer and his office, and all of said accounts shall be properly indexed for convenient reference.

Account with the tax collector.

ART. 937. The accounts of the tax collector shall be kept as follows: A separate account shall be kept for each separate fund that may be upon the tax rolls; each account shall state the name of the collector, the character of fund entered therein, and the year for which the same is assessed.

ART. 938. Whenever the tax rolls are ready for delivery to the tax collector the court or officer having control of the same shall take from the collector a written receipt for the same, specifying the amount therein assessed and due the county, stating separately the amount assessed to each fund, and shall deliver said receipt to the clerk of the county court, who shall charge the collector with the amount stated in said receipt in the proper account, and said amounts shall be treated as debts due the county by the collector.

Receipt of collector for tax rolls.

ART. 939. The collector shall discharge said indebtedness within the time prescribed by law, by filing with said clerk receipts for the same, as follows:

How the collector may discharge his indebtedness.

1. The commissions due the collector.
2. The assessor's receipt for commissions due such assessor, if any are to be paid by the county.
3. Proper vouchers for such payments as he is now, or may hereafter be, required to pay out of any money on hand.
4. The receipt of the county treasurer for the money paid into the treasury.

ART. 940. The collector shall make separate lists of the indigent and delinquent taxpayers, showing their names, and the amounts due by each taxpayer, and the court shall carefully examine said indigent and delinquent list, and shall make an order and enter the same upon the minutes of the court, stating the names and amounts that are adjudged uncollectible, and the collector shall have credit for the amounts included in said order in the proper account.

Collector shall make separate lists of indigent and delinquent taxpayers, etc.

ART. 941. No credit for indigent or delinquent taxes shall be entered in said collector's accounts until an order of the court has been made and entered allowing the same.

No credit shall be entered for delinquent taxes until allowed by the court.

ART. 942. In keeping accounts with the collector, the taxes assessed for each year shall be kept separate and distinct.

Taxes for each year shall be kept separate.

ART. 943. Whenever a tax collector shall go out of office, he shall deliver to his successor the tax rolls in his possession, and shall receive from his successor a receipt in writing for the amount of taxes due on the tax rolls so delivered, specifying the amount of each fund and each year separately, and also the amount due on the indigent and delinquent list, which receipts he shall deliver to the clerk of the county court, who shall enter them to the credit of the collector presenting them, to the extent that the same are allowed by the court as hereinbefore provided, and shall charge the amounts so credited to the successor in office of such collector, in the proper accounts.

Tax collector going out of office shall deliver tax rolls to successor, etc.

ART. 944. All occupation taxes due the county shall be collected by the tax collector of the county without assessment, and the collector shall give to the party paying the tax a receipt in writing, stating the name of the person paying the same, the occupation paid for, the time such occupation is to be pursued, and the amount collected for the state and for the county.

Collector shall collect occupation tax, and receipt for same.

ART. 945. Upon the presentation of the receipts provided for in the preceding article to the clerk of the county court of the county in which such tax has been paid, such clerk shall issue a license in the name of the state or county, or both, in accordance with the tax paid, to the person paying such tax, authorizing him to pursue the occupation named in such receipt during the time for which he has paid the tax.

County clerk shall issue occupation license, when.

ART. 946. Said clerk shall, at the end of every month, make two reports in writing, one of licenses issued on taxes paid to the state, which he shall forward to the comptroller of public accounts, by mail; the other of licenses issued on taxes paid to the county, and file the same in his office.

County clerk shall make two reports of licenses issued at end of each month.

What the reports shall state, etc.

ART. 947. The reports required by the preceding article shall state the name of the licensee, the occupation, the time for which the license is issued, and the amount of taxes paid therefor, and shall be dated and signed officially by such clerk and attested by his seal of office.

Clerk shall keep occupation tax account with collector.

ART. 948. The clerk shall keep an occupation tax account with the collector of the county, in which he shall charge the collector with all licenses issued for the county, and the collector shall have credit in said account for his commissions, and the amount paid into the treasury upon filing the proper receipt of the county treasurer with such clerk.

Clerk shall keep account with sheriff.

ART. 949. An account shall be kept by the clerk with the sheriff of each county, in which such sheriff shall be charged with all judgments, fines, forfeitures and penalties, payable to the county, rendered in the district or county courts of the county, or any other court of his county, and with the collection of which he is, by law, made chargeable.

How sheriff may free himself from liability under preceding article.

ART. 950. The sheriff may free himself from liability from the charge required in the preceding article by—

1. Producing the receipt of the county treasurer showing the payment of such judgment, fine, forfeiture or penalty.

2. By showing to the satisfaction of the commissioners' court that the same can not be collected, or that the same has been discharged by imprisonment or labor, or by escape, without his fault or neglect; and none of the credits herein provided for, except those on the receipts of the treasurer, shall be entered without an order of the commissioners' court allowing the same.

Clerks and justices of the peace shall report fines, judgments and jury fees monthly.

ART. 951. The clerk of the district court, clerk of the county court and justices of the peace shall each make a full and complete report in writing at the end of every month of all fines imposed and judgments rendered, and jury fees collected in their respective courts, in favor of or for the use of the county, which reports shall be filed in the office of the clerk of the county court of the county for which the same are made.

What the reports shall show.

ART. 952. The reports required by the preceding article shall state fully—

1. The name of the party fined and the amount of the fine, or the name of the party against whom judgment was rendered and the amount of such judgment, as the case may be.

2. The style and number of the cases in which fines have been imposed or judgments rendered, and the date thereof.

3. The amount of jury fees collected, and the style and number of the case in which each jury fee was collected and from whom collected.

Fines imposed and judgments rendered by justices shall be charged against them, etc.

ART. 953. Fines imposed and judgments rendered by justices of the peace shall be charged against the justice of the peace imposing or rendering the same, and he may discharge said indebtedness by filing with the clerk of the county court the treasurer's receipt for the amount thereof, or by showing to the satisfaction of the commissioners' court that he has used due diligence to collect the same without avail, or that the same have been satisfied by imprisonment or labor.

District attorney shall make report, etc.

ART. 954. The district attorney of each district shall, at each term of the district court for each county in his district, make a report in writing to the clerk of the county court of all moneys received by him since the last term of the district court for such county, for the use of such county.

County attorney shall make report.

ART. 955. The county attorney of each county in the state shall make a similar report to the one required in the preceding article to the clerk of the county court of his county, at the end of each month.

Any officer collecting money for county shall report the same.

ART. 956. When any officer collects money belonging to and for the use of any county, he shall, except where otherwise provided in this title, forthwith report the same in writing to the clerk of the county court of the county to which such money belongs, stating fully in such report from whom collected, the amount collected, the time when collected and by virtue of what authority or process collected.

**ART. 957.** When any officer reports to the clerk of the county court any money collected by such officer for the use of the county, the amount of money so collected shall be charged to such officer, and he may discharge himself from such indebtedness by producing the receipt of the proper county treasurer therefor.

Money collected by officer shall be charged to him, etc.

**ART. 958.** There shall also be kept in the ledger, provided for in article 934, an estray account, in which shall be entered on the debit side each application made to the clerk of the county court to estray any animal in his county, by entering the date of the application, the name of the person estraying, and a brief description of the animal or animals to be estrayed, and the amount of such charge shall be left blank until said person shall file his account of the sale of said animal or animals, and upon the filing of said account the net amount due the county from such sale shall be entered in the blank.

Estray account

**ART. 959.** When the receipt of the county treasurer is presented to the clerk, showing any amount paid into the treasury on account of the sale of an estray, the same shall be entered on the credit side of the account, showing the date, name of payer, amount paid and a brief description of the estray, and such amount shall be charged on the debit side of the county treasurer's account.

Same subject.

**ART. 960.** An account shall also be kept in said ledger by the clerk with the county treasurer, in which such treasurer shall be charged separately with the amount of each fund for which he gives a receipt to the sheriff, collector or other person paying the same into the treasury, and such treasurer shall have credit for all moneys paid out by him, when the commissioners' court has approved his reports of the same, and for his legal commissions.

Clerk shall keep account with county treasurer.

**ART. 961.** The county treasurer of each county shall keep a well-bound book in which he shall register all claims against his county when presented to him for registration, and no claim or any part thereof against a county shall be paid by such county treasurer, nor shall the same or any part thereof be received by any officer in payment of any indebtedness to the county until it has been duly registered in accordance with the provisions of this title.

County treasurer shall register claims against the county.

**ART. 962.** Claims against a county shall be registered in three classes, as follows:

Claims shall be classified.

1. All jury scrip and scrip issued for feeding jurors.
2. All scrip issued under the provisions of the road law or for work done on roads and bridges.
3. All the general indebtedness of the county, including feeding and guarding prisoners and paupers' claims.

**ART. 963.** Each claim shall be entered in the register, stating the class to which it belongs, the name of the payee, the amount, the date of the claim, the date of registration, the number of such claim, by what authority issued, and for what service the same was issued.

Manner of registering claims.

**ART. 964.** When a claim has been registered the treasurer shall write on the face of the same its registered number, the word "registered," the date of such registration, and shall sign his name officially thereto.

What shall be written on registered claim.

**ART. 965.** Claims shall be numbered in the order presented, and if more than one claim is presented at one and the same time they shall be numbered in the order of their date.

Claims shall be numbered, in what order.

**ART. 966.** The treasurer shall pay off the claims in each class in the order in which they are registered.

Order in which claims shall be paid.

**ART. 967.** The funds received by the county treasurer shall be classed as follows:

Classification of county funds. (Const., art. 16, §24.)

1. All jury fees, all money received from the sale of estrays, and all occupation taxes; and this class of funds shall be appropriated to the payment of all claims registered in class first, described in article 962.
2. All money received under any of the provisions of the road and

bridge law, and all fines and forfeitures; and this fund shall be appropriated to the payment of all claims registered in class second.

3. All money received, not otherwise appropriated herein or by the commissioners' court; and the funds of this class shall be appropriated to the payment of all claims registered in class third.

Commissioners' court may create other classes of funds, etc.

ART. 968. The commissioners' court shall have power to cause such other accounts to be kept, creating other classes of funds, as it may deem proper, and require the scrip to be issued against the same and registered accordingly.

Said court may transfer one class of funds to another, except, etc.

ART. 969. The commissioners' court shall have power by an order to that effect to transfer the money in hand from one fund to another, as in its judgment is deemed necessary and proper, except that the funds which belong to class first shall never be diverted from the payment of the claims to which the same are appropriated by article 967, unless there is an excess of such funds.

County treasurer shall report registered claims each month.

ART. 970. The county treasurer shall, at the end of each month, file in the office of the clerk of the county court of his county a report in writing, showing the total amount of claims registered by him during said month, stating each class separately.

Clerk shall enter report upon ledger, etc.

ART. 971. The clerk with whom the report required by the preceding article is filed shall enter the same upon the ledger under the head of "Registered indebtedness of the county," keeping a separate account of each class of indebtedness, and, from the reports of the treasurer of disbursements made, credit said accounts with the total amount of vouchers of each class of claims paid.

Party receiving payment of claim shall receipt thereon.

ART. 972. The county treasurer, or any other officer disbursing money for the county, or receiving county claims in payment of dues of any kind, shall require the party receiving payment of, or credit for the same, his agent or attorney, to receipt in writing upon the face of such claim for the amount so paid or received thereon.

Officer receiving claims in payment of debt to county, shall report list of same.

ART. 973. Every officer who shall collect any fine, penalty, forfeiture, judgment, tax or other indebtedness due the county, in claims against the county, shall keep a descriptive list of such claims, and shall, when he reports such collection, file with his report a list stating the party in whose favor each claim was issued, the class and registered number thereof, the name of the party paying in such claim, and the amount received, and for what purpose received.

Claims received by other officer than county treasurer shall be reported to county treasurer.

ART. 974. Claims received for the county by any officer other than the treasurer shall be turned over, together with the list mentioned in the preceding article, to the county treasurer, who shall give a proper receipt for the same, and the county treasurer shall file said list with his report in the office of the clerk of the county court.

County treasurer shall keep accurate accounts and accompany same with vouchers.

ART. 975. The county treasurer shall keep accurate accounts, showing all the transactions of his office in detail, and the vouchers relating to and accompanying each report shall be presented to the commissioners' court with the corresponding report, when it shall be the duty of said court to compare the vouchers with the report, and all proper vouchers shall be allowed and the treasurer credited with the amounts thereof.

Claim shall be cancelled, when and how.

ART. 976. When a claim presented as a voucher has been found by the court to be correct, the court shall cause the same to be cancelled by writing or stamping upon the face thereof the word "cancelled," and the clerk shall attest the same by his official signature.

Order of court approving treasurer's report.

ART. 977. When the commissioners' court has compared and examined a 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, and the balance of such fund, if any, remaining in the treasurer's hands, and shall cause the proper

credits to be made in the accounts of the treasurer in accordance with said order.

ART. 978. The commissioners' court shall, at each regular term, examine all accounts and reports relating to the finances of the county, and compare the same with the vouchers accompanying them, and cause such corrections to be made as are necessary, in order to make said accounts and reports correct, and shall cause all orders made by them, appertaining to said accounts and reports, to be properly entered upon the minutes of said court, and noted upon said accounts and reports.

Commissioners' court shall examine and correct all accounts and reports, etc.

ART. 979. All reports and vouchers shall be filed in the office of the clerk of the county court, and shall be carefully preserved therein, and shall be briefly noted in the proper account upon the ledger.

Reports and vouchers shall be filed and preserved in county clerk's office.

ART. 980. At each term of the district court the district judge, upon the request of the grand jury, may appoint a committee consisting of three citizens of the county, men of good moral character and intelligence, and experienced accountants, to examine into the condition of the finances of the county.

District judge shall appoint committee to examine into finances of county.

ART. 981. It shall be the duty of the committee provided for in the preceding article, to examine all the books, accounts, reports, vouchers and orders of the commissioners' court relating to the finances of the county that have not been examined and reported upon by a previous committee; to count all the money in the office of the county treasurer belonging to the county, and to make such other examination as to them may seem necessary and proper in order to ascertain the true condition of the finances of the county, and the court shall, if necessary, upon the application of said committee, send for persons and evidence to aid them in their investigation.

Duty of such committee.

ART. 982. Said committee shall, at the earliest practicable day after their appointment, make to said district court a report in writing, in detail, stating whether the books and accounts required to be kept by the provisions of this title are correctly kept in accordance with said provisions, and setting forth fully the condition of the finances of the county, the state of each officer's account, and specifying all irregularities, omissions or malfeasance of any kind that they may discover. Said report shall be signed and sworn to by said committee and filed in the office of the clerk of said district court, and the attention of the grand jury called thereto as soon after the filing of the same as practicable.

Report of committee.

ART. 983. Said committeemen shall each be entitled to receive for their services three dollars for each day, not to exceed five days, that they may be engaged in the performance of their duties as such, which fees shall be paid out of the county treasury upon the certificate of the district judge stating the number of days served.

Pay of committee.

ART. 984. All reports required under any of the provisions of this title shall be sworn to by the officer making the same, before some officer authorized to administer oaths.

All reports shall be sworn to.

ART. 985. All monthly reports required by any of the provisions of this title shall be filed in the office of the clerk of the county court of the proper county within five days after the end of each month.

Monthly reports shall be filed, when.

ART. 986. All warrants or scrip issued against the county treasurer by any judge or court, shall be signed and attested by the clerk or judge of the court issuing the same, under his official seal, and no justice of the peace shall have authority to issue warrants against the treasury for any purpose whatever, except as provided in articles 1080 and 1085 of the Code of Criminal Procedure.

Warrants issued against county by judge or court shall be attested by clerk, etc.

TITLE XXV.

County Treasurer.

	Article		Article
Election and term of office.....	987	Shall keep true accounts and superintend	
Oath and bond of .....	988	collection of moneys, etc.....	985
Shall give bond for school fund.....	989	Shall report to commissioners' court.....	996
Shall be required to give new bond, when.....	990	Shall deliver money, etc., to successor in	
Office to be declared vacant, when.....	991	office.....	997
Vacancy, how filled.....	992	Shall not pay out money, except, etc.....	998
Appointee shall take oath and give bond.....	993	Shall examine docket, accounts, etc.....	999
Shall receive moneys belonging to coun-		Shall perform such other duties as may be	
ties, etc.....	994	required by law.....	1000

Election and term of office. (Con. st., art. 16, §44.) (Act Aug. 19, 1876, p. 199.)

Oath and bond of. (Act May 13, 1846.) P.D. 1096.

Shall give bond for school fund (Act Aug. 19, 1876, p. 203, §23.)

Shall be required to give new bond, when.

Office to be declared vacant when.

ARTICLE 987. At each regular biennial election for state and county officers, there shall be elected in each county, by the qualified voters thereof, a county treasurer, whose term of office shall be two years and until his successor is qualified.

ART. 988. The county treasurer, before entering upon the duties of his office, and within twenty days after he has received his certificate of election, shall take the oath of office prescribed by the constitution of this state, and shall give a bond payable to the county judge of his county, with at least two good and sufficient sureties, to be approved by the commissioners' court, in such sum as such court may deem necessary, conditioned that such treasurer shall faithfully execute the duties of his office and pay over according to law all moneys which shall come into his hands as county treasurer, and render a just and true account thereof to said court at each regular term of said court, which oath and bond shall be filed and recorded in the office of the clerk of the county court of such county and safely preserved.

ART. 989. The county treasurer shall also give an additional bond to the one required in the preceding article, for the school fund of his county, payable to the county judge of such county, with two good and sufficient sureties, to be approved by such county judge, in a sum double the amount of such school fund, to be estimated by such county judge, conditioned that he will safely keep and faithfully disburse the school fund according to law, and pay such warrants as may be drawn on said fund by competent authority. Said bond shall be given within twenty days after such treasurer has received his certificate of election, and when given and approved, shall be filed and recorded in the office of the clerk of the county court of his county and there safely preserved.

ART. 990. It shall be the duty of the county commissioners' court, whenever they may consider the bonds, or either of the bonds, of a county treasurer, from any cause, insufficient or doubtful, to require such treasurer to give another bond or bonds, or to give additional bond or bonds, as the case may be.

ART. 991. Should the person elected treasurer fail to give the bonds required by this title and take the oath of office within twenty days after receiving his certificate of election, it shall be the duty of the county judge to declare the said office vacant; and should a treasurer fail to give another or an additional bond or bonds when required to do so, as provided in the preceding article, within twenty days after notice of such requirement, he shall be removed from said office in the manner provided by law.

**ART. 992.** Whenever there shall be a vacancy in the office of county treasurer, it shall be the duty of the commissioners' court of the county in which such vacancy occurs to fill such vacancy by appointment, such appointment to be made by a majority vote of the commissioners present, at a regular or special term of such court, and such appointment shall continue in force until the next general election and until a successor is qualified.

Vacancy, how filled.  
(Act Aug. 19, 1876, p. 217.)

**ART. 993.** The person appointed to fill the vacancy, as provided in the preceding article, shall, before entering upon the discharge of the duties of such office, and within twenty days after he has been notified of such appointment, take the oath and give the bonds required, as in the case of an election to such office.

Appointee shall take oath and give bonds.  
*Ib.*

**ART. 994.** It shall be the duty of the county treasurer to receive all moneys belonging to the county from whatever source they may be derived, and to pay and apply the same as required by law, in such manner as the commissioners' court of his county may require and direct.

Shall receive moneys belonging to county, etc.  
(Act May 13, 1846.)

**ART. 995.** The county treasurer shall keep a just and true account of the receipts and expenditures of all moneys which shall come into his hands by virtue of his office, and of the debts due to and from his county; and direct prosecutions according to law for the recovery of all debts that may be due his county, and superintend the collection thereof.

P.D. 1097.  
Shall keep true accounts and superintend collection of money, etc.  
P.D. 1098.  
*Ib.*

**ART. 996.** The county treasurer shall render a detailed report at every regular term of the commissioners' court of his county of all the moneys received and disbursed by him, of all debts due to and from his county, and of all other proceedings in his office, and shall exhibit to said court at every such term all his books and accounts for their inspection and all vouchers relating to the same, to be audited and allowed.

Shall report to commissioners' court.  
P.D. 1099.  
*Ib.*

**ART. 997.** He shall deliver the moneys, securities, and all other property of the county in his hands, together with all documents, instruments of writing, papers and books belonging to or for the use of the county to his successor in office, and perform all such other acts as may be required of him by said commissioners' court.

Shall deliver money, etc., to successor in office.  
P.D. 1100.  
*Ib.*

**ART. 998.** The county treasurer shall not pay any money out of the county treasury except in pursuance of a certificate or warrant from some officer authorized by law to issue the same; and if such treasurer shall have any doubt of the legality or propriety of any order, decree, certificate or warrant presented to him for payment, he shall not pay the same, but shall make report thereof to the commissioners' court for their consideration and direction.

Shall not pay out money except, etc.  
P.D. 1101.  
*Ib.*

**ART. 999.** It shall be the duty of the county treasurer to examine the accounts, docketts and records of the clerks, sheriff, justices of the peace, constables and tax collector of his county, for the purpose of ascertaining whether any moneys of right belonging to his county are in their hands which have not been accounted for and paid over according to law, and shall report the same to the commissioners' court at their next term, to the end that suit may be instituted for the recovery thereof.

Shall examine docketts, accounts, etc.  
P.D. 1102.  
*Ib.*

**ART. 1000.** The county treasurer shall perform all such other duties as may be required of him by law.

Shall perform such other duties as may be required by law.



## TITLE XXVI.

### Courts—Supreme and of Appeals.

NOTE.—Chapter 34, acts 1879, extra session, creates the “Commission of appeals of the State of Texas,” and defines the powers and duties thereof. See appendix for the act in full.—L.

#### CHAPTER ONE.

##### JUDGES OF THE SUPREME COURT.

	Article		Article
One chief and two associate justices.....	1001	Qualifications of judges.....	1003
Election and tenure of office.....	1002	Vacancies, how filled.....	1004

ARTICLE 1001. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and the concurrence of two judges shall be necessary to the decision of a case.

ART. 1002. The chief justice and associate justices of the supreme court shall be elected by the qualified voters of the state at a general election, and shall hold their offices for six years.

ART. 1003. No person shall be eligible to the office of chief justice or associate justice of the supreme court unless he be at the time of his election a citizen of the United States and of this state, and unless he shall have attained the age of thirty years, and shall have been a practicing lawyer or a judge of a court in this state, or such lawyer and judge together, at least seven years.

ART. 1004. In case of a vacancy in the office of chief justice or associate justice of the supreme court, the governor shall fill the vacancy until the next general election for state officers, and at such general election the vacancy for the unexpired term shall be filled by election by the qualified voters of the state.

One chief, and two associate justices.  
(Const., art. 5, §2.)

Election, tenure of office.  
*Ib.*

Qualification of judges.  
*Ib.*

Vacancies, how filled.  
*Ib.*

#### CHAPTER TWO.

##### TERMS OF THE SUPREME COURT.

	Article		Article
Terms of supreme court.....	1005	When new counties formed.....	1009
Counties returnable to Tyler.....	1006	Adjournment from day to day or longer period.....	1010
Counties returnable to Galveston.....	1007		
Counties returnable to Austin.....	1008		

Terms of supreme court.  
(Act April 2, 1874, p. 49, §3.)  
(Const., art. 5, §3.)

ARTICLE 1005. The supreme court shall hold its terms as follows, viz: A term of said court shall be held at the town of Tyler, in Smith county, which shall begin on the first Monday in October of each year, and may continue until the last day of December thereafter, unless the business before it is sooner disposed of.

A term of said court shall be held at the city of Galveston, in Galveston county, which shall begin on the first Monday in January of each year, and may continue until the last day of March thereafter, unless the business before it is sooner disposed of.

A term of said court shall be held at the city of Austin, in Travis

county, which shall begin on the first Monday in April of each year, and may continue until the last Saturday of June thereafter, unless the business before it is sooner disposed of.

ART. 1006. Appeals and writs of error from the counties of Anderson, Bowie, Camp, Cass, Cherokee, Delta, Franklin, Gregg, Harrison, Henderson, Hopkins, Hunt, Kaufman, Marion, Morris, Nacogdoches, Panola, Rains, Red River, Rockwall, Rusk, Sabine, San Augustine, Shelby, Smith, Titus, Upshur, Van Zandt and Wood, shall be returnable to the term of said court held at Tyler.

Counties returnable to Tyler.  
*Ib.* §4.

ART. 1007. Appeals and writs of error from the counties of Aransas, Angelina, Austin, Bee, Brazoria, Calhoun, Cameron, Chambers, Colorado, DeWitt, Duval, Encinal, Fayette, Fort Bend, Freestone, Galveston, Goliad, Gonzales, Grimes, Hardin, Harris, Hidalgo, Houston, Jackson, Jasper, Jefferson, Lavaca, Leon, Liberty, Madison, Matagorda, Montgomery, Newton, Nueces, Orange, Polk, Refugio, San Jacinto, San Patricio, Starr, Trinity, Tyler, Victoria, Walker, Waller, Webb, Wharton and Zapata, shall be returnable to the term of said court held at Galveston.

Counties returnable to Galveston.  
*Ib.*

ART. 1008. Appeals and writs of error from the counties of Andrews, Archer, Armstrong, Atascosa, Bailey, Bandera, Bastrop, Baylor, Bell, Bexar, Blanco, Borden, Bosque, Brazos, Briscoe, Brown, Burlison, Burnet, Caldwell, Callahan, Carson, Castro, Childress, Clay, Cochran, Coleman, Collin, Collingsworth, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crockett, Crosby, Dallam, Dallas, Dawson, Deaf Smith, Denton, Dickens, Dimmit, Donley, Eastland, Edwards, Ellis, El Paso, Erath, Falls, Fannin, Fisher, Floyd, Frio, Gaines, Garza, Gillespie, Gray, Grayson, Greer, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hays, Hemphill, Hill, Hoekley, Hood, Howard, Hutchinson, Jack, Johnson, Jones, Karnes, Kendall, Kent, Kerr, Kimble, King, Kinney, Knox, Lamar, Lamb, Lampasas, LaSalle, Lee, Limestone, Lipscomb, Live Oak, Llano, Lubbock, Lynn, Martin, Mason, Maverick, McCulloch, McLennan, McMullen, Medina, Menard, Milam, Mitchell, Montague, Moore, Motley, Navarro, Nolan, Ochiltree, Oldham, Parmer, Palo Pinto, Parker, Pecos, Potter, Presidio, Randall, Roberts, Robertson, Rockwall, Runnels, San Saba, Scurry, Shackelford, Sherman, Somervell, Stephens, Stonewall, Swisher, Tarrant, Taylor, Terry, Throckmorton, Tom Green, Travis, Uvalde, Washington, Wheeler, Wichita, Wilbarger, Williamson, Wilson, Wise, Yoakum, Young and Zavala, shall be returnable to the term of said court held at Austin.

Counties returnable to Austin.  
*Ib.*

ART. 1009. When a new county shall be created, appeals and writs of error therefrom shall be returnable to the term of the supreme court to which they are returnable from the county or counties out of which such new county was formed, or from which the largest area of such new county was formed.

When new counties formed.  
*Ib.* §7.

ART. 1010. The said court may adjourn from day to day, or for such period as they may think necessary to the ends of justice and the determination of the business before them; and there shall be no discontinuance of any suit, process or matter returned to or depending in the supreme court, although a quorum of the court may not be in attendance at the commencement, or any other day of the term; but if a sufficient number of judges shall not attend on the first day of the term to hold said court, or shall not attend at any day of the term, any judge of the court, or the sheriff attending the same, may adjourn the said court from time to time, for thirty days, at which time, if a majority or quorum shall not attend, it shall be the duty of the judge or sheriff in attendance to adjourn the court to the next regular term time.

Adjournment from day to day; want of quorum.  
(Act May 12, 1846.)  
P.D. 1574.

CHAPTER THREE.

JURISDICTION OF THE SUPREME COURT.

	Article		Article
Appellate jurisdiction of supreme court...	1011	May punish contempts....	1015
May issue what writs.....	1012	May issue mandamus to compel district judge to proceed to trial.....	1016
May ascertain matters of fact.....	1013		
May make rules and regulations.....	1014		

Appellate jurisdiction of supreme court. (Const., art. 5, §3.)

ARTICLE 1011. The supreme court shall have appellate jurisdiction only, which shall be co-extensive with the limits of the state; but shall only extend to civil cases of which the district courts have original or appellate jurisdiction.

May issue what writs.

ART. 1012. The supreme court and the judges thereof shall have power to issue the writ of mandamus and all other writs necessary to enforce the jurisdiction of said court.

May ascertain matters of fact

ART. 1013. The supreme court shall have power upon affidavit or otherwise, as by the court may be thought proper, to ascertain such matters of fact as may be necessary to the proper exercise of its jurisdiction.

May make rules and regulations. (Const., art. 5, §35.)

ART. 1014. The supreme court shall have power to make rules and regulations for the government of said court, and the other courts of the state, to regulate proceedings and expedite the dispatch of business therein.

May punish contempt. (Act May 12, 1846.) P.D. 1577.

ART. 1015. The supreme court shall have power to punish any person for a contempt of said court, according to the principles and usages of law in like cases, not to exceed one thousand dollars fine, and imprisonment not exceeding twenty days.

May issue mandamus to compel district judge to proceed to trial. P.D. 1579.

ART. 1016. The said court, or any judge thereof, in vacation, may issue the writ of mandamus to compel a judge of the district court to proceed to trial and judgment in a cause, agreeably to the principles and usages of law, returnable to the supreme court on or before the first day of the term, or during the session of the same, or before any judge of the said court, as the nature of the case may require.

CHAPTER FOUR.

THE CLERK OF THE SUPREME COURT.

	Article		Article
One clerk for each, etc.....	1017	Shall file and preserve transcripts, docket causes .....	1021
Vacancy in vacation, how filled .....	1018	Shall record proceedings.....	1022
Term of office; how removed; <i>pro tem.</i> appointment.....	1019	May appoint deputies.....	1023
Seal of court, clerk to procure.....	1020	Shall be librarians .....	1024
		Duties of, as librarians .....	1025

One clerk for each branch, etc. (Const., art. 5, §4.) (Act Nov. 10, 1864.) P.D. 1563.

ARTICLE 1017. There shall be appointed for the supreme court one clerk for each branch thereof, who shall reside at the place of holding court; which appointment shall be made by the court, or the judges thereof, and shall be entered of record in the proceedings of the court, and each person so appointed shall, before he enters upon the duties of his office, take and subscribe the oath prescribed by the constitution, before some officer authorized to administer oaths generally, and shall enter into a bond with two good and sufficient sureties, to be approved by the court or judges thereof, payable to the governor, and his successors in office, in the penalty of two thousand dollars, conditioned for the faithful performance of the duties of his office, and that he correctly record the judgments, decrees, decisions and orders of the said court, and deliver over to his successor in office all records, minutes, books and papers, and whatever belongs to his said office of clerk, which bond and oath shall, without delay, be deposited in the office of the secretary of state, and shall not be void on the first recovery, but may be put in suit and prosecuted by any

party injured, until the amount thereof be recovered, and shall be deemed to extend to the faithful discharge of the duties of his office.

ART. 1018. If, in vacation, the office of clerk may become vacant, the appointment shall be made by the chief justice and the associates of said court, or any one of said associates and chief justice; and the person so appointed shall give bond and take the oath as prescribed in the preceding article, the bond to be approved by any judge of the court—which bond and oath shall be deposited in the same manner as though the appointment had been made in term time, and may be prosecuted and put in suit in like manner; copies of said bond, certified under the hand of the secretary of state and the seal of state, shall be received in evidence in any court in this state, in the same manner as the original would be were it presented in court; and the said appointment shall continue until the next regular term of the said court, or until a regular appointment shall be made.

Vacancy in vacation, how filled.  
(Act May 12, 1846.)  
P.D. 1564.

ART. 1019. The clerk of the supreme court shall hold his office for the term of four years from his appointment, but may be removed therefrom for neglect of duty, or misconduct in office, by the supreme court, on motion, of which the clerk against whom complaint is made shall have ten days previous notice, specifying the particular charges of negligence or misconduct in office preferred; and in every such case the court shall determine both the law and the facts; and whenever the necessity occurs the supreme court may appoint a clerk *pro tempore*.

Term of office; how removed; *pro tem.* appointment.  
O. & W. 1902.  
(Const., art. 5, §4.)

ART. 1020. It shall be the duty of the clerk of the supreme court to procure a seal for the use of the court, which shall have a star of five points, with the words "Supreme Court of the State of Texas" engraved thereon.

Seal of court, clerk to procure.  
(Act May 12, 1846.)  
P.D. 1569.

ART. 1021. The clerk of the supreme court shall file and carefully preserve the transcripts of all records certified to said court, and all papers relative thereto, and shall docket all causes in the order in which the court shall direct.

Shall file and preserve transcripts and docket causes.  
P.D. 1533.

ART. 1022. The said clerk shall faithfully record the proceedings and decisions of said court, and certify their judgments to the courts from which the causes were brought.

Shall record proceedings.  
P.D. 1584.

ART. 1023. The clerks of the supreme court may appoint deputies, who, in the names of said clerks, may discharge all the duties required by law of said clerks, and said deputies may be required to give bonds with sureties to said clerks for the faithful discharge of their duties.

May appoint deputies.

ART. 1024. The clerks of the supreme court shall be librarians in charge of the libraries of said court.

Shall be librarians.  
(Acts Nov. 10, 1864, and Nov. 7, 1866, p. 99.)  
P.D. 1563.

ART. 1025. It shall be the duty of such librarians to take charge of and keep together and in good order, and make catalogues of the books of said libraries, which shall be open to the public use under such rules as may be prescribed by them for the safe-keeping thereof; *provided*, the books shall not be removed from the library room, except by the judges of the court and by members of the legislature during the session of the legislature, upon their receipt for the same to the clerk.

Duties of, as librarians.  
(Act April 2, 1874.)  
P.D. 6463m.

CHAPTER FIVE.

REPORTER TO THE SUPREME COURT.

	Article		Article
Court may appoint and remove reporter..	1026	Price to be paid by state; price to the pro-	
Reporter to prepare decisions for publica-		fession .....	1030
tion .....	1027	Voucher for pay of reporter.....	1031
Requisites of volume.....	1028	Court shall designate cases to be pub-	
Opinions to be delivered to reporter.....	1029	lished.....	1032

Court may ap-  
point and re-  
move reporter.  
(Act Nov. 12,  
1866, p. 180.)  
P.D. 7466a.

ARTICLE 1026. The supreme court is authorized and required to appoint one or more reporters of its decisions, who shall be subject to removal by said court for any inefficiency or neglect of duty.

Reporter to  
prepare de-  
cisions for  
publication.  
P.D. 7466b.

ART. 1027. It shall be the duty of the reporter to prepare for publica- tion, under the direction of the supreme court, the decisions thereof, and cause the same to be printed and published with promptness as fast as there shall be a sufficient number to form a volume, and shall deliver to the secretary of state, for the use of the state, four hundred copies of each volume of the reports.

Requisites of  
volume.  
P.D. 7466c.

ART. 1028. Each volume shall contain an average number of pages of the volumes of Texas Reports heretofore published, and each page shall contain the number of lines, and each line the same number of "ems" as are contained in each page and line of Moore and Walker's reports, here- tofore published. The type shall be of the same kind, and the paper, presswork, execution and binding shall be of the same style, and of at least equal quality in every respect with the volumes of Moore and Walker's reports, heretofore published. They shall be styled the "Texas Reports," and shall be so styled on the title page and back thereof, and the numbers of the volumes shall be continued on progressively. The name of the reporter may be printed on the back, as on the volumes published by Moore and Walker.

Opinions to be  
delivered to re-  
porter.  
P.D. 7466d.

ART. 1029. As soon as the opinions are recorded, the originals, together with the records and papers in each case to be reported, shall be delivered to the reporter, upon his giving a receipt therefor, who shall return them to the respective clerks from whom he received them when he shall have finished using them.

Price to be  
paid by state;  
price to the  
profession.  
(Act April 23,  
1874, p. 120.)

ART. 1030. The reporter shall be entitled to receive in payment for the four hundred copies of each volume, delivered as aforesaid, the fol- lowing compensation, viz: The sum of three dollars per page for as many pages as shall be contained in one copy of each volume so delivered; *provided*, that if the reporter charge the profession over six dollars per volume he shall be removed from office by the supreme court.

Voucher for  
pay of reporter  
(Act Nov. 12,  
1866, p. 189.)  
P.D. 7466g.

ART. 1031. When the reporter shall have delivered to the secretary of state the copies of a volume of the reports, as required by this chapter, the comptroller of public accounts shall draw his warrant upon the state treasurer for the amount of compensation due such reporter, based upon the certificate of the secretary of state, that the reporter has delivered to him four hundred copies of the.....volume of the Texas Reports, containing.....pages, printed, published and bound in accordance with the provisions of this chapter.

Court shall  
designate  
cases to be  
published.  
P.D. 7466h.

ART. 1032. The supreme court shall designate, by order or otherwise, all cases to be reported, and only such cases shall be reported as shall be designated by the supreme court for publication.

CHAPTER SIX.

PROCEEDINGS IN CIVIL CASES IN THE SUPREME COURT AND COURT OF APPEALS—FILING AND DOCKETING CAUSES, Etc.

	Article		Article
Mode of trial.....	1033	Assignment of errors.....	1037
Transcript must be filed, when.....	1034	No answer to assignment of errors required.....	1038
Certificate may be filed, when; affirmance on certificate.....	1035	Briefs of attorneys sufficient appearance..	1039
Transcript may be filed after affirmance, when.....	1036		

**ARTICLE 1033.** In all cases of appeal or writ of error to the supreme court or court of appeals, the trial shall be on a statement of facts, as agreed upon by the parties or their attorneys, certified to by the judge of the court below; or should the parties fail to agree, then the judge of the court below shall certify the facts; or on a bill of exceptions to the opinion of the judge; or on a special verdict; or on an error in law, either assigned or apparent on the face of the record; and in the absence of all these, the case shall be dismissed with costs alone, or with costs and damages, at the discretion of the court. And the court shall admit as part of the record to be examined by them in the trial of a cause every bill of exception not signed by the judge trying the cause below, upon it appearing to the satisfaction of the court that the facts are fairly stated therein; that said bill was prepared in accordance with the law governing the preparation of such bills, and that the judge trying the cause refused to sign the same; and the truth of any such bill of exceptions shall be determined by the court on the copies of the affidavits required by law to be made in such cases, such copies to be contained in and to form a part of the record transmitted to the supreme court or court of appeals.

Mode of trial.  
(Act May 12,  
1846.)  
P.D. 219, 1581.

**ART. 1034.** When an appeal from any final judgment of a district or county court has been taken, and an appeal-bond has been filed; or when an appeal has been taken in cases where no appeal-bond is required; or when a citation has been served on a petition for a writ of error, it shall be the duty of the appellant or plaintiff in error to file a transcript of record with the clerk of the supreme court or court of appeals, at the place where such appeal or writ of error is returnable, on or before the first day of the term to which the same is so returnable, that is held next succeeding the term when the appeal was perfected or the citation for writ of error was served, or on or before the first day in such term designated for the trial of causes from the county in which such appeal or writ of error was taken; *provided, however,* that if such appeal was perfected or such citation in error was served less than twenty days before the said first day of the term next succeeding the taking thereof, or less than twenty days before the first day of the term in said term designated for the trial of causes brought from the county in which such appeal or writ of error was taken, then such transcript shall be filed at the next succeeding term thereafter in the same manner; *and provided, also,* that where a party is unable to file such transcript in the time limited by this article from any unavoidable cause, the court shall, upon satisfactory proof thereof, permit such transcript to be filed at a later period.

Transcript must be filed, when.  
(Act April 2,  
1874, p. 51, §11.)  
P.D. 1586, 6460.

**ART. 1035.** In case the appellant or plaintiff in error shall fail to file a transcript of the record as directed in the preceding article, then it shall be lawful for the appellee or defendant in error to file with the clerk of the supreme court or court of appeals a certificate of the clerk of the district or county court in which any such appeal or writ of error may have been taken, attested by the seal of his court, stating the time when such appeal was perfected or such citation was served; whereupon it shall be the duty of the supreme court or court of appeals to affirm the

Certificate may be filed, when.

Affirmance on certificate.  
(Act Feb. 11,  
1850.)  
P.D. 1539.

judgment of the court below, unless good cause be shown why such transcript was not filed by the appellant or plaintiff in error; and in cases where a bond has been given by the appellant or plaintiff in error, if a copy of such bond accompanies such certificate of the clerk of the district or county court, the judgment shall in like manner be affirmed against the sureties in such bond.

Court may permit transcript to be filed after affirmance on certificate, when.

P.D. 1590.

ART. 1036. In all cases where the supreme court or court of appeals shall have affirmed the judgment of the court below, under the provisions of the preceding article, said court may at any time during the term at which any such judgment was so affirmed permit the transcript to be filed by the appellant or plaintiff in error, and the case to be tried on its merits; *provided*, the appellant or plaintiff in error shall show to the court good cause why the transcript was not filed by him in accordance with the provisions of article 1034; and shall also show to said court that he has given the appellee or defendant in error notice of his intention to apply for such permission to file said transcript; and in cases where the supreme court or court of appeals shall adjourn within forty days after any judgment shall have been affirmed under the provisions of the next preceding article, the court may permit the appellant or plaintiff in error to file said transcript on the first day of the next succeeding term, or the first day of the term that may have been designated by said court for the trial of cases from the district in which such appeal or writ of error was taken, and have said cause tried on its merits; *provided*, said appellant or plaintiff in error shall show good cause why said transcript was not filed as herein directed, and shall also show to the court that he has given the appellee or defendant in error notice of his intention to apply for permission to file said transcript.

Assignment of errors.

P.D. 1591.

ART. 1037. The appellant or plaintiff in error shall in all cases file with the clerk of the court below an assignment of errors, distinctly specifying the grounds on which he relies before he takes the transcript of the record from the clerk's office, and a copy of such assignment of errors shall be attached to and form a part of the record; and all errors not so distinctly specified shall be considered by the supreme court or court of appeals as waived.

No answer to assignment of errors.

(Act May 12, 1846.)

P.D. 1582.

ART. 1038. The appellee or defendant in error shall not be required to file any answer to such assignment of errors or defects as may be insisted on by the appellant or plaintiff in error, but he shall furnish the court with a brief of his argument and the authorities on which he relies; and where the appellant or plaintiff in error does not appear, or furnish the court with a brief of the cause, the appeal may be dismissed or the appellee or defendant in error may, at his option, proceed *ex-parte*.

Briefs of attorneys sufficient appearance.

(Act April 25, 1846.)

P.D. 1541.

ART. 1039. When any cause or suit may be taken up from any inferior court to the supreme court or court of appeals, whether by appeal, writ of error or otherwise, it shall be lawful for the attorney, both for plaintiff and defendant, to file in the papers of said suit or cause his written brief or argument; and the judge of said court shall be required to notice the same as if it were the personal appearance of such attorney, and shall not dismiss any suit or cause where such brief or argument of counsel is filed with the papers, for want of other or further prosecution.

CHAPTER SEVEN.

HEARING CAUSES.

	Article		Article
Disqualification of judges.....	1040	Causes may be taken under advisement	
Equal division of judges.....	1041	from one term to another.....	1045
Order of trial of causes.....	1042	Causes may be transferred from one term	
No reversal or dismissal for want of form.....	1043	to another, how.....	1046
No abatement on death of parties, when.....	1044		

ARTICLE 1040. No judge of the supreme court or court of appeals shall sit in any cause wherein he may be interested in the question to be determined, or where either of the parties may be connected with him by affinity or consanguinity, within the third degree, or where he shall have been of counsel in the cause; and when either court or any two of its members, shall be thus disqualified to hear and determine any cause or causes in said court, the same shall be certified to the governor, who shall immediately commission the requisite number of persons, learned in the law, for the trial and determination of said case or cases.

Disqualification of judges (Const., art. 5, §11; act May 12, 1846.) P.D. 1575

ART. 1041. Whenever the supreme court or court of appeals shall be equally divided in opinion on hearing any appeal or other matter, it shall be the duty of the chief justice or presiding judge of the court to certify the same to the governor; also, all other causes of disability of said court, as prescribed in the preceding article; whereupon the governor shall immediately commission the required number of persons learned in the law for the determination of said case or cases; *provided*, that the person or persons so commissioned shall possess all the qualifications hereinbefore and hereinafter prescribed for judges of the supreme court or court of appeals.

Equal division of judges. P.D. 1576.

ART. 1042. Causes on the docket of said courts may be tried by districts, or in such order as to the judges of said court may seem best calculated to promote the interest and convenience of the parties or their attorneys.

Order of trial of causes. (Act Feb. 11, 1850.) P.D. 1585.

ART. 1043. There shall be no reversal on an appeal or writ of error, nor shall the same be dismissed for want of form, provided sufficient matter or substance be contained in the record to enable the court to decide the cause upon its merits; and where the court shall be of opinion that an appeal or writ of error has been taken for delay, and that there was no sufficient cause for taking such appeal, then, and in that case, the appellant or plaintiff in error, if he be the defendant in the court below, shall pay ten per cent. on the amount in dispute, as damages, together with the judgment, interest, and costs of suit thereon accruing. If in any judgment rendered in the district or county court there shall be an excess of damages rendered, and before the plaintiff has entered a release of the same in such court in the manner provided by law, such judgment shall be removed to the supreme court or court of appeals, it shall be lawful for the party in whose favor such excess of damages has been rendered to make such release in the supreme court or court of appeals in the same manner as such release is required to be made in the district or county court; and upon such release being filed in said supreme court or court of appeals, the said court, after revising said judgment, shall proceed to give such judgment as the court below ought to have given if the release had been made and filed therein.

No reversal or dismissal for want of form. (Act May 12, 1846.) P.D. 52, 1580.

ART. 1044. If any party to the record, in any cause now pending in or hereafter taken to the supreme court or court of appeals, by appeal or writ of error, shall have died heretofore, or shall hereafter die, after the appeal-bond has been filed and approved, or after the writ of error has been served, and before such cause has been decided by the supreme court or court of appeals, such cause shall not abate by such death, but the court shall proceed to adjudicate such cause, and render judgment therein as if all the parties thereto were still living, and such judgment shall

No abatement on death of parties, when. (Act Nov. 29, 1871, p. 51.) P.D. 6463.



have the same force and effect as if rendered in the lifetime of all the parties thereto; *provided, however*, that this act shall not apply to any suit or action in which the cause of action does not survive in favor of or against the legal representatives of a deceased person.

Causes may be taken under advisement from one term to another. (Act April 2, 1874, p. 51, §10.) P.D. 6463k.

Causes may be transferred from one term to another, how. (Acts 1874, p. 50, §5.) P.D. 6463f.

ART. 1045. The said courts may take any cause under advisement from one term to another, and when the same shall be decided may send the judgment and opinion thereon to the clerk of said court at the place from which said cause was taken, who shall enter such judgment in vacation as of the term from which the cause was so taken.

ART. 1046. The said courts may transfer causes from the term of either place to the term of any other place, upon the consent in writing of the parties, or their counsel, filed with the clerk and attached to the transcript of the record; and the parties to any cause, or their counsel, may, on filing a written agreement for that purpose, with the clerk of the district or county court, direct the transcript of the record in any appeal or writ of error to the supreme court or court of appeals, with a certified copy of such agreement, to be returned for hearing and judgment to either of the places where the terms of said courts are held.

## CHAPTER EIGHT.

### JUDGMENT OF THE COURT.

Judgments in open court; opinions in writing.....	Article 1047	Judgment against appellant, etc., for damages, etc.....	Article 1049
Reversal, judgment on.....	1048	Judgments final at end of term; mandate may issue, when.....	1050

Judgments in open courts. Opinions in writing. (Act Nov. 10, 1866, p. 134.) P.D. 6417.

Reversal, judgment on. (Act May 12, 1846.) P.D. 1562.

Judgment against appellant, etc., for damages, etc. (Act March 13, 1848.) P.D. 1571.

ARTICLE 1047. In all cases decided by the supreme court or court of appeals, the judgment or decree of the court shall be pronounced in open court; and the opinion of the court shall be reduced to writing in those cases which the court in its discretion may deem of sufficient importance to be reported, and such opinions shall be recorded by the clerk of the court in a book kept by him for that purpose; *provided*, the opinions in all cases which are reversed and remanded for new trial shall be in writing.

ART. 1048. When the judgment or decree of the court below shall be reversed the supreme court, or court of appeals, shall proceed to render such judgment or decree as the court below should have rendered, except when it is necessary that some matter of fact be ascertained, or the damages to be assessed or the matter to be decreed is uncertain, in either of which cases the cause shall be remanded for a new trial in the court below.

ART. 1049. Whenever the supreme court or court of appeals on the trial of a cause brought from any inferior court, shall affirm the judgment or decree of such inferior court; or when said court shall proceed to render such judgment or decree as should have been rendered by the court below, and such judgment shall be for the same or a greater amount, or of the same nature as rendered in the court below, said court shall render judgment against the appellant or plaintiff in error and his sureties on the appeal-bond, a copy of which shall always accompany the transcript of the record; and said supreme court or court of appeals shall, in their discretion, also include in their said judgment or decree such damages, not exceeding ten per cent. on the amount of the original judgment, as the court may deem proper; and the judgment or decree of said court rendered as contemplated in this article shall be final.

Judgments final at end of term. Mandate may issue, when. (Act April 2, 1874, p. 51, §9.) P.D. 6463j.

ART. 1050. The judgments rendered at any term of said courts shall be final at the end thereof; and the clerk shall issue the mandate thereon immediately after the close of the term; but a mandate may issue on any judgment before the term is closed, by an order on the minutes of the court upon good cause shown therefor, on a written application supported

by proof satisfactory to said court, and such order shall be subject to revision or revocation at any time before the close of the term at which it was made.

## CHAPTER NINE.

### REHEARING.

	Article		Article
Motion for, when and how made .....	1051	Service on one of several parties.....	1054
Notice to opposing party or attorney .....	1052	When motion heard .....	1055
Service and return of officer.....	1053		

ARTICLE 1051. Any party desiring a rehearing of any matter determined by said courts may, within fifteen days after the date of entry of the judgment or decision of the court, file with the clerk of said court his motion in writing for a rehearing thereof, in which motion the grounds relied upon for the rehearing shall be distinctly specified, and the name and residence of the counsel of the opposing party if known, and if not known, then the name and residence of the opposing party as shown in the record; *provided*, that should the court adjourn within less time than fifteen days after the rendition of the judgment it may make such rules and regulations in reference to the filing of the motion as to it may seem best for the promotion of the interest of all the parties concerned.

Motion for, when and how made.  
(Act May 2, 1874, p. 216, §2.)  
P.D. 6463g.

ART. 1052. Upon the filing of such motion with the clerk of said court, he shall make a certified copy of such motion and transmit the same by mail to the sheriff or any constable of the county in which the attorney or opposing party, as the case may be, is alleged in said motion to reside, together with a precept commanding him to deliver the copy of the motion to the person named in such precept.

Notice to opposing party or attorney.  
(Act May 2, 1874, p. 216, §4.)  
P.D. 6463r.

ART. 1053. Upon the receipt of such precept and copy of motion by the officer it shall be his duty to deliver the copy of the motion to the person named in said precept, if found in his county, and to return said precept to the court from which it issued, by mail, stating thereon at what time and to whom he delivered the copy of the motion, or that the party named in the precept is not to be found in his county, as the case may be.

Service and return of officer.  
*Ib.*  
P.D. 6463r

ART. 1054. Service of said motion on any one of several parties or their attorneys to a cause, shall be sufficient service on all.

Service on one of several parties.

ART. 1055. At any time, after five days from the return of such precept served, it shall be lawful for said supreme court or court of appeals to hear and determine such motion for rehearing, and not sooner.

When motion heard.  
*Ib.*  
P.D. 6463p.

## CHAPTER TEN.

### EXECUTION OF JUDGMENT.

	Article		Article
Process, how tested.....	1056	Execution returnable, when.....	1059
Judgment enforced, how.....	1057	Officer failing to make return, etc.....	1060
Clerk not compelled to issue mandate until costs paid.....	1058		

ARTICLE 1056. All writs and process issuing from the supreme court or court of appeals shall bear the test of the chief justice or presiding judge of said court, and be under the seal of said court, and signed by the clerk thereof, and may be directed to the sheriff or any constable of any county in the state, and shall be by such officer executed according to the command thereof, and returned to the court from which they emanated; and whenever such writ or process shall not be executed, the clerk of said court is hereby authorized and required to issue another like process or writ upon the application of the party suing out the former writ or process to the same or any other county.

Process, how tested.  
(Act May 12, 1846.)  
P.D. 1573.

Judgment enforced, how. (Act Mar. 13, 1848.) P.D. 1571.

ART. 1057. Upon the rendition by the supreme court or court of appeals of any such judgment or decree as is contemplated by article 1049, it shall not be necessary for the lower court from which the cause was removed to make any further order or decree therein, but the clerk of said lower court, on the receipt of the mandate of the supreme court or court of appeals, shall proceed to issue execution thereon as in other cases.

Clerk not compelled to issue mandate until costs paid. (Act March 13, 1848.) P.D. 2568.

ART. 1058. On the rendition of any final judgment or decree by the supreme court or court of appeals, the clerk of said court shall not be compelled to issue and deliver the mandate of the court, or certify the proceedings to the proper court, until all of the costs accruing on the cause in the supreme court or court of appeals shall have been paid. But in case said clerk shall elect to issue and deliver the mandate of the court or certify the proceedings to the proper court, without such costs having been paid, then he shall make out a correct list of all the costs accruing in said cause in his court, and shall issue execution therefor against the party and his sureties adjudged to pay the same, directed to the sheriff or any constable of the proper county from which the original cause was removed, or to any county where the person or persons liable under such execution may have property; and it shall be the duty of every sheriff or constable, on receipt of any such execution, to execute the same under the same rules, regulations and liabilities as provided for in cases of executions from the district courts.

Execution returnable, when. (Act March 9, 1875, p. 70, §2.)

ART. 1059. All executions for costs of the supreme court or court of appeals, as authorized by law, shall be returned by the sheriff or constable to whom they are directed within four months from the date thereof.

Officer failing to make return, etc. *Ib.*

ART. 1060. In case any officer shall fail or refuse to make such return with the amount of such costs, if he has collected the same within the time prescribed herein, or shall make a false or fraudulent return of any such execution, the clerk of said supreme court or court of appeals may issue citation returnable forthwith to such officer to appear before said supreme court or court of appeals, and show cause if any he can, why he has not collected and returned such costs and execution; and failing to show cause, said court may enter judgment against such officer and the sureties on his official bond for twice the amount of said costs, together with the costs of such proceeding.

## CHAPTER ELEVEN.

### JUDGES OF THE COURT OF APPEALS.

	Article	Article
Number of judges and quorum.....	1061	Presiding judge, how chosen; process, how tested.....
Election and qualification of judges.....	1062	When judge is disqualified.....
Terms of office.....	1063	1065

Number of judges and quorum. (Const., art. 5, §5.)

ARTICLE 1061. The court of appeals shall consist of three judges, any two of whom shall constitute a quorum, and the concurrence of two judges shall be necessary to a decision of said court.

Election and qualification of judges. *Ib.*

ART. 1062. Said judges shall be elected by the qualified voters of the state at a general election. They shall be citizens of the United States and of this state; shall have arrived at the age of thirty years at the time of election; each shall have been a practicing lawyer or a judge of a court in this state, or such lawyer and judge together, for at least seven years.

Term of office. *Ib.*

ART. 1063. Said judges shall hold their offices for a term of six years and until their successors are qualified.

Presiding judge. Process, how tested. (Act May 6, 1876, p. 4, §8.)

ART. 1064. The judges of the court of appeals shall choose a presiding judge for said court from their number, at such times as they think proper, and all writs and process issuing from said court shall bear test in the name of said presiding judge and the seal of the court.

ART. 1065. Whenever any of the judges of the court of appeals are disqualified from sitting in any criminal case for like reasons to those enumerated in article 1040, the same shall be certified to the governor, who shall fill such temporary vacancy in the manner prescribed in articles 1040 and 1041.

When judge is disqualified. (Const., art. 5, §11.)

**CHAPTER TWELVE.**

**TERMS OF THE COURT OF APPEALS.**

Times and places of holding terms.....	Article 1066	Appeals, etc., returnable where.....	Article 1067
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ARTICLE 1066. The court of appeals shall hold its terms at the same times and places as the terms of the supreme court are, or may be, by law required to be held; and the court may be adjourned for like causes and with like effect as is, or may be, provided in the case of the supreme court.

Times and places of holding terms. (Const., art. 5, §5.) (See art. 1010) P.D. 1574.

ART. 1067. Appeals and writs of error from the several counties to the court of appeals shall be returnable to the respective terms of said court, as is, or may be, provided for the return of appeals and writs of error to the supreme court from such counties respectively.

Appeals, etc., returnable where. (See arts. 1005-1009.)

**CHAPTER THIRTEEN.**

**JURISDICTION OF THE COURT OF APPEALS.**

Jurisdiction of what cases.....	Article 1068	May ascertain matters of fact.....	Article 1070
Writ of <i>habeas corpus</i> and other writs.....	1069		

ARTICLE 1068. The court of appeals shall have appellate jurisdiction, co-extensive with the limits of the state, of all civil cases, of which the county courts have exclusive or concurrent original jurisdiction, except cases involving matter pertaining to the administration or guardianship of estates of deceased persons, habitual drunkards, insane persons, and minors; and of all civil cases of which the county court have appellate jurisdiction, where the judgment rendered, or the amount in controversy shall exceed one hundred dollars exclusive of interest and costs, and in such other cases as are, or may be, provided by law; and such appellate jurisdiction in criminal cases as is provided in the Code of Criminal Procedure.

Jurisdiction of what cases. (Const., art. 5, §6; acts June 16, 1876, p. 18, §3; Aug. 18, 1876, p. 172.)

ART. 1069. The court of appeals and the judges thereof shall have power to issue the writ of *habeas corpus*; and may under such regulations as may be prescribed by law, issue such writs as may be necessary to enforce its own jurisdiction.

Writ of *habeas corpus* and other writs. (Const., art. 5, §6.)

ART. 1070. The court of appeals shall have power upon affidavits, or otherwise, as by the court may be thought proper, to ascertain such matters of fact as may be necessary to the exercise of its jurisdiction.

May ascertain matters of fact, how. *Ib.*

**CHAPTER FOURTEEN.**

**CLERKS OF THE COURT OF APPEALS.**

Appointment, tenure, and removal of.....	Article 1071	Shall receive what records from clerk of supreme court.....	Article 1074
Oath and bond of.....	1072	May appoint deputies.....	1075
Duties and liabilities of.....	1073	Seal of the court of appeals.....	1076

ARTICLE 1071. The court of appeals shall appoint a clerk for each place at which it may sit, who shall hold his office for four years, unless sooner removed by the court for good cause entered on the minutes of said court.

Appointment, tenure and removal of. *Ib.*

Oath and bond of. *Ib.*  
(Act May 6, 1876, p. 3, §1.)

ART. 1072. Said clerks shall, before entering upon the duties of their offices, take and subscribe the oath of office prescribed by the constitution, and shall give the same bond, to be approved by the court of appeals, as is now or may hereafter be required by law of the clerks of the supreme court.

Duties and liabilities of. *Ib.*  
(*Ib.* p. 3, §1.)

ART. 1073. Said clerks shall perform as clerks of the court of appeals the like duties as are now or may hereafter be required by law of the clerks of the supreme court, and shall be subject to the same liabilities as are now or may hereafter be prescribed for the clerks of the supreme court.

Shall receive what records from clerk of supreme court. *Ib.*  
(*Ib.* p. 3, §3.)

ART. 1074. Said clerks shall receive from the clerks of the supreme court, and receipt for, all records of cases which have been or may hereafter be received by said clerks of the supreme court, of which the court of appeals has or may have, under the constitution and laws, exclusive appellate jurisdiction, and file the same in said court of appeals.

May appoint deputies. (Act Aug. 17, 1876, p. 169.)

ART. 1075. Said clerks may appoint deputies, who shall perform all the duties required of said clerks, and who shall be responsible to said clerks for the faithful discharge of the duties of their offices.

Seal of the court of appeals. (Act May 6, 1876, p. 3, §3.)

ART. 1076. It shall be the duty of the clerk of the court of appeals at Austin to procure a seal for said court, and a copy thereof shall be made for each place where its session may now or may hereafter be required by law to be held; it shall have a star with five points with the words "Court of Appeals of Texas" engraved thereon.

## CHAPTER FIFTEEN.

### REPORTER TO THE COURT OF APPEALS.

	Article		Article
Appointment and removal of reporter.....	1077	Pay for state copies; price to the pro-	1080
Duty of reporter; copies of reports delivered to secretary of state.....	1078	fession .....	1081
Requisites of each volume.....	1079	Records to be delivered to reporter.....	1082
		How reporter paid for state copies.....	1082

Appointment and removal of reporter. (Act July 28, 1876, p. 57.)

ARTICLE 1077. The court of appeals is hereby authorized and required to appoint one or more reporters of its decisions in criminal cases and of such other of its decisions as may be required by law to be published. Such reporters shall be subject to removal by said court for any inefficiency or neglect of duty.

Duty of reporter.

ART. 1078. It shall be the duty of the reporter to prepare for publication, under the direction of said court, the said decisions thereof, and to cause the same to be printed and published with promptness, as fast as there shall be a sufficient number to form a volume; and to deliver to the secretary of state, for the use of the state, four hundred copies of each volume of said reports.

Copies of reports delivered to secretary of state.

Requisites of each volume.

ART. 1079. Each volume shall contain an average number of pages of the volumes of Texas Reports heretofore published, and each page shall contain the number of lines, and each line the same number of "ems" as are contained in each page of Moore and Walker's Reports heretofore published. They shall be styled the "Court of Appeals Reports," and shall be so styled on the title page and back thereof, and the numbers of the volumes shall be continued on consecutively. The name of the reporter may be printed on the back as on the volumes published by Moore and Walker.

Pay for state copies.

ART. 1080. In payment for the four hundred copies of each volume, delivered as aforesaid, the said reporter shall be entitled to receive the following compensation, viz: The sum of three dollars (\$3.00) per page for as many pages as shall be contained in one copy of each volume so delivered; *provided*, that if the reporter charge the profession over five dollars (\$5.00) per volume, he shall be removed from office by the said court.

Price to the profession.

ART. 1081. As soon as the opinions are recorded the originals, together with the records and papers in each case to be reported, shall be delivered to the reporter by the clerks of said court, who shall take the reporter's receipt for the same; but the reporter shall return to said clerks the said opinions, records and papers when he shall have finished using them.

Records to be delivered to reporter.

ART. 1082. When the reporter shall have delivered to the secretary of state the copies of a volume of said reports, as required by this chapter, the comptroller of public accounts shall draw his warrant on the state treasurer for the amount of compensation due to such reporter, based upon the certificate of the secretary of state that the reporter has delivered to him four hundred copies of ..... volume of such reports, containing ..... pages, printed, published and bound, in accordance with the provisions of this chapter.

How reporter paid for state copies.

## CHAPTER SIXTEEN.

### SPECIAL PROVISIONS RELATING TO THE COURT OF APPEALS.

	Article		Article
Transfer of cases from supreme court.....	1083	Clerk's fees in criminal cases.....	1085
Mandate, how directed in cases of change of jurisdiction.....	1084		

ARTICLE 1083. All cases which have been or may hereafter be received by and filed in the supreme court, of which the court of appeals has or may have, under the constitution and laws, exclusive appellate jurisdiction, shall be transferred by said supreme court to said court of appeals, and there considered and disposed of by said court as though they had been originally carried to said court of appeals.

Transfer of cases from supreme court (Act May 6, 1876, p. 8.)

ART. 1084. When the court from which an appeal has been or may hereafter be taken, or from which a writ of error has been or may hereafter be prosecuted, has been or shall be deprived of jurisdiction over any case pending such appeal or writ of error, and when such case shall have been or may hereafter be determined by the court of appeals, the mandate of said court of appeals shall be directed to the court to which jurisdiction has been or may hereafter be given over such case.

Mandate of, how directed in cases of change of jurisdiction. *Ib.* §4.

ART. 1085. In every state case of a less grade than felony, in which an appeal is taken to the court of appeals, and the judgment of the court below is affirmed against the defendant, all fees due the clerk of said court in said case shall be adjudged against the defendant and his relatives on his recognizance, for which execution shall issue as in other cases of appeal to the court of appeals. Should said case be reversed by the court of appeals and a new trial be had in the court below, and the defendant convicted, then the costs aforesaid in favor of the clerk of the court of appeals shall be taxed by the court below against the defendant, and a certified copy of said bill of costs by the clerk of the court of appeals, filed in the court below, shall be sufficient to require said costs to be taxed and collected as other costs against the defendant in the court below.

Clerk's fees in criminal cases. (Act March, 1875, p. 69.)

TITLE XXVII.  
 Courts—District.

CHAPTER ONE.

THE JUDGE OF THE DISTRICT COURT.

	Article		Article
District judge, election, qualification and residence.....	1086	Record to be made when special judge elected or appointed.....	1093
Term of office.....	1087	Special judge elected, when and how.....	1094
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District judge, election of.

ARTICLE 1086. There shall be elected for each judicial district, by the qualified voters thereof, at a general election for members of the legislature, a judge, who shall be at least twenty-five years of age, shall be a citizen of the United States, shall have been a practicing attorney or a judge of a court in this state for the period of four years, and shall have resided in the district in which he is elected for two years next before his election, and shall reside in his district during his term of office.

Qualification.

Residence. (Const., art. 5, §7.)

Term of office. (Ib. and art. 16, §17.)

ART. 1087. The judge of the district court shall hold his office for the term of four years and until his successor shall have duly qualified.

Oath of office. (Const., art. 16, §1.)

ART. 1088. The judge of the district court, and each special judge hereinafter provided for, shall, before entering upon the duties of his office, take the oath of office prescribed by the constitution.

Vacancy in office, how filled. (Ib. art. 5, §28.)

ART. 1089. Any vacancy in the office of a judge of the district court shall be filled by the governor until the next succeeding general election.

Disqualification, causes of. (Ib. art. 5, §11.)

ART. 1090. No judge of the district court shall sit in any cause wherein he may be interested, or where he shall have been of counsel, or where either of the parties may be connected with him by affinity or consanguinity within the third degree.

Parties may agree on special judge. (Ib. P.D. 1419.)

ART. 1091. When a judge of the district court is disqualified by any of the causes above stated, the parties may by consent appoint a proper person to try such case.

Governor may appoint a special judge. (Ib. (Const., art. 5, §11.)

ART. 1092. Whenever a judge of the district court is disqualified to try a civil case pending in any of the courts of his district, and the parties shall fail at the first term of the court to agree upon a special judge, it shall be the duty of the judge to certify to the governor that he is disqualified to try such case and the failure of the parties to agree upon a proper person to try the same; whereupon the governor shall proceed to appoint some person learned in the law to try such case.

NOTE—Chapter one, acts 1879, without referring to the foregoing articles, amends section 3 of the act of August 15, 1876, and provides—

That whenever any case or cases are called or pending in which the district judge or the special judge chosen, shall be a party, or has an interest, or has been attorney or of counsel, or is otherwise disqualified from trying the same, no change of venue shall be made necessary thereby; but the parties, or their counsel, shall have the right to select and agree upon an attorney of the court for the trial thereof, and if the parties or their attorneys shall fail to select or agree upon an attorney for the trial of such case, at or before the time it is called for trial, or, if the trial of the

case is pending, and the district judge should become unable to act, or is absent, and a special judge is selected, who is disqualified to proceed with the trial, and the parties fail to select a special judge at once who is qualified, it shall be the duty of the district judge, or special judge presiding, to certify the fact immediately to the governor by mail, telegram or otherwise, whereupon the governor shall appoint a special judge, not so disqualified, to try the same. The evidence of such appointment may be transmitted by telegram or otherwise. The special judge so appointed, shall qualify as provided in the first section of the act, and proceed to the trial or disposition of such case, immediately, if the trial is pending, otherwise, when called or reached, as in other cases.—L.

ART. 1093. Whenever a special judge is agreed upon by the parties, or is appointed by the governor for the trial of any particular cause as above provided, the clerk shall enter in the minutes of the court, as a part of the proceedings in such cause, a record showing—

Record to be made where special judge is agreed on or appointed. (Act Aug. 15, 1876, p. 141, §2.)

1. That the judge of the court was disqualified to try the cause; and
2. That such special judge [*naming him*] was, by consent, agreed upon by the parties to try the cause; or
3. That the parties having failed to agree upon a proper person to try the cause, and the judge of the court having certified that fact to the governor, he had appointed such special judge [*naming him*] to try the cause; and
4. That the oath prescribed by law had been duly administered to such special judge.

ART. 1094. Whenever on the day appointed for a term of the district court, or at any time before the expiration of the term, or the completion of all the business of the court, the judge thereof shall be absent, or shall be unable or unwilling to hold the court, there shall thereby be no failure of the term, and no failure to proceed with the business of the court, but the practicing lawyers of such court present thereat may proceed to elect from among their number a special judge of said court, who shall proceed to hold said court and conduct the business thereof, and shall have all the power and authority of the judge of said court, during such continued absence or inability, and until the completion of any business begun before such special judge.

Special judge, when and how elected. (Act Aug. 15, 1876, p. 140, §1.)

ART. 1095. Such election shall be by ballot, and each practicing lawyer in attendance at such court shall be entitled to participate in such election, and shall be entitled to one vote; and a majority of the votes of all the practicing lawyers present and participating shall be necessary to the election of such special judge.

Electoral body, how constituted. (Act Aug. 15, 1876, p. 140, §2.)

ART. 1096. The mode of conducting such election shall be as follows: The sheriff or constable shall make proclamation at the court-house door that the election of a special judge of the court is about to be made by the practicing lawyers present thereat; the clerk shall then make a roll or list of all the practicing lawyers present; and such lawyers shall then proceed to organize and hold the election as hereinbefore provided.

Mode of conducting the election. (Act Aug. 15, 1876, p. 140, §1.)

ART. 1097. Should the sheriff or constable and clerk, or either of them, fail or refuse to act, the said practicing lawyers may nevertheless proceed to organize themselves into such electoral body, and appoint a sheriff and clerk *pro tem.* to do the duties of such officers respectively.

Failure or refusal of officers to act. (Act Aug. 15, 1876, p. 141, §2.)

ART. 1098. It shall be the duty of the clerk to enter upon the minutes of the court a record of the election of such special judge, showing—

Record of the election, etc. 16.

1. The names of all the practicing lawyers present and participating in such election.
2. The fact that public proclamation was made at the court-house door that such election was about to take place.
3. The number of ballots polled at such election and the number polled for each person, and the result of the election.
4. That the oath prescribed by law had been duly administered to the special judge.



Effect of such record.  
*Ib.*

ART. 1099. The record of such proceedings, showing a substantial compliance with the requirements of the law in that behalf, shall be conclusive evidence of the election and qualification of such special judge.

Other similar elections from time to time.  
*Ib.*

ART. 1100. Like elections may be held from time to time during the term of the court to supply the absence, failure or inability of the judge, or of any special judge, to perform the duties of the office.

CHAPTER TWO.

THE CLERK OF THE DISTRICT COURT.

	Article	Article
District clerk, election and term of office.....	1100a	Records of suits, etc., in former district courts.....
Vacancy in office, how filled.....	1101	1110
Bond and oath.....	1102	Records of suits in former county courts.....
May appoint deputies.....	1103	1111
Oath and powers of deputies.....	1104	Custody and arrangement of books, papers, etc.....
Shall keep his office at county seat.....	1105	1112
May administer oaths, take depositions, etc.....	1106	Indexes to all judgments.....
Shall keep a record of proceedings of court, judgments, etc.....	1107	1113
Other dockets, books, etc.....	1108	Shall transfer records to his successor.....
Shall report fines and jury fees.....	1109	1114
Shall pay over jury fees and fines.....	1109a	Single clerk for district and county courts in certain counties.....
		1115
		When acting as district clerk to use seal of said court.....
		1116

Clerk, how elected.

ARTICLE 1100a. There shall be a clerk for the district court of each county, who shall be elected at a general election for members of the legislature by the qualified voters of such county, who shall hold his office for two years, and until his successor shall have duly qualified.

Term of office. (Const., art. 5, §9, art. 16, §17.)

Vacancy in office of clerk, how filled.

*Ib.*  
(Act Aug. 19, 1876, p. 233, §1.)

ART. 1101. Whenever a vacancy may, from any cause, occur in the office of clerk of the district court the same shall be filled by the judge of the district court of such county, and the clerk so appointed shall give bond and qualify in the same manner as if he had been elected, and shall hold his office until the next general election, and until his successor shall have duly qualified.

Bond and oath. (Act May 11, 1846, p. 203, §20.)  
P.D. 500.

ART. 1102. Each clerk of the district court shall, before entering on the duties of his office, give bond, with two or more good and sufficient sureties, to be approved by the commissioners' court of the county, payable to the governor and his successor in office, in the sum of five thousand dollars, conditioned for the safe-keeping of the records and the faithful discharge of the duties of his office, and shall also take and subscribe the oath of office required by the constitution, which shall be indorsed upon the bond, and the bond and oath, so taken and approved shall be filed and recorded in the office of the clerk of the county court. A certified copy of such bond may be put in suit, in the name of the governor, for the use of the party injured, and shall not become void on the recovery of part of the penalty thereof, but may be sued on from time to time by the parties injured, until the whole amount of the penalty is recovered.

May appoint deputies. *Ib.* p. 202, §21.  
P.D. 501.

ART. 1103. The clerk of the district court, whether elected or appointed, shall have power to appoint one or more deputies by a written appointment under his hand and the seal of his court, which appointment shall be filed in the office of the clerk of the county court, and shall be by him recorded.

Oath and power of deputies.

ART. 1104. Such deputies shall take the oath of office prescribed by the constitution; they shall act in the name of their principal, and may do and perform all such official acts as may be lawfully done and performed by such clerk in person.

Shall keep office at county seat.

ART. 1105. The several clerks of the district courts shall keep their offices at the county seats of their respective counties, and when the clerk does not reside at such county seat he shall have a deputy, or deputies, residing there.

**ART. 1106.** The several clerks of the district court shall have power to administer all oaths and affirmations required in the discharge of their official duties, to take the depositions of witnesses, and generally to perform all such duties as are, or may be, imposed upon them by law.

May administer oaths and take depositions. (Act May 11, 1846, p. 202, §34.)

**ART. 1107.** Such clerks shall also keep a fair record of all the acts done, and proceedings had, in their respective courts; they shall enter all judgments of the court, under the direction of the judge, and shall keep a record of all executions issued and of the returns thereon, in record books to be kept for the purpose.

Shall keep a record of proceedings, judgments and executions. (Act May 11, 1846, p. 203, §34.)

**ART. 1108.** They shall also keep such other dockets and books as are, or may be, required by law.

P. D. 504.  
Other dockets, etc.

**ART. 1109.** In addition to the reports required of the clerk of the district court under the several provisions of the Code of Criminal Procedure, it shall be his duty on the last day of each term of the court to make out a statement in writing, which shall set forth all moneys received by him for jury fees and fines, with the names of the parties from whom received, up to the date of such statement, and since his previous statement, if any such has been made; and also, the name of each juror who has served at such term, the number of days he served, and the amount due him for such services, which statement shall be examined by the judge holding such court, and if found to be correct shall be approved and signed by him. Should the judge consider such statement erroneous, he may make such corrections therein as he may deem necessary, and shall then approve and sign the same. Such statement when so approved and signed shall be recorded in the minutes of the court.

Shall report fines and jury fees. (Act Nov. 15, 1864, p. 7, §9.) P. D. 4014.

**ART. 1109a.** It shall be the duty of the clerk to pay over to the county treasurer all jury fees and fines received by him, to the use of the county.

Shall pay over jury fees and fines.

**ART. 1110.** All records of judgments, executions, and all other papers and proceedings in suits heretofore had in the district courts of the several counties of the Republic or State of Texas, shall be kept in the office of the clerks of the district courts of such counties, and the same proceedings may be had thereon as if such suits had been commenced and such proceedings had in the district courts of this state as now organized.

Records of suits, etc., in former district courts. (Act May 11, 1846, p. 204, §26.) P. D. 506.

**ART. 1111.** All records of judgments, executions, and all other papers and proceedings in suits heretofore had in the county courts of the Republic of Texas prior to the first day of February, 1839, and of the county courts of the state as organized under the act entitled "An act to organize the county courts and to define the powers and jurisdiction thereof," approved October 25, 1866, shall be kept in the office of the clerks of the district courts of such counties, and the same proceedings may be had thereon as if such suits had been commenced and such proceedings had in the district courts as now organized.

Records of suits, etc., in former county courts. (Acts May 11, 1846, p. 20, §27; Aug. 8, 1870, p. 43, §1-4.)

**ART. 1112.** The clerks of the district courts shall have the custody of all the minutes, records, books, papers and seals which now are, or may have been heretofore, or may be hereafter deposited in their respective offices in accordance with law, and it shall be their duty carefully to attend to the arrangement and preservation of the same.

Custody and arrangement of books, papers, etc. (Act May 11, 1846, p. 203, §22.) P. D. 502.

**ART. 1113.** They shall also provide and keep in their respective offices, as part of the records thereof, full and complete alphabetical indexes of the names of the parties to all suits filed in their said courts; which indexes shall be kept in well-bound books, and shall state in full the names of all the parties to such suits, which shall be indexed and cross-indexed, so as to show the name of each party under the proper letter; and a reference shall be made opposite each name to the page of the minute book upon which is entered the judgment in each case.

Indexes to all judgments. (Act June 21, 1876, p. 25, §1.)

**ART. 1114.** Whenever a clerk of the district court shall vacate his office, he shall transfer to his successor all the records, books, and papers of the office.

Shall transfer records to his successor.

Single clerk for district and county courts in certain counties. (Const., art. 5, §20.)

**ART. 1115.** In counties having a population of less than eight thousand persons only one clerk shall be elected, who shall take the oath and give the bond required of clerks, both of the district and county court, and who shall have all the powers and perform all the duties of such clerks respectively.

Number of inhabitants, how determined.

**NOTE.**—Sections 1 and 2, chapter 33, acts 1879, are as follows:  
 "Section 1. In counties having a population of less than eight thousand inhabitants, one person may hold the offices of both clerk of the district court and county court, the number of inhabitants to be determined on the basis of five inhabitants for every vote cast for governor in said counties at the last preceding general election.

Validating previous acts.

"Sec. 2. All acts heretofore done by any person holding both the offices of clerk of the district and county courts, which are authorized by this act or any pre-existing law, are hereby legalized, and shall be as valid as though this law was in effect at the time of said acts."—L.

When acting as district clerk to use seal of said court.

**ART. 1116.** When in any county a single clerk shall have been elected, as provided in the preceding article, he shall, in performing the duties of clerk of the district court, use the seal of said court, and authenticate his official acts as clerk of such district court.

### CHAPTER THREE.

#### THE POWERS AND JURISDICTION OF THE DISTRICT COURT AND OF THE JUDGE THEREOF.

	Article		Article
Jurisdiction, original, of the district court.....	1117	To hear and determine all cases of legal and equitable cognizance.....	1122
Jurisdiction in probate matters.....	1118	To grant all remedial writs.....	1123
Motions against sheriffs, attorneys, etc.....	1119	Judges may alternate, etc.....	1124
To punish contempts.....	1120	May appoint attorney to represent pauper.....	1125
To try cases transferred from county court and when county judge is disqualified.....	1121	Other powers and authority.....	1126

Original jurisdiction of the district court. (Const., art. 5, §8.)

**ARTICLE 1117.** The district court shall have original jurisdiction in civil cases—

1. Of all suits in behalf of the state to recover penalties, forfeitures and escheats.
2. Of all cases of divorce.
3. Of all suits to recover damages for slander or defamation of character.
4. Of all suits for the trial of title to land and for the enforcement of liens thereon.
5. Of all suits for trial of right to property levied on by virtue of any writ of execution, sequestration or attachment, when the property levied on shall be equal to or exceed in value five hundred dollars; and
6. Of all suits, complaints or pleas whatever, without regard to any distinction between law and equity, when the matter in controversy shall be valued at or amount to five hundred dollars exclusive of interest.

Jurisdiction in matters of probate. (Const., art. 5, §8.) (Act May 11, 1846, p. 200, §5.) P.D. 1406.

**ART. 1118.** The district court shall also have appellate jurisdiction and general control in probate matters over the county court established in each county for appointing guardians, granting letters testamentary and of administration for settling the accounts of executors, administrators and guardians, and for the transaction of business appertaining to estates. The district court shall also have such original jurisdiction and general control over executors, administrators, guardians and minors as is or may be provided by law.

Motions against sheriffs, attorneys, etc. (Act May 11, 1846, p. 201, §5.) P.D. 1406.

**ART. 1119.** The district court shall also have power to hear and determine all motions against sheriffs and other officers of the court for failure to pay over moneys collected under the process of said court, or other defalcation of duty in connection with such process, and of motions against attorneys for money collected by them and not paid over.

To punish contempts. (Act May 11, 1846, p. 201, §6.) P.D. 1406.

**ART. 1120.** The district court shall also have power to punish by fine not exceeding one hundred dollars, and by imprisonment not exceeding three days, any person guilty of contempt of such court.

ART. 1121. The district court shall also have power to try all such cases as may be transferred to said court from the county court on account of the disqualification of the county judge to try the same; and where there exists any cause disqualifying the county judge for the trial of a case of which the county court has jurisdiction, the district court of the county shall have original jurisdiction thereof.

To try cases transferred from the county court, and when county judge is disqualified. (Const., art. 5, §16.) (Act June 10, 1876, p. 19, §6.)

ART. 1122. Subject to the limitations stated in this chapter, the district court is authorized to hear and determine any cause which is or may be cognizable by courts, either of law or equity, and to grant any relief which could be granted by said courts, or either of them.

To hear and determine all cases of legal or equitable cognizance. (Act May 10, 1846, p. 201, §7.) P.D. 1410.

ART. 1123. The judge of the district court shall have authority, either in term time or in vacation, to grant writs of mandamus, injunction, sequestration, attachment, garnishment, certiorari, and supersedeas, and all other writs necessary to the enforcement of the jurisdiction of the court.

To grant all remedial writs. (Act May 11, 1846, p. 200, §4.) P.D. 1407.

ART. 1124. Any judge of the district court may hold courts for or with any other district judge, and the judges of the several district courts may exchange districts whenever they may deem it expedient to do so.

May alternate, etc. (Act May 11, 1846, p. 202, §15.) P.D. 1418.

ART. 1125. The judge of the district court shall also have power to appoint counsel to attend to the cause of any party who may make affidavit that he is too poor to employ counsel to attend to the same.

May appoint attorney to represent pauper. (Act May 11, 1846, p. 202, §11.) P.D. 1414.

ART. 1126. In addition to the foregoing powers and jurisdiction, the district courts and the judges thereof shall have such authority as is or may be vested in them by law.

Other powers and authority.

## CHAPTER FOUR.

### THE TERMS OF THE DISTRICT COURT.

<p>Terms of the court..... Article 1127 Adjournment of term, when and how made 1128</p>	<p>Article</p>	<p>Special terms of district courts.....1128—Note</p>	<p>Article</p>
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ARTICLE 1127. The several judges of the district courts shall hold the regular terms of their said courts at the county seat of each county in the district twice in each year, unless additional terms should be prescribed by law; and shall hold such special terms as may be required by law.

Terms of court. (Const., art. 5, §7.)

ART. 1128. Should the judge of any district court not appear at the time appointed for holding the same, and should no election of a special judge be had, the sheriff of the county, or in his default any constable of the county, shall adjourn the court from day to day for three days; and if the judge should not appear on the morning of the fourth day, and should no special judge have been elected, the sheriff or constable, as the case may be, shall adjourn the court until the next regular term thereof.

Adjournment of term, when and how made. (Act May 11, 1846, p. 203, §9.) P.D. 1412.

NOTE.—Chapter 45, acts of 1879, provides that special terms of the district courts may be held, where it may become necessary in the opinion of the judge, on account of an accumulation of business which can not be disposed of in the time provided for the regular term of the court. He shall enter the order at a regular term, appointing the time for the special term not less than thirty days after adjournment of the regular term; and the order shall state the length of time deemed necessary for the holding of such special term. As to notices, juries, etc., see the act.—L.

Special term district courts

CHAPTER FIVE.

MISCELLANEOUS PROVISIONS RELATING TO THE DISTRICT COURT.

	Article		Article
Minutes of the court to be read and signed.	1129	Seal of the court.....	1131
Of proceedings before a special judge.....	1130	When clerk has no seal.....	1132

Minutes to be read and signed. (Act May 11, 1846, p. 202, §12.) P.D. 1415.

ARTICLE 1129. The minutes of the proceedings of each preceding day of the session shall be read in open court on the morning of the succeeding day; except on the last day of the session, on which day they shall be read, and if necessary corrected and signed in open court by the judge.

Minutes of proceedings before a special judge

ART. 1130. When a special judge has presided during the term, or a portion thereof, or in the trial of a particular case, he shall sign the minutes of such proceedings as were had before him.

Seal of the court. (Act May 11, 1846, p. 201, §8.) P.D. 1411.

ART. 1131. Each of the several district courts shall be provided with a seal, having engraved thereon a star of five points, in the center, and the words, "District Court of ..... county, Texas," the impress of which shall be attached to all process, except subpoenas, issued out of such court, and shall be used to authenticate the official acts of the clerk.

When clerk has no seal. (Act May 11, 1846, p. 201, §8.) P.D. 1411.

ART. 1132. When no such seal has been provided for the court, the clerk may use a scroll until a seal can be procured.

TITLE XXVIII

Courts—County.

CHAPTER ONE.

THE COUNTY JUDGE.

	Article		Article
County judge, election, qualification and term of office.....	1133	Disqualification, causes of.....	1138
Oath of office.....	1134	When county judge disqualified, case to be transferred.....	1139
Shall keep office at the county seat.....	1135	Special county judge may be elected in certain cases.....	1140
May practice law in certain counties.....	1136	Record of election of special judge.....	1141
Vacancy, how filled.....	1137		

ARTICLE 1133. There shall be elected in each county by the qualified voters thereof, at each general election, a county judge, who shall be well-informed in the law of the state, who shall hold his office for two years, and until his successor shall have duly qualified.

ART. 1134. The county judge shall, before entering on the duties of his office, take the oath of office prescribed in the constitution, and the further oath required of the several members of the commissioners' court.

ART. 1135. The county judge shall keep his office at the county seat of the county, and shall attend at said office from day to day. He shall not absent himself from the county without the permission of the commissioners' court, to be entered on the minutes of the court, nor shall he so absent himself with such permission for a longer period than twenty days.

ART. 1136. 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.

ART. 1137. Any vacancy in the office of the county judge may be filled by the commissioners' court of the county in which such vacancy may occur, until the next general election.

ART. 1138. No judge of the county court shall sit in any case wherein he may be interested, or where he shall have been of counsel, or where either of the parties may be connected with him by affinity or consanguinity within the third degree.

ART. 1139. Whenever a judge of the county court is disqualified to try any civil case pending in such court, it shall be his duty, on motion of any party to the cause, or of his own motion, by an order entered of record, to remove such cause to the district court of his county, to be there tried.

ART. 1140. Should any county judge fail to appear at the time appointed for holding the court, or should he during the term be absent, or unable or unwilling to hold the court, a special county judge may be elected in the same manner as is provided for the election of a special judge of the district court in articles 1094 to 1097, inclusive, so far as

County judge, election; qualification; term of office. (Const., art. 5, §15, art. 16, §17.) (Act June 10, 1876, p. 17, §1.)

Oath of office. (Const., art. 16, §1.) (Act July 27, 1876, p. 53, §16.)

Shall keep office at the county seat. (Act June 10, 1876, p. 17, §1.)

May practice law in certain counties. (Acts 1879, extra session, ch. 16.)

Vacancy, how filled. (Const., art. 5, §28.) (Act June 10, 1876, p. 17, §1.)

Disqualification—causes of. (Const., art. 5, §11.) (Act June 10, 1876, p. 19, §6.)

When county judge disqualified case to be transferred. (Const., art. 5, §16.) (Act June 10, 1876, p. 19, §6.)

Special county judge may be elected in certain cases. (Acts June 16, 1876, p. 23, §27; Aug. 15, 1876, p. 140, §§1, 2.)

applicable; and the special county judge so elected shall have all the powers and authority of the county judge while acting as such; and similar elections may be held from time to time during the term to supply the absence, failure or inability of the county judge or any special judge to perform the duties of the office.

Record of election of special county judge.

ART. 1141. When a special county judge shall have been so elected, it shall be the duty of the clerk to enter upon the minutes of the court a record, such as is provided for the district court in article 1098; and such record shall have the force and effect provided for the record of the district court in similar cases in article 1099.

## CHAPTER TWO.

### THE CLERK OF THE COUNTY COURT.

	Article		Article
County clerk, election and term of office...	1142	Custody of records, etc., of said court.....	1152
Vacancy in office, how filled.....	1143	Keep a record of proceedings, judgments, etc.....	1153
Bond and oath.....	1144	Indexes to all judgments.....	1154
May appoint deputies.....	1145	Other dockets, indexes, etc.....	1155
Oath and powers of deputies.....	1146	Report fines and jury fees.....	1156
Clerk shall keep office at county seat.....	1147	Shall pay over jury fees and fines.....	1157
Take acknowledgments and proofs of deeds for record.....	1148	Shall transfer records to his successor.....	1158
Issue marriage licenses and take oaths, depositions, etc.....	1149	Single clerk for district and county court in certain counties.....	1159
<i>Ex officio</i> clerk of commissioners' court.....	1150	When acting as county clerk to use seal of said court.....	1160
Have custody of records of deeds, etc.....	1151		

County clerk, election and term of office. (Const., art. 5, §20; art. 16, §17)

ARTICLE 1142. There shall be a clerk of the county court for each county, who shall be elected at a general election for members of the legislature, by the qualified voters of such county, who shall hold his office for two years, and until his successor shall have duly qualified.

Vacancy in office, how filled. (Const., art. 5, §20.)

ART. 1143. Whenever a vacancy may, from any cause, occur in the office of clerk of the county court, the same shall be filled by the commissioners' court of the county, and the clerk so appointed shall give bond and qualify in the same manner as if he had been elected, and shall hold his office until the next general election, and until his successor shall have duly qualified.

Bond and oath. (Act May 25, 1876, p. 10, §2.) P.D. 500.

ART. 1144. Each clerk of the county court shall, before entering on the duties of his office, give bond with two or more good and sufficient sureties, to be approved by the commissioners' court of the county, payable to the governor and his successors in office, in a sum to be fixed by the commissioners' court, not less than two thousand nor more than ten thousand dollars, conditioned for the safe-keeping of the records, and the faithful discharge of the duties of his office, and shall also take and subscribe the oath of office required by the constitution, which shall be indorsed upon the bond, and the bond and oath so taken and approved shall be recorded in the county clerk's office, and shall be deposited in the office of the clerk of the district court. A certified copy of such bond may be put in suit in the name of the governor for the use of the party injured, and shall not become void on the recovery of part of the penalty thereof, but may be sued on from time to time by the parties injured, until the whole amount of the penalty is recovered.

May appoint deputies. (Act May 25, 1876, p. 10, §3.)

ART. 1145. The clerk of the county court, whether elected or appointed, shall have power to appoint one or more deputies, by a written appointment under his hand and the seal of his court, which appointment shall be recorded in the office of such clerk of the county court, and shall be deposited in the office of the clerk of the district court.

Oath and power of deputies. (Act May 25, 1876, p. 10, §4.)

ART. 1146. Such deputies shall take the oath of office prescribed by the constitution. They shall act in the name of their principal, and may do and perform all such official acts as may be lawfully done and performed by such clerk in person.

ART. 1147. The several clerks of the county court shall keep their offices at the county seat of their respective counties; and when the clerk does not reside at such county seat he shall have a deputy or deputies residing there.

Clerk shall keep office at county seat.  
*Ib.*

ART. 1148. The clerks of the county court shall have power and it shall be their duty, when applied to for that purpose, to take the separate acknowledgment of married women in all cases where such acknowledgment is required or permitted by law to be taken, to the execution of any deed or other instrument in writing, or conveyance executed by them, and to take the acknowledgment of all other persons to deeds or other written instruments or conveyances, and to take proof by witnesses of all such deeds, written instruments or conveyances, which are required or permitted by law to be so acknowledged or proven for record; and it shall also be their duty to record, in accordance with the registration laws now or hereafter in force, all such deeds, mortgages, deeds of trust or any other instruments in writing, or judgments, which may be permitted or required by law to be recorded.

Take acknowledgments and proofs of deeds for record, etc.  
(Act May 25, 1876, p. 10, §5.)

ART. 1149. Such clerks shall also be authorized to issue all marriage licenses, to administer all oaths and affirmations, and to take affidavits and depositions to be used as provided by law in any of the courts.

Issue marriage licenses, and take oaths, depositions, etc.  
*Ib.* §9.

ART. 1150. Such clerks shall be *ex officio* clerks of the commissioners' courts of their respective counties, and it shall be their duty to attend upon each term of said court, to issue all notices, writs and other process required by said courts, to keep the records, books, papers and proceedings of said courts, and see that the same are properly indexed, arranged and preserved, and generally to do and perform such other duties as are or may be imposed on them by law as clerks of such courts.

*Ex officio* clerk of commissioners' courts.  
(Acts July 22, 1876, p. 51, §8; May 25, 1876, p. 10, §1.)

ART. 1151. They shall be *ex officio* recorders for their several counties, and as such shall record in suitable books to be procured for that purpose all deeds, mortgages and other instruments required or permitted by law to be recorded; they shall be the keepers of such record books, and shall keep the same properly indexed, arranged and preserved, and shall do and perform such other duties as are or may be by law required of them as recorders.

Have custody of records of deeds, etc.  
(Act May 25, 1876, p. 10, §1.)

ART. 1152. They shall be the keepers of the records, books, papers and proceedings of their respective county courts in civil and criminal cases and in matters of probate, and see that the same are properly indexed, arranged and preserved, and shall do and perform such other duties in that behalf as are or may be by law imposed on them.

Custody of records, etc., of said court.  
(Act May 25, 1876, p. 10, §1.)

ART. 1153. The several clerks of the county courts shall keep a fair record of all the acts done and proceedings had in their respective courts; they shall enter all judgments of the court, under the direction of the judge, and shall keep a record of all executions issued, and of the returns thereon in record books to be kept for that purpose.

Keep a record of proceedings, judgments, etc.  
*Ib.*  
P.D. 504.

ART. 1154. It shall be the duty of the several clerks of the county courts to provide and keep in their respective offices, as part of the records thereof, full and complete alphabetical indexes of the names of the parties to all suits filed in their said courts, which indexes shall be kept in well-bound books, and shall state in full the names of all the parties to such suits, which shall be indexed and cross-indexed, so as to show the name of each party under the proper letter; and a reference shall be made opposite each name to the page of the minute book upon which is entered the judgment in each case.

Indexes to all judgments.  
(Act June 21, 1876, p. 25, §1.)

ART. 1155. They shall also keep such other dockets, books and indexes as are or may be required by law.

Other dockets, indexes, etc.

ART. 1156. In addition to the reports required of the clerk of the county court under the several provisions of the Code of Criminal Procedure, it shall be his duty on the last day of each term of the county

Report fines and jury fees.  
(Act June 16, 1876, p. 23, §24.)



court to make out a statement in writing, which shall set forth all moneys received by him for jury fees and fines, with the names of the parties from whom received up to the date of such statement, and since his previous statement, if any such has been made; and also the name of each juror who has served at such term, the number of days he served, and the amount due him for such service, which statement shall be examined by the judge holding such court, and, if found to be correct, shall be approved and signed by him. Should said judge consider said statement erroneous, he may make such corrections therein as he may deem necessary, and shall then approve and sign the same—which statement, when so approved and signed, shall be recorded in the minutes of the court.

Shall pay over jury fees and fines.

ART. 1157. It shall be the duty of the clerk to pay over to the county treasurer all jury fees and fines received by him to the use of the county.

Shall transfer records to his successor.

ART. 1158. Whenever a clerk of the county court shall vacate his office, he shall transfer to his successor all the records, books and papers of the office.

Single clerk for district and county court in certain counties. (Const., art. 5, §20.)

ART. 1159. In counties having a population of less than eight thousand persons only one clerk shall be elected, who shall take the oath and give the bond required of clerks both of the district and county court, and who shall have all the powers and perform all the duties of such clerks, respectively.

When acting as county clerk to use seal of county court.

ART. 1160. Where in any county a single clerk shall have been elected as provided in the preceding article, he shall, in performing the duties of clerk of the county court, use the seal of said court and authenticate his official acts as clerk of such county court.

### CHAPTER THREE.

#### THE POWERS AND JURISDICTION OF THE COUNTY COURT AND OF THE JUDGE THEREOF.

	Article		Article
Exclusive original jurisdiction .....	1161	To punish contempts .....	1168
Concurrent original jurisdiction .....	1162	Both law and equity powers .....	1169
Forfeited bonds in criminal cases .....	1163	To grant remedial writs .....	1170
Jurisdiction denied in certain cases .....	1164	To appoint attorney for paupers .....	1171
Appellate jurisdiction .....	1165	Additional authority, where expressly granted .....	1172
Certiorari to justices' courts .....	1166		
Motions against sheriffs and other officers .....	1167		

Exclusive original jurisdiction. (Const., art. 5, §16.) (Act Aug. 18, 1876, p. 172, §3.)

ARTICLE 1161. The county court shall have exclusive original jurisdiction in civil cases when the matter in controversy shall exceed in value two hundred dollars, and shall not exceed five hundred dollars, exclusive of interest.

Concurrent original jurisdiction. *Ib.*

ART. 1162. The county court shall have concurrent jurisdiction with the district court when the matter in controversy shall exceed five hundred and not exceed one thousand dollars.

Forfeited bonds in criminal cases. (Act Aug. 18, 1876, p. 172, §3.)

ART. 1163. The county court shall also have jurisdiction to enter final judgment on all forfeited bonds taken in criminal cases pending in said court.

Jurisdiction denied in certain cases. (Const., art. 5, §16; art. 5, §8.) (Act Aug. 18, 1876, p. 172.)

ART. 1164. The county court shall not have jurisdiction of any suit to recover damages for slander or defamation of character, nor of suits for the recovery of lands, nor of suits for the enforcement of liens upon land, nor of suits in behalf of the state for escheats, nor of suits for divorce, nor of suits for the forfeiture of the charters of incorporations and incorporated companies, nor of suits for the trial of the right to property levied on by virtue of any writ of execution, sequestration or attachment, when the property levied on shall be equal to or exceed in value five hundred dollars.

- ART. 1165.** The county court shall have appellate jurisdiction in civil cases over which the justices' courts have original jurisdiction, when the judgment of the court appealed from or the amount in controversy shall exceed twenty dollars, exclusive of costs. Appellate jurisdiction. (Const., art. 5, §16.) (Act Aug. 18, 1876, p. 172, §3.)
- ART. 1166.** The county court shall also have power to hear and determine cases brought up from the justices' courts by certiorari under the provisions of the title relating thereto. Certiorari to justices' courts.
- ART. 1167.** The county court shall also have power to hear and determine all motions against sheriffs and other officers of the court for failure to pay over moneys collected under the process of said court, or other defalcation of duty in connection with such process. Motions against sheriffs and other officers. (Act June 16, 1876, p. 33, §26.)
- ART. 1168.** The county court shall also have power to punish by fine not exceeding one hundred dollars, and by imprisonment not exceeding three days, any person guilty of contempt of such court. To punish contempts. (Act May 11, 1846, p. 200, §6.) P.D. 1409.
- ART. 1169.** Subject to the limitation stated in this chapter, the county court is authorized to hear and determine any cause which is, or may be cognizable by courts, either of law or equity, and to grant any relief which could be granted by said courts, or either of them. Both law and equity powers. (Act May 11, 1846, p. 200, §7.) P.D. 1410.
- ART. 1170.** The county judge shall have authority, either in term time or in vacation, to grant writs of mandamus, injunction, sequestration, attachment, garnishment, certiorari and supersedeas, and all other writs necessary to the enforcement of the jurisdiction of the court. To grant remedial writs. (Const., art. 5, §16.) (Act June 16, 1876, p. 19, §5.)
- ART. 1171.** The county judge shall also have power to appoint counsel to attend to the cause of any party who may make affidavit that he is too poor to employ counsel to attend to the same. To appoint attorney for pauper. (Act May 11, 1846, p. 200, §11.) P.D. 1414.
- ART. 1172.** In addition to the foregoing powers and jurisdiction, the county court and the county judge shall have such authority as is or may be vested in them by law. Additional authority, where expressly granted.

## CHAPTER FOUR.

### THE TERMS OF THE COUNTY COURT FOR CIVIL AND PROBATE BUSINESS.

	Article		Article
Terms of the county court.....	1173	Adjournment of term when the county judge fails to appear.....	1174

- ARTICLE 1173.** There shall be begun and holden at the county seat of each county a term of the county court thereof for civil and probate business on the third Mondays in January, March, May, July, September and November in each year, which shall continue in session until the business thereof is disposed of; *provided*, the term for civil and probate business shall not extend beyond the commencement of the term for criminal business. County court, terms of. (Const., art. 5, §17.) (Act June 10, 1876, p. 17, §3.)
- ART. 1174.** Should the county judge fail to appear at the time appointed for holding the county court, and should no election of a special judge be had, the sheriff of the county, or, in his default, any constable of the county, shall adjourn the court from day to day, for three days; and if the judge should not appear on the fourth day, and should no special judge have been appointed, the sheriff, or constable, as the case may be, shall adjourn the court until the next regular term thereof. Adjournment of term when county judge fails to appear. (Act May 11, 1846, p. 200, §9.) P.D. 1412.

CHAPTER FIVE.

MISCELLANEOUS PROVISIONS RELATING TO THE COUNTY COURT.

	Article		Article
Minutes of the court to be read and signed.	1175	When clerk has no seal may use scroll.....	1178
Minutes of proceedings before special judge.....	1176	Probate day to be designated.....	1179
Seal of the court.....	1177	Proceedings when case is transferred to district court.....	1180

Minutes of the court to be read and signed. (Act May 11, 1846, p. 200, §12)

ARTICLE 1175. The minutes of the proceedings of each preceding day of the session shall be read in open court on the morning of the succeeding day, except on the last day of the session, on which day they shall be read, and if necessary corrected, and signed in open court by the county judge.

Minutes of proceedings before special judge.

ART. 1176. When a special county judge has presided during the term or a portion thereof, he shall sign the minutes of such of the proceedings as were had before him.

Seal of the court. (Act June 16, 1876, p. 23, §22.) P.D. 1411.

ART. 1177. Each of the several county courts shall be provided with a seal, having engraved thereon a star of five points in the center, and the words: "County court of ..... county, Texas," the impress of which shall be attached to all process, except subpoenas, issued out of such court, and shall be used to authenticate the official acts of the clerk and of the county judge, where he is authorized or required to use a seal of office.

When clerk has no seal, may use scroll. (Act May 11, p. 200, §12.) P.D. 1411.

ART. 1178. When no such seal has been provided for the court, the clerk may use a scroll until a seal can be procured.

Probate day to be designated. (Act June 16, 1876, p. 22, §20.)

ART. 1179. On the first day of the term for civil business the county court shall, by an order entered on the minutes, designate a day for taking up the probate business, and the probate docket shall thereupon be called in its regular order, unless otherwise ordered by the court.

Proceedings when case is transferred to the district court. (Act June 10, 1876, p. 19, §6.)

ART. 1180. Whenever a cause shall be transferred from the county court to the district court, the clerk shall immediately make out a transcript of all the proceedings had in said cause in the county court, and shall transmit the same, duly certified as such, together with a bill of the costs which have accrued in said court, and all the original papers in the cause, to the clerk of the district court.

TITLE XXIX.

Courts—District and County. Practice In.

CHAPTER ONE.

INSTITUTION OF SUITS.

Suit commenced by petition filed with the clerk	Article 1181	Clerk's file docket.	Article 1183	Suits commenced by petition filed with clerk.
Duty of the clerk on receiving petition	1182	Civil suits not to be instituted on Sunday, etc	1184	(Act May 13, 1846, p. 363, §3.) P.D. 1425.

ARTICLE 1181. All civil suits in the district and county courts shall be commenced by petition filed in the office of the clerk of such court.

ART. 1182. When a petition is filed with the clerk, it shall be his duty to indorse thereon the day on which it was filed and the number of the suit, and he shall enter the suit in a docket to be kept by him for that purpose, to be called the clerk's file docket.

ART. 1183. The clerk's file docket shall be so kept as to show in a convenient form the number of the suit, the names of the attorneys, the names of the several parties to the suit, and the object thereof, and in a brief form the return on the process made by the sheriff or constable, and all the subsequent proceedings had in the case, specifying the time when they were had.

ART. 1184. No civil suit shall be commenced, nor shall any process be issued or served on Sunday, or on any legal holiday, except in case of injunction, attachment or sequestration.

CHAPTER TWO.

PLEADING IN GENERAL.

System of pleading	Article 1185	Pleading special acts of the legislature	Article 1191	System of pleading.
Pleadings to be in writing, signed and filed	1186	Pleadings may be amended	1192	(Act Feb. 5, 1840, p. 88, §1.) P.D. 979.
"Pleadings" defined	1187	Time of filing amendment	1193	Pleadings to be in writing, signed and filed.
Pleadings of an intervenor	1188	Pleadings amended after arrest of judgment, etc.	1194	Pleadings defined.
Pleadings in particular cases	1189			Pleadings of an intervenor
Pleading charters and acts of incorporation	1190			Pleadings in particular cases.

ARTICLE 1185. The pleadings in all civil suits in the district and county courts shall be by petition and answer.

ART. 1186. The pleadings in said courts shall be in writing and signed by the party, or by his attorney, and filed with the clerk of the court.

ART. 1187. The pleadings shall consist of a statement, in logical and legal form, of the facts constituting the plaintiff's cause of action, or the defendant's ground of defense.

ART. 1188. The pleadings of an intervenor shall conform to the requirements of pleadings on the part of the plaintiff and defendant, respectively, so far as they may be applicable.

ART. 1189. In addition to the requirements of the several articles of this title relating to pleading, the pleadings of the parties, respectively,

shall contain any other matter, not included in the preceding articles, which may be required by any law authorizing or regulating any particular action or defense.

Pleading, charters and acts of incorporation. (Act Feb. 14, 1860, p. 116, §1.) P.D. 1518.

ART. 1190. In pleading the charter or act of incorporation of any corporation, public or private, organized under the laws of this state, it shall not be necessary to set out at length such charter or act of incorporation, but it shall be sufficient to allege that such corporation, if it be of the adverse party, was duly incorporated, and if it be of the party pleading it, or of a third party, the date and manner of incorporation shall be stated.

Pleading special act of the legislature.

ART. 1191. Whenever any pleading is founded, in whole or in part, on any private or special act or law of the congress of the Republic of Texas, or of the legislature of this state, it shall not be necessary for the party pleading the same to set out such private or special act or law, but it shall be sufficient to recite the title thereof, and the date of its approval, and to allege in substance so much of such act or law as may be pertinent to the cause of action or defense.

Pleadings may be amended. (Act May 13, 1846, p. 363, §34.) P.D. 54.

ART. 1192. The pleadings may be amended under leave of the court, upon such terms as the court may prescribe before the parties announce themselves ready for trial, and not thereafter.

Time of filing amendment. *Ib.*

ART. 1193. Such leave shall be given, and such amendment filed, for a reasonable time before the case is called for trial, so as not to operate a surprise to the opposite party.

Pleadings amended after arrest of judgment, etc. (Act May 13, 1846, p. 363, §114.) P.D. 1475.

ART. 1194. Whenever a judgment has been arrested or a new trial granted, because of the insufficiency of the pleadings of the party in whose favor the judgment was rendered, the court may allow such pleadings to be amended as if no such trial had been had or judgment rendered.

## CHAPTER THREE.

### PLEADINGS OF THE PLAINTIFF.

	Article		Article
Requisites of the petition.....	1195	Denial of special defenses presumed.....	1197
Defensive matters when pleaded by plaintiffs.....	1196		

Requisites of the petition. (Act May 13, 1846, p. 363, §5.) P.D. 1427.

ARTICLE 1195. The petition shall set forth clearly the names of the parties and their residences, if known, with a full and clear statement of the cause of action, and such other allegations, pertinent to the cause, as the plaintiff may deem necessary to sustain his suit, and without any distinction between suits at law and in equity, and shall also state the nature of the relief which he requests of the court.

Defensive matters pleaded by plaintiff.

ART. 1196. When the defendant sets up a counter claim against the plaintiff, the plaintiff may plead thereto under the rules prescribed for the pleadings of defensive matter by the defendant so far as the same may be applicable; and, whenever under such rules the defendant is required to plead any matter of defense under oath, the plaintiff shall in like manner be required to plead such matters under oath, when relied on by him.

Denial of special defenses presumed.

ART. 1197. It shall not be necessary for the plaintiff to deny any special matter of defense pleaded by the defendant, but the same shall be regarded as denied unless expressly admitted.

**CHAPTER FOUR.**

**VENUE OF SUITS.**

In what counties suits shall or may be brought	Article 1198	When water course or highway is county boundary	Article 1199
<b>ARTICLE 1198.</b> No person who is an inhabitant of this state shall be sued out of the county in which he has his domicile, except in the following cases, to wit:			Venue, general rule. (Act Dec. 10, 1863.) P.D. 1423.
1. Where the defendant is a married woman, in which case she may be sued in the county in which her husband has his domicile.			Exceptions—married woman. P.D. 1423.
2. Where the defendant is a transient person, in which case he may be sued in any county in which he may be found.			Transient persons. P.D. 1423.
3. Where the defendant, or all of several defendants, reside without the state, or where the residence of the defendants is unknown, in which case the suit may be brought in the county in which the plaintiff resides.			Non-residents and persons whose residence is unknown.
4. Where there are two or more defendants residing in different counties, in which case the suit may be brought in any county where any one of the defendants resides.			Several defendants residing in different counties. P.D. 1423.
5. Where a person has contracted in writing to perform an obligation in any county, in which case suit may be brought either in such county or in the county where the defendant has his domicile.			Contract in writing to be performed in a particular county. P.D. 1423.
6. Where the suit is against an executor, administrator or guardian, as such, to establish a money demand against the estate which he represents, in which case the suit must be brought in the county in which such estate is administered.			Executors, administrators, etc. P.D. 1423.
7. In all cases of fraud, and in cases of defalcation of public officers, in which cases suit may be instituted in the county in which the fraud was committed, or where the defalcation occurred, or where the defendant has his domicile.			Cases of fraud and defalcation. P.D. 1423.
8. Where the foundation of the suit is some crime, or offense, or trespass, for which a civil action in damages may lie, in which case the suit may be brought in the county where such crime, or offense, or trespass was committed, or in the county where the defendant has his domicile.			Cases of crime, offense or trespass. P.D. 1423.
9. Where the suit is for the recovery of any personal property, in which case the suit may be brought in any county in which the property may be, or in which the defendant resides.			Suits for personal property. P.D. 1423.
10. Where the defendant has inherited an estate, concerning which the suit is commenced, in which case suit may be brought in the county where such estate principally lies.			Concerning inheritances. P.D. 1423.
11. Where the suit is for the foreclosure of a mortgage or other lien, in which case suit may be brought in the county in which the property subject to such lien or a portion thereof may be situated.			Foreclosure of mortgage or other liens. P.D. 1423.
12. Suits for the partition of lands or other property may be brought in the county where such lands or other property or a part thereof may be, or in the county in which one or more of the defendants reside.			Suits for partition.
13. Suits for the recovery of lands or damages thereto, suits to remove incumbrances upon the title to land, suits to quiet the title to land, and suits to prevent or stay waste on lands, must be brought in the county in which the land or a part thereof may lie.			Suits concerning lands. P.D. 1423.
14. Suits for divorce from the bonds of matrimony shall be brought in the county in which the plaintiff, whether husband or wife, shall have resided for six months next preceding the bringing of the suit.			Suits for divorce. (Act May 27, 1873, p. 117.)

**Injunctions, etc.**  
(Act May 13, 1846.)  
P.D. 3932.

15. When the suit is brought to enjoin the execution of a judgment or to stay proceedings in any suit, in which case the suit shall be brought in the county in which such judgment was rendered or in which such suit is pending.

To revise proceedings of county court in probate matters.

(Act Aug. 9, 1876, p. 128, §§128, 130.)

16. Suits to revise the proceedings of the county court in matters of probate must be brought in the district court of the county in which such proceedings were had.

**Suits against counties.**  
(Act April 11, 1846.)

P.D. 1047.

17. Suits against any county shall be commenced in some court of competent jurisdiction within such county.

**Heads of departments.**

P.D. 1407.

18. Suits for mandamus against the heads of any of the departments of the state government shall be brought in the district court of the county in which the seat of government may be.

**Forfeiture of charters granted by the legislature.**  
(Act Aug. 21, 1876, p. 312, §2.)

19. Suits in behalf of the state for the forfeiture of the charters of private corporations chartered by act of the legislature, shall be commenced in the district court of the county in which the seat of government may be.

**Suits to set aside fraudulent alienations of lands granted to railway companies,**  
(Const., art. 14, §5.)

20. Suits on behalf of the state to forfeit land fraudulently or colorably alienated by railway companies in fraud of the rights of the state, under the laws granting lands to railway companies, shall be brought in the county in which the seat of government may be.

**Private corporations, associations, etc.**  
(Act March 21, 1874, p. 31.)  
P.D. 6011f.  
6011h.

(Act to adopt and establish R.C.S., passed Feb. 21, 1879.)

21. Suits against any private corporation, association or joint stock company may be commenced in any county in which the cause of action or a part thereof arose, or in which such corporation, association or company has an agency or representative, or in which its principal office is situated. And suits against a railroad corporation, or against any assignee, trustee or receiver, operating its railway, may also be brought in any county through or into which the railroad of such corporation extends or is operated.

**Fire, marine, life and accident insurance companies.**  
(Act April 17, 1874, p. 107.)  
P.D. 6011f.

22. Suits against fire, marine or inland insurance companies may also be commenced in any county in which any part of the insured property was situated; and suits against life and accident insurance companies or associations may also be commenced in the county in which the persons insured, or any of them, resided at the time of such death or injury.

**Venue prescribed by particular law.**

23. Whenever in any law authorizing or regulating any particular character of action the venue is expressly prescribed, the suit shall be commenced in the county to which jurisdiction may be so expressly given.

**When water course or highway is county boundary.**  
(Act May 11, 1846.)  
P.D. 1421.

ART. 1199. In all cases where any part of a river, water course, highway, road or street shall be the boundary line between two counties, the several courts of each of said counties shall have concurrent jurisdiction in all cases over such parts of said river, water course, highway, road or street as shall be the boundary of such county, in the same manner as if such parts of said river, water course, highway, road or street were within the body of such county.

CHAPTER FIVE.

PARTIES TO SUITS.

	Article		Article
Suits by and against counties, cities, etc.	1200	Several obligors in any contract may be joined, etc., etc.	1207
Suits by executors, etc.	1201	Parties conditionally liable may be sued alone, when.	1208
Suits for lands against estates of decedents	1202	Additional parties may be brought in, when	1209
Suits for injuries resulting in death	1203	Parties may appear by attorney.	1210
Suits for wife's separate property	1204	Guardian <i>ad litem</i> for minors.	1211
Against husband and wife for necessaries, etc.	1205	Attorney for absent defendants.	1212
For wife's debts, etc.	1206		

ARTICLE 1200. All suits brought by or against any of the counties or incorporated cities, towns or villages shall be by or against it in its corporate name.

Suits by and against counties, cities, etc. (Act Aug. 30, 1876.)  
P.D. 1045.

ART. 1201. Suits for the recovery of personal property, debts or damages, and suits for title or for the possession of lands, or for any right attached to or growing out of the same, or for any injury or damage done thereto, may be instituted by executors, administrators or guardians appointed in this state, in like manner as they could have been by their testator or intestate, and judgment in such cases shall be as conclusive as if rendered in favor of or against such testator or intestate; but such judgment may be set aside by any person interested for fraud or collusion on the part of such executor or administrator.

Suits by executors, etc. (Act May 13, 1846, p. 363, §44.)  
P.D. 1447.

ART. 1202. In every suit against the estate of a decedent involving the title to real estate, the executor or administrator, if any, and the heirs shall be made parties defendant.

Suits for land against decedents. (Act Aug. 15, 1870, p. 141, §229.)  
P.D. 5697.

ART. 1203. In cases arising under the provisions of title lii. (relating to injuries resulting in death), the parties entitled thereto may bring their suit for such damages as provided in said title.

Suits for injuries resulting in death.

ART. 1204. The husband may sue either alone or jointly with his wife for the recovery of any separate property of the wife; and in case he fail or neglect so to do, she may, by the authority of the court, sue for such property in her own name.

Suits for wife's separate property. (Act Jan. 20, 1840, p. 3, §9.)  
P.D. 4636.

ART. 1205. The husband and wife shall be jointly sued for all debts contracted by the wife for necessaries furnished herself or children, and for all expenses which may have been incurred by the wife for the benefit of her separate property.

Against husband and wife, for necessaries etc. (Act March 13, 1848, p. 77, §4.)  
P.D. 4643.

ART. 1206. The husband and wife shall also be jointly sued for all separate debts and demands against the wife, but in such case no personal judgment shall be rendered against the husband.

For wife's debts, etc. (Act May 13, 1848, p. 303, §41.)  
P.D. 9.

ART. 1207. The acceptor of any bill of exchange, or any other principal obligor in any contract, may be sued either alone or jointly with any other party who may be liable thereon; but no judgment shall be rendered against such other party not primarily liable on such bill or other contract, unless judgment shall have been previously, or shall be at the same time, rendered against such acceptor or other principal obligor, except where the plaintiff may discontinue his suit against such principal obligor as hereinafter provided.

Several obligors to any contract may be joined, but, etc. (Acts May 13, 1846, p. 363, §4; *Ib.* §§45-6; Jan. 25, 1840, p. 144, §6)  
P.D. 1426, 1448-9, 225.

ART. 1208. The assignor, indorser, guarantor and surety upon any contract, and the drawer of any bill which has been accepted, may be sued without the necessity of previously or at the same time suing the maker, acceptor or other principal obligor, when he resides beyond the limits of the state, or in such part of the same that he can not be reached by the ordinary process of law, or when his residence is unknown and

(Act to adopt and establish E.C.S., passed Feb. 21, 1879.)

Parties conditionally liable may be sued, when.  
*Ib.*



can not be ascertained by the use of reasonable diligence, or when he is dead, or actually or notoriously insolvent.

Additional parties may be brought in, when.

ART. 1209. Before a case is called for trial additional parties may, when they are necessary or proper parties to the suit, be brought in by proper process, either by the plaintiff or the defendant, upon such terms as the court may prescribe; but such parties shall not be brought in at such a time or in such a manner as unreasonably to delay the trial of the case.

Parties may appear by attorney.

ART. 1210. Any party to a suit may appear and prosecute or defend his rights therein, either in person or by an attorney of the court.

Guardian *ad litem* for minors. (Act May 13, 1846, p. 363, §43.) P.D. 1446.

ART. 1211. In all cases where a minor may be a defendant to a suit, and it shall be shown to the court that such minor has no guardian within the state, it shall be the duty of the court to appoint a guardian *ad litem* for such minor, for the purpose of defending such suit, and to allow him a reasonable compensation for his services, to be taxed as part of the costs of the suit.

Attorney for absent defendants. (Act Nov. 9, 1866, p. 125, §1.) P.D. 26.

ART. 1212. In all suits where the defendant is cited by publication, and no appearance is entered within the term allowed for pleading, the court shall appoint an attorney to defend in behalf of such defendant, and shall allow such attorney a reasonable compensation for his services, to be taxed as part of the costs of the suit.

## CHAPTER SIX.

### PROCESS AND RETURNS.

	Article		Article
Requisites of citation and when to issue.....	1213	Same .....	1239
One citation to each county where there is a defendant.....	1214	Citation to defendants without the state...	1230
Citation shall contain, what.....	1215	By whom served .....	1231
Defendant out of county to have copy of petition.....	1216	Service in such cases.....	1232
Citation when sheriff is a party.....	1217	Return of service.....	1233
Duty of officer receiving citation.....	1218	Effect of such service.....	1234
Service of citation within the county.....	1219	Citation by publication .....	1235
Service without the county .....	1220	For unknown heirs.....	1236
Citation in suits against counties.....	1221	Citation by publication to contain same requisites as other writs.....	1237
Against cities, towns, etc.....	1222	Return of citation by publication.....	1238
Against incorporated companies and joint stock associations.....	1223	Mistake in return may be corrected.....	1239
Against partners.....	1224	Acceptance of service of process.....	1240
Return of citation.....	1225	Entering appearance in open court.....	1241
Return of citation not served.....	1226	Answer constitutes appearance.....	1242
Alias process.....	1227	Motion constitutes appearance, when.....	1243
Time of service of citation.....	1228	Reversal of judgment an appearance.....	1244
		No judgment without service of process, etc	1245

Citation to issue, when. (Act Feb. 6, 1854, p. 53, §9.) P.D. 1430.

ARTICLE 1213. When a petition shall be filed with the clerk and the other regulations hereinafter prescribed shall be complied with, it shall be his duty to issue forthwith a writ of citation for the defendant.

One citation to each county where there is a defendant.

ART. 1214. If there be several defendants, residing in different counties, one citation shall issue to each of such counties.

Citation shall contain, what. (Acts Feb. 6, 1854, p. 53, §9; May 13, 1846, p. 363, §10; Nov. 12, 1866, p. 199, §1.)

ART. 1215. Such citation shall be directed to the sheriff or any constable of the county where the defendant is alleged to reside, or be, and shall command him to summon the defendant to appear and answer the plaintiff's petition, at the next regular term of the court, stating the time and place of holding of the same. It shall state the date of the filing of the plaintiff's petition, the file number of the suit, the names of all the parties and the nature of the plaintiff's demand, and shall contain the requisites prescribed in article 1443.

P.D. 1430-1. (Act to adopt and establish R.C.S., passed Feb. 21, 1879.) Defendant out of county to have copy of petition.

ART. 1216. Where the defendant is to be served without the county in which the suit is pending, a certified copy of the plaintiff's petition shall accompany the citation, and should there be more than one defendant to be served without the county, a certified copy of the petition shall be made out for each of them.

ART. 1217. Where it appears from the petition that the sheriff is a party to the suit, or is interested therein, the citation shall be addressed to any constable of his county.

Citation where sheriff is a party.  
(Act May 13, 1846, p. 363, §21.)  
P.D. 1437.

ART. 1218. It shall be the duty of the sheriff or constable to whom any citation shall be delivered to indorse thereon the day and hour on which he received it, and to execute and return the same without delay.

Duty of officer receiving citation.  
(Act May 13, 1846, p. 363, §14.)  
P.D. 1433.

ART. 1219. Unless the process should otherwise direct, the citation shall be served, if within the county in which the suit is pending, by the officer executing it delivering to the defendant, or if there be more than one, then to each defendant in person, a true copy of the citation.

Service of citation within the county.

ART. 1220. If served without the county in which the suit is pending, the officer shall also deliver to the defendant and each of them, in person, the certified copy of the petition accompanying the citation.

Service without the county (Act May 13, 1846, p. 363, §14.)  
P.D. 1433.

ART. 1221. In suits against any county the citation shall be served on the county judge of such county.

Citation in suits against counties.  
(Act May 11, 1846, p. 320, §5.)  
P.D. 1048.

ART. 1222. In suits against any incorporated city, town or village, the citation may be served on the mayor, clerk, secretary or treasurer thereof.

Against cities, towns, etc.  
(Act Feb 6, 1854, p. 53, §9.)  
P.D. 1430.

ART. 1223. In suits against any incorporated company or joint stock association, the citation may be served on the president, secretary or treasurer of such company or association, or upon the local agent representing such company or association in the county in which suit is brought, or by leaving a copy of the same at the principal office of the company during office hours.

Against incorporated companies and joint stock associations.  
(Acts March 21, 1874, p. 32, §2; April 17, 1874, p. 10, §2; Feb. 6, 1854, p. 53, §9.)  
(Act Feb. 7, 1854, p. 55, §4.)  
P.D. 1430, 4888.

ART. 1224. In suits against partners the citation may be served upon one of the firm, and such service shall be sufficient to authorize a judgment against the firm and against the partner actually served.

Against partners.  
(Act Feb 5, 1858, p. 110, §2.)  
P.D. 1514.

ART. 1225. The return of the officer executing the citation shall be indorsed on or attached to the same; it shall state when the citation was served and the manner of service, conforming to the command of the writ, and shall be signed by him officially.

Return of citation.  
(Act March 16, 1848, p. 106, §11.)  
P.D. 1507.

ART. 1226. When the citation has not been served the return shall show the diligence used by the officer to execute the same and the cause of failure to execute it, and where the defendant is to be found in so far as he has been able to ascertain.

Return of citation not served

ART. 1227. When any process has not been returned or has been returned without service, or has been improperly served, it shall be the duty of the clerk upon application of any party to the suit, his agent or attorney, to issue other process to the same or any other county, as the party applying may direct.

Alias process.  
(Act May 13, 1846, p. 363, §19.)  
P.D. 1435.

ART. 1228. The citation shall be served before the return day thereof, and in order to compel the defendant to plead at the return term of the court, the citation must have been served at least five days before the first day of such return term, exclusive of the days of service and return.

Time of service of citation.  
(Act March 16, 1848, p. 106, §10.)  
P.D. 1506.

ART. 1229. If the citation be issued too late, or if it can not be served at least five days before the first day of such return term, exclusive of the days of service and return, the officer to whom it is delivered shall nevertheless proceed to serve the same at any time before the return day thereof; and such service shall compel the defendant to plead at the next succeeding term of the court.

Same.  
Id.

Citations to defendants without the state. (Act March 15, 1875, p. 170, §2.)

ART. 1230. Where the defendant is absent from the state, or is a non-resident of the state, the clerk shall, upon the application of any party to the suit, his agent or attorney, address a notice to the defendant requiring him to appear and answer the plaintiff's petition at the time and place of the holding of the court, naming such time and place. Its style shall be "The State of Texas," and it shall give the date of the filing of the petition, the file number of the suit, the names of all the parties and the nature of the plaintiff's demand, and shall state that a copy of the plaintiff's petition accompanies the notice. It shall be dated and signed, and attested by the clerk, with the seal of the court impressed thereon; and the date of its issuance shall be noted thereon; a certified copy of the plaintiff's petition shall accompany the notice.

By whom served. *Ib.*

ART. 1231. Such notice may be served by any disinterested person competent to make oath of the fact.

Service in such cases. *Ib.*

ART. 1232. Service in such cases shall be made by the person executing the same, delivering to the defendant in person a true copy of such notice, together with the certified copy of the plaintiff's petition accompanying the same.

Return of such service. *Ib.*

ART. 1233. The return of service in such cases shall be indorsed or attached to the original notice; it shall state when the same was served and the manner of service, and shall be signed and sworn to by the party making such service before some officer authorized by the laws of this state to take affidavits; and such affidavit shall be certified under the hand and official seal of such officer.

Effect of such service.

ART. 1234. Where a defendant has been served with such notice he shall be required to appear and answer in the same manner and under the same penalties as if he had been personally served with a citation within this state.

Citation by publication. (Acts March 16, 1848, p. 106, §13; March 15, 1875, p. 170, §1.) (Acts 1879, ch. 96, p. 108.) P.D. 25.

ART. 1235. Where any party to the suit, his agent or attorney, shall make oath at the time of instituting the suit, or at any time during its progress, that the party defendant is a non-resident of the state, or that he is absent from the state, or that he is a transient person, or that his residence is unknown to the affiant, the clerk shall issue a citation for the defendant, addressed to the sheriff or any constable of the county in which the suit is pending. Such citation shall contain a brief statement of the cause of action, and shall command the officer to summon the defendant by making publication of the citation in some newspaper published in his county, if there be any newspaper published therein, but if not, then in any newspaper published in the judicial district where the suit is pending; but if there be no newspaper published in such judicial district, then it shall be published in the nearest district to the district where the suit is pending. Such citation shall be published once in each week for four consecutive weeks previous to the return day thereof.

For unknown heirs. (Acts Nov. 9, 1866, p. 125, §1; March 16, 1848, p. 106, §26.) P.D. 5460, 26.

ART. 1236. Where any property of any kind in this state may have been granted or may have accrued to the heirs, as such, of any deceased person, any party having a claim against them relative to such property, if their names be unknown to him, may bring his action against them, their heirs or legal representatives, describing them as the heirs of such ancestor, naming him; and if the plaintiff, his agent or attorney, shall at the time of instituting the suit or any time during its progress, make oath that the names of such heirs are unknown to the affiant, the clerk shall issue a citation for such heirs, addressed to the sheriff or any constable of the county in which the suit is pending. Such citation shall contain a brief statement of the cause of action, and shall command the sheriff or constable to summon the defendant by making publication of the citation in some newspaper of his county, if there be a newspaper published therein, but if not, then in the nearest county where a newspaper is published, once in each week for eight successive weeks previous to the return day of such citation.

ART. 1237. The citations provided for in the two preceding articles shall contain the requisites prescribed in article 1443.

Citation by publication to contain same requisites as other writs. (Act to adopt and establish R. C. S., passed Feb. 21, 1879.)

ART. 1238. The return of the officer executing such citation shall be indorsed or attached to the same, and shall show when the citation was executed and the manner thereof, specifying the dates of such publication, shall be accompanied by a printed copy of such publication, and shall be signed by him officially.

Return of citation by publication.

ART. 1239. Any mistake or informality in a return may be corrected by the officer at any time under the direction of the court.

Mistake in return may be corrected. (Act May 13, 1846, p. 363, §18.) P. D. 53.

ART. 1240. The defendant may accept service of any process, or waive the issuance or service thereof, by a written memorandum signed by him or by his duly authorized agent or attorney, and filed among the papers of the cause; and such waiver or acceptance shall have the same force and effect as if the citation had been issued and served as provided by law.

Acceptance of service of process. (Act May 13, 1846, p. 363, §§12, 13.) P. D. 1508, 1432.

ART. 1241. The defendant may in person, or by attorney, or by his duly authorized agent, enter an appearance in open court, and such appearance shall be noted by the judge upon his docket and entered in the minutes, and shall have the same force and effect as if citation had been duly issued and served as provided by law.

Entering appearance in open court. *Ib.*

ART. 1242. The filing of an answer shall constitute an appearance of the defendant so as to dispense with the necessity for the issuance or service of citation upon him.

Answer constitutes appearance. *Ib.*

ART. 1243. Where the citation or service thereof is quashed on motion of the defendant the case may be continued for the term, but the defendant shall be deemed to have entered his appearance to the succeeding term of the court.

Motion constitutes appearance, when.

ART. 1244. Where the judgment is reversed on appeal or writ of error taken by the defendant for the want of service, or because of defective service, of process, no new citation shall be issued or served, but the defendant shall be presumed to have entered his appearance to the term of the court at which the mandate shall be filed.

Reversal of judgment an appearance.

ART. 1245. No judgment shall in any case be rendered against any defendant unless upon service, or acceptance, or waiver of process, or upon an appearance by the defendant, as prescribed in this chapter, except where otherwise expressly provided by law.

No judgment without service of process, etc. (Act May 11, 1846, p. 65, §18.)

## CHAPTER SEVEN.

### ABATEMENT AND DISCONTINUANCE OF SUIT.

Article	Article
Suit not to abate where plaintiff dies, if, etc. 1246	Death of party to suit for injuries resulting in death. 1255
<i>Scire facias</i> to executor, etc. 1247	When some of the defendants not served. 1256
Death of defendant. 1248	Discontinuance as to principal obligor. 1257
When executor, etc., dies. 1249	Discontinuance in vacation. 1258
Surviving parties. 1250	Discontinuance as to defendant not served. 1259
Death between verdict and judgment. 1251	Discontinuance when defendant has filed counter claim. 1260
Marriage of plaintiff <i>feme sole</i> . 1252	Requisites of <i>scire facias</i> and returns. 1261
Marriage of defendant <i>feme sole</i> . 1253	
Suit to the use of another. 1254	

ARTICLE 1246. Where in any suit the plaintiff shall die before verdict, if the cause of action be one which survives, the suit shall not abate by reason of such death, but the executor or administrator, and if there be no administration, and no necessity therefor, then the heir of such

Suit not to abate where plaintiff dies, if, etc. (Act May 13, 1846, p. 363, §38.) P. D. 6.

deceased plaintiff may appear, and upon a suggestion of such death being entered of record, in open court, may be made plaintiff in such suit, and the suit shall proceed in his name.

*Scire facias to executor, etc.*  
*Ib.*

ART. 1247. If upon such death no such appearance and suggestion be made at the first term of the court thereafter it shall be the duty of the clerk, upon the application of the defendant, his agent or attorney, to issue a *scire facias* for the executor, administrator or heir of such decedent requiring him to appear and prosecute such suit; and if, after service of such *scire facias* as required in the case of citations, such executor, administrator or heir shall not enter his appearance on or before the appearance day of the succeeding term of the court, the defendant may, on motion, have the suit discontinued.

Death of defendant.  
*Ib.* §39.  
P.D. 7.

ART. 1248. Where in any suit the defendant shall die before verdict, if the cause of action be one which survives, the suit shall not abate by reason of such death, but, upon a suggestion of such death being entered of record in open court, or upon a petition of the plaintiff, representing that fact, being filed with the clerk, it shall be his duty to issue a *scire facias* for the executor or administrator, and in a proper case for the heir of such deceased defendant, requiring him to appear and defend the suit, and upon the return of such service the suit shall proceed against such executor, administrator or heir, and such judgment may be rendered therein as may be authorized by law.

Where executor, etc., dies.  
P.D. 6, 7.

ART. 1249. Where an executor or administrator shall be a party to any suit, whether as plaintiff or defendant, and shall die or cease to be such executor or administrator before verdict, the suit shall not thereby abate, but may be continued by or against the person succeeding him in the administration, or by or against the heir, where there is no administration and no necessity therefor, upon like proceedings being had as provided in the two preceding articles, or the suit may be discontinued, as provided in article 1247.

Surviving parties.  
*Ib.* §36.  
P.D. 4.

ART. 1250. Where there are two or more plaintiffs or defendants, and one or more of them die, if the cause of action survive to the surviving plaintiffs and against the surviving defendants, the suit shall not abate by reason of such death, but upon suggestion of such death being entered upon the record the suit shall, at the instance of either party, proceed in the name of the surviving plaintiffs or against the surviving defendants, as the case may be.

Death between verdict and judgment.  
*Ib.* §37.  
P.D. 5.

ART. 1251. Where in any suit either party shall die between verdict and judgment, the judgment shall be entered as if both parties were living.

(Act to adopt and establish R.C.S., passed Feb. 21, 1879.)  
Marriage of plaintiff *feme sole*.  
*Ib.* §40.  
P.D. 8.

ART. 1252. A suit instituted by a *feme sole* shall not abate by her marriage, but upon a suggestion of such marriage being entered on the record, the husband may make himself a party to such suit and prosecute the same as if he and his wife had been originally plaintiffs in such suit.

Marriage of defendant *feme sole*.  
*Ib.* §41.  
P.D. 9.

ART. 1253. A suit instituted against a *feme sole* shall not abate by her marriage, but upon a suggestion of such marriage being entered on the record, in open court, or upon a petition representing that fact being filed with the clerk, it shall be his duty to issue a *scire facias* to the husband of such defendant, and upon the return thereof executed, the husband shall be made a party to such suit, and it shall proceed as if such husband and wife had originally been defendants in such suit.

Suit to the use of another.  
*Ib.* §42.  
P.D. 10.

ART. 1254. When a plaintiff, suing for the use of another person, shall die before verdict, the person for whose use such suit was brought, upon such death being suggested on the record in open court, may prosecute the suit in his own name, and shall be responsible for costs in the

same manner as he would have been had the suit been commenced by him.

ART. 1255. In cases arising under the provisions of title lii, the suit shall not abate by the death of either party pending the suit; but in such case, if the plaintiff dies, where there is only one plaintiff, some one or more of the parties entitled to the money recovered may be substituted and the suit prosecuted to judgment in the name of such party or parties, for the benefit of the persons entitled; if the defendant dies, his executor, administrator or heir may be made a party, and the suit prosecuted to judgment as provided for in previous articles of this chapter.

Death of party to suit for injuries resulting in death. (Act Feb. 2, 1860, p. 32, §4.) P.D. 18.

ART. 1256. Where there are several defendants in a suit, and some of them are served with process in due time and others not so served, the plaintiff may either discontinue as to those not so served and proceed against those that are, or he may continue the suit until the next term of the court and take new process against those not served; and no defendant against whom any suit may be so discontinued shall be thereby exonerated from any liability under which he was, but may at any time be proceeded against as if no such suit had been brought and no such discontinuance entered.

Where some of defendants not served. (Act May 13, 1846, p. 363, §45.) P.D. 1448.

ART. 1257. Where a suit is discontinued as to a principal obligor no judgment can be rendered therein against an indorser, guarantor, surety or drawer of an accepted bill who is jointly sued, unless it is alleged and proven that such principal obligor resides beyond the limits of the state, or in such part of the same that he can not be reached by the ordinary process of law, or that his residence is unknown and can not be ascertained by the use of reasonable diligence, or that he is dead or actually or notoriously insolvent.

Discontinuance as to principal obligor. *Ib.* P.D. 1449, 1426, 225.

ART. 1258. The plaintiff may enter a discontinuance on the docket in vacation, in any suit wherein the defendant has not answered, on the payment of all costs that have accrued thereon.

Discontinuance in vacation. *Ib.* §28. P.D. 1440.

ART. 1259. The court may permit the plaintiff to discontinue his suit as to one or more of several defendants who may have been served with process, or who may have answered when such discontinuance would not operate to the prejudice of the other defendants; but no such discontinuance shall in any case be allowed as to a principal obligor, except in the cases provided for in article 1257.

Discontinuance as to defendants served, etc.

ART. 1260. Where the defendant has filed a counter claim seeking affirmative relief, the plaintiff shall not be permitted, by a discontinuance of his suit, to prejudice the right of the defendant to be heard on such counter claim.

Discontinuance when defendant has filed counter claim.

ART. 1261. The *scire facias* and returns thereon provided for in this chapter shall conform to the requisites of citations and the returns thereon, under the provisions of chapter six of this title.

Requisites of *scire facias* and returns.

## CHAPTER EIGHT.

### PLEADINGS OF THE DEFENDANT.

Article	Article
Answer may include several matters..... 1262	General denial need not be repeated ..... 1267
Answer to be filed, when..... 1263	Pleas to be filed in due order, etc..... 1268
Answer in cases of citation by publication. 1264	Certain pleas to be determined during the term at which filed..... 1269
Certain pleas to be verified by affidavit..... 1265	
Plea of payment, counter claim, etc..... 1266	

ARTICLE 1262. The defendant in his answer may plead as many several matters, whether of law or fact, as he shall think necessary for his defense, and which may be pertinent to the cause; *provided*, that he shall file them all at the same time, and in due order of pleading.

Answer may include several matters. (Act May 13, 1846, p. 363, §29.) P.D. 1441.

Answer to be filed when.  
(Act May 13, 1846, p. 368, §§10, 12; June 16, 1876, p. 22, §18.)  
P.D. 1506, 1508.

Answer in cases of citation by publication.  
(Act May 13, 1846, p. 363, §12.)  
Certain pleas to be verified by affidavit.  
(Act May 13, 1846, p. 363, §31.)

P.D. 1.  
Ib. §52.  
P.D. 228.  
Ib. §88.  
P.D. 1444.  
Ib. §30.  
P.D. 1442.  
Ib. §86.  
P.D. 1443.  
(Act Jan. 25, 1840, p. 144, §5.)  
P.D. 224.  
(Act April 2, 1874, p. 52, §1.)  
P.D. 6829c.

(Act to adopt and establish R.C.S., passed Feb. 21, 1879.)  
Plea of payment, counter-claim, etc.  
(Act Feb. 5, 1840, p. 62, §2.)  
P.D. 3444.

General denial need not be repeated.

Pleas to be filed in due order, etc.  
(Act May 13, 1846, p. 363, §32.)  
P.D. 2.

Certain pleas to be determined during the term at which filed.  
Ib. §33.  
P.D. 3.

ART. 1263. In all cases in which the citation has been personally served at least five days before the first day of the term to which it is returnable, exclusive of the day of service and return, the answer of the defendant shall be filed in the district court on or before the fifth day of the return term, and in the county court on or before the third day of the return term.

ART. 1264. In all cases in which service of the citation has been made by publication the answer shall be filed on or before appearance day of the term next succeeding that to which such citation is returnable.

ART. 1265. An answer setting up any of the following matters, unless the truth of the pleadings appear of record, shall be verified by affidavit:

1. That the suit is not commenced in the proper county.
2. That the plaintiff has not legal capacity to sue.
3. That the plaintiff is not entitled to recover in the capacity in which he sues.
4. That there is another suit pending in this state between the same parties for the same cause of action.
5. That there is a defect of parties, plaintiff or defendant.
6. A denial of partnership as alleged in the petition, whether the same be on the part of the plaintiff or defendant.
7. That the plaintiff or the defendant, alleged in the petition to be duly incorporated, is duly incorporated as alleged.
8. A denial of the execution by himself or by his authority of any instrument in writing, upon which any pleading is founded, in whole or in part, and charged to have been executed by him or by his authority, and not alleged to be lost or destroyed. Where such instrument in writing is charged to have been executed by a person then deceased, the affidavit will be sufficient if it state that the affiant has reason to believe and does believe that such instrument was not executed by the decedent or by his authority.
9. A plea denying the genuineness of the indorsement or assignment of a written instrument, as required by article 271.
10. That a written instrument upon which a pleading is founded, is without consideration, or that the consideration of the same has failed in whole or in part.
11. That an account which is the foundation of the plaintiff's action, and supported by an affidavit, is not just, and in such case the answer shall set forth the items and particulars which are unjust.
12. That the contract sued upon is usurious.

ART. 1266. In every action in which a defendant shall desire to prove any payment, counter claim or set-off, he shall file with his plea, an account stating distinctly the nature of such payment, counter claim or set-off, and the several items thereof; and on failure to do so he shall not be entitled to prove the same unless it be so plainly and particularly described in the plea as to give the plaintiff full notice of the character thereof.

ART. 1267. Where the defendant has pleaded the general denial, and the plaintiff shall afterward amend his pleading, it shall not be necessary for the defendant to plead such denial a second time, but such original denial shall be presumed to extend to all matters subsequently set up by the plaintiff.

ART. 1268. Pleas shall be filed in the due order of pleading, and shall be heard and determined in such order under the direction of the court.

ART. 1269. Pleas to the jurisdiction, pleas in abatement, and other dilatory pleas and demurrer, not involving the merits of the case, shall be determined during the term at which they are filed, if the business of the court will permit.

CHAPTER NINE.

CHANGE OF VENUE.

	Article		Article
By consent of parties.....	1270	To what county.....	1273
Granted on application, when.....	1271	In case of new counties.....	1274
Shall be granted, unless.....	1272	Duty of clerk on change of venue.....	1275

ARTICLE 1270. The court may, upon the written consent of the parties thereto, or their attorney, filed with the papers of the cause by an order entered on the minutes, transfer the same for trial to the court of any other county having jurisdiction of the subject matter of such suit.

By consent of parties.  
(Act June 21, 1876, p. 25, §1.)

ART. 1271. A change of venue may be granted in any civil cause upon application of either party, supported by his own affidavit and the affidavit of at least three credible persons, residents of the county in which the suit is pending, for any of the following causes:

Granted on application, when.  
(Act April 7, 1874, p. 67, §1.)  
P.D. 5885a.

1. That there exists in the county where the suit is pending so great a prejudice against him that he can not obtain a fair and impartial trial.

2. That there is a combination against him instigated by influential persons by reason of which he can not expect a fair and impartial trial.

3. For other good and sufficient cause, to be determined by the court.

ART. 1272. Where application for a change of venue is made in conformity to the requirements of the preceding article, the same shall be granted unless it appear to the satisfaction of the judge, upon proof made before him, that the persons making the affidavit are not credible persons.

Shall be granted, unless, etc.  
*Ib.* §4.  
P.D. 5885d.

ART. 1273. Upon the grant of a change of venue, as provided in the two preceding articles, the cause shall be removed to some adjoining county, the court-house of which is nearest to the court-house of the county in which the suit is pending, unless it be made to appear in the application that such nearest county is subject to some objection sufficient to authorize a change of venue therefrom in the first instance; but the parties may by consent agree that it shall be changed to some other county, and the order of court shall conform to such agreement.

To what county.  
*Ib.* §2.  
P.D. 5885b.

ART. 1274. Where a suit may be pending in the district or county court of any county, out of the territory of which a new county has been or may hereafter be made, in whole or in part, if the defendants, or any one of them, shall file a motion in the court where such suit is pending, to transfer the same to such new county, naming it, together with an affidavit stating that neither he nor any one of the defendants now resides in the territorial limits of the county where such suit is pending, and that neither he nor any one of the defendants resided in said territorial limits at the time of the institution of such suit—and shall further swear that at the date of the filing of such suit said defendant was a resident citizen within the territorial limits of the new county—the court shall grant a change of venue to such new county, unless the suit could be properly brought in the county in which the same is pending under some provision of article 1198.

In case of new counties.  
(Act July 29, 1876, p. 74, §1.)

ART. 1275. When an order for a change of venue has been granted by the court the clerk shall immediately make out a correct transcript of all the orders made in said cause, certifying thereto officially under the seal of the court, and transmit the same with the original papers in the cause to the clerk of the court to which the venue has been changed.

Duty of clerk on change of venue.



CHAPTER TEN.

CONTINUANCE.

	Article	Article
Continuance not to be granted, except, etc	1276	Business not disposed of continued by
First application, requisites of	1277	operation of law
Second and subsequent applications	1278	1279

<p>Continuance not to be granted, except, etc. (Act March 16, 1846, p. 363, §15.) P.D. 1500.</p> <p>First application, requisites of. <i>Ib.</i></p> <p>Second and subsequent applications. <i>Ib.</i></p> <p>Business not disposed of, continued by operation of law. (Act May 13, 1846, p. 363, §95.) P.D. 1462.</p>	<p>ARTICLE 1276. No application for a continuance shall be heard before the defendant files his defense, nor shall any continuance be granted except for sufficient cause, supported by affidavit, or by consent of the parties, or by operation of law.</p> <p>ART. 1277. On the first application for a continuance, if the ground of such application be the want of testimony, the party applying therefor shall make affidavit that such testimony is material, and that he has used due diligence to procure the same, stating such diligence.</p> <p>ART. 1278. On the second or any subsequent application for a continuance, if the ground of such application be the want of testimony, the party applying therefor shall make affidavit that such testimony is material, showing the materiality thereof, and that he has used due diligence to procure such testimony, stating such diligence, and the cause of failure if known; that such testimony can not be obtained from any other source; and if it be for the absence of a witness, he shall state the name and residence of the witness and what he expects to prove by him; and he shall also state that the continuance is not sought for delay only, but that justice may be done.</p> <p>ART. 1279. If from any cause the court shall not be held at the time prescribed by law, or if the business before the court be not determined before the adjournment thereof, such business, of whatsoever nature, remaining undetermined, shall stand continued until the next succeeding term of the court.</p>
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CHAPTER ELEVEN.

TRIAL OF CAUSES.

	Article	Article
Appearance day	1280	Order of proceedings on trial by jury
Call of appearance docket	1281	Additional testimony allowed, when
Judgment by default	1282	Order of argument
Where some defendants answer and others do not	1283	Charge and instructions
Damages on liquidated demands, how assessed	1284	Non-suit may be taken, when
On unliquidated demands	1285	Foreman of the jury
Jury to assess damages, when	1286	Jury may take papers with them, except, etc.
Suits called in their order, etc.	1287	Jury to be kept together
To be tried when called	1288	Duty of officer in charge of jury
Day set for jury docket	1289	Caution to the jury
Call of non-jury docket	1290	Jury may communicate with the court
Issues of law and dilatory pleas, tried when	1291	May ask further instructions
Trial by the court	1292	May have witnesses recalled
Agreed case	1293	May have depositions, etc., re-read
Cases brought up from inferior courts tried <i>de novo</i>	1294	Disagreement of jury
Court may employ a stenographer	1295	May be discharged by the court
Compensation of stenographer	1296	Final adjournment of court discharges
		Case to be tried again
		Court may proceed with other business

ARTICLE 1280. The fifth day of each term of the district court and the third day of each term of the county court are termed appearance days.

ART. 1281. It shall be the duty of the court on appearance day of each term, or as soon thereafter as may be practicable, to call in their order all the cases on the docket which are returnable to such term.

ART. 1282. Upon the call of the appearance docket, or at any time after appearance day, the plaintiff may take judgment by default against any defendant who has been duly served with process and who has not previously filed an answer.

Appearance day.
Call of the appearance docket.
Judgment by default. (Act May 13, 1846, p. 363, §12.) P.D. 1508.

ART. 1283. Where there are several defendants, some of whom have answered and others have made default, an interlocutory judgment by default may be entered against those who have not answered, and the cause may proceed against the others; but only one final judgment shall be given in the suit.

Where some defendants answer and others do not.  
*Ib.* § 47.  
P.D. 1450.

ART. 1284. Where a judgment by default is rendered against the defendant, or all of several defendants, if the cause of action is liquidated and proved by an instrument in writing, the damages shall be assessed by the court or under its direction, and judgment final shall be rendered therefor unless the defendant shall demand and be entitled to a trial by jury.

Damages on liquidated demands, how assessed.  
*Ib.*

ART. 1285. If in such case the cause of action is unliquidated or be not proved by an instrument in writing, the court shall hear evidence as to the damages and shall render judgment therefor, unless the defendant shall demand and be entitled to a trial by jury.

On unliquidated demands, etc.  
*Ib.*

ART. 1286. If the defendant shall demand and be entitled to a trial by jury, the judgment by default shall be noted and a writ of inquiry awarded, and the cause shall be entered on the jury docket.

Jury to assess damages, when  
*Ib.*

ART. 1287. All suits in which final judgments shall not have been rendered by default, as hereinbefore provided, shall be called for trial in the order in which they stand on the docket to which they belong, unless otherwise ordered by the court.

Suits called in their order, etc. (Act May 13, 1846, p. 363, § 93.)  
P.D. 1461.

ART. 1288. Every suit shall be tried when it is called, unless it be continued or be postponed to a future day of the term, or be placed at the end of the docket to be called again for trial in its regular order.

To be tried when called, unless, etc.  
*Ib.*

ART. 1289. The court shall, in all counties where the term lasts two weeks or under, at the first term after the passage of this act, by an order entered on the minutes, designate a day of the term for taking up for trial the causes on the jury civil docket; and, in all counties where the term continues three weeks or longer, the court shall, at its first term after the passage of this act, by a like order entered on the minutes, designate a day of the term, not earlier than the first day of the second week of the term, for the taking up and trial of causes on the jury civil docket; and the day so designated shall be the time for taking up for trial the causes on the jury civil docket at all subsequent terms until changed by a like order; but in case of change it shall not take effect until the succeeding term of said court. In all cases in which juries have been demanded by either party, all questions of law, demurrers, exceptions to pleadings shall by the court be heard and determined before the day designated for the trial of said jury causes; and all jurors shall be summoned to appear on the day of the term so designated.

Day set for the jury docket. (Acts 1879, ch. 97, p. 104.)

ART. 1290. The docket of cases in which jury trials have not been granted shall be taken up at such times and in such manner as not unnecessarily to interfere with the dispatch of business on the jury docket.

Call of non-jury docket.

ART. 1291. When a case is called for trial, the issues of law arising on the pleadings, and all pleas in abatement, and other dilatory pleas remaining undisposed of, shall be determined, and it shall be no cause for the postponement of a trial of the issues of law that a party is not prepared to try the issues of fact.

Issues of law and dilatory pleas, tried when. (Act May 13, 1846, p. 363, § 93.)  
P.D. 3.

ART. 1292. The rules hereinafter prescribed for the trial of causes before the jury, shall govern in trials by the court so far as may be applicable.

Trial by the court.

ART. 1293. The parties may in any case submit the matter in controversy between them to the court upon an agreed statement of facts made out and signed by them or their counsel, and filed with the clerk, upon which judgment shall be rendered as in other cases; and in such case the statement so agreed to and signed and certified by the court to be correct, and the judgment rendered thereon, shall constitute the record of the cause.

Agreed case. (Act Feb. 5, 1858, p. 110, § 12.)  
P.D. 1516.

Cases brought up from inferior courts, tried *de novo*.  
(Act May 13, 1846, p. 363, §§59, 60.  
P.D. 1459, 1460.

ART. 1294. In all cases brought up from inferior courts, whether by appeal or certiorari, the case shall be tried *de novo*.

Court may employ a stenographer, etc.

ART. 1295. For the purpose of preserving a statement of the evidence given on the trial of a cause, the court may, and upon application of either party shall employ a stenographer or other competent person to take down the testimony in a cause.

Compensation of stenographer.

ART. 1296. Reasonable compensation, not to exceed twenty cents per hundred words, shall be allowed such stenographer, to be fixed by the court and taxed in the bill of costs.

Order of proceedings on trial by jury.

ART. 1297. In suits tried by a jury the trial shall proceed in the following order, unless the court should for good cause, to be stated in the record, otherwise direct:

1. The plaintiff or his counsel shall read his petition to the jury.
2. The defendant or his counsel shall read his answer.
3. If there be any intervenor, he or his counsel shall read his pleadings.
4. The party, plaintiff or defendant, upon whom rests the burden of proof on the whole case under the pleadings, shall then be permitted to state to the jury briefly the nature of his claim or defense and facts relied on in support thereof.
5. Such party shall then introduce his evidence.
6. The adverse party shall then be permitted to state briefly the nature of his defense or claim and the facts relied on in support thereof.
7. He shall then introduce his evidence.
7. The intervenor, if any, shall in like manner be permitted to make his statement, and shall then introduce his evidence.
9. The parties shall then be confined to rebutting testimony on each side.

Additional testimony allowed, when.

ART. 1298. The court may at its discretion, at any time before the conclusion of the argument, where it appears to be necessary to the due administration of justice, allow a party to supply an omission in the testimony, on such terms and under such limitations as the court may prescribe.

Order of argument.

ART. 1299. After the evidence is concluded the parties may submit the case to the jury in argument; the party having under the pleadings the burden of proof on the whole case shall be entitled to open and conclude the argument; where there are several other parties having separate claims or defenses, and represented by different counsel, the court shall prescribe the order of argument between them.

Charge and instructions.  
(Act Feb. 6, 1853, p. 19, §99.)  
P.D. 1464.

ART. 1300. After the conclusion of the argument the court shall read to the jury the charges and instructions, if any, under the provisions of this title relating thereto.

Non-suit may be taken, when  
*Id.*  
P.D. 1464.

ART. 1301. At any time before the jury have retired the plaintiff may take a non-suit, but he shall not thereby prejudice the right of an adverse party to be heard on his claim for affirmative relief; when the case is tried by the judge such non-suit may be taken at any time before the decision is announced.

Foreman of jury.

ART. 1302. The court may appoint one of the jury to be the foreman thereof, and in case no foreman is appointed by the court, the jury may elect a foreman from their number, who shall preside at their deliberations and see that the same are conducted with regularity and in order.

Jury may take papers with them, except, etc.  
*Id.*  
P.D. 1464.

ART. 1303. The jury may take with them in their retirement the charges and instructions in the cause, the pleadings and any written evidence except the depositions of witnesses. But when part only of a paper has been read in evidence, the jury shall not take the same with

them unless the part so read to them is detached from that which was excluded.

ART. 1304. The jury may either decide the case in court or retire for deliberation. If they retire, they shall be kept together in some convenient place, under the charge of an officer, until they agree upon a verdict or are discharged by the court; but the court may in its discretion permit them to separate temporarily for the night and at their meals, and for other proper causes.

Jury to be kept together.

ART. 1305. The officer having the jury under his charge shall not suffer any communication to be made to them, or make any himself, except to ask them if they have agreed upon their verdict, unless by order of the court; and he shall not, before their verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon.

Duty of officer in charge of jury.

ART. 1306. If the jury are permitted to separate, either during the trial or after the case is submitted to them, they shall be admonished by the court that it is their duty not to converse with, or suffer themselves to be addressed by any other person, on any subject connected with the trial.

Caution to the jury.

ART. 1307. When the jury wish to communicate with the court, they shall make their wish known to the officer having them in charge, who shall inform the court thereof, and they may be brought into open court, and through their foreman shall state to the court, either verbally or in writing, what they desire to communicate.

Jury may communicate with the court.

ART. 1308. The jury may, after having retired, ask further instruction of the court touching any matter of law. For this purpose they shall appear before the judge in open court in a body and through their foreman state to the court, either verbally or in writing, the particular question of law upon which they desire further instruction, and the court shall give such instruction in writing; but no instruction shall be given except upon the particular question on which it is asked.

May ask further instruction. *Id.* P.D. 1464.

ART. 1309. If the jury disagree as to the statement of any particular witness, they may, upon applying to the court, have such witness again brought upon the stand, and he shall be directed by the judge to detail his testimony to the particular point of disagreement, and no other, and as nearly as he can in the language used upon his examination.

May have witness recalled.

ART. 1310. If the jury disagree as to any portion of a deposition or other paper not carried with them in their retirement, the court may in like manner permit such portion of the deposition or paper to be again read to the jury.

May have deposition, etc., re-read.

ART. 1311. The jury may, after the cause is submitted to them, be discharged by the court when they can not agree and both parties consent to their discharge, or when they have been kept together for such time as to render it altogether improbable that they can agree.

Disagreement of jury.

ART. 1312. They may also be discharged by the court when any calamity or accident may, in the opinion of the court, require it; and they shall be so discharged when by sickness or other cause their number is reduced below the number constituting a jury in such court.

May be discharged by the court. (Const., art. 5, §13.)

ART. 1313. The final adjournment of the court before the jury have agreed upon a verdict discharges them.

Final adjournment of court discharges.

ART. 1314. Where a jury has been discharged as herein provided, without having rendered a verdict, the cause may be again tried at the same or another term.

Case to be tried again.

ART. 1315. The court may, during the retirement of the jury, proceed to any other business and adjourn from time to time, but shall be deemed open for all purposes connected with the case before the jury.

Court may proceed with other business.

CHAPTER TWELVE.

CHARGES AND INSTRUCTIONS TO THE JURY.

	Article		Article
Court may charge the jury.....	1316	Instructions refused constitute part of bill	1320
Requisites of the charge.....	1317	of exceptions.....	1320
Charge need not be excepted to.....	1318	Jury may carry charge, etc., with them....	1321
Parties may ask instructions.....	1319		

Court may charge the jury.  
(Act Feb. 5, 1853, p. 19, §99.)  
P. D. 1464.  
Requisites of the charge.  
Ib.

ARTICLE 1316. After the argument of a cause the judge may, in open court, deliver a charge to the jury on the law of the case, subject to the restrictions hereinafter provided.

ART. 1317. The charge shall be in writing and signed by the judge, and he shall read it to the jury in the precise words in which it is written; he shall not charge or comment on the weight of evidence; he shall so frame the charge as to distinctly separate the questions of law from the questions of fact; he shall decide on and instruct the jury as to the law arising on the facts, and shall submit all controverted questions of fact solely to the decision of the jury.

Charge need not be excepted to.

ART. 1318. Such charge shall be filed by the clerk and shall constitute a part of the record of the cause, and shall be regarded as excepted to, and subject to revision for errors therein, without the necessity of taking any bill of exception thereto.

Parties may ask instructions.  
(Act May 13, 1846, p. 363, §100.)  
P. D. 216.

ART. 1319. Either party may present to the judge, in writing, such instructions as he desires to be given to the jury, and the judge may give such instructions, or a part thereof, or he may refuse to give them, as he may see proper, and he shall read to the jury such of them as he may give.

Instructions refused constitute part of bill of exceptions.  
Ib.

ART. 1320. When the instructions asked, or some of them are refused, the judge shall note distinctly which of them he gives, and which he refuses, and shall subscribe his name thereto, and such instructions shall be filed with the clerk, and shall constitute a part of the record of the cause, subject to revision for error without the necessity of taking any bill of exception thereto.

Jury may carry charge, etc., with them.  
(Act Feb. 5, 1853, p. 19, §99.)  
P. D. 1464.

ART. 1321. The charge and instructions given to the jury may be carried with them by the jury in their retirement, and an additional charge or instructions may be given them upon any question of law arising in the case, in conformity with the preceding rules, upon the application of the jury therefor in open court.

CHAPTER THIRTEEN.

THE VERDICT.

	Article		Article
Rendition of verdict.....	1322	General verdict.....	1329
Must be in writing and signed.....	1323	Special verdict.....	1330
Verdict to be received and noted on docket.....	1324	Requisites of special verdict.....	1331
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Defective or mistaken verdict.....	1326	Verdict to cover all the issues submitted....	1333
Not responsive to the issues.....	1327	Verdict not void for want of form.....	1334
Verdicts either general or special.....	1328		

Rendition of verdict.

ARTICLE 1322. When the jury have agreed upon their verdict they shall be conducted into court by the officer having them in charge, and their names shall be called by the clerk, and they shall deliver their verdict to the clerk.

Must be in writing and signed.  
(Act Aug. 1, 1876, p. 82, §19.)

ART. 1323. The verdict shall be in writing, and shall be signed by the foreman; and where, pending a trial in the district court, any juror may die or be disabled from sitting, and the verdict is rendered by the remaining jurors, the verdict shall be signed by all of such remaining jurors.

Verdict received and noted on docket.

ART. 1324. The clerk shall read the verdict aloud, and shall inquire of the jury if such is their verdict; if any juror disagrees to the verdict, the jury shall be sent out again, but if no disagreement is expressed, and

neither party requires the jury to be polled, the court shall (except in the cases hereinafter provided for) receive the verdict and enter a minute thereof on the docket, and the jury shall be discharged.

ART. 1325. When the verdict is announced either party may require the jury to be polled, which is done by the clerk or judge asking each juror separately if such is his verdict; if any juror answers in the negative, the jury shall again be sent out for further deliberation; but if each juror concurs in the verdict the same shall be received and noted in the docket, except in the cases provided for in the two succeeding articles, and the jury shall be discharged.

Jury may be polled.

ART. 1326. If the verdict is informal or defective the court may direct it to be reformed at the bar, and where there has been a manifest miscalculation of interest, the court may direct a computation thereof at the bar, and the verdict may, if the jury assent thereto, be reformed in accordance with such computation.

Defective or mistaken verdict.

ART. 1327. If the verdict is not responsive to the issues submitted to the jury, the court shall call their attention thereto, and send them back for further deliberation.

Not responsive to the issues.

ART. 1328. The verdict of a jury is either a general or a special verdict.

Verdicts either general or special.

ART. 1329. A general verdict is one whereby the jury pronounce generally in favor of one or more parties to the suit upon all or any of the issues submitted to them.

General verdict.

ART. 1330. A special verdict is one wherein the jury find the facts only on issues made up and submitted to them under the direction of the court.

Special verdict. (Act May 13, 1846, p. 363, §108.)

P.D. 1469.

ART. 1331. The special verdict must find the facts as established by the evidence, and not the evidence by which they are established, and the findings must be such as that nothing remains for the court but to draw from such facts the conclusions of law.

Requisites of special verdict.

ART. 1332. A special verdict found under the provisions of the two preceding articles shall, as between the parties, be conclusive as to the facts found.

Special verdict conclusive. P.D. 1469.

ART. 1333. The jury shall render a general or special verdict as may be directed by the court; and the verdict shall comprehend the whole issue or all the issues submitted to them; and upon a trial by the court, the judge shall, at the request of either of the parties, also state in writing the conclusions of fact found by him, separately from the conclusions of law; which conclusions of fact and law shall be filed with the clerk and shall constitute a part of the record; and in all cases where a special verdict of the jury is rendered or the conclusions of fact found by the judge are separately stated, the court shall, unless the same be set aside and new trial granted, render judgment thereon, and it shall be sufficient for the party excepting to the conclusions of law or judgment of the court to cause it to be noted on the record in the judgment entry, that he excepts thereto; and such party may thereupon take his appeal or writ of error without a statement of facts or further exceptions in the transcript, but the transcript shall in such case contain the special verdict or conclusions of fact and law aforesaid and the judgment rendered thereon.

Verdict to cover all the issues submitted. (Acts 1879, ch. 111, p. 119; and *Ib.*, extra session, ch. 42.)

ART. 1334. No special form of verdict is required, and where there has been a substantial compliance with the requirements of the law in rendering a verdict, the judgment shall not be arrested or reversed for mere want of form therein.

Verdict not void for want of form. (Act May 13, 1846, p. 363, §104.) P.D. 1465.

CHAPTER FOURTEEN.

JUDGMENTS.

	Article		Article
Judgments, how framed.....	1335	Judgment on appeal, etc., from justice's court.....	1342
For or against one or more plaintiffs, etc.....	1336	Judgments against executors, etc.....	1343
But one final judgment.....	1337	Against executors acting independently of probate court.....	1344
Judgment may pass title.....	1338	Judgment in suits by publication.....	1345
Court shall enforce its own decrees, and may in certain cases do so by contempt process.....	1339	Against partners where all not served.....	1346
Judgments of foreclosure of liens.....	1340	Confession of judgment.....	1347
Judgment on appeals, etc., from county court.....	1341	Confession by attorney.....	1348
		Releases errors, but may be impeached, etc.....	1349
		Other judgments when authorized by law.....	1350

**Judgments, how framed.**  
 (Acts May 13, 1846, p. 363, §115; May 11, 1846, p. 200, §7.)  
 P.D. 1476, 1410.  
**For or against one or more plaintiffs, etc.**

**But one final judgment.**

**Judgment may pass title, etc.**  
 (Act May 13, 1846, p. 363, §120.)  
 P.D. 1481.

**Court shall enforce its own decrees, and may in certain cases do so by contempt process.**  
 (Act May 11, 1846, p. 200, §17.)  
 P.D. 1420.

**Judgments of foreclosure of liens.**  
 (Act May 13, 1846, p. 363, §119.)  
 P.D. 1480.

**Judgment on appeal, etc., from county court.**  
 (Act May 13, 1846, p. 363, §60.)  
 P.D. 1460.

**On appeal, etc. from justice's court.**

**Judgments against executors, etc.**  
 (Act May 13, 1846, p. 363, §118.)  
 P.D. 1479.

**Against executors acting independently of probate court.**

ARTICLE 1335. The judgment of the court shall conform to the pleadings, the nature of the case proved and the verdict, if any, and shall be so framed as to give the party all the relief to which he may be entitled either in law or equity.

ART. 1336. Judgment may, in a proper case, be given for or against one or more of several plaintiffs, and against or for one or more of several defendants or intervenors.

ART. 1337. Only one final judgment shall be rendered in any cause, except where it is otherwise specially provided by law.

ART. 1338. Where the judgment is for the conveyance of real estate, or for the delivery of personal property, the decree may pass the title to such property without any act to be done on the part of the party against whom the judgment is rendered.

ART. 1339. The court shall cause its judgments and decrees to be carried into execution; and where the judgment is for personal property, and it is shown by the pleadings and evidence and the verdict, if any, that such property has an especial value to the plaintiff, the court may award a special writ for the seizure and delivery of such property to the plaintiff, and the court may, in addition to the other relief granted in such case, enforce its judgment by attachment, fine and imprisonment.

ART. 1340. Judgments for the foreclosure of mortgages and other liens shall be that the plaintiff recover his debt, damages and costs, with a foreclosure of the plaintiff's lien on the property subject thereto, and (except in judgments against executors, administrators and guardians) that an order of sale shall issue to the sheriff or any constable of the county where such property may be, directing him to seize and sell the same as under execution, in satisfaction of the judgment; and if the property can not be found, or if the proceeds of such sale be insufficient to satisfy the judgment, then to make the money, or any balance thereof remaining unpaid, out of any other property of the defendant, as in case of ordinary executions.

ART. 1341. Judgments on appeal or certiorari from any county court sitting in probate shall be certified to such county court for observance.

ART. 1342. Judgments on appeal or certiorari from any justice's court shall be enforced by the county court.

ART. 1343. Where a recovery of money is had against an executor, administrator or guardian, as such, the judgment shall state that it is to be paid in the due course of administration, and no execution shall issue on such judgment, but the same shall be certified to the county court, sitting in matters of probate, to be there enforced in accordance with law.

ART. 1344. The preceding article shall not apply to judgments against an executor who has been appointed and is acting under a will dispensing with the action of the county court in reference to such estate; but such

judgment shall be enforced against the property of the testator in the hands of such executor, by execution, as in other cases.

**ART. 1345.** Where service of process has been made by publication, and no answer has been filed within the time prescribed by law, the court shall appoint an attorney to defend the suit, and judgment shall be rendered as in other cases; but in every such case a statement of the evidence, approved and signed by the judge, shall be filed with the papers of the cause as part of the record thereof. Judgment in suits by publication. (Acts May 13, 1846, p. 363, §123; Nov. 6, 1860, p. 123, §1.) P.D. 1483, 26.

**ART. 1346.** Where the suit is against several partners jointly indebted upon contract, and the citation has been served upon some of such partners, but not upon all, judgment may be rendered therein against such partnership and against the partners actually served, but no personal judgment or execution shall be awarded those not served. Against partners when all not sued. (Act Feb. 5, 1853, p. 110, §2.) P.D. 1514.

**ART. 1347.** Any person indebted, or against whom a cause of action exists, may without process appear, in person or by attorney, and confess judgment therefor in open court; but in such case a petition shall be filed and the justness of the debt or cause of action be sworn to by the person in whose favor the judgment is confessed. Confession of judgment. (Act May 13, 1846, p. 363, §116.) P.D. 1477.

**ART. 1348.** When the judgment is confessed by attorney, the power of attorney shall be filed, and a recital of the contents of the same be made in the judgment. Confession of, by attorney. *Ib.*

**ART. 1349.** Every judgment by confession duly made shall operate as a release of all errors in the record thereof, but such judgment may be impeached for fraud or other equitable cause. Releases errors but may be impeached, etc. *Ib.* §117. P.D. 1478.

**ART. 1350.** The court may render such other judgments and in such form as may be authorized by law. Other judgments, when authorized by law.

## CHAPTER FIFTEEN.

### REMITTER AND AMENDMENT OF JUDGMENT.

	Article		Article
Remitter of excess in verdict.....	1351	Mis-recitals, etc., corrected in vacation or term time.....	1355
Remitter of excess in judgment in open court.....	1352	Correction made in vacation to be certified to clerk.....	1356
Remitter in vacation.....	1353	Correction or remitter operates to cure errors.....	1357
Mistake in judgment corrected in open court.....	1354		

**ARTICLE 1351.** Any party in whose favor a verdict has been rendered may in open court remit any part of such verdict, and such remitter shall be noted on the docket and entered in the minutes, and execution shall thereafter issue for the balance only of such judgment, after deducting the amount remitted. Remitter of excess in verdict. (Acts May 13, 1846, p. 363, §133.) P.D. 52.

**ART. 1352.** Any person in whose favor a judgment has been rendered may in open court remit any part of such judgment, and such remitter shall be noted on the docket and entered in the minutes, and execution shall thereafter issue for the balance only of such judgment, after deducting the amount remitted. Remitter of excess in judgment in open court. *Ib.*

**ART. 1353.** Any party may make such remitter in vacation by executing and filing with the clerk a release in writing, signed by him or by his attorney of record, and attested by the clerk with the seal of his office. Such release shall constitute a part of the record of the cause, and any execution thereafter issued shall be for the balance only of the judgment after deducting the amount remitted. Remitter in vacation. *Ib.*

**ART. 1354.** Where there shall be a mistake in the record of any judgment or decree, the judge may, in open court, and after notice of the application therefor has been given to the parties interested in such judgment or decree, amend the same according to the truth and justice of the case, and thereafter the execution shall conform to the judgment as amended. Mistakes in judgments corrected in open court. (Act May 11, 1846, p. 200, §13.) P.D. 49.



Mis-recitals, etc., corrected in vacation or term time, in certain cases. (Act May 13, 1846, p. 363, §132.)

P. D. 51. (Act to adopt and establish R. G. S., passed Feb. 21, 1879.)

Correction made in vacation, to be certified to clerk, etc.

Correction or remitter operates to cure errors. *Ib.* §133. P. D. 52.

ART. 1355. Where, in the record of any judgment, or decree of any court, there shall be any mistake, miscalculation, or mis-recital of any sum or sums of money, or of any name or names, and there shall be among the records of the cause any verdict or instrument of writing, whereby such judgment or decree may be safely amended, it shall be the duty of the court, in which such judgment or decree shall be rendered, and the judge thereof, in vacation, on application of either party, to amend such judgment or decree thereby, according to the truth and justice of the case; but the opposite party shall have reasonable notice of the application for such amendment.

ART. 1356. The judge making such correction in vacation shall embody the same in a judgment, and shall certify thereto and deliver the same to the clerk, who shall enter the same in the minutes. Such judgment shall constitute a part of the record of the cause, and any execution thereafter issued shall conform to the judgment as corrected.

ART. 1357. A remitter or correction made as provided in any of the six preceding articles shall, from the making thereof, cure any error in the verdict or judgment by reason of such excess.

## CHAPTER SIXTEEN.

### BILL OF EXCEPTIONS.

	Article	Article
Exception to rulings, taken when .....	1358	Bill to be presented to the judge during the term and in ten days.....
Requisites of bill of exceptions.....	1359	Submitted to opposing counsel, etc.....
May refer to statement of facts.....	1360	If found incorrect.....
Charges regarded as excepted to.....	1361	In disagreement judge to make out bill....
No bill of exceptions where ruling appears of record.....	1362	Controverted bill of exceptions and affidavits relating thereto.....
		1367

Exception to rulings taken, when. (Act May 13, 1846, p. 363, §101.)

P. D. 217. Requisites of bill of exceptions.

May refer to statement of facts.

Charges regarded as excepted to. (Act May 13, 1846, p. 363, §101.)

P. D. 217. No bill of exceptions where ruling appears of record.

Bill to be presented to the judge during the term, and in ten days.

Submitted to opposing counsel, etc.

ARTICLE 1358. Whenever, in the progress of a cause, either party is dissatisfied with any ruling, opinion or other action of the court, he may except thereto at the time the same is made, or announced, and at his request time shall be given to embody such exception in a written bill.

ART. 1359. No particular form of words shall be required in a bill of exceptions, but the objection to the ruling or action of the court shall be stated with such circumstances, or so much of the evidence as may be necessary to explain it, and no more, and the whole as briefly as possible.

ART. 1360. Where the statement of facts contains all the evidence requisite to explain the bill of exceptions, it shall not be necessary to set out such evidence in the bill of exceptions, but it shall be sufficient to refer to the same as it appears in the statement of facts.

ART. 1361. The ruling of the court in the giving, refusing or qualifying of instructions to the jury, shall be regarded as excepted to in all cases.

ART. 1362. Where the ruling or other action of the court appears otherwise of record, no bill of exceptions shall be necessary to reserve an exception thereto.

ART. 1363. It shall be the duty of the party taking any bill of exceptions to reduce the same to writing, and present the same to the judge for his allowance and signature during the term, and within ten days after the conclusion of the trial.

ART. 1364. It shall be the duty of the judge to submit such bill of exceptions to the adverse party or his counsel, if in attendance on the court, and if the same is found to be correct, it shall be signed by the judge without delay and filed with the clerk during the term.

ART. 1365. Should the judge find such bill of exceptions to be incorrect, he shall suggest to the party or his counsel, who drew it, such corrections as he may deem necessary therein, and if they are agreed to he shall make such corrections and sign the same and file it as provided in the preceding article. If found incorrect, (Act May 13, 1846, p. 363, §101.) P.D. 217.

ART. 1366. Should the party not agree to such corrections, the judge shall return the bill of exceptions to him with his refusal indorsed thereon, and shall make out and sign and file with the clerk such a bill of exceptions as will in his opinion present the ruling of the court in that behalf as it actually occurred. On disagreement, judge to make out bill, etc.

ART. 1367. Should the party be dissatisfied with the bill of exceptions filed by the judge, as provided in the preceding article, he may, upon procuring the signatures of three respectable bystanders, citizens of this state, attesting the correctness of the bill of exceptions as presented by him, have the same filed as part of the record of the cause; and the truth of the matter in reference thereto may be controverted and maintained by affidavits, not exceeding five in number on each side, to be filed with the papers of the cause, within ten days after the filing of such bill of exceptions, and to be considered as a part of the record relating thereto. Controverted bill of exceptions and affidavits relating thereto. (Act May 13, 1846, p. 363, §§101, 102.)

## CHAPTER SEVENTEEN.

### NEW TRIALS AND ARREST OF JUDGMENT.

	Article		Article
New trial, etc., may be granted. . . . .	1368	Bill of review in suits by publication. . . . .	1373
Motion for new trial, requisites of. . . . .	1369	Petition, etc., necessary in such cases. . . . .	1374
Not more than two new trials except, etc. . . . .	1370	Execution not suspended, unless, etc. . . . .	1375
Time of making motion. . . . .	1371	Sale under such execution not avoided, but, etc. . . . .	1376
Determined when. . . . .	1372		

ARTICLE 1368. New trials may be granted, and judgments may be set aside or arrested on motion for good cause, on such terms and conditions as the court shall direct. New trials, etc., may be granted. *Ib.* §109. P.D. 1470.

ART. 1369. Every such motion shall be in writing and signed by the party or his attorney, and shall specify the grounds upon which it is founded; and no ground, other than those specified, shall be heard or considered. Motion for new trial, etc., requisites of. *Ib.* §112. P.D. 1473.

ART. 1370. Not more than two new trials shall be granted to either party in the same cause, except when the jury have been guilty of some misconduct or have erred in matter of law. Not more than two new trials, except, etc. *Ib.* §109. P.D. 1470.

ART. 1371. All motions for new trials in arrest of judgment, or to set aside a judgment, shall be made within two days after the rendition of verdict, if the term of the court shall continue so long; if not, then before the end of the term. Time of making motion. *Ib.* §112. P.D. 1473.

ART. 1372. All motions for new trials, in arrest of judgment, or to set aside a judgment, shall be determined at the term of the court at which such motion shall be made. Determined, when. *Ib.*

ART. 1373. In cases in which judgment has been rendered on service of process by publication, where the defendant has not appeared in person or by an attorney of his own selection, a new trial may be granted by the court upon the application of the defendant for good cause shown, supported by affidavit, filed within two years after the rendition of such judgment. Bill of review in suits by publication. *Ib.* §129. P.D. 1489.

ART. 1374. In the cases mentioned in the preceding article a petition shall be filed and service of process made upon the parties adversely interested in the judgment as in other cases. Petitions, etc., necessary in such cases. *Ib.*

ART. 1375. In the cases mentioned in the two preceding articles, process on such judgment shall not be suspended, unless the defendant or party applying therefor shall give bond, with two or more good and sufficient sureties, to be approved by the clerk, in double the amount of Execution, etc. not suspended, unless, etc. *Ib.*

the judgment, or value of the property adjudged, payable to the plaintiff in the judgment, conditioned that the party will prosecute his petition for new trial to effect, and will perform such judgment as may be rendered by the court should its decision be against him.

Sale under such execution not avoided, but, etc. *Ib.*

ART. 1376. Where in such case as is mentioned in the three preceding articles, property has been sold under the judgment and execution before the process was suspended, the defendant, should he defeat the plaintiff's action, shall not recover the property so sold, but shall have judgment against the plaintiff in the judgment for the proceeds of such sale.

## CHAPTER EIGHTEEN.

### STATEMENT OF FACTS.

	Article	Article
Statement of facts agreed on by the parties.....	1377	1376
When the parties disagree.....		1377
Made up and filed in vacation, when.....		1379

Statement of facts agreed on by the parties. (Act May 13, 1846, p. 363, §135.)

ARTICLE 1377. After the trial of any cause, either party may make out a written statement of the facts given in evidence on the trial, and submit the same to the opposite party, or his attorney, for inspection, if the parties, or their attorneys, agree upon such statement of facts, they shall sign the same, and it shall then be submitted to the judge, who shall, if he find it correct, approve and sign it, and the same shall be filed with the clerk during the term.

When the parties disagree. *Ib.*

ART. 1378. If the parties do not agree upon such statement of facts, or if the judge do not approve or sign it, the parties may submit their respective statements to the judge, who shall, from his own knowledge, with the aid of such statements during the term, make out and sign and file with the clerk a correct statement of the facts proven on the trial, and such statement shall constitute a part of the record.

Made up and filed in vacation, when.

ART. 1379. The court may, by an order entered upon the record during the term, authorize the statement of facts to be made up, and signed and filed, in vacation, at any time not exceeding ten days after the adjournment of the term.

## CHAPTER NINETEEN.

### APPEAL AND WRIT OF ERROR.

	Article	Article
Appeals and writs of error from district court to supreme court.....	1380	1401
Appeals, etc., from county court to court of appeals.....	1381	1402
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In other cases when provided by law.....	1383	1404
"Appellant" and "appellee" defined.....	1384	1405
"Plaintiff in error" and "defendant in error" defined.....	1385	1406
"Appellate court" and "court below" defined.....	1386	1407
Appeal taken, when and how.....	1387	1408
By parties of whom no appeal-bond is required.....	1388	1409
Writ of error sued out, when.....	1389	1410
By petition.....	1390	1411
Requisites of petition.....	1391	1412
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Service and return of.....	1395	1416
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Appeal or writ of error perfected, when.....		1402
Appeal, etc., on cost bond or affidavit does not suspend execution.....		1403
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No bond required of the state.....		1407
Of executors, etc.....		1408
Executor, etc., may take appeal or writ of error.....		1409
Transcript to be made out and delivered.....		1410
Transcript to contain all proceedings, except, etc.....		1411
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Omission of unimportant proceedings, when.....		1413
Agreed statement of pleadings and proof.....		1414
Transcript must contain, what.....		1415
Clerk's certificate and indorsement.....		1416
Case appealed, etc., to remain on docket till, etc.....		1417
Proceeding on return of mandate.....		1418
Proceedings in case of affirmation of judgment.....		1419

Appeals and writs of error from district court to supreme court. (Const., art. 5, §3.)

ARTICLE 1380. An appeal or writ of error may be taken to the supreme court from every final judgment of the district court in civil cases.

ART. 1381. An appeal or writ of error may be taken to the court of appeals from every final judgment of the county court rendered in civil causes of which the county court has original jurisdiction.

Appeals from county court to court of appeals.  
(Const., art. 5, §6.)  
(Act Aug. 18, 1876, p. 173, §1.)

ART. 1382. An appeal or writ of error may also be taken to the court of appeals from any final judgment of the county court rendered on appeal or certiorari in civil cases taken from the justices' courts, where the judgment or the amount in controversy exceeds one hundred dollars.

From judgments on appeal or certiorari in certain cases.  
(Const., art. 5, §§16, 22.)  
*Ib.*

ART. 1383. Appeals and writs of error may also be taken to the court of appeals from judgments of the county court in such other civil cases as are or may be provided by law.

In other cases when provided by law.

ART. 1384. The party taking an appeal is called the "appellant," and the adverse party is called the "appellee."

"Appellant" and "appellee" defined.

ART. 1385. The party suing out a writ of error is called the "plaintiff in error," and the adverse party is called the "defendant in error."

"Plaintiff in error" and "defendant in error" defined.

ART. 1386. The term "appellate court" includes the supreme court or court of appeals having jurisdiction of a cause on appeal or writ of error. The term "court below" includes the district or county court from which such appeal or writ of error is taken.

"Appellate court" and "court below" defined.

ART. 1387. An appeal may, in cases where an appeal is allowed, be taken during the term of the court at which the final judgment in the cause is rendered, by the appellant's giving notice of appeal in open court, which shall be noted on the docket and entered of record, and by his filing with the clerk an appeal-bond, or affidavit in lieu thereof, as hereinafter provided, within twenty days after the expiration of the term.

Appeal taken, when and how.  
(Act March 16, 1848, p. 106, §19.)  
P.D. 1510.

ART. 1388. In cases where the appellant is not required by law to give bond on appeal, the appeal is perfected by the notice provided for in the preceding article.

By parties of whom no appeal-bond is required.

ART. 1389. The writ of error may, in cases where the same is allowed, be sued out at any time within two years after the final judgment was rendered, and not thereafter, except in the case of infants, married women, and persons of unsound mind, who shall have two years after the removal of their respective disabilities within which to sue out such writ.

Writ of error sued out, when.  
(Act May 13, 1846, p. 363, §142.)  
P.D. 1496.

ART. 1390. The party desiring to sue out a writ of error shall file with the clerk of the court in which the judgment was rendered, a petition in writing, signed by him or by his attorney, and addressed to such clerk.

By petition.  
*Ib.* §140.  
P.D. 1495.

ART. 1391. The petition shall state the names and residences of the parties adversely interested, shall describe the judgment with sufficient certainty to identify it, and shall state that he desires to remove the same to the supreme court or court of appeals, as the case may be, for revision and correction; and where the plaintiff in error desires the issuance of a supersedeas, he shall state the facts which entitle him thereto, and pray for the issuance thereof.

Requisites of petition.  
*Ib.*

ART. 1392. The plaintiff shall also, at the time of filing such petition, file with the clerk a writ of error bond, or affidavit in lieu thereof, as hereinafter provided.

Error bond.  
*Ib.*

ART. 1393. Upon the filing of the petition and bond mentioned in the three preceding articles, it shall be the duty of the clerk forthwith to issue a citation for the defendant in error, and if there be several defendants, residing in different counties, one citation shall issue to each of such counties.

Citation in error.  
*Ib.*

ART. 1394. The style of such citation shall be "The State of Texas," and it shall be dated and tested by the clerk as other writs, and the date of its issuance shall be noted thereon. It shall be directed to the sheriff or any constable of the county where the defendant is alleged to reside, or be, and shall command him forthwith to summon the defendant to

Requisites of.  
*Ib.*

appear and defend such writ before the supreme court, or court of appeals, as the case may be, at the next term thereof, stating the time and place of holding the same, according to the provisions of the law regulating the return of appeals and writs of error from the county in which the judgment was rendered. It shall state the date of the filing of the petition in error, the names of the parties according to such petition, the description of the judgment as therein given, and that the writ of error, and superseas, if any, have been granted. Such citation shall be made returnable within thirty days from the issuance of the same.

Service and  
return of.  
*Ib.*

ART. 1395. It shall be the duty of the sheriff or constable receiving such citation to indorse the day and hour on which he received it, and to execute and return it forthwith. Service shall be made by delivering to the defendant in error, and if more than one, then to each of them, in person, a true copy of such citation. The return of such officer shall be indorsed on or attached to the original writ, and shall state when and how the same was served, and shall be signed by him officially.

Return, when  
citation not  
served. *Ib.*

ART. 1396. The citation shall be returned within thirty days, and where the same has not been served the return shall show the diligence used by the officer to execute the same, and the failure to execute it, and where the defendant is to be found, so far as he has been able to ascertain.

Alias citation.  
*Ib.*

ART. 1397. If the citation is returned not executed the clerk shall forthwith issue an *alias* or *pluris* citation, as the case may be, which shall conform to the requisites prescribed for the issuance of citation in the first instance, and shall, in addition, indicate how many previous citations have been issued.

Service on the  
attorney of  
record. *Ib.*

ART. 1398. If it appears from the allegations in the papers of the cause that the party is a non-resident of the state, or if it appears from the return of the sheriff or constable that the party can not be found in the county of his residence, the citation shall direct the officer to summon the defendant by making service on his attorney of record, if there be one.

Service in  
other modes.

ART. 1399. Service of the citation may also be made in either of the modes provided in chapter six of this title, so far as the same are applicable.

Cost bond on  
appeal or writ  
of error.

ART. 1400. The appellant or plaintiff in error, as the case may be, shall execute a bond, with two or more good and sufficient sureties, to be approved by the clerk, payable to the appellee or defendant in error, in a sum at least double the probable amount of the costs of the suit of both the appellate court and the court below, to be fixed by the clerk, conditioned that such appellant or plaintiff in error shall prosecute his appeal or writ of error with effect, and shall pay all the costs which have accrued in the court below or which may accrue in the appellate court.

Appeal, etc.,  
by party un-  
able to give  
cost bond.  
(Act May 3,  
1871, p. 74, §1.)  
(Acts 1879, ch.  
81, p. 90.)  
P.D. 6180.

ART. 1401. Where the appellant or plaintiff in error is unable to pay the costs of appeal, or give security therefor, he shall nevertheless be entitled to prosecute his appeal; but, in order to do so, he shall be required to make strict proof of his inability to pay the costs, or any part thereof. Such proof shall be made before the county judge of the county where such party resides, or before the court trying the case, and shall consist of the affidavit of said party, stating his inability to pay the costs; which affidavit may be contested by any officer of the court or party to the suit, whereupon it shall be the duty of the court trying the case, if in session, or the county judge of the county in which the suit is pending, to hear evidence and to determine the right of the party, under this act, to his appeal.

Appeal or writ  
of error, per-  
fected, when.

ART. 1402. When the bond, or affidavit in lieu thereof, provided for in the two preceding articles, has been filed and the previous requirements of this chapter have been complied with, the appeal or writ of error, as the case may be, shall be held to be perfected.

ART. 1403. The bond, or affidavit in lieu thereof, provided in the three preceding articles, shall not have the effect to suspend the judgment, but execution shall issue thereon as if no such appeal or writ of error had been taken.

Appeal, etc., on cost bond or affidavit, does not suspend execution.

ART. 1404. Should the appellant or plaintiff in error, as the case may be, desire to suspend the execution of the judgment, he may do so by giving instead of the bond, or affidavit in lieu thereof, mentioned in the four preceding articles, or in addition to such bond, a bond with two or more good and sufficient sureties, to be approved by the clerk, payable to the appellee or defendant in error, in a sum at least double the amount of the judgment, interest and costs, conditioned that such appellant or plaintiff in error shall prosecute his appeal or writ of error with effect, and in case the judgment of the appellate court shall be against him, that he shall perform its judgment, sentence or decree, and pay all such damages as said court may award against him.

Supersedeas bond.  
(Act May 13, 1846, p. 363, §136.)  
P. D. 1491.

ART. 1405. Where the judgment is for the recovery of land or other property, the bond shall be further conditioned that the appellant or plaintiff in error shall, in case the judgment is affirmed, pay to the appellee or defendant in error, the value of the rent or hire of such property in any suit which may be brought therefor.

Supersedeas bond, where judgment is for land or other property.  
*Ib.* §137.  
P. D. 1492.

ART. 1406. Upon the filing of the bonds mentioned in the two preceding articles, the appeal or writ of error shall be held to be perfected and the execution of the judgment shall be stayed, and should execution have been issued thereon, the clerk shall forthwith issue a supersedeas.

Judgment stayed and execution superseded.  
*Ib.* §140.  
P. D. 1495.

ART. 1407. The State of Texas shall not be required to give bond on any appeal or writ of error taken by it in any civil case.

No bond required of the state.

ART. 1408. Executors, administrators and guardians, appointed by the courts of this state, shall not be required to give bond on any appeal or writ of error taken by them in their fiduciary capacity.

Of executors, etc.  
(Act March 16, 1848, p. 106, §4.)  
P. D. 1503.

ART. 1409. In case of the death of any party entitled to an appeal or writ of error, the same may be taken by his executor, administrator or heir.

Executor, etc., may take appeal or writ of error.

ART. 1410. When an appeal or writ of error has been perfected, the clerk of the court shall, upon the application of either party, make out and deliver to him a transcript of the record of the cause.

Transcript to be made out and delivered.  
(Act May 13, 1846, p. 363, §139.)  
P. D. 1494.

ART. 1411. The transcript shall, except in the cases hereinafter provided, contain a full and correct copy of all the proceedings had in the cause.

Transcript to contain all proceedings, except, etc.  
*Ib.*

ART. 1412. If the pleadings or the judgment show an appearance of the defendant, in person or by attorney, the citation and returns shall not be copied into the transcript.

Citation and return omitted, when.

ART. 1413. The parties may, by an agreement in writing, with the approval of the judge, direct the clerk in making up the transcript for the appellate court to omit therefrom any designated portion of the proceedings not deemed material to the disposition of the cause in such appellate court, and in such case the transcript shall not embrace such portions of the proceedings.

Omission of unimportant proceedings, when.  
(Act Feb. 5, 1853, p. 110, §12.)  
P. D. 1516.

ART. 1414. The parties may, without the necessity of setting out all the proceedings at length, agree upon such a brief statement of the case and of the facts proven, with or without copies of any part of the proceedings as shall in their opinion enable the appellate court to determine whether there has been any error in the judgment; and if the judge shall approve and sign such statement, the same shall be filed among the papers of the cause and shall constitute a part of the record, and on appeal or writ of error shall be copied into the transcript in lieu of such proceedings themselves.

Agreed statement of pleadings and proof.  
*Ib.*

Transcript must contain, what.

ART. 1415. The transcript shall, in all cases, contain a copy of the final judgment, notice of appeal, petition for writ of error and citation in error, with return of service thereon, bond on appeal or writ of error, or affidavit in lieu thereof, and assignment of errors or such of them as there may be, and also a copy from the fee book of all the costs that have accrued in the cause.

Clerk's certificate and indorsement. (Act May 13, 1846, p. 363, §139.) P.D. 1494.

ART. 1416. The clerk shall certify to the correctness of the transcript, and sign the same officially with the seal of the court attached. Such certificate shall state whether the same be a transcript of all the proceedings in the cause, or the transcripts provided for in articles 1412, 1413 and 1414. The clerk shall indorse on the transcript the day on which it was demanded, and by whom, and the day on which it was delivered, and to whom, and shall sign his name officially thereto.

Case appealed, etc., to remain on docket till, etc.

ART. 1417. Where a cause shall be removed by appeal or writ of error to the appellate court, the cause shall remain, or be replaced on the docket to await the mandate of the appellate court.

Proceedings on return of mandate.

ART. 1418. Upon the return of the mandate, if the judgment of the court below be reversed by the appellate court, the cause shall stand for trial in its order on the docket.

Proceedings in case of affirmation of judgment.

ART. 1419. If the judgment of the court below be affirmed in the appellate court, the court below shall make such orders as may be necessary to carry out the judgment of the appellate court, and the cause shall be dropped from the docket.

## CHAPTER TWENTY.

### COSTS AND SECURITY THEREFOR.

	Article		Article
Each party responsible to officers for his own costs	1420	Where exception overruled	1426
Officers may demand payment of, up to adjournment of each term	1420a	Costs of several suits, etc	1427
May put bill of costs in hands of officer for collection, when	1420b	Where demand reduced by payment, etc.	1428
Same to have force of execution	1420b	Costs in actions of assault and battery, etc.	1429
Appeal not to prevent issuance of execution for costs	1420b	Costs of new trials	1430
Officer to levy for costs, when	1420c	Where judgment is arrested, etc.	1431
Costs demanded of attorney, when	1420c	On appeals and certiorari	1432
Fees for collecting costs, when allowed	1420c	The same	1433
Successful party to recover of his adversary	1421	Court may otherwise adjudge costs	1434
Taxes on law proceedings	1422	Clerk may require security for costs	1435
Fees of only two witnesses to any fact	1423	Defendant or any officer may require security	1436
Costs of motions	1424	Judgment on cost bond	1437
Costs where exception sustained	1425	Affidavit of inability to give cost bond	1438
		No security to be required of executors, etc	1439
		No security required by the state	1440
		Security may be required of intervenors, etc	1441
		Costs may be secured by other bonds	1442

Each party responsible to officers for his own costs. (Act May 13, 1846, p. 363, §126.) P.D. 1486. (Acts 1879, ch. 81, p. 90.)

ARTICLE 1420. Each party to any suit shall be responsible to the officers of the court for the costs incurred by himself.

Officers may demand payment of costs up to adjournment of each term. (Acts 1879, ch. 81, p. 90.)

ART. 1420a. It shall be lawful for the clerks of the district and county courts and justices of the peace, to demand payment of all costs due in each and every case pending in their respective courts, up to the adjournment of each term of said courts.

May put bill of costs in hands of officer for collection, when.

ART. 1420b. Should any party, against whom costs have been taxed under the provisions of this act, fail or refuse to pay the same, within ten days after demand for payment, it shall be lawful for the clerk or justice of the peace to make out a certified copy of the bill of costs then due, as herein provided for, and place the same in the hands of the sheriff or constable for collection, and such certified bill of costs shall have the force and effect of an execution. The removal of a case by appeal shall not prevent the district clerk, county clerk or justice of the peace from issuing his execution for costs, at the end of the term at which the appeal is taken.

Same to have force of execution.

Appeal not to prevent issuance of execution for costs. (Acts 1879, ch. 81, p. 90.)

- ART. 1420c. It shall be lawful for the sheriff or constable, upon demand and failure to pay said bill of costs, to levy upon a sufficient amount of property of the person from whom said costs may be due to satisfy the same, and sell such property according to the law governing sales under execution; *provided*, where such party is not a resident of the county where such suit is pending, then payment of such costs may be demanded of his attorney of record, and neither the clerk nor justice of the peace shall be allowed to charge any fee for making out such certified bill of costs, nor shall the sheriff or constable be allowed any fees for collecting said costs unless he is compelled to make a levy; and in case of levy or sale, he shall charge and collect the same fees as are allowed for collecting money under other executions.
- ART. 1421. The successful party to a suit shall recover of his adversary all the costs expended or incurred therein, except where it is or may be otherwise provided by law.
- ART. 1422. All taxes imposed on law proceedings shall be included in the bill of costs.
- ART. 1423. There shall not be allowed in any cause the fees of more than two witnesses to any one fact.
- ART. 1424. On all motions the court may give or refuse costs at its discretion, except where it is otherwise provided by law.
- ART. 1425. Where a pleading is excepted to, if such exception be sustained, all the costs of such exception and of the pleading adjudged to be insufficient, shall be taxed against the party filing such insufficient pleadings.
- ART. 1426. If such exception be overruled, all costs of such exception shall be taxed against the party taking the exception.
- ART. 1427. Where any plaintiff shall bring in the same court several suits against the same defendant for causes of action which should have been joined, he shall recover the costs of one action only; and the costs of the other actions shall be adjudged against him, unless sufficient reasons appear to the court for instituting several actions.
- ART. 1428. Where the plaintiff's demand is reduced by payment to an amount which would not have been within the jurisdiction of the court, the defendant shall recover his costs.
- ART. 1429. In all civil actions for assault and battery, slander and defamation of character, if the verdict or judgment shall be for the plaintiff, but for a less sum than twenty dollars, the plaintiff shall not recover his costs, but each party shall be taxed with the costs incurred by him in such suit.
- ART. 1430. The costs of all new trials may either abide the event of the suit or may be taxed against the party to whom the new trial is granted, as may be adjudged by the court at the time of granting such new trial.
- ART. 1431. When the judgment is arrested or the verdict set aside because of the insufficiency of the pleadings of the party in whose favor the verdict or judgment was rendered, the costs thereof shall be taxed against the party whose pleadings shall have been so adjudged insufficient.
- ART. 1432. In cases of appeal or certiorari taken by the party against whom the judgment was rendered in the court below, if the judgment of the court above be against him, but for a less amount, such party shall recover the costs of the court above, but shall be adjudged to pay the costs of the court below; if the judgment be against him for the same or a greater amount than in the court below, the adverse party shall recover the costs of both courts.

Officer to levy for costs, when.

Costs demanded of attorney, when.

Fees for collecting costs, when allowed. (Acts 1879, ch. 81, p. 90.)

Successful party to recover of his adversary.

*Ib.* §122. P.D. 1483.

Taxes on law proceedings. *Ib.* §124. P.D. 1484.

Fees of only two witnesses to any fact. *Ib.* §127. P.D. 1487.

Costs of motions. *Ib.* §121. P.D. 1482.

Cost where exception is sustained. *Ib.* §§122, 123. P.D. 1483, 12.

Where exception overruled. *Ib.*

Costs of several suits, etc. *Ib.* §49. P.D. 1482.

Where demand reduced by payments, etc. (Act Jan. 2, 1860, p. 5, §1.) P.D. 3446.

Costs in action of assault and battery, etc. (Act May 13, 1846, p. 368, §106.) P.D. 1487.

Costs of new trials. *Ib.* §118. P.D. 1474.

Where judgment is arrested, etc. *Ib.* §114. P.D. 1475.

On appeal and certiorari. (Act Aug. 13, 1870, p. 87, §12.) P.D. 6349.



The same.  
Ib.

ART. 1433. In cases of appeal or certiorari taken by the party in whose favor the judgment was rendered in the court below, if the judgment of the court above be in his favor for a greater amount, such party shall recover the costs of both courts; if the judgment be in his favor, but for the same or a less amount than in the court below, he shall recover the costs of the court below and pay the costs of the court above.

Court may otherwise adjudge costs.

ART. 1434. The court may, for good cause, to be stated on the record, adjudge the costs otherwise than as provided in the preceding articles of this chapter.

Clerk may require security for costs.  
(Act March 20, 1848, p. 184, §23.)  
P. D. 3833.

ART. 1435. The clerk may require from the plaintiff in a suit security for costs before issuing any process therein, but he shall file the petition and enter the same properly on the docket.

Defendant or any officer may require security.  
(Act March 16, 1848, p. 106, §1.)

ART. 1436. The plaintiff in any civil suit may, at any time before final judgment, upon motion of the defendant or any officer of the court interested in the costs accruing in such suit, be ruled to give security for the costs; and if such rule be entered against the plaintiff and he fail to comply therewith on or before the first day of the next term of the court, the suit shall be dismissed.

Judgment on cost bond.  
Ib. §2.

ART. 1437. All bonds given as security for costs shall authorize judgment against all the obligors in such bond for the said costs, to be entered in the final judgment of the cause.

Affidavit of inability to give.  
(Act May 13, 1846, p. 363, §3.)  
P. D. 1429.  
(Acts 1879, ch. 81, p. 91.)

ART. 1438. A party, who is required to give security for costs, may file with the clerk an affidavit that he is too poor to pay the costs of court, and is unable to give security therefor, and it shall thereupon be the duty of the clerk to issue process and to perform all other services required of him in the same manner as if the security had been given; *provided*, the clerk or justice of the peace shall have the right to contest, by proof or otherwise, the inability of the party to pay costs, or his inability to give security for the same, said contest to be tried by the judge or justice of the peace at the next term after the filing of the contest.

No security to be required of executors, etc.  
(Act March 16, 1848, p. 106, §4.)  
P. D. 1503.

ART. 1439. Executors, administrators and guardians appointed by the courts of this state, shall not be required to give security for costs in any suit brought by them in their fiduciary character.

No security required of state.

ART. 1440. The state shall not in any case be required to give security for costs.

Security may be required of intervenors, etc.

ART. 1441. The provisions of this chapter relating to security for costs by the plaintiff shall also apply to an intervenor, and to a defendant who seeks a judgment against the plaintiff on a counter claim after the plaintiff shall have discontinued his suit under the provisions of this title relating to discontinuance.

Costs may be secured by other bonds, etc.

ART. 1442. Where the costs are secured by the provisions of an attachment or other bond filed by the party required to give security for costs, no further security shall be required.

CHAPTER TWENTY-ONE.

GENERAL PROVISIONS.

<i>Miscellaneous provisions.</i>	Article	<i>Appointment of receivers.</i>	Article
Process, requisites of.....	1443	Receivers to be appointed in certain cases.....	1461
Subpœnas.....	1444	Application, evidence, etc.....	1462
No paper considered filed, unless, etc.....	1445	Notice of application for.....	1463
No mandamus on <i>ex parte</i> hearing.....	1446	Amount of bond to be fixed.....	1464
Vouchers, wager of battle, etc., repealed.....	1447	Certain persons shall not be appointed.....	1465
New trials granted when damages too small.....	1448	Bond and oath of.....	1466
Several counts, some good and others bad.....	1449	Certificate of appointment.....	1467
Suits consolidated, when.....	1450	Powers of receiver.....	1468
Officers failing, etc., punished for contempt and liable for damages.....	1451	Court may remove.....	1469
		Rules of equity practice to govern.....	1470
		<i>Appointment of auditors.</i>	
<i>Motions.</i>		Auditor appointed, when.....	1471
Motion docket.....	1452	Report to be verified by affidavit.....	1472
Service of motion, how made.....	1453	Shall be admitted in evidence, but, etc.....	1473
Notice of motion in pending suits.....	1454	Compensation of.....	1474
Motions disposed of, when.....	1455		
Notice of motion not in pending suit.....	1456	<i>Substitution of lost records and papers.</i>	
Disposed of, when.....	1457	Lost records and papers supplied on motion.....	1475
<i>Deposit of money, etc., in court.</i>		Motion, requisites of.....	1476
Custody of money and other articles deposited.....	1458	If substitutes agreed to.....	1477
Officer shall deliver funds, etc., to his successor.....	1459	If not agreed to court may hear proof.....	1478
Not to exempt officer and his sureties from liability, etc.....	1460	Adverse party may supply.....	1479
		Parties may agree on brief statement.....	1480
		Substituted copies constitute record.....	1481

MISCELLANEOUS PROVISIONS.

ARTICLE 1443. The style of all writs and process shall be "The State of Texas," and unless otherwise specially provided by law, every such writ and process shall be directed to the sheriff or any constable of the proper county; shall be made returnable on the first day of the next term of the court after the issuance thereof; and shall be dated and tested by the clerk with the seal of the court impressed thereon, and the date of its issuance shall be noted on the same.

Process, requisites of. (Const., art. 5, §12; acts Nov. 12, 1866, p. 199, §1; May 13, 1846, p. 363, §10.) P.D. 1431.

ART. 1444. Subpœnas shall be issued without the seal of the court, and may be made returnable forthwith, or on any day for which the trial of the cause may be set.

Subpœnas. *Ib.*

ART. 1445. No paper shall be considered as filed in the proceedings of any cause, unless the clerk shall have indorsed thereon the day on which it was filed, and have signed his name officially thereto.

No paper considered filed, unless, etc. *Ib.* §35. P.D. 1445.

ART. 1446. No mandamus shall be granted on an *ex parte* hearing, and any peremptory mandamus granted without notice shall be abated on motion.

No mandamus on *ex parte* hearing. (Act May 11, 1846, p. 300, §4.) P.D. 1407.

ART. 1447. All vouchers, views, essoins, and also trials by wager of battle and wager of law, shall stand repealed.

Vouchers, wager of battle, etc., repealed. (Act May 13, 1846, p. 363, §107.) P.D. 1468.

ART. 1448. New trials may be granted, as well when the damages are manifestly too small as when they are too large.

New trials granted where damages too small. *Ib.* §111. P.D. 1472.

ART. 1449. Where there are several counts in the petition, and entire damages are given, the verdict or judgment, as the case may be, shall be good, notwithstanding one or more of such counts may be defective.

Several counts, some good and others bad. *Ib.* §105. P.D. 1460.

ART. 1450. Whenever several suits may be pending in the same court, by the same plaintiff, against the same defendant, for causes of action which may be joined, or where several suits are pending in the same court, by the same plaintiff, against several defendants, which may be joined,

Suits consolidated, when. *Ib.* §48. P.D. 1451.

the court in which the same are pending may, in its discretion, order such suits to be consolidated.

Officers failing,  
etc., punished  
for contempt  
and liable for  
damages.  
*Ib.* §20.  
P.D. 1436.

ART. 1451. Every clerk, sheriff, constable, or other officer, neglecting or refusing to perform any duty required of him under the provisions of this title shall, in addition to the punishment prescribed in the Penal Code, be punished as for a contempt of court and shall also be liable to damages at the suit of any person injured.

#### MOTIONS.

Motion docket.  
*Ib.* §53.  
P.D. 1453.

ART. 1452. The clerk shall keep a motion docket in which he shall enter every motion filed in his court, the number of the suit in which it is made, if it relates to a suit pending, the names of the parties and their attorneys, with a brief statement of the nature of the motion.

Service of mo-  
tion, how  
made.  
(Act May 13,  
1846, p. 363,  
§96.)  
P.D. 1463.

ART. 1453. Whenever in the commencement or progress of any suit it shall be necessary to serve any notice on any party to such suit, such notice may be served either by an officer authorized by law to serve original process of the court in which suit is brought or may be pending, or by any person who would be a competent witness upon the trial of such suit; every such notice may be served in like manner as an original writ, either on the party or his attorney of record; and the return of such notice, when made by an officer, or when made by any other person, and verified by the affidavit of such person, shall be received as evidence of the fact of service, subject to be repelled by contrary proof.

Notice of mo-  
tion in pend-  
ing suits.

ART. 1454. Notice of motions in a suit pending is given by the filing of the motion and entry thereof in the motion docket during the term.

Motions dis-  
posed of, when.  
*Ib.* §54.  
P.D. 1454.

ART. 1455. All motions relating to a suit pending, which do not go to the merits of the case, may be disposed of at any time before the trial of the cause.

Notice of mo-  
tion not in  
pending suit.  
(Act May 11,  
1846, p. 200, §5.)  
P.D. 1468.

ART. 1456. Where a motion does not relate to a pending suit, and where the time of service is not elsewhere prescribed, the adverse party shall be entitled to three days' notice of the motion.

#### DEPOSIT OF MONEY, ETC., IN COURT.

Disposed of,  
when.  
(Act May 13,  
1846, p. 363, §55.)  
P.D. 1455.

ART. 1457. All motions, not relating to a suit pending, shall be taken up and disposed of in their order as other suits are required to be.

Custody of  
money and  
other articles  
deposited.  
(Act May 19,  
1876, p. 7, §1.)

ART. 1458. Whenever during the progress of any cause, any money, debt, scrip, instrument of writing, or other article shall be paid or deposited in court to abide the result of any legal proceedings, the officer having custody thereof, shall seal up the identical money, or other article received by him, in a secure package and deposit it in some safe or bank vault, keeping it always accessible and subject to the control of the court; and he shall also keep in his office, and as part of the records thereof, in a well-bound book, a correct statement showing each and every item of money and property so received by him, on what account received, and what disposition has been made of the same.

Officer shall  
deliver funds,  
etc., to his  
successor.  
*Ib.* §2.

ART. 1459. On the expiration of his term of office, such officer shall turn over to his successor all such trust funds and other property, and the record aforesaid, and shall take his receipt therefor.

Not to exempt  
officer and his  
sureties from  
liabilities, etc.  
*Ib.* §5.

ART. 1460. The provisions of articles 1458 and 1459 shall not exempt any officer or his sureties from liability on his official bond, for any neglect or other default, in regard to the funds therein mentioned.

#### APPOINTMENT OF RECEIVERS.

Receiver to be  
appointed in  
certain cases.

ART. 1461. Judges of the district and county courts, in term time or in vacation, may appoint a receiver in suits pending in said courts, when no other adequate remedy is given by law for the protection and preservation of property or the rights of parties therein, pending litigation in respect thereto.

ART. 1462. The application for the appointment of a receiver shall be in writing supported by affidavit. The adverse party shall be permitted to file counter-affidavits, and the same, with such other testimony as the court may desire or admit, shall be considered on the hearing of the application.

Application,  
evidence, etc.

ART. 1463. Before appointing a receiver the court or judge shall require reasonable notice of the application to be given to the adverse party; and in the meantime may restrain such adverse party from removing, secreting or otherwise disposing of the property to the injury of the applicant.

Notice of appli-  
cation for.

ART. 1464. The order for the appointment of a receiver shall fix the amount of the obligation to be filed by him in a sum not less than double the value of the property stated in the complaint.

Amount of  
bond to be  
fixed.

ART. 1465. No party, or attorney, or person interested in a suit, shall be appointed receiver therein.

Certain per-  
sons shall not  
be appointed.

ART. 1466. Before entering upon his duties the receiver must be sworn to perform them faithfully and file a bond with two or more good and sufficient sureties, to be approved by the clerk, in the amount fixed by the order of appointment, to the effect that he will faithfully discharge the duties of receiver in the suit, and obey the orders of the court therein.

Oath and  
bond of.

ART. 1467. When the bond of the receiver has been approved, and he has taken the oath faithfully to perform his duties, which oath shall be indorsed on the bond, the clerk shall deliver to him a certificate of his appointment, which shall contain a description of the property.

Certificate of  
appointment.

ART. 1468. The receiver shall have power, subject to the control of the court, to bring and defend suits, to take and keep possession of the property, to receive rents, to collect debts, and generally to do such acts respecting the property as may be authorized by the court.

Powers of  
receiver.

ART. 1469. The court may, at any time, with or without an application therefor, and with or without notice, remove the receiver and appoint another.

Court may  
remove.

ART. 1470. In all matters relating to the appointment of receivers, and to their powers, duties and liabilities, and to the powers of the court in relation thereto, the rules of equity shall govern, whenever the same are not inconsistent with the provisions of this subdivision.

Rules of equity  
practice to  
govern.

#### APPOINTMENT OF AUDITORS.

ART. 1471. Whenever, in any suit, it shall appear that an investigation of accounts or examination of vouchers is necessary for the purposes of justice between the parties, the court shall appoint an auditor or auditors to state the accounts between the parties and to make report thereof to the court as soon as may be.

Auditor ap-  
pointed, when.  
*Ib.* §97.  
P.D. 3760.

ART. 1472. The report of the auditor shall be verified by his affidavit, stating that he has examined carefully the state of the account between the parties, and that his report contains a true statement thereof, so far as the same has come to his knowledge.

Report to be  
verified by  
affidavit.

ART. 1473. The report of the auditor shall be admitted in evidence, but may be contradicted by evidence from either party, where exceptions to such report, or of any items thereof, shall have been filed before the trial.

Shall be admit-  
ted in evidence,  
but, etc.  
*Ib.*

ART. 1474. The court shall award reasonable compensation to such auditor, which shall be allowed and taxed in the bill of costs, as in other cases.

Compensation  
of.

#### SUBSTITUTION OF LOST RECORDS AND PAPERS.

ART. 1475. Whenever the record and papers of a cause, or any part thereof, may be lost or destroyed, either before or after the trial, the same may be supplied by either party, on motion before the court, upon three days' notice to the adverse party or his attorney.

Lost records  
and papers  
supplied, on  
motion.  
(Act Feb. 11,  
1850, p. 160, §1.)  
P.D. 4969.

Motion, requisites of.  
*Ib.* §2.  
P.D. 4970.

ART. 1476. Such motion shall be in writing and signed by the party or his attorney, and shall be verified by affidavit. It shall state the loss or destruction of such record or papers, and shall be accompanied by certified copies of the originals, if they can be had, and if not, then substantial copies thereof as near as may be.

If substitutes agreed to.

ART. 1477. If the adverse party admit the correctness of such copies, and the court be satisfied that they are correct copies in substance of the originals, an order shall be made substituting such copies for the originals.

If not agreed to, court may hear proof, etc.

ART. 1478. If their correctness be not admitted, or if the court do not find them to be correct, the parties shall submit their respective statements to the judge, and he shall hear proof as to the contents of such lost records and papers, and correct copies thereof shall be made up under the direction of the judge.

Adverse party may supply.

ART. 1479. The adverse party may, in the same proceedings, supply any other portions of such records and papers desired by him.

Parties may agree on brief statement, etc.

ART. 1480. The parties may, by consent in writing, with the approval of the judge, agree on a brief statement of the matters contained in such lost records and papers, and the court may by an order substitute such statement for the lost originals.

Substituted copies constitute record.  
(Act to adopt and establish R.C.S., passed Feb. 21, 1879.)

ART. 1481. Such substituted copies, or brief statement of their contents as the case may be, made up under the preceding articles of this subdivision, shall be filed with the clerk, and shall constitute a part of the record of the cause, and shall have all the force and effect of the originals.

## TITLE XXX.

### Courts—Criminal District.

#### CHAPTER ONE.

##### THE JUDGE.

	Article		Article
Judge shall be appointed.....	1482	May be removed from office, how.....	1486
His term of office.....	1483	May exchange or alternate with district	
Shall possess certain qualifications.....	1484	judge.....	1487
Shall reside in his district.....	1485		

ARTICLE 1482. There shall be appointed by the governor, by and with the advice and consent of the senate, a criminal district judge of the criminal district court for the district composed of the counties of Galveston and Harris. Judge shall be appointed. (Act July 23, 1870, p. 37, §6.) P.D. 6140.

ART. 1483. Said judge shall hold his office for the term of two years and until his successor is qualified. His term of office. *Ib.* (Const., art. 16, §30.)

ART. 1484. No person shall be appointed judge of said court who does not possess the following qualifications: Shall possess certain qualifications. (Const., art. 5, §7.)

1. He must be at least twenty-five years of age.

2. He must be a citizen of the United States.

3. He shall have been a practicing attorney or judge of a court in this state for the period of four years.

4. He shall have resided in said district for two years next before his appointment.

ART. 1485. Said judge shall reside in his district during his term of office. Shall reside in his district. *Ib.*

ART. 1486. Said judge may be removed from office for the same causes and in the manner provided by law for the removal from office of a district judge. May be removed from office, how. (Act July 23, 1870, p. 37, §8.) P.D. 6142.

ART. 1487. Said judge may exchange or alternate with any district judge in all criminal matters, as provided by law in the case of district judges. May exchange or alternate with any district judge. (Act May 18, 1871, p. 94, §2.) P.D. 6149.

#### CHAPTER TWO.

##### THE CLERK.

	Article		Article
Governor shall appoint clerks.....	1488	Duties and powers of clerks.....	1492
Clerk shall give bond.....	1489	Fees of clerks.....	1493
Shall take oath of office.....	1490	Salary of clerks.....	1494
Bond and oath shall be recorded.....	1491	Vacancy in office of clerk, how filled.....	1495

ARTICLE 1488. There shall be appointed by the governor a clerk of said court for each of said counties, who shall hold his office for the term of two years and until his successor is qualified. Governor shall appoint clerks, etc. (Act July 23, 1870, p. 37, §9.) P.D. 6143.

ART. 1489. The clerk so appointed shall, before entering upon the duties of his office, enter into bond in the sum of ten thousand dollars, payable to the State of Texas, with two or more good and sufficient sureties, conditioned as the bonds of the clerks of the district court, to be approved by the judge of said criminal district court. Clerk shall give bond. *Ib.*

Shall take oath of office.  
*Ib.*

ART. 1490. The said clerk shall also take and subscribe the oath of office prescribed by the constitution of the state.

Bond and oath shall be recorded.  
*Ib.*

ART. 1491. The bond and oath required by the two preceding articles shall be deposited and recorded in the office of the clerk of the county court of the county for which the clerk of said criminal district court has been appointed.

Duties and powers of clerks.  
*Ib.*

ART. 1492. The duties of the clerks of said criminal district court, in all matters appertaining to said court, shall be the same as the duties prescribed by law for clerks of the district court, and they shall also in said matters have the same powers as are conferred by law upon clerks of the district court.

Fees of clerks.  
*Ib.*

ART. 1493. Clerks of the criminal district court shall receive the same fees as are prescribed by law for clerks of the district and county court for the same services.

Salary of clerks.  
*Ib.*

ART. 1494. In addition to the fees provided for in the preceding article, said clerks shall receive a salary of one thousand dollars each per annum, to be paid by the counties for which they are appointed respectively.

Vacancy in office of clerk, how filled.  
*Ib.*

ART. 1495. When a vacancy occurs in the office of clerk of the criminal district court, the governor shall fill the same by appointment, and the person appointed shall hold the office for the unexpired term, and until his successor is qualified, and shall enter into bond and take the oath of office as heretofore prescribed in this chapter.

### CHAPTER THREE.

#### JURISDICTION OF THE CRIMINAL DISTRICT COURT.

	Article	Article
Original jurisdiction.....	1496	Jurisdiction over cases transferred to it... 1499
Appellate jurisdiction.....	1497	Jurisdiction over bail-bond, etc..... 1500
May grant <i>habeas corpus</i> , etc.....	1498	

Original jurisdiction.  
(Const., art. 5, §1, 16.)  
(Act July 23, 1870.)  
P.D. 6135.

ARTICLE 1496. The criminal district court shall have original and exclusive jurisdiction of all cases of felony and misdemeanor in the counties of Galveston and Harris, of which the district and county courts have original and exclusive jurisdiction under the law.

Appellate jurisdiction.  
(Const., art. 5, §16.)  
(Act May 18, 1871, p. 94, §3.)

ART. 1497. The said court shall have exclusive appellate jurisdiction over all criminal cases tried and determined by justices of the peace, mayors and recorders, in the said counties of Galveston and Harris, under the same rules and regulations provided by law for appeals from justices of the peace, mayors and recorders to the county court in criminal cases.

May grant *habeas corpus*, etc.  
P.D. 6136.

ART. 1498. The judge of said court shall have power to grant the writ of *habeas corpus*, mandamus, and all writs necessary to enforce the jurisdiction of his court, under the same rules and regulations which govern district judges.

Jurisdiction over cases transferred to it, etc.  
*Ib.*  
P.D. 6148.

ART. 1499. The said court shall have jurisdiction over all criminal cases heretofore transferred by law from other courts to said criminal district court, as fully in all respects as if said cases had been commenced in said court.

Jurisdiction over bail-bonds etc.

ART. 1500. The said court shall have jurisdiction over all bail-bonds and recognizances taken in proceedings had before said court, or that may be returned to said court from other courts, and may enter forfeitures thereon, and final judgment, and enforce the collection of the same in the same manner as is provided by law for the district court.

CHAPTER FOUR.

MISCELLANEOUS PROVISIONS.

	Article		Article
Seal of the court and its use.....	1501	Procedure.....	1505
Terms of the court.....	1502	Sheriffs shall attend upon the court.....	1506
Rules of practice, pleading and evidence.....	1503	Same power as district court.....	1507
Selection, etc., of juries.....	1504	Appeals from.....	1508

ARTICLE 1501. The said criminal district court in each of said counties of Galveston and Harris shall have a seal similar to the seal of the district court, with the words "Criminal District Court of ..... County" engraved thereon, an impression of which seal shall be attached to all writs and other process except subpoenas issuing from said court, and shall be used in the authentication of all official acts of the clerks of said court.

Seal of the court and its use.  
(Act July 23, 1870, p. 37, §3.)  
P.D. 6137.

ART. 1502. Said judge shall hold a term of said court in the city of Galveston, county of Galveston, on the first Mondays in the months of January, March, May, July and November, and in the city of Houston, county of Harris, on the first Mondays in the months of February, April, June, October and December of each year, and at such other times as such judge may order and appoint. The terms of said courts may continue four weeks, unless the business be sooner disposed of.

Terms of the court.  
Ib. §4.  
P.D. 6138.

ART. 1503. The practice in the said court shall be conducted according to the laws governing the practice of the district court, and the rules of pleading and evidence in the district courts shall govern.

Rules of practice, pleading and evidence.  
Ib. §5.  
P.D. 6139.

ART. 1504. All laws regulating the selection, summoning and impaneling of grand and petit juries in the district court shall govern the criminal district court so far as the same may be applicable.

Selection, etc., of juries.  
Ib. §11.  
P.D. 6145.

ART. 1505. All the rules of criminal procedure governing the district court shall apply to and govern said criminal district court.

Procedure.

ART. 1506. The sheriffs of said counties of Galveston and Harris shall attend upon said court for their respective counties, and shall receive the same fees for their services as they are entitled to by law for the same services in the district court.

Sheriffs shall attend upon the court.  
Ib. §12.  
P.D. 6146.

ART. 1507. In all matters over which said criminal district court has jurisdiction it shall have the same power as is conferred by law upon the district court, and shall be governed by the same rules in the exercise of such power.

Same power as district court.

ART. 1508. Appeals and writs of error may be prosecuted from said criminal district court to the supreme court or court of appeals, in the same manner and form as from the district court in like cases.

Appeals from.



TITLE XXXI.

Courts—Commissioners'.

CHAPTER ONE.

ORGANIZATION.

	Article	Article
Election and term of office of county commissioners.....	1509	Three members constitute a quorum, except, etc..... 1511
Court composed of whom and the presiding officer thereof.....	1510	Oath to be taken by county commissioners 1512 Vacancy in office of county commissioner, how filled..... 1513
<p><b>ARTICLE 1509.</b> Each county shall be divided into four commissioner precincts, in each of which precincts there shall be elected by the qualified voters thereof one county commissioner, who shall hold his office for two years, and until his successor is qualified.</p>		
<p><b>ART. 1510.</b> The said commissioners, together with the county judge, shall compose the commissioners' court, and the county judge when present shall be the presiding officer of said court.</p>		
<p><b>ART. 1511.</b> Any three members of the said court, including the county judge, shall constitute a quorum for the transaction of any business except that of levying a county tax.</p>		
<p><b>ART. 1512.</b> Before entering upon the duties of his office, the county judge and each commissioner shall take the oath of office prescribed by the constitution, and shall also take an oath that he will not be directly or indirectly interested in any contract with, or claim against the county in which he resides, except such warrants as may issue to him as fees of office; which oath shall be in writing and taken before some officer authorized to administer oaths, and together with the certificate of the officer who administered the same, shall be filed and recorded in the office of the clerk of the county court, in a book to be provided for that purpose.</p>		
<p><b>ART. 1513.</b> In case of vacancy in the office of commissioner, the county judge shall appoint some suitable person living in the precinct where such vacancy occurs, to serve as commissioner for such precinct until the next general election.</p>		

Election and term of office of county commissioners (Const., art. 5, §18.)  
(Act July 22, 1876, p. 51, §3.)  
Court composed of whom and the presiding officer thereof. (Const., art. 5, §18.)  
(Act July 22, 1876, p. 51, §2.)  
Three members constitute a quorum, except, etc. *Ib.* §12.  
Oath to be taken by commissioners. (Act July 22, 1876, p. 53, §16.)  
Vacancy in office of commissioner, how filled. *Ib.* §18.

CHAPTER TWO.

POWERS AND DUTIES.

	Article	Article
Certain powers of the court specified.....	1514	Shall send indigent sick to hospital, when... 1520
Power to levy tax.....	1515	May co-operate with cities and towns in sanitary regulations.....1520—Note
Court-house tax.....	1515—Note	May provide building, etc., for county court..... 1521
When new bonds are issued.....	1515—Note	Other powers, etc., of the court..... 1522
Certain tax shall not exceed, etc.....	1516	Duty as to school lands..... 1523
May scale old debts and fund the same.....	1516—Note	Shall provide seals for district and county court..... 1524
May compromise railroad bonds.....	1516—Note	To provide abstract book.....1524—Note
Tax shall not be levied, except, etc.....	1517	
Power to fill certain vacancies.....	1518	
How vacancies shall be filled.....	1519	
<p><b>ARTICLE 1514.</b> The said courts shall have power and it shall be their duty—</p>		
<p>1. To lay off their respective counties into precincts, not less than four</p>		

Certain powers of the court specified. (Const., art. 5, §18.)  
(Act July 22, 1876, p. 51, §§4, 9, 10.)

nor more than eight, for the election of justices of the peace and constables, and shall fix the times and places of holding the various justices' courts in their counties, and shall establish places in such precincts where elections shall be held.

2. To establish public ferries whenever the public interest may require.

3. To lay out and establish, change and discontinue public roads and highways.

4. To build bridges and keep the same in repair.

5. To appoint road overseers and apportion hands.

6. To exercise general control and superintendence over all roads, highways, ferries and bridges in their counties.

7. To provide and keep in repair court-houses, jails and all necessary public buildings.

8. To audit and settle all accounts against the county and direct their payment.

9. To provide for the support of paupers, and such idiots and lunatics as cannot be admitted into the lunatic asylum, residents of their county, who are unable to support themselves.

10. To provide for the burial of paupers.

11. To punish contempts by fine not to exceed twenty-five dollars, or by imprisonment not to exceed twenty-four hours, and in case of fine the party may be held in custody until the fine is paid.

12. To issue all such notices, citations, writs and process as may be necessary for the proper execution of the powers and duties imposed upon such court, and to enforce its jurisdiction.

ART. 1515. Said court shall have power to levy and collect a tax for county purposes, upon all subjects of taxation in their respective counties on which a tax may be levied by the state, but shall not levy more than one-half of the state tax in their respective counties for one year, for county purposes, except for the payment of debts incurred prior to April 18, 1876, and for the erection and repair of public buildings, under such limitations and with such restrictions as may be prescribed by law and the constitution of this state.

Power to levy tax.  
(Const., art. 7, §9.)  
Ib. §5.

NOTE—Section 1, chapter 31, acts 1879, is as follows:

Section 1. "The county commissioners' courts of any county where it may become necessary to construct, or to complete court-houses and jails, or to complete payment for construction of same, are hereby authorized and empowered to levy and collect an annual *ad valorem* tax, not to exceed fifty cents on the one hundred dollars in any one year, in said counties, to raise a fund to erect or complete, or to complete payment for the construction of court-houses and jails in said counties."

Court-house tax.

And see chapter 46, acts 1879, as to the duty of the court when new bonds are issued, to take up county bonds issued prior to the adoption of the present constitution. See appendix.—L.

When new bonds are issued.

ART. 1516. No tax levied for the purpose of paying debts incurred prior to the eighteenth day of April, A. D. 1876, shall exceed two and one-half mills on the dollar, and no tax levied for the erection or repair of public buildings shall exceed two and one-half mills on the dollar for any one year.

Certain tax shall not exceed, etc.  
Ib.

NOTE.—Chapter 54, acts 1879, authorizes counties, cities and towns to fund and scale their debts, issuing bonds, and substituting new for old bonds bearing interest not to exceed six per centum per annum. The law applies only to debts contracted prior to the eighteenth day of April, 1876, and requires an annual sinking fund of two per centum to be provided to meet the principal of the bonds issued, and the levying of an annual tax on all taxable property within their limits to pay such interest and provide said sinking fund.

May scale old debts and fund the same.

And by chapter 105, acts 1879, they are authorized to compromise bonds issued in aid of railroads or other works of internal improvement, and to issue new bonds. All laws in force as to levying and collecting taxes for payment of existing bonds to apply to the new bonds. See appendix for both acts in full.—L.

May compromise railroad bonds.

ART. 1517. No county tax shall be levied except at a regular term of the court and when all the members of said court are present.

Tax shall not be levied except, etc.  
Ib. §12.

Power to fill certain vacancies.

ART. 1518. The said court shall have power to fill vacancies in the following named county offices, viz: County judge, clerk of the county court, sheriff, county attorney, county treasurer, county surveyor, county hide inspector, assessor of taxes, collector of taxes, justices of the peace and constables.

How vacancy shall be filled, etc.

ART. 1519. Such vacancies shall be filled by a majority vote of the members of said court present and voting, and the person chosen to fill any vacancy shall hold the office until the next general election.

Shall send indigent sick to hospital, when. *Ib.* §31.

ART. 1520. In case there is a regular established public hospital in the county, the commissioners' court shall provide for sending the indigent sick of the county to such hospital; and if more than one such hospital exist in the county, the indigent patient shall have the right to select which one of them he shall be sent to.

May co-operate with cities and towns in sanitary regulations.

NOTE.—They may, by chapter 12, acts 1879, extra session, co-operate with the authorities of cities and towns, within the limits of their counties in constructing and providing for the payment for improvements to promote efficient sanitary regulations.

May provide building, etc., for county court. (Act Aug. 19, 1876, p. 211.)

ART. 1521. Said courts may, when necessary, provide buildings, rooms or apartments at the county seats, other than the court-house, for holding the sessions of the county courts.

Other powers, etc., of the court.

ART. 1522. Said courts shall have all such other powers and jurisdiction, and shall perform all such other duties as are now or may hereafter be prescribed by law.

Duty as to school lands. (Const., art. 7, §6.)

ART. 1523. It shall be the duty of the commissioners' court to provide for the protection, preservation and disposition of all lands heretofore granted, or that may hereafter be granted to the county for education or schools.

Court to make list of renters of school lands.

NOTE.—Section 3, chapter 92, acts 1879, makes it the duty of the court at its first term, after the first Monday in June in each year, to "make a list of the names of the persons controlling the public free school lands, the number of sections so controlled by each person, and the aggregate amount due from each person (as rent), at the rate of \$25 for each section inclosed and controlled." This list is to be recorded by the clerk, and a certified copy thereof furnished to the comptroller and to the collector of taxes for the county. See the appendix for the act in full.—L.

Shall provide seals for district and county courts.

ART. 1524. Said court shall provide the seals required by law for the district and county courts of their respective counties.

To provide abstract books.

NOTE.—Shall furnish assessors of taxes abstract books, as per chapter 27, acts 1879.—L.

## CHAPTER THREE.

### TERMS AND MINUTES OF THE COURT.

	Article		Article
Regular terms of the court.....	1525	Minutes of proceedings in vacation.....	1528
Special terms of the court.....	1526	To sit as board of equalization.....	1528—Note.
Minutes of the court.....	1527		

Regular terms of the court. (Act July 22, 1876, p. 53, §13.)

ARTICLE 1525. The regular terms of the commissioners' courts shall commence and be held at the court-house of their respective counties on the second Mondays in February, May, August and November in every year and may continue in session one week.

Special terms of the court. *Ib.*

ART. 1526. Special terms of said courts may be called by the county judge or any three of the county commissioners, and may continue in session until the business is completed.

Minutes of the court. *Ib.* §11.

ART. 1527. The court shall cause to be procured and kept in the clerk's office suitable books in which shall be recorded the proceedings of each term of the court, which record shall be read over and signed by the county judge or the member of the court presiding, at the end of each term and attested by the clerk.

ART. 1528. The clerk shall also record all the proceedings of said court authorized to take place in the vacation between the terms, and such record, so made in vacation, shall be read over and signed on the first day of the term of said court next after such proceedings took place. Minutes of proceedings in vacation. *Id.*

NOTE.—Chapter 47, acts 1879, requires the court to convene as a board of equalization, on the second Monday in June of each year, or as soon thereafter before the first day of July, as practicable, to receive all the assessment lists or books, of the assessors of their counties, for inspection, correction, equalization and approval. The act prescribes fully the powers, duties and mode of procedure of the court when sitting as such board. See appendix for the act in full.—L. To sit as a board of equalization.

## CHAPTER FOUR.

### MISCELLANEOUS PROVISIONS.

	Article		Article
Seal of the court.....	1529	Clerk shall issue process.....	1531
The clerk of the court and his duties.....	1530	Process shall be executed, when, etc.....	1532

ARTICLE 1529. Each commissioners' court shall have a seal, whereon shall be engraved a star with five points, the words "Commissioners' Court,..... county, Texas" (the blank to be filled with the name of the county), which seal shall be kept in the office of the clerk of said court, and shall be used in the authentication of all official acts of said court, or of the presiding officer or clerk of said court, in all cases where a seal may be necessary for the authentication of any of said acts. Seal of the court. (Act July 22, 1876, p. 53, §7.)

ART. 1530. The clerk of the county court shall be *ex officio* clerk of the commissioners' court, and it shall be the duty of such clerk to attend upon each term of said commissioners' court; to preserve and keep in his possession all books, papers, records and effects belonging thereto; to issue all notices, writs and process necessary for the proper execution of the powers and duties imposed upon such commissioners' court, and to perform all such other duties as may be prescribed by law. The clerk of the court and his duties. *Id.* §8.

ART. 1531. All notices, citations, writs and process issued from said court shall run in the name of "The State of Texas," and shall be directed to the sheriff or any constable of a county, and shall be dated and signed officially by the clerk, and shall have the seal of the court impressed thereon, except subpoenas, which need not be under seal. Clerk shall issue process. *Id.* §9.

ART. 1532. All process of said court, when not otherwise directed by law, shall be executed at least five days before the return day thereof, which return day shall be specified in the process. Subpoenas for witnesses may be executed and returned forthwith, when necessary. Process shall be executed when, etc. *Id.* §9.

TITLE XXXII.

Courts—Justices'.

CHAPTER ONE.

ELECTION AND QUALIFICATION OF JUSTICES.

	Article		Article
Justices, election and term of office.....	1533	Commission and qualification.....	1535
Appointed, how, in unorganized coun- ties.....	1533—Note	Vacancy, how filled.....	1536
Two justices in certain precincts.....	1534	Nearest justice to hold court, when.....	1537
		Justice disqualified, when.....	1538

Justices, elec-  
tion and term  
of office.  
(Const., art. 5,  
§18.)  
(Act Aug. 17,  
1876, p. 154, §1.)

Appointed,  
how, in unor-  
ganized coun-  
ties.

Two justices in  
certain pre-  
cincts.  
*Id.*

Commission  
and qualifica-  
tion.  
(Const., art. 4,  
§20.)  
(Act Aug. 17,  
1876, p. 155, §28.)

Vacancy, how  
filled.  
(Const., art. 6,  
§28.)  
(Act Aug. 17,  
1876, p. 155, §2.)

Nearest justice  
to hold court,  
when.  
(Act Aug. 17,  
1876, p. 155, §25.)

Justice dis-  
qualified when.  
(Act Aug. 17,  
1876, p. 164,  
§34.)

ARTICLE 1533. There shall be elected by the qualified voters of each justice's precinct in the several counties of this state, at each biennial election, one justice of the peace, who shall hold his office for two years, and until his successor shall be elected and qualified.

NOTE.—Section 3, chapter 79, acts 1879, provides:  
Section 3. "The commissioners' courts of the several counties, to which unorganized counties are attached for judicial purposes, shall have power to appoint a justice of the peace \* \* \* for each of the unorganized counties attached to said counties for judicial purposes, in accordance with the provisions of the law now in force, authorizing such appointments in organized counties."—L.

ART. 1534. Where in any such justice's precinct there may be a city of eight thousand or more inhabitants, there shall be elected two justices of the peace.

ART. 1535. Each justice of the peace shall be commissioned as justice of the peace of his precinct and *ex officio* notary public of his county, and shall take the oath of office prescribed in the constitution, and give the bond elsewhere prescribed for notaries public.

ART. 1536. Where any vacancy shall occur in the office of a justice of the peace, the same shall be filled by some person appointed by the commissioners' court of the county, who shall hold his office until the next general election, and until his successor shall be elected and qualified.

ART. 1537. During the period of such vacancy, or whenever the justice of the peace in any precinct shall be absent, or unable or unwilling to perform the duties of his office, the nearest justice of the peace in the county may perform the duties of the office until such vacancy shall be filled, or such absence, inability or unwillingness shall cease.

ART. 1538. No justice of the peace shall sit in any cause where he may be interested, or where he may be related to either party within the third degree of consanguinity or affinity.

CHAPTER TWO.

POWERS AND JURISDICTION.

	Article		Article
Jurisdiction in civil cases.....	1539	Other jurisdiction conferred by law.....	1543
To enter forfeiture of bail-bonds.....	1540	No jurisdiction in certain cases.....	1544
To punish contempts.....	1541	To proceed with unfinished business.....	1545
To issue writs of garnishment, etc.....	1542		

Jurisdiction  
in civil cases.  
(Const., art. 5,  
§19.)  
(Act Aug. 17,  
1876, p. 155,  
§3, 4.)

ARTICLE 1539. The courts of justices of the peace shall, in addition to the powers and duties elsewhere provided for, have and exercise original jurisdiction in civil matters of all cases where the amount in con-

trovcrsy is two hundred dollars or less, exclusive of interest, of which exclusive original jurisdiction is not given to the district or county courts, and of all cases of forcible entry and detainer. They shall also have power to foreclose mortgages and enforce liens on personal property, where the amount in controversy is within their jurisdiction, as above provided.

ART. 1540. Justices of the peace shall also have power to enter forfeitures of bail-bonds given for the appearance of parties or witnesses in their courts, and to render judgments thereon, without regard to the amount of such bond.

To enter forfeitures of bail-bonds.  
*Ib.* §3.

ART. 1541. They shall have power to punish any party guilty of a contempt of court by fine not to exceed twenty-five dollars and by imprisonment not exceeding one day.

To punish for contempts.  
*Ib.*

ART. 1542. They shall have the same power in cases within their jurisdiction as judges and clerks of the district and county courts have to issue writs of attachment, garnishment and sequestration.

To issue writs of garnishment, etc.  
*Ib.* §26.

ART. 1543. They shall also have and exercise jurisdiction over all other matters not hereinbefore enumerated that are or may be cognizable before a justice of the peace under any law of this state.

Other jurisdiction conferred by law.  
(Act Aug. 17, 1876, p. 155, §3.)

ART. 1544. Justices' courts have no jurisdiction of suits in behalf of the state to recover penalties, forfeitures and escheats, of suits for divorce, of suits to recover damages for slander or defamation of character, suits for the trial of title to land, or of suits for the enforcement of liens on land.

No jurisdiction in certain cases.  
(Const., art. 5, §8.)

ART. 1545. Every justice of the peace shall have power and it shall be his duty to proceed with all unfinished business of his office in like manner as if such business had been originally commenced before him.

To proceed with unfinished business.  
(Act Aug. 17, 1876, p. 156, §6.)

## CHAPTER THREE.

### TERMS OF THE COURT.

	Article		Article
Monthly terms.....	1546	May hold from day to day, etc.....	1548
Times and places of holding.....	1547	Failure of term.....	1549

ARTICLE 1546. Each justice of the peace shall hold a term of his court for civil business once in each month, and may transact such business out of term time as is or may be authorized by law.

Monthly terms.  
*Ib.* §25.  
(Act Aug. 14, 1870, p. 87, §13.  
P. D. 6357.

ART. 1547. The justice or justices residing at the county seats, shall hold the regular terms of their courts at their offices on the last Monday of each month, and all the other justices shall hold the regular terms of their courts at their respective offices at such time as may be prescribed by the commissioners' court of the county.

Times and places of holding.  
(Const., art. 5, §19.) *Ib.* §25.

ART. 1548. The justices may hold the courts from day to day until all business shall be disposed of, or they may adjourn the court or the trial of any case to a particular day.

May hold from day to day, etc.  
*Ib.* §25.

ART. 1549. If from any cause the regular term of a justice's court shall not be opened on the day fixed therefor by law, the court shall be considered as adjourned until the next regular term thereof.

Failure of term.  
*Ib.* §25.

CHAPTER FOUR.

DOCKETS, BOOKS AND PAPERS.

	Article		Article
Justice's docket.....	1550	Books and papers to be delivered to suc-	
Fee book.....	1551	cessor.....	1554
Other books.....	1552	Delivery of, may be enforced.....	1556
Custody of books, papers, etc.....	1553		

Justice's docket.  
(Act Aug. 17, 1876, p. 156, §5.)

ARTICLE 1550. It shall be the duty of every justice of the peace to keep a civil docket in which he shall enter—

1. The title of all suits commenced before him.
2. The time when the first process was issued against the defendant, when returnable, and the nature thereof.
3. The time when the parties, or either of them, appeared before him, either with or without citation.
4. A brief statement of the nature of the plaintiff's demand or claim, and the amount claimed, and a brief statement of the nature of the defense made by the defendant, if any.
5. Every adjournment, stating at whose request and to what time.
6. The time when the trial was had, stating whether the same was by a jury or by the justice.
7. The verdict of the jury, if any.
8. The judgment rendered by the justice, and the time of rendering the same.
9. All applications for setting aside judgment or granting new trials, and the order of the justice thereon, with the date thereof.
10. The time of issuing execution, to whom directed and delivered, and the amount of debt, damages and costs, and when any execution is returned he shall note such return on said docket, with the manner in which it was executed.
11. All stays and appeals that may be taken, and the time when taken, the amount of the bond and the names of the sureties.

Fee book.  
*Ib.* §27.

ART. 1551. He shall also keep a fee book in which shall be taxed all costs accruing in every suit commenced before him.

Other books,

ART. 1552. He shall also keep such other dockets, books and records as may be required by law.

Custody of books, papers, etc.

ART. 1553. Each justice of the peace shall arrange and safely keep the dockets, books and papers transmitted to him by his predecessors, and all papers filed in any case in his court, subject at all reasonable times to the inspection of any party interested therein.

Books and papers to be delivered to successor.  
(Act Aug. 17, 1876, p. 156, §6.)

ART. 1554. When a justice of the peace shall vacate his office it shall be his duty to deliver up to his successor all dockets, books and papers pertaining to his said office; and it shall be the duty of any person having possession of dockets, books or papers belonging to the office of any justice of the peace, to deliver the same over to such justice on demand.

Delivery of, may be enforced.  
*Ib.*

ART. 1555. Should any person, having such dockets, books or papers, refuse to deliver the same on such demand, he may, upon motion, be attached and imprisoned by order of the county judge in term time or in vacation, until he shall make such delivery; but such motion shall be supported by affidavit, and three days' notice thereof shall be given to the party against whom such motion is made.

CHAPTER FIVE.

VENUE.

Article	Article
Suits to be brought in the county of defendant's residence, except, etc.....	1556
Residence of single man.....	1557
Where two justices in one precinct.....	1558
Where two justices in one city or town.....	1559
Where justice is disqualified.....	1560
Change of venue on affidavit.....	1561
By consent.....	1562
Where justice is disqualified.....	1563
Term "nearest justice" defined.....	1563a
Order of transfer.....	1564
Duty of justice in case of transfer.....	1565

Suits to be brought in the county of defendant's residence, except, etc. 16. §8.

ARTICLE 1556. Every suit in the court of a justice of the peace shall be commenced in the county and precinct in which the defendant, or one or more of several defendants resides, except in the following cases, and such other cases as are or may be provided by law:

1. Cases of forcible entry and detainer must be brought in the precinct where the premises, or a part thereof, are situated.

2. Suits against executors, administrators and guardians as such, must be brought in the county in which such administration or guardianship is pending, and in the precinct in which the county seat is situated.

3. Suits against counties must be brought in such county and in the precinct in which the county seat is situated.

In the following cases the suit may, at the plaintiff's option, be brought either in the county and precinct of the defendant's residence, or in that provided in each exception:

4. Suits upon a contract in writing promising performance at any particular place, may be brought in the county and precinct in which such contract was to be performed.

5. Suits for the recovery of rents may be brought in the county and precinct in which the rented premises, or a part thereof, are situated.

6. Suits for damages for torts may be brought in the county and precinct in which the injury was inflicted.

7. Suits against transient persons may be brought in any county and precinct where such defendant is to be found.

8. Suits against non-residents of the state, or persons whose residence is unknown, may be brought in the county and precinct where the plaintiff resides.

9. Suits for the recovery of personal property may be brought in any county and precinct in which the property may be.

10. Suits against private corporations, associations and joint stock companies may be brought in any county and precinct in which the cause of action, or a part thereof arose, or in which such corporation, association or company has an agency or representative, or in which its principal office is situated.

11. Suits against railroad and canal companies, or the owners of any line of mail stages or coaches, for any injury to person or property upon the road, canal or line of stages or coaches of the defendant, or upon any liability as a carrier, may be brought in any precinct through which the road, canal or line of stages or coaches may pass, or in any precinct where the route of such railroad, canal, stages or coaches may begin or terminate.

12. Suits against fire, marine or inland insurance companies may also be brought in any county and precinct in which any part of the insured property was situated; and suits against life and accident insurance companies or associations may also be brought in the county and precinct in which the persons insured, or any of them, resided at the time of such death or injury.

13. Suits against the owners of a steamboat or other vessel may be brought in any county or precinct where such steamboat or vessel may be found, or where the cause of action arose or the liability was contracted or accrued.



- Residence of single man. ART. 1557. The residence of a single man is where he boards.  
*Ib.*
- Where two justices in one precinct. ART. 1558. Where in any precinct there may be more than one justice of the peace, the suit may be brought before either of them.  
*Ib.*
- Where two or more justices in one city or town. ART. 1559. Where in any incorporated city or town there may be more than one justice of the peace, suit may be brought before either of them.  
*Ib.*
- When justice is disqualified. ART. 1560. If there be no justice of the peace qualified to try the suit in the proper precinct, the suit may be commenced before the nearest justice of the peace of the county who is not disqualified to try the same.  
*Ib.*
- Change of venue on affidavit. ART. 1561. If any party to a suit before any justice of the peace shall make an affidavit, supported by the affidavit of two other credible persons, citizens of the county, to the effect that they have good reason to believe and do believe that such party can not have a fair and impartial trial before such justice or in such justice's precinct, it shall be the duty of such justice to transfer such suit to the court of the nearest justice of the peace within the county not subject to the same or some other disqualification.  
*Ib.* §9.
- By consent. ART. 1562. The venue may also be changed to the court of any other justice of the peace of the county upon the written consent of the parties or their attorneys, filed with the papers of the cause.
- When justice is disqualified. ART. 1563. If a justice of the peace shall be disqualified from sitting in any civil case pending before him, he shall transfer the same to the nearest justice of the peace of the county who is not disqualified to try it.  
*Ib.* §9.
- The term "nearest justice" defined. ART. 1563*a*. By the term "nearest justice," as used in this chapter, is meant the justice whose place of holding his court is nearest to that of the justice before whom the proceeding is pending or should have been brought.
- Order of transfer. ART. 1564. The order of transfer in such cases shall state the cause of the transfer, and the name of the court to which the transfer is made, and shall require the parties and witnesses to appear before such court in its next ensuing term.
- Duty of justice in case of transfer. ART. 1565. When such order of transfer is made it shall be the duty of the justice who made the order immediately to make out a true and correct transcript of all the entries made on his docket in the cause, and certify thereto officially, and to transmit the same, with a certified copy of the bill of costs taken from his fee book, and the original papers in the cause, to the justice of the peace of the precinct to which the same has been transferred.

## CHAPTER SIX.

### SECURITY FOR COSTS.

Rules of district courts, etc., apply as to security for costs..... Article 1566

Rules of district courts, etc., apply as to security for costs.  
*Ib.* §27.

ARTICLE 1566. The rules governing the district and county courts in reference to requiring security for costs, and the effect of the rule for costs, and the penalty for non-compliance therewith, shall also govern the justices' courts, in so far as they can be applied to proceedings therein.

CHAPTER SEVEN.

PARTIES.

Same rules as to parties as in district courts, etc. Article 1567

ARTICLE 1567. The rules relating to parties in the district and county courts shall also govern the justices' courts, in so far as they can be applied thereto. Same rules as to parties as in district courts, etc.

CHAPTER EIGHT.

PROCESS AND SERVICE.

Process of justice's court, requisites of..... <span style="float: right;">Article 1568</span> Citation to be issued ..... <span style="float: right;">1569</span> Citation shall contain what..... <span style="float: right;">1570</span>	Justice may depute a person to serve process <span style="float: right;">Article 1571</span> Rules of district courts, etc., govern as to issuance and service of process..... <span style="float: right;">1572</span>
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ARTICLE 1568. Every writ or process from the courts of justices of the peace shall be issued by the justice, and shall be in writing and signed by him officially. The style thereof shall be "The State of Texas." It shall, except where otherwise specially provided by law, be directed to the sheriff or any constable of the proper county, and shall be made returnable to some regular term of such court, and the date of its issuance shall be noted thereon. Process of justice's court, requisites of. (Act Aug. 17, 1876, p. 158, §10.)

ART. 1569. When a claim or demand is lodged with a justice of the peace for suit, it shall be his duty to issue forthwith a writ or citation for the defendant, and if there be several defendants, residing in different counties, one citation shall be issued to each of such counties. Citation to be issued, when. *Ib.*

ART. 1570. The citation shall be directed to the sheriff or any constable of the county where the defendant is represented to be, and shall, in addition to the requirements of article 1568, require the officer to summon the defendant to appear and answer the plaintiff's suit, at some regular term of the court, stating the time and place of holding the same. It shall state the names of all the parties to the suit, and the nature of the plaintiff's demand. Citation shall contain, what. *Ib.*

ART. 1571. The justice of the peace may, in case of an emergency, depute any person of good character to serve any process, and the person so deputed shall for such purpose have all the authority of a sheriff or constable; but in every such case the justice shall indorse on the process a statement in writing, signed by him officially, to the effect that he has deputed such person to serve such process; and such person shall also take and subscribe an affidavit, to be indorsed on or attached to the process, to the effect that he will, to the best of his ability, execute the same according to law. Justice may depute person to serve process. *Ib.*

ART. 1572. All the rules governing the issuance and service, and the return of citations, issued out of the district and county courts, and providing for acceptance of service, and entering appearance, shall, except where otherwise provided by law, govern also the justices courts in so far as they can be applied to the proceedings of said court. Rules of district courts, etc., govern as to issuance and service of process. *Ib.*

CHAPTER NINE.

PLEADINGS.

Pleadings oral, but entered on docket..... <span style="float: right;">Article 1573</span> Pleadings, to be in writing and under oath... <span style="float: right;">1574</span>	Pleadings amendable..... <span style="float: right;">Article 1575</span>
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ARTICLE 1573. The pleadings in the justices courts shall be oral, but where otherwise specially provided; but a brief statement thereof shall be noted on the docket. Pleadings oral, but entered on docket. *Ib.* §§5, 12.

Certain pleadings to be in writing and under oath. *Ib.* §12. (Act to adopt and establish R.C.S., passed Feb. 21, 1879.)

ART. 1574. An answer or other pleading, setting up any of the following matters, shall be in writing and signed by the party or his attorney, and verified by affidavit:

1. That the suit is not commenced in the proper county or precinct.
2. That the plaintiff has not legal capacity to sue.
3. That the plaintiff is not entitled to recover in the capacity in which he sues.
4. That there is another suit pending in this state between the same parties for the same cause of action or counter claim.
5. That there is a defect of parties, plaintiff or defendant.
6. That the plaintiffs or defendants, suing or sued as partners, are not partners as alleged.
7. That the plaintiff or defendant, suing or sued as a corporation, is not a corporation as alleged.
8. That a written instrument, purporting to be signed by him and relied on by the other party, was not executed by him or by his authority.
9. That the indorsement or assignment of a written instrument, pleaded by the adverse party, was not executed by the party by whom it purports to have been executed or by his authority.
10. That a written instrument, pleaded by the adverse party, is without consideration, or that the consideration of the same has failed in whole or in part.
11. That an account pleaded by the adverse party and duly verified by affidavit as provided in article 2266, is not just, and in such case the answer shall set forth the items and particulars which are unjust.
12. That the contract sued upon is usurious.

Pleadings amendable.

ART. 1575. The pleadings may be amended in accordance with the rules governing amendments of pleadings in the district and county courts so far as the same are applicable.

## CHAPTER TEN.

### CONTINUANCE.

Cause may be continued, etc. *Ib.* §11.

Cause may be continued, etc. Article 1576  
 ARTICLE 1576. Any justice of the peace may for good cause shown, supported by affidavit, continue any suit pending before him to the next regular term of his court, or postpone the same to some other day of the term.

## CHAPTER ELEVEN.

### APPEARANCE AND TRIAL.

Appearance day. *Ib.* §18.

Proceedings where defendant fails to appear. *Ib.* §18.

	Article		Article
Appearance day.....	1577	Call of the non-jury docket ..	1582
Proceedings where defendant fails to appear.....	1578	Plaintiff failing to appear, may be non-sued.....	1583
Appearance noted.....	1579	Proceedings, evidence, etc., to conform to rules governing district courts, etc.....	1584
Jury trial may be demanded.....	1580	Judgment on trial without jury.....	1585
Court shall try case, when.....	1581		

ARTICLE 1577. The first day of each term of the justice's court after the return of process duly served in any cause shall be appearance day; but where the service was made by publication, the first day of the second term after such publication shall be appearance day.

ART. 1578. If the defendant, who has been duly served with a citation, shall fail to appear at or before 10 o'clock A. M., on appearance day, the justice shall proceed in the following manner:

1. If the plaintiff's cause of action be liquidated and proved by an

instrument of writing purporting to have been executed by the defendant, or be upon an open account duly verified by affidavit, the justice shall, whether the plaintiff appear or not, render judgment in his favor against the defendant for the amount of such written obligation or sworn account, after deducting all credits indorsed thereon.

2. If the plaintiff's cause of action is not so liquidated, and the plaintiff appear in person or by agent or attorney, the justice shall proceed to hear the testimony, and if it shall appear therefrom that the plaintiff is entitled to recover, judgment shall be rendered against the defendant for such amount as the testimony shows the plaintiff entitled to; otherwise judgment shall be rendered for the defendant.

ART. 1579. If the defendant appear, the same shall be noted on the docket and the cause shall stand for trial in its order.

Appearance noted.

ART. 1580. Either party may demand a jury as hereinafter provided.

Jury trial may be demanded. (Const., art. 1, §15.)

ART. 1581. If neither party shall demand and be entitled to a jury trial, the cause shall be tried by the justice without a jury.

Court shall try case, when.

ART. 1582. The docket of cases to be tried by the justice shall be called regularly, and the cases shall be tried when called, unless the same should be continued or postponed to some later period in the term.

Call of the non-jury docket. *Ib.* §41.

ART. 1583. If the plaintiff shall fail to appear when the cause is called in its order for trial, the justice may, on motion of the defendant, dismiss the suit.

Plaintiff failing to appear may be non-suited. *Ib.* §18.

ART. 1584. Upon a trial before the justice the proceedings shall conform as near as may be to the rules governing the district and county courts, and all the rules of evidence and the provisions for procuring the attendance of witnesses, for taking the depositions of witnesses and parties, and for taking and determining exceptions thereto, prescribed for the government of the district and county courts, shall, when not in conflict with the provisions of this title, govern the proceedings in the justices courts, so far as the same may be applicable.

Proceedings, evidence, etc., to conform to rules governing district courts, etc. *Ib.* §§14-16.

ART. 1585. After hearing the evidence the justice trying the case without a jury shall give judgment for the party who may appear to be justly entitled thereto.

Judgment on trial without jury. *Ib.* §11.

## CHAPTER TWELVE.

### TRIAL BY JURY.

Article	Article
Jury trial may be demanded..... 1586	Drawing of jury ..... 1600
Time of demand and deposit of jury fee... 1587	Challenge for cause ..... 1601
Jury trial day to be fixed..... 1588	Challenge for cause, proceedings on, same as in district courts, etc..... 1602
Summons for jury to be issued, when, etc... 1589	Peremptory challenges, when and how made..... 1603
Oath to sheriff, etc., summoning jury..... 1590	The jury..... 1604
Duty of the officer..... 1591	When the jury is incomplete..... 1605
Summons to juror, how served..... 1592	Jurors to be sworn..... 1606
Venire of jurors to be called..... 1593	Oath of jurors..... 1607
Excuses of jurors..... 1594	Mode of proceeding on trial before jury, same as in district courts, etc..... 1608
Defaulting jurors to be fined..... 1595	Verdict for specific articles to assess their value separately..... 1609
Other jurors summoned when necessary... 1596	Pay of jurors..... 1610
Call of jury docket..... 1597	
Challenge to the array, when..... 1598	
Challenge to the array, how made and proceedings thereon..... 1599	

ARTICLE 1586. Either party to any suit in the justice's court shall be entitled to a trial by jury upon making demand therefor and complying with the provisions of this chapter relating thereto.

Jury trial may be demanded. (Act Aug. 17, 1876, p. 159, §11.)

ART. 1587. Either party desiring a jury shall, on or before the first day of the term at which the case is to be tried, make a demand for a jury, which shall be noted by the justice in his docket; and shall also deposit a jury fee of three dollars, which shall also be noted on the docket, and the case shall be set down as a jury case.

Time of demand and deposit of jury fee.

Jury trial day to be fixed.

ART. 1588. The justice shall, on the first day of the term, fix a day for taking up the jury cases, if any, pending for trial at such term, and he may fix said first day of the term for that purpose.

Summons for jury to be issued, when, etc

ART. 1589. Whenever at any term of a justice's court there may be any jury cases pending for trial, it shall be the duty of the justice to issue a writ directed to the sheriff or any constable of the county, commanding him to summon six legally qualified jurors, or a greater number should the justice deem it necessary, to attend as a jury before such justice at a day and place to be named in the writ.

Oath to sheriff, etc., summoning jury. (Act Aug. 1, 1876, p. 80, §12.)

ART. 1590. The justice on delivering such writ to the officer shall administer to him the following oath: "You do solemnly swear that you will, to the best of your skill and ability, and without bias or favor toward any party, summon such jurors as may be ordered by the court; that you will select none but impartial, sensible and sober men, having the qualifications of jurors under the law; that you will not directly or indirectly converse or communicate with any jurymen touching any case pending for trial; and that you will not, by any means, attempt to influence, advise or control any jurymen in his opinion, in any case which may be tried by him; so help you God."

Duty of the officer.

ART. 1591. The officer receiving such writ shall immediately proceed to execute the command thereof by summoning the required number of jurors, to appear before the justice at the day and place named in the writ.

Summons to juror, how served.

ART. 1592. Such summons shall be by an oral notice by the officer to the juror that he is required to appear as a juror before such justice at the day and place named.

Venire of jurors to be called.

ART. 1593. At the time fixed for taking up the jury cases, the justice shall proceed to call the names of the jurors so summoned.

Excuses of jurors.

ART. 1594. The court may hear any reasonable excuse of a juror, supported by oath or affirmation; and may excuse him for the trial of any particular case, or for one or more days of the term.

Defaulting jurors to be fined.

ART. 1595. When any person so summoned as a juror shall fail or refuse to attend, it shall be the duty of the justice to enter a *fine nisi* against him for an amount not exceeding five dollars, to the use of the county, to be made final, with costs, unless such person shall, after being cited to do so, show some good and sufficient excuse for such failure, to be judged of by the justice.

Other jurors to be summoned when necessary.

ART. 1596. If the number of jurors present and not excused be less than six, or less than the justice shall deem necessary, he shall order the sheriff or constable to summon a sufficient number of others, having like qualifications, to make up the required number.

Call of jury docket.

ART. 1597. When the required number of jurors is present, the jury cases shall be called in their order on the docket.

Challenge to the array, when.

ART. 1598. When the parties to a jury case have announced themselves ready for trial, either party may challenge the array of jurors.

Challenge to the array, how made, and proceedings therein.

ART. 1599. The causes of such challenge, and the manner of making it, and the decision thereof and the proceedings when such challenge is sustained, shall be as provided for similar proceedings in the district and county courts in the title "Juries."

Drawing jury. (Act Aug. 1, 1876, p. 82, §22.)

ART. 1600. If no challenge to the array is made the justice shall write the name of all the jurors present on separate slips of paper, as nearly alike as may be, and shall place them in a box and mix them well, and shall then draw the names one by one from the box, and write them down as they are drawn, upon several slips of paper, and deliver one slip to each of the parties, or their attorneys.

Challenge for cause.

ART. 1601. If either party desire to challenge any juror for cause, such challenge shall now be made.

*Ib.*

**ART. 1602.** The causes of such challenge, and the manner of making it, and the decision thereof, and the proceedings, when such challenge is sustained, shall be as provided for similar proceedings in the district and county courts. Challenge for cause, proceedings on, same as in district court, etc.

**ART. 1603.** When a juror has been challenged for cause his name shall be erased from the slips furnished to the parties; and if there be remaining on such slips as many as six names, the parties shall proceed to make their peremptory challenges, if they desire to make any, which shall be governed by the same rules as are prescribed for the district and county courts. Peremptory challenges, when and how made.

**ART. 1604.** When the parties have made their peremptory challenges, or when they decline to make any, they shall deliver their slips to the justice who shall call off the first six names on the slips that have not been erased, who shall constitute the jury to try the case. The jurors not called shall retire. The jury.

**ART. 1605.** Where by peremptory challenges the jury is left incomplete the justice shall direct the sheriff or constable to summon others to complete the jury, and the same proceedings shall be had in selecting and impaneling such jurors as are had in the first instance. Where jury is left incomplete. (Act Aug. 1, 1876, p. 82, §22.)

**ART. 1606.** When the jury has been selected such of them as have not been previously sworn for the trial of civil cases, shall be sworn by the justice. Jurors to be sworn.

**ART. 1607.** The form of the oath shall be in substance as follows: "You and each of you do solemnly swear that in all cases between parties which shall be to you submitted, you will a true verdict render according to the law and the evidence, so help you God." Oath of jurors. P. D. 3984.

**ART. 1608.** The mode of proceeding on the trial before the jury shall be the same, so far as applicable, as is prescribed for the district and county courts in the chapters relating thereto, except that the justice shall not deliver any charge to the jury. Mode of proceeding on trial before jury same as in district courts, etc.

**ART. 1609.** Where the suit is for the recovery of specific articles, the jury shall, if they find for the plaintiff, assess the value of each of such articles separately according to the proof. Verdict for specific articles to assess their value separately. (Act Aug. 17, 1876, p. 163, §19.)

**ART. 1610.** Before the verdict is rendered the justice shall pay to each juror fifty cents out of the jury fee deposited in the case. Pay of jurors.

## CHAPTER THIRTEEN.

### THE JUDGMENT.

	Article		Article
Judgment upon verdict of jury.....	1611	Court may, in certain cases, enforce judgment by attachment, fine, etc.....	1616
Case tried without jury, decision in open court.....	1612	No judgment without citation.....	1617
Judgment.....	1613	Confession of judgment.....	1618
Costs.....	1614	Warrant of attorney to be filed.....	1619
Judgment for specific articles.....	1615	Same rules as govern district courts, etc....	1620

**ARTICLE 1611.** Where the case has been tried by a jury and a verdict has been returned by them, the justice shall announce the same in open court and note it in his docket, and shall proceed to render judgment thereon. Judgment upon verdict of jury.

**ART. 1612.** When the case has been tried by the justice without a jury, he shall announce his decision in open court and note the same in his docket, and shall proceed to render judgment thereon. Case tried without a jury, decision in open court. *Ib.* §17.

**ART. 1613.** The judgment shall be recorded at length in the justice's docket, and shall be signed by such justice. It shall clearly state the determination of the rights of the parties in the subject matter of con- Judgment.

troversy and the party who shall pay the costs, and shall direct the issuance of such process as may be necessary to carry the judgment into execution.

Costs.  
*Ib.* §§11, 14.

ART. 1614. The successful party in the suit shall recover his costs, except in cases where it is otherwise expressly provided.

Judgment for specific articles.  
*Ib.* §19.

ART. 1615. Where judgment is for the recovery of specific articles, their value shall be separately assessed, and the judgment shall be that the plaintiff recover such specific articles, if they can be found, and if not, then their value as assessed, with interest thereon at the rate of eight per cent. from the date of the judgment.

Court may, in certain cases, enforce judgment by attachment, fine, etc.  
(Act May 11, 1846, p. 200, §17.)  
P.D. 1420.

ART. 1616. The court shall cause its judgments to be carried into execution, and where the judgment is for personal property, and the verdict, if any, that such property has an especial value to the plaintiff, the court may award a special writ for the seizure and delivery of such property to the plaintiff, and may, in addition to the other relief granted in such case, enforce its judgment by attachment, fine and imprisonment.

No judgment without citation.  
(Acts Aug. 13, 1870, p. 87, §9; Aug. 17, 1876, p. 163, §19.)  
P.D. 6341.

ART. 1617. No judgment, other than a judgment by confession, shall be rendered by a justice of the peace against any party who has not entered an appearance, or accepted or waived service, unless such party has been cited either personally or by publication.

Confession of judgment.  
*Ib.* §17.

ART. 1618. Any party may appear in person, or by an agent or attorney, before any justice of the peace, without the issuance or service of process, and confess judgment for any amount within the jurisdiction of the justices courts, and such judgment shall be entered on the justice's docket, as in other cases; but in such cases the plaintiff, his agent or attorney, shall make and file an affidavit in writing, signed by him, to the justness of his claim.

Warrant of attorney to be filed.  
P.D. 1477.

ART. 1619. Where such judgment is confessed by an agent or attorney, the warrant of attorney shall be filed with the justice and noted in the judgment.

Same rules as govern district courts, etc.

ART. 1620. The rules governing the district and county courts in relation to judgments, shall apply also to the justices courts in so far as they may not conflict with some provision of this title.

## CHAPTER FOURTEEN.

### NEW TRIALS, ETC.

	Article	Article
Judgments by default, etc., may be set aside	1621	Notice..... 1624
New trials may be granted	1622	Where motion granted, cause continued, unless, etc..... 1625
Motion to be sworn to, except, etc.	1623	But one new trial to either party..... 1626

Judgments by default, etc., may be set aside.  
*Ib.* §19.

ARTICLE 1621. Any justice of the peace shall have power, at any time within ten days after the rendition of a judgment by default or of dismissal, to set aside such judgment, on motion in writing, for good cause shown, supported by affidavit. Notice of such motion shall be given to the opposite party at least one full day prior to the hearing thereof.

New trials may be granted.  
*Ib.* §17

ART. 1622. Any justice of the peace may, at any time within ten days after the rendition of any other judgment in any suit tried before him, grant a new trial therein on motion in writing, showing that justice has not been done him in the trial of the cause.

Motion to be sworn to, except, etc.  
*Ib.*

ART. 1623. If the grounds of the motion be other than that the verdict or judgment is contrary to the law or the evidence, or that the justice erred in some matter of law, the motion shall be supported by affidavit.

Notice.  
*Ib.* §§19, 17.

ART. 1624. All motions to set aside a judgment, or to grant a new trial, under the two preceding articles, shall be made within five days

after the rendition of the judgment, and one day's notice thereof shall be given to the opposite party or his attorney.

ART. 1625. Where a judgment is set aside, or a new trial is granted, the cause shall be continued to the next regular term of the court, unless otherwise agreed by the parties with the consent of the justice.

Where motion granted cause continued, unless, etc. *Ib.* §17.  
But one new trial to either party. *Ib.*

ART. 1626. But one such new trial shall be granted to either party.

## CHAPTER FIFTEEN.

### EXECUTION.

	Article		Article
Judgments enforced by execution, etc.	1627	Issued to another county to be attested by clerk	1633
Execution	1628	Dormant judgments, etc.	1634
Returnable in sixty days	1629	The rules governing executions generally apply, except, etc.	1635
Taxation of costs	1630		
Execution to issue after ten days	1631		
Within the ten days, when	1632		

ARTICLE 1627. The judgments of the courts of justices of the peace shall be enforced by execution or other appropriate process.

Judgments enforced by execution, etc. Execution.

ART. 1628. Such execution or other process shall conform to the requirements of article 1568. It shall describe the judgment and shall require the sheriff or constable of the proper county to execute the same, according to its terms, whether the same be to make a sum of money, or to deliver personal property, or to deliver possession of real estate, or to do some other thing; and if for money it shall state the rate of interest; and it shall also require the officer to make the costs which may have been adjudged against the defendant in execution, and the further costs of executing the writ. A certified copy of the costs, taxed against the defendant in execution according to the fee book up to the issuance of the execution, shall be attached to the writ.

ART. 1629. Such execution or other process shall be returnable in sixty days.

Returnable in sixty days. *Ib.* §22.

ART. 1630. Within ten days after the rendition of any final judgment of the justice's court it shall be the duty of the justice to tax up the costs in such suit, and to enter the same in his fee book.

Taxation of costs.

ART. 1631. On the eleventh day after the rendition of any final judgment, if the case has not been appealed, and no stay of execution has been granted, it shall be the duty of the justice to issue an execution for the enforcement of such judgment and the collection of the costs.

Execution to issue after ten days. *Ib.* §23.

ART. 1632. Such execution may be issued at any time before the eleventh day, upon the filing of an affidavit by the plaintiff in the judgment, or his agent or attorney, to the effect that the defendant is about to remove his property out of the county, or is about to transfer or secrete his property for the purpose of defrauding his creditors.

Within the ten days, when. *Ib.*

ART. 1633. Where an execution from a justice's court is sent to a county other than that in which the judgment was rendered, it shall be accompanied by a certificate of the county clerk and attested by his official signature and seal of office, that the officer issuing the same is an acting justice of the peace in said county; and the cost of procuring such certificate shall be collected as part of the costs of executing the writ.

Issued to another county to be attested by clerk. (Act Jan. 27, 1842, p. 51, §13.) P.D. 3734.

ART. 1634. If no execution is issued within twelve months after the rendition of the judgment, the judgment shall become dormant and no execution shall issue thereon unless such judgment be revived; but where the first execution has issued within the twelve months, the judgment shall not become dormant unless ten years shall have elapsed between the issuance of executions thereon, and execution may issue at any time within ten years after the issuance of the preceding execution.

Dormant judgments, etc. (Act Nov. 9, 1866, p. 118, §81, 3.) P.D. 7005, 7007.



The rules governing executions generally apply, except, etc. (Act Aug. 17, 1876, §22.)

ART. 1635. The rules prescribed for the issuance, levy and return of executions shall apply to the justices courts where not in conflict with some provision of this chapter.

CHAPTER SIXTEEN.

STAY OF EXECUTION.

	Article		Article
Stay of execution.....	1636	Judgment and execution on.....	1637

Stay of execution. *Ib.* §22.

ARTICLE 1636. At any time within ten days after the rendition of any judgment in a court of a justice of the peace, such justice may grant a stay of execution thereon for three months, if the person against whom such judgment was rendered shall, with one or more good and sufficient sureties to be approved by the justice, appear before him and acknowledge themselves and each of them bound to the successful party for the full amount thereof, with interest and costs.

Judgment and execution on. *Ib.*

ART. 1637. Such acknowledgment shall be entered by the justice in his docket, and shall constitute a judgment against the defendant and such sureties, upon which execution shall issue in case the same is not paid on or before the expiration of such stay.

CHAPTER SEVENTEEN.

APPEAL.

	Article		Article
Appeals may be taken.....	1638	Duty of justice in case of appeal.....	1640
Taken to district court, when.....	1638—Note	Transcript, etc., to be transmitted to county court.....	1641
Notice of appeal.....	1639		

Appeal may be taken. *Ib.* §21.

ARTICLE 1638. Any party to a final judgment in the justice's court may appeal therefrom to the county court where such judgment, or the amount in controversy, shall exceed twenty dollars exclusive of costs, and in such other cases as may be expressly provided by law.

Taken to district court, when.

NOTE.—Chapter 114, acts 1879, provides: "That in all counties in which the civil and criminal jurisdiction, or either, of the county courts has been transferred to the district courts, appeals and writs of certiorari may be prosecuted to remove a case tried before a justice of the peace to the district court, in the same manner and under the same circumstances under which appeals and writs of certiorari are allowed by general law to remove causes to the county court."—L.

Notice of appeal. *Ib.*

ART. 1639. The party appealing, his agent or attorney, shall give notice thereof in open court during the term at which the judgment was rendered, and shall afterward, within ten days from the date of the judgment, file with the justice a bond, with two or more good and sufficient sureties to be approved by the justice, in double the amount of the judgment, payable to the appellee, conditioned that the appellant shall prosecute his appeal to effect, and shall pay off and satisfy the judgment which may be rendered against him on such appeal.

Duty of justice in case of appeal. *Ib.*

ART. 1640. Whenever an appeal has been granted from the justice's court to the county court, it shall be the duty of the justice who made the order, immediately to make out a true and correct copy of all the entries made on his docket in the cause, and certify thereto officially, and transmit the same, together with a certified copy of the bill of costs taken from his fee book and the original papers in the cause, to the clerk of the county court of his county.

Transcript, etc., to be transmitted to county court. *Ib.*

ART. 1641. Such transcript and papers shall, if practicable, be transmitted to the clerk of the county court on or before the first day of the next term of such court; but if there be not time to make out and trans-

mit the same to the first term, they may be so transmitted on or before the first day of the second term of the court.

CHAPTER EIGHTEEN.

GENERAL PROVISIONS.

	Article		Article
Certiorari to remove cause to county court	1642	Rules governing district courts, etc., to	
Duty of justice on service of writ.....	1643	apply, except, etc.....	1644

**ARTICLE 1642.** Any cause tried before a justice of the peace, wherein the amount in controversy, or the judgment, exceeds twenty dollars, exclusive of costs, may be removed from such justice's court to the county court by certiorari, under the rules prescribed in the title and chapter relating thereto.

Certiorari to remove cause to county court.

**ART. 1643.** Whenever a writ of certiorari to remove any cause from the justice's court to the county court, shall be served on any justice of the peace, it shall be his duty immediately to make out a certified copy of the entries made on his docket, and of the bill of costs, as provided in case of appeals in article 1640, and transmit the same, together with the original papers in the cause, to the clerk of the county court in the manner and within the time prescribed in that and the succeeding article.

Duty of justice on service of writ of certiorari.

**ART. 1644.** Whenever the mode of proceeding in any particular case or matter is not prescribed by the provisions of this title, or of some other law or title specially relating thereto, the same shall be governed by the provisions of the title relating to the mode of proceeding in the district and county court in civil cases, in so far as the same are applicable.

Rules governing district courts, etc., to apply, except, etc.

TITLE XXXIII.

Descent and Distribution.

[For Descent of Homestead see title "Homestead."]

	Article		Article
Where intestate leaves no husband or wife.....	1645	Advancement brought into hotchpot.....	1651
Where intestate leaves husband or wife.....	1646	<i>Per capita</i> and <i>per stirpes</i> .....	1652
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Rule as to whole and half blood.....	1648	Passes charged with debts.....	1654
No corruption of blood, forfeiture of estate, etc.....	1649	<i>Jus accrescendi</i> abolished.....	1655
Persons not in being.....	1650	Illegitimate children and issue of void marriages.....	1656
		Bastards inherit from mother.....	1657
		Alienage no bar.....	1658

Where intestate leaves no husband or wife.  
(Act March 18, 1848.)  
P.D. 3419.

ARTICLE 1645. Where any person, having title to any estate of inheritance, real, personal or mixed, shall die intestate, as to such estate, and shall leave no surviving husband or wife, it shall descend and pass in partenary to his kindred, male and female, in the following course, that is to say—

1. To his children and their descendants.
2. If there be no children nor their descendants, then to his father and mother, in equal portions. But if only the father or mother survive the intestate, then his estate shall be divided into two equal portions, one of which shall pass to such survivor, and the other half shall pass to the brothers and sisters of the deceased, and to their descendants; but if there be none such, then the whole estate shall be inherited by the surviving father or mother.
3. If there be neither father nor mother, then the whole of such estate shall pass to the brothers and sisters of the intestate, and to their descendants.
4. If there be none of the kindred aforesaid, then the inheritance shall be divided into two moieties, one of which shall go to the paternal and the other to the maternal kindred, in the following course, that is to say: To the grandfather and grandmother in equal portions, but if only one of these be living, then the estate shall be divided into two equal parts, one of which shall go to such survivor, and the other shall go to the descendant or descendants of such deceased grandfather or grandmother. If there be no such descendants then the whole estate shall be inherited by the surviving grandfather or grandmother. If there be no surviving grandfather or grandmother, then the whole of such estate shall go to their descendants, and so on without end, passing in like manner to the nearest lineal ancestors and their descendants.

Where intestate leaves husband or wife.  
P.D. 3422.

ART. 1646. Where any person having title to any estate of inheritance, real, personal or mixed, shall die intestate as to such estate, and shall leave a surviving husband or wife, the estate of such intestate shall descend and pass as follows:

1. If the deceased have a child or children, or their descendants, the surviving husband or wife shall take one-third of the personal estate, and the balance of such personal estate shall go to the child or children of the deceased and their descendants. The surviving husband or wife shall also be entitled to an estate for life, in one-third of the land of the intestate, with remainder to the child or children of the intestate and their descendants.

2. If the deceased have no child or children, or their descendants, then the surviving husband or wife shall be entitled to all the personal estate, and to one-half of the lands of the intestate, without remainder to any person, and the other half shall pass and be inherited according to the rules of descent and distribution; *provided, however*, that if the deceased have neither surviving father or mother, nor surviving brothers and sisters, or their descendants, then the surviving husband or wife shall be entitled to the whole of the estate of such intestate.

ART. 1647. There shall be no distinction in regulating the descent and distribution of the estate of a person dying intestate between property which may have been derived by gift, devise or descent from the father, and that which may have been derived by gift, devise or descent from the mother; and all the estate to which such intestate may have had title at the time of death shall descend and vest in the heirs of such person in the same manner as if he had been the original purchaser thereof; *provided, however*, that if such intestate was the legally adopted heir of another, and dies, leaving no surviving husband or wife, and no children, then so much of his estate as was obtained by gift, devise or descent, from the person adopting him, shall descend to the person and his heirs who adopted such intestate.

No distinction on account of source of property, except in cases of adoption. (Act March 20, 1861.)

P. D. 3420. (Act to adopt and establish R.C.S. passed Feb. 21, 1879.)

ART. 1648. In cases before mentioned, where the inheritance is directed to pass to the collateral kindred of the intestate, if part of such collateral be of the whole blood, and the other part of the half blood only of the intestate, those of the half blood shall inherit only half so much as those of the whole blood; but if all be of the half blood they shall have whole portions.

Rule as to whole and half blood. (Act March 18, 1848.) P. D. 3424.

ART. 1649. No conviction shall work corruption of blood or forfeiture of estate, nor shall there be any forfeiture by reason of death by casualty, and the estates of those who destroy their own lives shall descend or vest as in case of natural death.

No corruption of blood, forfeiture of estate, etc. (Const. Bill of Rights, §21; act Mar. 18, 1848.)

P. D. 3418.

ART. 1650. No right of inheritance shall accrue to any person whatsoever other than to children or lineal descendants of the intestate, unless they be in being and capable in law to take as heirs at the time of the death of the intestate.

Persons not in being. (Act March 18, 1848.)

P. D. 3423.

ART. 1651. Where any of the children of a person dying intestate, or their issue, shall have received from such intestate in his lifetime any real, personal or mixed estate by way of advancement, and shall choose to come into the partition and distribution of the estate with the other distributees, such advancement shall be brought into hotchpotch with the whole estate, and such party returning such advancement shall thereupon be entitled to his proper portion of the whole estate; *provided*, that it shall be sufficient to account for the value of the property so brought into hotchpotch at the time it was advanced.

Advancements brought into hotchpotch. P. D. 3426.

ART. 1652. Where the children of the intestate's brothers and sisters, uncles and aunts, or any other relations of the deceased standing in the same degree, come into the partition, they shall take *per capita*, that is to say, by persons; and where a part of them being dead and a part living, the issue of those dead have right to partition, such issue shall take *per stirpes*, or by stocks, that is to say, the shares of their deceased parents.

*Per capita* and *per stirpes*. P. D. 3425.

ART. 1653. Upon the dissolution of the marriage relation by death, all the common property belonging to the community estate of the husband and wife shall go to the survivor if the deceased have no child or children; but if the deceased have a child or children, his survivor shall be entitled to one-half of said property and the other half shall pass to the child or children of the deceased.

Rule as to community estate. (Act March 20, 1840.) P. D. 4642.

ART. 1654. In every case the community estate passes charged with the debts against it.

Passes charged with debts. P. D. 5498.

*Jus accrescendi*  
abolished.  
(Act March 18,  
1848.)  
P.D. 3429.  
(*Ross vs. Arm-  
strong*, 25 Tex.  
sup., p. 366.)

ART. 1655. Where two or more persons hold an estate, real, personal or mixed, jointly, and one joint owner dies before severance, his interest in said joint estate shall not survive to the remaining joint owner or joint owners, but shall descend to and be vested in the heirs or legal representatives of such deceased joint owner in the same manner as if his interest had been severed and ascertained.

Illegitimate  
children and  
issue of void  
marriages.  
P.D. 3427.

ART. 1656. Where a man, having by a woman a child or children, shall afterward intermarry with such woman, such child or children, if recognized by him, shall thereby be legitimated and made capable of inheriting his estate. The issue also of marriages deemed null in law shall nevertheless be legitimate.

Bastards in-  
herit from  
mother.  
P.D. 3428.

ART. 1657. Bastards shall be capable of inheriting from and through their mother, and of transmitting estates, and shall also be entitled to distributive shares of the personal estates of any of their kindred, on the part of their mother, in like manner as if they had been lawfully begotten of such mother.

Alienage no  
bar.  
(Acts March 18,  
1848; Feb. 13,  
1854.)  
P.D. 44, 45, 46.

ART. 1658. In making title to land by descent, it shall be no bar to a party that any ancestor through whom he derives his descent from the intestate, is or hath been an alien; and every alien, to whom any land may be devised or may descend, shall have nine years to become a citizen of the state and take possession of such land, or shall have nine years to sell the same before it shall be declared forfeited or shall escheat to the government; *provided*, that the treaties of the United States with the nation to which such alien may belong do not otherwise direct; *and, provided further*, that aliens may take and hold any property, real or personal, in this state, by devise or descent from any alien or citizen, in the same manner in which citizens of the United States may take and hold real or personal estate by devise or descent within the country of **such alien**

# TITLE XXXIV.

## Elections.

### CHAPTER ONE.

#### TIME AND PLACE OF HOLDING ELECTIONS.

	Article		Article
Time of holding general elections.....	1659	City wards, etc., shall be election pre-	
Time of holding special elections.....	1660	cincts.....	1664
Hours of election and for one day only.....	1661	Election precincts shall be numbered.....	1665
Election precincts.....	1662	Place of holding election in each precinct	
Justices' precincts may be divided into		shall be numbered.....	1666
election precincts, but, etc.....	1663		

ARTICLE 1659. The next general election in the State of Texas shall be held on the first Tuesday next after the first Monday in November, A. D. 1880, and general elections shall be held every two years thereafter, at such places and under such regulations as may be prescribed by law.

Time of holding general elections.  
(Act Aug. 17, 1876, p. 169.)

ART. 1660. Special elections shall be held at such times and places as may be fixed by the law providing therefor, or as may be fixed by the authority empowered by law to order the same.

Time, etc., of holding special elections.

ART. 1661. All elections shall be held for one day only at each election, and the polls shall be open on that day from eight o'clock A. M. to six o'clock P. M.

Hours of election and for one day only.  
(Act Aug. 23, 1876, p. 307, §12.)

ART. 1662. The election precincts of the counties, as now established, shall constitute election precincts, but the commissioners' court of each county may, at the first regular term of said court for each year, change or discontinue any election precinct, or establish a new precinct or precincts, as to said court may seem expedient.

Election precincts.  
*Ib.* p. 306, §1.  
(See acts 1879, ch. 38.—L.)

ART. 1663. Justices' precincts may be divided into as many election precincts as the commissioners' court may deem expedient; but no election precinct shall be formed out of any two or more justices' precincts or parts thereof, and each justices' precinct shall contain at least one election precinct.

Justices' precincts may be divided into election precincts, but, etc.  
*Ib.*

ART. 1664. In each incorporated city, town or village, each ward shall constitute an election precinct.

City wards, etc., shall be election precincts.  
*Ib.*

ART. 1665. Each election precinct shall, by order of the commissioners' court, be numbered, and no two election precincts in the same county shall be designated by the same number.

Election precinct shall be numbered.  
*Ib.*

ART. 1666. There shall be designated by order of the commissioners' court, one place within each election precinct at which all elections in said election precinct shall be held.

Place of holding election in each precinct shall be designated.  
*Ib.*

## CHAPTER TWO.

## OFFICERS OF ELECTIONS.

	Article		Article
Presiding officers of elections to be appointed.....	1667	Judges and clerks of election shall be appointed, etc.....	1673
Qualification of presiding officers.....	1668	Oath to be administered to judges and clerks.....	1674
Shall act for what time.....	1669	Oath of presiding officer.....	1675
Certified copy of order of appointment shall be delivered to presiding officer....	1670	Officers of election may administer necessary oaths.....	1676
Voters may appoint presiding officer, when	1671	Powers of the judges of election.....	1677
Appointment by voters must be certified with election returns.....	1672	Compensation of officers of election.....	1678

Presiding officers of election to be appointed.  
(Act Aug. 23, 1876, p. 306, §1.)  
(See acts 1879, ch. 38.—L.)

ARTICLE 1667. At the first regular or called session of the commissioners' court of each county, in each year, or as soon thereafter as practicable, said court shall select and appoint some suitable and competent person in each election precinct to serve as presiding officers of elections in said precinct, and said appointment shall be noted upon the minutes of the court.

Qualification of presiding officer.  
Shall act for what time.

ART. 1668. No person shall be appointed presiding officer who is not a qualified voter of the precinct for which he is so appointed.

ART. 1669. A presiding officer appointed by the commissioners' court, shall continue to act as such for two years and until his successor is appointed.

Certified copy of order of appointment shall be delivered to presiding officer.

ART. 1670. Where a presiding officer of elections has been appointed by the commissioners' court, the clerk of said court shall make out a certified copy of the order of appointment, together with a certified copy of the order establishing the election precinct in which he is to preside, and deliver it to the sheriff, who shall deliver the same to such presiding officer.

Voters may appoint presiding officer, when.  
(Act Aug. 23, 1876, p. 307, §9.)

ART. 1671. In case the presiding officer appointed should fail to attend on the day of election, or refuse or fail to act, or in case no presiding officer has been appointed, it shall be lawful for the voters present at the precinct voting place on that day, to appoint from among the qualified voters of such precinct a presiding officer to act as such at that election; and the person so appointed shall be authorized to act as presiding officer as fully as if he had been appointed by the commissioners' court.

Appointment by voters shall be certified with election returns.  
*Ib.*

ART. 1672. Where a presiding officer has been appointed by the voters, as provided in the preceding article, the judges and clerks of the election at such precinct shall, in making the returns of such election, certify that the presiding officer was appointed from and by the voters at the precinct voting place on the day of such election, because there was no regular presiding officer in attendance, or because the regular presiding officer failed or refused to act, as the case may be.

Judges and clerks of election shall be appointed, etc.  
*Ib.* §8.

ART. 1673. The presiding officer of each election precinct shall, on or before the day of election, select from among the qualified voters of the precinct two judges and two clerks, such selection to be made from the different political parties, if demanded, as far as practicable, and there be present a sufficient number of the party making such demand who are willing and competent to serve in said positions; and the said judges and clerks, together with the presiding officers, shall be the managers of the election.

Oath to be administered to judges and clerks.  
*Ib.* §8.

ART. 1674. The presiding officer shall, before opening the polls, administer to each judge and clerk of election the following oath: "You do solemnly swear that you will well and truly conduct the election, without partiality or prejudice and agreeable to law, according to the best of your skill and understanding, so help you God."

Oath of the presiding officer.  
*Ib.*

ART. 1675. One of the judges of election shall, before opening the polls, administer to the presiding officer of election, the following oath: "You do solemnly swear that you will faithfully and impartially dis-

charge the duties of presiding officer of elections to the best of your skill and understanding, so help you God.”

ART. 1676. Presiding officers, judges and clerks of election are authorized to administer all oaths necessary or proper in the discharge of their duties as such officers, and to administer all oaths connected in any way with the holding of elections.

Officers of election may administer necessary oaths.  
*Ib.* §10.

ART. 1677. Judges of elections, while in the discharge of their duties as such, shall have the power of a district judge to preserve order and keep the peace. They may appoint special peace officers to act as such during the election, and they or either of them may issue warrants of arrest for felony or breach of the peace committed at such election directed to the sheriff or any constable of the county, who shall forthwith execute any such warrant, and shall, if so ordered by a judge of the election, commit the party arrested to jail during the election, but the party arrested shall first be permitted to vote, if entitled to do so; and, as soon as practicable after closing the polls, the party arrested shall be taken before the proper magistrate for examination or trial as in other cases.

Powers of the judges of elections.  
*Ib.* §30.

ART. 1678. The presiding officer, judges and clerks of election shall be entitled to receive as compensation for their services the sum of two dollars each for each election held by them, to be paid by the county treasurer of the county where such services are rendered, upon the order of the commissioners' court of such county.

Compensation of officers of election.

## CHAPTER THREE.

### ORDERING ELECTIONS.

	Article		Article
Governor shall order certain elections. . . .	1679	Forms shall be furnished by secretary of state, etc. . . . .	1683
County judge shall order certain elections. . . . .	1680	Special elections to fill vacancies. . . . .	1684
Writs of election shall be issued, etc. . . . .	1681	Twenty days' notice of any election shall be given. . . . .	1685
Writs of election shall be delivered to whom, etc. . . . .	1682	Who shall order, etc., town or city elections	1686

ARTICLE 1679. The governor shall by proclamation order all elections for state and district officers, electors for president and vice-president of the United States, members of congress, members of the legislature, and all other elections required to be ordered by him by the constitution or laws of the state.

Governor shall order certain elections.  
(Act Aug. 23, 1876, p. 306, §3.)

ART. 1680. It shall be the duty of the county judge of each county, or in case of vacancy in that office or any inability or failure of the county judge to act, then any two of the county commissioners, to order all elections for county and precinct officers, and all other elections required by law to be ordered by the county judge.

County judge shall order certain elections.  
*Ib.* §2.

ART. 1681. The county judge or county commissioners ordering an election shall issue writs of election, wherein shall be particularly stated the officer or officers to be chosen, or the question to be voted upon, or both as the case may be, and the day of election and a copy of the form of election returns furnished by the secretary of state shall accompany each writ.

Writs of election shall be issued, etc.  
*Ib.* §7.

ART. 1682. The writs of election and copies of the form of returns, as provided for in the preceding article, shall be delivered to the sheriff of the county, who shall, previous to the day of election, deliver the same to the presiding officer of each election precinct in which the election is ordered to be held, and in case there be no presiding officer in any such election precinct, the writ and form shall be delivered to the qualified voter of such election precinct who resides at or nearest to the voting place in such precinct.

Writs of election shall be delivered to whom, etc.



Forms shall be furnished by secretary of state, etc.  
*Ib.* §6.

ART. 1683. Forms of election notices, writs and returns shall be furnished by the secretary of state to the county judge of each county.

Special elections to fill vacancies.  
*Ib.* §5.

ART. 1684. In all cases of vacancy in any civil office of the county, district, or the state, by death, resignation, or otherwise, which by law is filled by special election, the officer or officers authorized by this chapter to order elections shall immediately make such order for an election, fixing the day, not exceeding thirty days off, to fill the unexpired time made vacant, and cause like notice to be given and issue writs as provided for general elections.

Twenty days' notice of any election shall be given.  
*Ib.* §4.

ART. 1685. Where any election is ordered, at least twenty days' notice of the same shall be given by notice posted up at the place or places designated for holding the election in each election precinct, specifying the time at which such election will be held, and the officer or officers to be chosen, or the question to be voted upon, or both, as the case may be; and it is hereby made the duty of the county judge of each county, or in case of vacancy in that office, or inability or failure to act, then any two of the county commissioners, to have said notices of election posted as required by this article.

Who shall order, etc., town or city elections.  
*Ib.* §23.

ART. 1686. In all city, town or village elections, where not otherwise provided for by the charter of said city or town, the mayor thereof, or in the event that office is vacant, or when the mayor is unable or fails to act, then any two of the aldermen shall order such elections, give notice thereof and appoint presiding officers, who shall hold the election and make returns to the mayor, under the same regulations and with like effect as in county elections, so far as applicable.

## CHAPTER FOUR.

### SUFFRAGE.

	Article	Article
Who are not qualified to vote.....	1687	"Residence" defined..... 1690
Who are qualified voters.....	1688	Who are qualified to vote in city elections, etc..... 1691
Voters shall vote in precinct where they reside, except, etc.....	1689	Challenge of vote..... 1692

Who are not qualified to vote.  
(Const., art. 6, §1.)  
(Act Aug. 23, 1876, p. 307, §13.)

ARTICLE 1687. The following classes of persons shall not be allowed to vote, to wit:

1. Idiots and lunatics.
2. All paupers supported by any county.
3. All persons convicted of any felony.
4. All soldiers, marines and seamen employed in the service of the army or navy of the United States.

Who are qualified voters.  
(Const., art. 6, §2.)  
*Ib.* §14.

ART. 1688. Every male person who is subject to neither of the disqualifications named in the preceding article, who shall have attained the age of twenty-one years, and who shall be a citizen of the United States, and who shall have resided in the state for one year next preceding an election, and the last six months within the district or county in which he offers to vote, shall be deemed a qualified voter; and every male person of foreign birth, subject to none of the disqualifications aforesaid, who, at any time before an election, shall have declared his intention to become a citizen of the United States in accordance with the federal naturalization laws, and shall have resided in this state one year next preceding such election, and the last six months in the county in which he offers to vote, shall also be deemed a qualified voter.

Voters shall vote in precinct where they reside, except, etc.  
(Act Aug. 23, 1876, p. 308, §14.)

ART. 1689. Voters in an organized county shall vote in the election precinct in which they reside. Voters in any unorganized county may vote in any election precinct in the county to which such unorganized county is attached for judicial purposes.

ART. 1690. The residence of a married man, if not separated from his wife, shall be where his wife resides. If a married man be separated from his wife he shall be considered, as to residence, a single man. The residence of a single man shall be where he usually sleeps.

Residence defined.  
*Ib.* §14.  
(See art. 1557.—L.)

ART. 1691. All qualified voters of the state who shall have resided for six months immediately preceding an election within the limits of any city, town or village, shall have the right to vote for all elective officers of such city, town or village; but in all elections to determine expenditure of money or assumption of debt, only those shall be qualified to vote who pay taxes on property in said city, town or village.

Who are qualified to vote in city, town, etc., elections. (Const., art. 6, §3.)  
*Ib.* §15.

ART. 1692. When any person offering to vote shall be objected to, the managers of elections, or either of them, shall examine the person offering to vote upon oath touching the points of such objection, and if such person fail to establish his qualification to vote to the satisfaction of a majority of the managers of the election, his vote shall be rejected. If his vote be received the word "sworn" shall be written by the clerks upon the poll lists opposite the name of such voter.

Challenge of vote. (Act March 16, 1848.)  
P.D. 3603

CHAPTER FIVE.

MANNER OF HOLDING AN ELECTION AND MAKING RETURNS THEREOF.

Article	Article	Article
<p>Vote shall be by ballot..... 1693 Poll lists and manner of receiving and numbering votes..... 1694 Secrecy of the ballot guarded..... 1695 Counting the votes..... 1696 Ballots which shall not be counted..... 1697 Kind of ballots to be used..... 1697—Note Names not to be pasted over..... 1697—Note Returns of elections, how and to whom made..... 1698 Same subject..... 1699 Within what time returns shall be delivered 1700 Tally lists shall be kept..... 1701 Ballots, etc., to be placed in a box and delivered to county clerk..... 1702 Ballots, etc., shall be burned, when..... 1703 Presiding officer shall retain one poll and one tally list..... 1704 County judge shall open returns, when..... 1705 Returns shall not be estimated, unless, etc. 1706</p>	<p>Certificates of election to county and precinct officers..... 1707 When a county is a representative or senatorial district..... 1708 Returns of elections for certain state and district officers..... 1709 Such returns shall be counted, when and by whom..... 1710 Governor shall give certificate of election, when..... 1711 Returns for governor and lieutenant-governor..... 1712 Secretary of state shall keep returns, etc. 1713 Returns for members of the legislature ... 1714 Returns shall be transmitted, how and to whom..... 1715 Duty of district returning officer..... 1716 Count may be made before the thirtieth day, when..... 1717 County judge shall certify to the secretary of state the officers elected and qualified. 1718</p>	<p>Vote shall be by ballot. (Const., art. 6, §4.) Poll lists and manner of receiving and numbering votes. (Act Aug. 23, 1876, p. 308, §16.) Secrecy of the ballot guarded. <i>Ib.</i> Counting the votes. <i>Ib.</i> §17.</p>

ARTICLE 1693. In all elections by the people the vote shall be by ballot, which ballot may either be written or printed, or written in part or printed in part.

ART. 1694. Each of the clerks of an election shall keep a poll list upon which he shall write and number the name of each person who votes at the time of his voting, and one of the judges of election, in every case, shall receive the ballot, and at the time of receiving it shall write upon it the voter's number, corresponding with the number on the clerk's poll list, and shall immediately place the ballot in the ballot-box.

ART. 1695. No officer of election shall unfold or examine a ballot received, nor shall they examine the same by comparing it with the clerk's list of voters when the votes are counted out, nor shall they permit the same to be done, nor shall they examine, or permit to be examined the ballots, subsequent to the same being received into the ballot-box, except in cases specially provided by law.

ART. 1696. Immediately after closing the polls, the officers of election shall proceed to count the votes in the presence of two qualified voters of their county of good repute, and of different political parties, if such can be conveniently obtained, and shall continue such count without interruption until all the ballots voted at such election are counted.

Ballots which shall not be counted.

*Ib.* §16.

ART. 1697. No ballot which is not numbered as provided in article 1694 shall be counted, nor shall either of two or more ballots folded together be counted, and where the names of two or more persons are upon a ballot for the same office, when but one person is to be elected to that office, such ballot shall not be counted for either of such persons.

Kind of ballots to be used.

NOTE.—Chapter 112, acts 1879, provides that “all ballots shall be written or printed on plain white paper, without any picture, sign, vignette, device or stamp, or mark, except the writing or printing, in black ink or black pencil, of the names of the candidates, and the several offices to be filled, and except the name of the political party whose candidates are on the ticket; *provided*, such ballots may be written or printed, on plain white foolscap, legal cap, or letter paper; *provided*, that all ballots containing the name of any candidate pasted over the name of any other candidate, shall not be counted for such candidate whose name is so pasted, and any ticket not in conformity with the above, shall not be counted.” See appendix for the act in full.—L.

Names not to be pasted over.

Returns of elections, how and to whom made.

*Ib.* §17.

ART. 1698. When the ballots have all been counted the managers of election shall make out returns of the same, signed by them, which shall be sealed up in an envelope, and delivered by one of the managers of the election to the county judge of the county, and a duplicate of such returns shall be kept by the presiding officer for twelve months from the day of election.

Same subject.

*Ib.*

ART. 1699. In case of vacancy in the office of county judge, or the absence or inability of that officer to act, the election returns shall be delivered to the clerk of the county court of the county, who shall safely keep the same in his office and deliver the same to the county judge or county commissioners, as the case may be, on the day appointed to open and compare the polls.

Within what time returns shall be delivered.

*Ib.*

ART. 1700. The returns of election shall be delivered, as provided in the two preceding articles, within ten days from the day of election, excluding Sundays and the day of election.

Tally lists shall be kept.

ART. 1701. In counting out the votes each clerk shall keep a tally list showing each vote counted, for what person or persons counted, and for what office or offices, and when the counting is completed each clerk shall certify his tally list to be correct and shall sign such certificate officially.

Ballots, etc., to be placed in a box and delivered to county clerk.

*Ib.* §16.

ART. 1702. Immediately after counting the votes by the managers of election, the presiding officer shall place all the ballots voted, together with one poll list and one tally list into a wooden or metallic box, and shall securely fasten the box with nails, screws or locks, and he shall, within ten days after the election, Sundays and the day of election excluded, deliver said box to the clerk of the county court of his county, whose duty it shall be to keep the same securely, and in the event of any contest growing out of the election within one year thereafter, he shall deliver said ballot-box to any competent officer having a process therefor from any tribunal or authority authorized by law to demand such ballot-box.

Ballots, etc., shall be burned when.

*Ib.*

ART. 1703. In the event that no contest grows out of the election within one year after the day of such election, the said clerk shall destroy the contents of said ballot-box by burning the same.

Presiding officer shall retain one poll and tally list.

ART. 1704. The presiding officer of election shall retain in his custody one of the poll lists and one of the tally lists of the election, and shall keep the same for one year after the election, subject to the inspection of any one interested in such election.

County judge shall open returns, when.

*Ib.* §18.

ART. 1705. At the expiration of ten days from the day of election, Sundays and the day of election excluded, and not before, the county judge shall open the election returns and estimate the result, recording the state of the polls in each precinct in a book to be kept for that purpose.

Returns shall not be estimated, unless, etc.

ART. 1706. No election returns shall be opened or estimated unless the same have been returned in accordance with the provisions of this chapter.

ART. 1707. After making an estimate of the result of the election the county judge shall deliver to the candidate or candidates for whom the greatest number of votes have been polled, for county and precinct officers, a certificate of election, naming therein the office to which such candidate has been elected, the number of votes polled for him, and the day on which the election was held, and shall sign the same, and cause the seal of the county court to be thereon impressed.

Certificates of election to county and precinct officers.  
*Ib.* §18.

ART. 1708. If the county constitutes a senatorial or representative district of itself, the county judge shall, at the same time, make an estimate of the votes polled for members of the legislature, and shall give a like certificate of election, as provided in the preceding article, to the person receiving the highest number of votes for senator or representative, and shall also transmit a duplicate of such certificate to the secretary of state.

When a county is a representative or senatorial district.  
*Ib.* §18.

ART. 1709. In all elections for comptroller of public accounts, treasurer of the state, commissioner of the general land office, attorney-general, judges of the supreme court, court of appeals and district courts, district attorneys, and for representatives in the congress of the United States, the county judge shall, on the tenth day after the election, Sundays and the day of election excluded, and not before, make out duplicate returns of the election, one of which he shall immediately transmit to the seat of government in this state, sealed in an envelope, directed to the secretary of state, and indorsed, "Election returns for.....county for....." [*filling the first blank with the name of the county, and the other blank with the office for which the election was held*], and the other of such returns shall be deposited in the office of the clerk of the county court of the county where such election was held.

Returns of elections for certain state and district officers.  
*Ib.* §19.

ART. 1710. On the fortieth day after the election, the day of election excluded, and not before, the secretary of state, in the presence of the governor and attorney-general, or in case of vacancy in either of said offices, or of inability or failure of either of said officers to act, then in the presence of either one of them, shall open and count the returns of election.

Such returns shall be counted when and by whom.  
*Ib.*

ART. 1711. When the returns have been counted the governor shall immediately make out, sign and deliver a certificate of election, with the seal of the state thereto affixed, to the person or persons who shall have received the highest number of votes for each or any of said offices.

Governor shall give certificate of election, when.  
*Ib.*

ART. 1712. The county judges of the several counties shall promptly make duplicate returns of the election for governor and lieutenant-governor, carefully sealed in an envelope, one of which shall be transmitted to the seat of government in this state, directed to the speaker of the house of representatives, and indorsed as provided in article 1709, and the other of said returns shall be deposited in the office of the clerk of the county court of said county.

Returns for governor and lieutenant-governor.  
*Ib.*

ART. 1713. The transmitted returns provided for in the preceding article, directed to the secretary of state, shall be taken charge of by him, and preserved in his office, the package and seal thereon to remain unbroken until the organization of the next legislature, when he shall, on the first day thereof deliver the said returns to the speaker of the house of representatives.

Secretary of state shall keep returns, etc.  
*Ib.*

ART. 1714. When an election shall have been held for members of the legislature in a district composed of more counties than one, the county judge to whom the returns in each county are made, and who is not authorized to give certificates of election to such members of the legislature, shall make out and send complete returns of such election for members of the legislature in his county immediately after examining and recording the same, to the county judge of the county, who may by law be authorized to give certificates of election to members of the legislature for such district.

Returns for members of the legislature.  
*Ib.* §26.

Returns shall be transmitted how, and to whom. *Ib.*

ART. 1715. The returns provided for in the preceding article shall be sealed in an envelope, and the name of the officer forwarding them shall be written across the seal, and the envelope shall be indorsed "Election returns," and directed to the county judge of the proper county and transmitted by mail or other safe and expeditious conveyance.

Duty of district returning officer. *Ib.*

ART. 1716. The county judge to whom the returns named in the two preceding articles are forwarded, or in case of a vacancy in that office, or of inability or failure to act on the part of such officer, then the clerk of the county court of such county, or his deputy, shall, upon the thirtieth day after the election, Sunday excluded if Sunday be the thirtieth day, open and count said returns in the presence of at least two qualified voters of said district, and after recording the same shall give a certificate or certificates of election to the person or persons receiving the highest number of votes for senator or representative in that district; which certificate shall be under the seal of the county court of the county from whence it issues, and shall state the number of votes received by the person to whom the same is given, and the officer giving such certificate shall immediately forward a duplicate of the same to the secretary of state.

Count may be made before 30th day, when *Ib.*

ART. 1717. If all the election returns of the district shall have been received by the returning officer of the district before the said thirtieth day, then he may count said returns and issue the certificates of election as provided for in the preceding article at any time before said thirtieth day.

County judge shall certify to secretary of state the officers elected and qualified. (Act March 6, 1863.)  
F.D. 3604.

ART. 1718. At the expiration of thirty days from an election, and from time to time thereafter as the officers may qualify, the county judge of each county shall make out and certify to the secretary of state a tabular statement showing who were elected, and to what office, and the date of qualification, giving the number of the precinct (if precinct officers), and he shall also certify the result of the vote for members of the legislature; and he shall in like manner report to the secretary of state all special elections to fill a vacancy in any county or precinct office, certifying when and how the vacancy occurred.

## CHAPTER SIX.

### CONTESTING ELECTIONS.

	Article		Article
Contest for office of district attorney, where tried.....	1719	Contestant shall be commissioned, when...	1738
For office of district judge, where tried.....	1720	Contestee shall be commissioned, when, unless, etc.....	1739
For office of justice of supreme court, etc., where tried.....	1721	Court shall decide to whom the office belongs.....	1740
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Other elections than for officers, where tried.....	1723	Bonds of contestant, etc., to remain on file and may be sued upon, etc.....	1742
Notice of contest.....	1724	Appeal to supreme court or court of appeals.....	1743
Reply to notice of contest.....	1725	Clerk shall forward transcript, etc.....	1744
Service of notice, etc., how made.....	1726	Costs in contested election cases.....	1745
Copy of notice, etc., shall be filed with district clerk.....	1727	Contest of election for members of the legislature.....	1746
Contest shall be docketed, tried, etc.....	1728	Depositions may be taken in such cases.....	1747
Rules governing trial.....	1729	Who may take depositions.....	1748
Where contestee makes no reply.....	1730	Mode of returning such depositions.....	1749
Contest may be tried in chambers, when.....	1731	Other evidence may also be introduced.....	1750
Ballot-box may be opened, when, etc.....	1732	Contest for office of governor or lieutenant-governor.....	1751
Notice of opening of ballot-box, served, etc.....	1733	Contest of election other than for offices.....	1752
Duty of clerk upon opening ballot-box.....	1734	Who shall be contestee in such case.....	1753
Contestee shall give bond, when.....	1735		
Contestant may give bond, when.....	1736		
Clerk shall certify to the governor.....	1737		

Contest for office of district attorney, where tried. (Act Feb. 11, 1850.)  
F.D. 3612.

ARTICLE 1719. Contested elections for the office of district attorney shall be tried by the district judge of the district in the county where the candidate who shall have received the certificate of election shall reside.

**ART. 1720.** Contested elections for the office of district judge shall be tried in the county of the adjoining district, the county seat of which is nearest to the residence of the candidate who shall have received the certificate of election, and by the district judge of such adjoining district.

For office of district judge, where tried.  
*Ib.*  
P.D. 3610.

**ART. 1721.** Contested elections for the office of chief justice or associate justice of the supreme court, and judge of the court of appeals, shall be tried in the county and by the district judge of the district in which the seat of government is located.

For office of justice of supreme court, and where tried.  
*Ib.*  
P.D. 3614.

**ART. 1722.** Contested elections for any county office shall be tried by the judge of the district court in the county where the election was held.

For county offices, where tried.  
(Act July 29, 1876, p. 70, §1.)

**ART. 1723.** Contested elections for other purposes than the election of officers, shall be tried by the district judge in the county where the election was held.

Other elections than for officers, where tried.

**ART. 1724.** Any person intending to contest the election of any one holding a certificate of election to any office shall, within thirty days after the return day of election, give him notice thereof in writing, and deliver to him, his agent or attorney, a written statement of the grounds on which such contestant relies to sustain such contest.

Notice of contest.  
(Act May 8, 1873, p. 37.)  
P.D. 6809pp.

**ART. 1725.** The person holding said certificate shall, within ten days after receiving such notice and statement, deliver or cause to be delivered, to said contestant, his agent or attorney, a reply thereto in writing.

Reply to notice of contest.  
*Ib.*

**ART. 1726.** The notice, statement and reply required by the two preceding articles, may be served by any person competent to testify, and shall be served by delivering the same to the party for whom they are intended, in person, if he can be found in the county; if not found, then upon the agent or attorney of such person, or by leaving the same with some person over the age of sixteen years, at the usual place of abode or business of such person.

Service of notice, etc., how made.  
*Ib.*

**ART. 1727.** If the contest be for the validity of an election for any state office, except the offices of governor and lieutenant-governor, or for any district office, except members of the legislature, or for any county office, a copy of the notice and statement of the contestant, and of the reply thereto of the contestee, served on the parties, shall be filed with the clerk of the court having jurisdiction of the case.

Copy of notice, etc., shall be filed with district clerk.  
(Act July 29, 1876, p. 70, §1.)

**ART. 1728.** When the notice, statement and reply have been filed with the clerk of the court, he shall docket the same as in other causes, and the said contest shall have precedence over all other causes, and shall be tried at the next term of the court, and no continuance of the same shall be granted to either party.

Contest shall be docketed, tried, etc.  
(Act May 8, 1873.)  
P.D. 6809qq.  
*Ib.*

**ART. 1729.** The trial of all contests of election shall be by the judge, without the intervention of a jury, and the evidence shall be confined to the issues made by the statement and reply thereto, which statement and reply shall not be in any case amended. In all other respects the trial shall be conducted under the rules governing proceedings in other civil causes.

Rules governing trial.  
*Ib.*

**ART. 1730.** In case the contestee should make and file no reply to the contestant's statement, and satisfactory proof is made that such contestee was duly served with notice, and with the statement of contestant, the court shall proceed to hear and determine said cause, upon the statement and evidence adduced thereunder of the contestant, and the contestee shall not be allowed to make defense in said trial.

Where contestee makes no reply.

**ART. 1731.** If more than sixty days will have elapsed from the return day after such election, before the first day of any regular term of the district court in which any contested election is pending, it shall be the duty of the judge of such court to hear the cause in chambers, in the county where the contest is pending, at as early a day to be fixed by him as may be practicable, and he shall direct the clerk of the district court

Contest may be tried in chambers, when.  
(Act July 29, 1876, p. 70, §1.)

of such county to give to the contesting parties, or their attorneys of record, at least ten days' notice of the time and place of hearing such cause in chambers.

Ballot-box may be opened, when, etc. (Act July 29, 1876, p. 70, §1.)

ART. 1732. It shall be the duty of the clerk in whose custody may be the several boxes containing the ballots, poll lists and tally lists, at any time upon the application of either of the contesting parties in such cause, and upon the filing with him of the affidavit in writing of the party so applying, his agent or attorney, that both the duplicate poll lists, or both the duplicate tally lists, as required by law, were sealed up in any of such boxes, specifying the box or boxes, or that he can not from any cause procure for examination such poll or tally list, to notify in writing the opposite party that such ballot-box or boxes will be opened at the office of such officer, at a time named in such notice, for the purpose of permitting an examination of such poll or tally list, or both.

Notice of opening of ballot-box to be served, etc. *Ib.*

ART. 1733. The notice provided for in the preceding article shall be served upon the opposite party, his agent or attorney, for at least five days before the time fixed therein for opening such ballot-box or boxes, and the same may be served by any person competent to testify, by reading the same to such party, his agent or attorney, or by leaving a copy thereof with such party, his agent or attorney, and the person serving the same shall return the original to the clerk who issued it, indorsing thereon the manner and date of service.

Duty of clerk upon opening ballot-box. *Ib.* §2.

ART. 1734. When the notice has been served as required in the preceding article, the clerk shall, at the time and place named in such notice, open the ballot-box or boxes specified in the applicant's affidavit, and take therefrom the poll or tally lists, or both, as the case may be, and permit the same to be examined in his presence, by the contesting parties, or either of them, or their attorneys, and a copy thereof to be taken by either or both parties, if so desired, and immediately thereafter the clerk shall replace the said list or lists in the said ballot-box or boxes from whence the same were taken, and seal the said ballot-box or boxes securely, and in no case shall the clerk permit the ballots in any ballot-box to be examined, except upon the trial of the case and under the direction of the court.

Contestee shall give bond, when. (Act July 29, 1876, p. 71, §2.)

ART. 1735. Whenever the validity of an election for an office is contested the contestee shall, within twenty days after the service of the notice and statement of such contest upon him, as provided in this chapter, file with the clerk of the court in which such contest is pending, a bond with two or more good and sufficient sureties, to be approved by said clerk in an amount to be fixed by said clerk, not less than double the probable amount of salary or fees or both, as the case may be, to be realized from the office being contested for, during six months. Said bond to be conditioned that in the event the decision of the contest shall be against such contestee and in favor of the contestant, such contestee will pay over to such contestant whatever sum may be adjudged against him by a court having jurisdiction of the subject matter of such bond.

Contestant may give bond, when. *Ib.* §2.

ART. 1736. Should the contestee fail to file the bond as required in the preceding article, and within the time therein prescribed, it shall be the duty of said clerk to notify the contestant immediately of such failure, and such contestant shall have the right within ten days after such notice to file a like bond, conditioned that in the event the decision of the contest is against him and in favor of the contestee, he will pay over to such contestee whatever sum may be adjudged against him, the said contestant, by a court having jurisdiction of the subject matter of such bond.

Clerk shall certify to the governor. *Ib.*

ART. 1737. Immediately upon the filing of said bond by the contestant, the clerk shall certify in writing and under his official seal to the governor that the contestee failed to give the required bond, and that the contestant has given such bond in accordance with law.

**ART. 1738.** Upon receiving such certificate from the clerk, it shall be the duty of the governor to issue a commission to the said contestant for the office in controversy pending such contest, and thereupon the contestant, upon qualifying in said office as required by law, shall exercise all the rights and powers, and perform all the duties of said office for the full term thereof, unless it shall be otherwise determined and ordered by the court upon the trial of such contest.

Contestant shall be commissioned, when.  
*Ib.*

**ART. 1739.** It shall be the duty of the governor to issue the commission to the contestee, at the time provided by law as in other cases, unless he has been notified of the failure of such contestee to file the bond required by article 1735, in which event the governor shall withhold the issuance of such commission until after the time allowed the contestant to file such bond has elapsed; but if the said contestant shall also fail to file bond as provided in article 1736, and within the time therein required, it shall be the duty of the clerk to certify all the facts in the case under his official seal to the governor, who shall thereupon issue the commission to the contestee.

Contestee shall be commissioned, when, unless, etc.  
*Ib.*

**ART. 1740.** If, upon the trial of any contested election case, any vote or votes be found to be illegal or fraudulent, the court shall substract such vote or votes from the poll of the candidate who received the same, and after a full and fair investigation of the evidence, shall decide to which of the contesting parties the office belongs.

Court shall decide to whom the office belongs.  
*Ib.*

**ART. 1741.** Should it appear from the evidence that the election was illegally or fraudulently conducted, or that by the action, or want of action on the part of the officers to whom were entrusted the control of such election, such a number of legal voters were denied the privilege of voting, as had they been allowed to vote might have materially changed the result; or, if it appear from the evidence that such irregularities existed as to render the true result of the election impossible to be arrived at, or very doubtful of ascertaining, the court shall adjudge such election, as to the contestant and contestee, to be void, and shall order the proper officer to order another election to be held to fill such office, and shall cause a certified copy of such judgment and order of the court to be delivered to such officer, upon whom is devolved by law the duty of ordering such election.

Election shall be adjudged void, when.  
*Ib.*

**ART. 1742.** The bonds required to be filed by the contestant and contestee, under the provisions of this chapter, shall remain on file in the office of the clerk where filed, and may be sued upon as other bonds.

Bonds of contestant, etc., to remain on file, and may be sued upon, etc.

**ART. 1743.** Either the contestant or contestee may appeal from the judgment of the district court to the supreme court, under the same rules and regulations as are provided for appeals in other civil cases, and such cases shall have precedence in the supreme court over all other cases.

Appeal to supreme court.  
*Ib.*

**ART. 1744.** In case of appeal, as provided for in the preceding article, the clerk shall, without delay, make up the transcript and forward the same to the clerk of the supreme court wherever the said court may then be in session, or if not then in session, wherever it may next be in session.

Clerk shall forward transcript, etc.  
*Ib.*

**ART. 1745.** The costs in all contested election cases shall be taxed according to the laws governing costs in other civil cases, except when otherwise specially provided, and bond for costs may be required as in other civil suits.

Costs in contested election cases.  
*Ib.*

**ART. 1746.** If the contest be for the validity of an election for members of the legislature, a copy of the notice, the statement and the reply served upon the parties as required by this chapter, shall, within twenty days after the service thereof, be filed with the district returning officer to whom the returns of such election were made, who shall envelop the same, together with a certified copy of the poll book, or register of the votes of each precinct and county returned to him in said election, and shall seal the said envelope and write his name across the seals, and

Contest of election for members of the legislature. (Act May 8, 1873.)  
P. D. 6808ss.



address the package to the president of the senate, or speaker of the house of representatives, as the case may be, to the care of the secretary of state, and shall forward the same, by mail or other safe conveyance, to the seat of government, so as to reach there, if possible, before the convening of the legislature.

Depositions may be taken in such case.  
*Ib.*

ART. 1747. At any time after filing said papers with said returning officer, either party to said contest may proceed, at his own expense, to take such written testimony as he may deem proper, having first served the opposite party, his agent or attorney, with a copy of the interrogatories he intends to propound to each witness, and the name of the officer before whom such interrogatories will be answered, as well as the time and place of taking such testimony.

Who may take such depositions.  
*Ib.*

ART. 1748. Any officer authorized by the law of this state to administer oaths, upon being satisfied as to any costs, including his own fees, that may accrue in the taking of such testimony, shall proceed upon the application of the party desiring it, to summon the witness or witnesses named in the interrogatories, and take his or their answers, in writing and under oath, to such interrogatories and cross-interrogatories as may be propounded in writing.

Mode of returning such depositions.  
*Ib.*

ART. 1749. The answers of each witness shall be reduced to writing and signed by such witness, and sworn to by such witness, before the officer taking the same, and shall be certified to by such officer and sealed in an envelope, and the name of the said officer shall be written by him across the seals, and he shall forward the same without delay, by mail or other safe conveyance, to the president of the senate or speaker of the house of representatives, as the case may be, to the care of the secretary of state, at the seat of government.

Other evidence may also be introduced.  
*Ib.*

ART. 1750. Either party to any such contest may also, upon the trial, introduce at his own expense any other legal testimony, oral or written.

Contest for office of governor or lieutenant-governor, etc.  
(Const., art. 4, §3.)

ART. 1751. If the contest be for the validity of an election for governor, lieutenant-governor, comptroller of public accounts, treasurer, commissioner of the general land office or attorney-general, the same shall be tried and determined by both houses of the legislature in joint session, and the provisions of this chapter governing in the case of a contest for the validity of an election for members of the legislature, shall apply to and govern in a contest for the offices above named, as far as the same may be applicable.

Contest of election other than for officers.

ART. 1752. If the contest be for the validity of an election held for any other purpose than the election of an officer or officers, in any county or precinct of a county, or in any incorporated city, town or village, any resident of such county, precinct, city, town or village, or any number of such residents may contest such election, in the district court of such county, in the same manner and under the same rules as far as applicable, as are prescribed in this chapter for contesting the validity of an election for a county office.

Who shall be contestee in such case (Act to adopt and establish R.C.S., passed Feb. 21, 1879.)

ART. 1753. In any case provided for in the preceding article the county attorney of the county, or where there is no county attorney the district attorney of the district, or the mayor of the city, town or village, as the case may be, shall be made the contestee, and shall be served with notice and statement, and shall file his reply thereto, as in the case of contests for office, but in no case shall the costs of such contest be adjudged against such contestee, or against the county, city, town or village which they may represent; nor shall such contestee be required to give any bond upon an appeal taken to the supreme court.

CHAPTER SEVEN.

MISCELLANEOUS PROVISIONS.

	Article		Article
In case of a tie another election shall be ordered.....	1754	Governor shall commission officers, except, etc.....	1758
County commissioner shall act, when.....	1755	Tax on commissions.....	1758—Note
Voters privileged from arrest, except, etc.....	1756	Provisions of this title shall apply to all elections.....	1759
County judge shall certify death of certain officers to secretary of state.....	1757		

**ARTICLE 1754.** Whenever at any election there shall be an equal number of votes given to two or more persons for the same office, except executive offices as provided in the constitution, and no one elected thereto, the officer to whom the returns are made shall declare such election void as to such office only, and shall immediately order another election to fill such office, and notice shall be given, and such other election shall be held in the same manner as is provided in other elections.

In case of a tie another election shall be held.  
(Act Aug. 23, 1876, p. 310, §24.)  
P.D. 3606.

**ART. 1755.** Whenever, by this title, any duty is devolved upon a county judge, and that office is vacant, or such officer from any cause fails to perform such duty, any two or more of the county commissioners of the county may perform such duty, and it shall be the duty of said commissioners to perform such duty in such case.

County commissioners shall act, when.  
(Act Feb. 11, 1850.)  
P.D. 3625.

**ART. 1756.** Voters, in all cases, shall be privileged from arrest during their attendance at elections, and in going to and returning from the same, except in cases of treason, felony or breach of the peace.

Voters privileged from arrest, except, etc.  
(Const., art. 6, §5.)  
(Act Aug. 23, 1876, p. 307, §11.)

**ART. 1757.** When any state or district officer, member of congress member of the legislature or notary public, shall depart this life, the county judge of the county where such death occurs or of the county where such officer resided, shall immediately certify the fact of the death of such officer to the secretary of state.

County judge shall certify death of certain officers to secretary of state.  
(Act March 6, 1863.)  
P.D. 3604.

**ART. 1758.** The governor shall commission all officers, except governor, members of congress, electors for president and vice-president of the United States, members of the legislature and municipal officers.

Governor shall commission officers, except, etc.  
(Act Aug. 23, 1876, p. 310, §22.)

**NOTE.**—Chapter 15, acts 1879, provides that the department of state shall charge and collect a fee of two dollars "for each commission to any notary public, (except *ex officio* notaries), and for every commission to every officer, state, county or precinct, authorized or required by law to be commissioned by the governor."—L.

Tax on commissions.

**ART. 1759.** The provisions of this title shall apply to all elections, whether for officers or for other purposes, where not otherwise provided by law.

Provisions of this title shall apply to all elections.  
*Ib.* §28.

TITLE XXXV.

Electors of President and Vice-President.

	Article		Article
Time of election of electors, and who are qualified to be electors and to vote for electors.....	1760	Electors shall convene, when and where, etc.....	1765
Mode, places, etc., for election of electors.....	1761	Place of absent or disqualified elector, how supplied.....	1766
Returns of election by precinct officers.....	1762	Governor shall cause list of electors to be made, etc.....	1767
Returns of election by counties.....	1763	Governor shall issue proclamation, etc.....	1768
Secretary of state shall count returns, when, etc.....	1764	Compensation of electors.....	1769

Time of election of electors and who are qualified to be electors and to vote for electors.  
(Act March 15, 1848.)  
P.D. 3644.

ARTICLE 1760. On the Tuesday next after the first Monday in November, A. D. 1880, and on the first Tuesday next after the first Monday in November every four years thereafter, the qualified voters for members of the house of representatives of the state legislature shall elect from among the resident citizens, over twenty-one years of age, and not members of either house of the congress of the United States, as many electors of president and vice-president of the United States as the State of Texas may at the time be entitled to elect.

Mode, places, etc., of election for electors.  
*Ib.*  
P.D. 3645.

ART. 1761. Such election shall be held in the same manner, at the same places, under the same regulations, and by officers and managers appointed in the same way as elections for members of the house of representatives of this state may be; except that such qualified voter shall be authorized to vote for the whole number of electors that the state will then be empowered to elect.

Returns of election by precinct officers.  
*Ib.*  
P.D. 3646.

ART. 1762. The officers conducting said elections, or the managers thereof at each precinct, shall, within three days after holding said election, add up and compare the number of votes given for each person there voted for as an elector, and shall make out in writing, seal up, certify and transmit the result of said election to the county judge or other proper officer of their county, in the same manner prescribed by the laws regulating elections for members of the state legislature.

Returns of elections by counties.  
*Ib.*  
P.D. 3647.

ART. 1763. It shall be and is hereby made the duty of the county judge or other proper officer or officers of each county, within four days after such election to make out in writing, certify, seal up and transmit by mail or other expeditious conveyance, a correct statement of the election held at all the precincts in the county, directed to the secretary of state at the seat of government of the state, as is now required by law in other elections, and indorsed thereon: "Election returns for the county of ..... for presidential electors."

Secretary of state shall count returns, when, etc.  
*Ib.*  
P.D. 3648.

ART. 1764. It shall be the duty of the secretary of state, in the presence of the governor and attorney-general, or either of them, on the fourth Monday in November next after said election, to open all the election returns received by him, and correctly add up all the votes cast in the several counties for each of said electors, and cause the result thereof, with the names of the persons elected, to be forthwith published in some newspaper printed at the seat of government, and in writing forthwith notify the persons elected of their election.

Electors shall convene, when and where, etc.  
*Ib.*  
P.D. 3649.  
(U. S. Revised Statutes, p. 21.)

ART. 1765. The electors so chosen shall convene in the capitol, at the seat of government of the state, on the first Wednesday of December next after their election, and vote for president and vice-president of the United States, and make return thereof as is required by the laws of the United States.

**ART. 1766.** If any person so chosen elector shall, by death or other disabling cause, fail to attend by the hour of two o'clock in the afternoon of the day fixed by law, and vote as required by law, or if any such person shall be legally disqualified to serve as elector, a majority of the qualified electors present, after having convened, may appoint some other person to act as elector in the place of any such absent or disqualified person, and shall immediately report their action to the secretary of state aforesaid.

Place of absent or disqualified electors, how supplied.  
*Ib.*  
P.D. 3650.

**ART. 1767.** The governor shall, on or before the meeting of the electors, cause three lists of the names of such electors to be made out and delivered to them, as required by act of congress.

Governor shall cause list of electors to be made, etc.  
*Ib.*  
P.D. 3651.

**ART. 1768.** It shall be the duty of the governor, or in case of his inability, then of the lieutenant-governor, to issue a proclamation under the seal of the state, and have the same published for at least forty days before an election for electors, in some newspaper printed at the seat of government, requiring the county judge or other proper officer or officers of each county in the state to cause an election to be held at each precinct in the county at the time and for the purpose prescribed in this title.

Governor shall issue proclamation, etc.  
*Ib.*  
P.D. 3652.

**ART. 1769.** Electors of president and vice-president of the United States shall receive the same pay for mileage in traveling to and from the seat of government of the state, and the same pay daily while engaged there in the duties required of them by law, as that allowed by law to the members of the legislature of this state.

Compensation of electors.  
(Act Dec. 1, 1849.)  
P.D. 3653.

TITLE XXXVI.

Escheat.

[See Estates of Decedents.]

	Article		Article
When estates shall escheat.....	1770	Appeal or writ of error.....	1761
Duty of district or county attorney.....	1771	Comptroller to keep accounts.....	1789
Court to issue <i>scire facias</i> to those alleged to be in possession.....	1772	Heirs afterward appearing may bring suit, etc.....	1783
Service of <i>scire facias</i> , its recitals and requirements.....	1773	Order of court in favor of claimant.....	1784
Claimants may appear and plead.....	1774	Proceeds of escheated property subject to disposition by the state.....	1785
If no person appears.....	1775	Final decree of probate court may be revised, when.....	1786
If any person appears, issue and trial.....	1776	Governor may cause proceedings to be instituted, when.....	1787
Judgment for the state, how paid.....	1778	Suit must be in name of state.....	1788
Costs against the state, how paid.....	1779		
Judgment for state vests title in state.....	1780		
Writ of seizure.....	1780		

When estates shall escheat. (Const., art. 13, §1.) (Act March 20, 1848.) P.D. 3657.

Duty of district or county attorney. P.D. 3658.

The court to issue *scire facias* to those alleged to be in possession. P.D. 3659.

Service of the *scire facias*, its recitals and requirements. P.D. 3660.

Claimants may appear and plead. P.D. 3661.

If no person appears. P.D. 3662.

ARTICLE 1770. If any person die seized of any real, or possessed of any personal estate, without any devise thereof, and having no heirs, or where the owner of any real or personal estate shall be absent for the term of seven years, and is not known to exist, such estate shall escheat to and vest in the state.

ART. 1771. When the district or county attorney shall be informed, or have reason to believe that an executor under the will of any person who has died without heirs, and without having devised his estate, has not accepted the trust, and that no administrator with the will annexed has been appointed; or where said attorney shall discover that no letters of administration on the estate of an intestate, who has died without heirs, have been granted, he shall file a petition in behalf of the state in the district court of the county where such succession is required to be opened, according to the law regulating the place of opening successions, which petition shall set forth a description of the estate, the name of the person last lawfully seized or possessed of the same, the names of the tenants or persons in actual possession, if any, and the names of the persons claiming the estate, if any such are known to claim, and the facts and circumstances in consequence of which such estate is claimed to have escheated; praying for a writ of possession for the same in behalf of the state.

ART. 1772. Such court shall award and issue a *scire facias* against such persons as shall be alleged in such petition to hold possession or claim such estate, requiring them to appear and show cause why such estate shall not be vested in the state, at the next term of the court.

ART. 1773. Such *scire facias* shall be served ten days before the return day thereof; and the court shall make an order, setting forth briefly the contents of such petition, and requiring all persons interested in the estate to appear and show cause why the same should not be vested in the state, which order shall be published as required by article 1236.

ART. 1774. All persons named in such petition as tenants or persons in actual possession or claimants of the estate, may appear and plead to such proceedings, and may traverse the facts stated in the petition, or the title of the state to the lands and tenements therein mentioned, as in civil cases, and any other person claiming an interest in such estate may appear and be made a defendant and plead as in other cases.

ART. 1775. If no person, after notice as aforesaid, shall appear and plead within the time prescribed by law, then judgment shall be rendered by default in behalf of the state.

ART. 1776. If any person appear and deny the title set up by the state, or traverse any material fact in the petition, issue shall be made up and tried as other issues of fact; and a survey may be ordered, as in other cases where the titles or boundaries of land are drawn in question.

If any person appears, issue and trial.  
P.D. 3663.

ART. 1777. If after the issue and trial it appears from the facts found or admitted that the state has good title to the estate, real or personal, in the petition mentioned or any part thereof, judgment shall be rendered that the state shall be seized or possessed thereof, and at the discretion of the court recover costs against the defendants.

Judgment for the state, when,  
P.D. 3664.

ART. 1778. If it appears that the state has no title in such estate the defendant shall recover his costs, to be taxed and certified by the clerk; and the comptroller of public accounts shall, on such certificate being filed in his office, issue a warrant therefor on the treasury, which shall be paid as other demands on the treasury.

Costs against the state, how paid.  
P.D. 3665.

ART. 1779. When any judgment shall be rendered that the state be seized or possessed of any estate, such judgment shall contain a description thereof, and shall vest the title in the state.

Judgment for state vests title in state.  
P.D. 3666.

ART. 1780. A writ shall be issued to the sheriff or any constable of the proper county commanding him to seize such estate vested in the state; and if the same be personal property or real estate he shall dispose thereof at public auction, in the manner provided by law for the sale of property under execution, and the proceeds paid into the treasury of the state.

Writ of seizure (41 Tex. p. 10.)  
P.D. 3667.

ART. 1781. Any party, who shall have appeared to any such proceedings, and the district or county attorney, on behalf of the state, shall have the right to prosecute an appeal or writ of error upon such judgment.

Appeal or writ of error.  
P.D. 3669.

ART. 1782. The comptroller shall keep just accounts of all moneys paid into the treasury, and of all lands vested in the state under the provisions of this chapter.

Comptroller to keep accounts.  
P.D. 3670.

ART. 1783. If any person appear after the death of the testator or intestate and claim any money paid into the treasury under this chapter, as heir, or devisee, or legatee thereof, he may file a petition in the district court for the county where the estate was sold, stating the nature of his claim and praying that such money be paid to him, a copy of which petition shall be served on the district or county attorney, at least twenty days previous to the return day of the process, who shall put in an answer to the same.

Heir, etc., afterward appearing, may bring suit.  
P.D. 3671.

ART. 1784. The court shall examine the claim and the allegations and proofs, and if it shall find that such person is an heir, devisee, legatee or legal representative, whether citizen or foreigner, such court shall make an order, directing the comptroller to issue his warrant on the treasury for the payment of the same, but without interest or costs, a copy of which order, under the seal of the court, shall be a sufficient voucher for issuing such warrant, and the same proceedings shall be instituted for the recovery of any money or property heretofore deposited with the treasurer or comptroller, in accordance with the laws heretofore existing.

Order of court in favor of claimant.  
P.D. 3672.

ART. 1785. The proceeds of all property escheated in accordance with the provisions of this chapter shall remain subject to the disposition of the state, as may hereafter be prescribed by law.

Proceeds of escheated property subject to disposition by the state.  
P.D. 3674.

ART. 1786. Any decree of the probate court finally closing any estate may be revised and corrected in the district court of the county in which the letters were granted to such executor or administrator, upon the ground that there was error, fraud or mistake, of law or fact, in such final account and settlement, upon the application of the state, by bill of review, in the same manner as is now provided by law for the revision and correction of any such account and settlement by any individual interested in an estate.

Final decree of probate court may be revised, when.  
(Act Nov. 13, 1866, p. 236, §1.)

Governor may  
cause proceed-  
ings to be insti-  
tuted, when.  
(Act Nov. 13,  
1866, p. 236, §2.)

ART. 1787. In any case in which the governor has reason to believe that there has been fraud, error or mistake of law or fact in any such final account and settlement, he is authorized to retain counsel and have proceedings instituted, in accordance with the provisions of this chapter and the laws, to have such final account and settlement revised and corrected for the protection of the rights of the state, and for such services the counsel so retained shall be allowed a reasonable compensation.

Suit must be in  
name of state.  
Ib. §3.

ART. 1788. All suits brought for the collection of the assets turned over to the treasurer, under this chapter, shall be brought in the name of "The State of Texas."

TITLE XXXVII.  
Estates of Decedents.

CHAPTER ONE.

JURISDICTION.

	Article		Article
Probate jurisdiction of county court.....	1789	In what counties wills shall be probated	
Probate jurisdiction of district court.....	1790	and letters granted.....	1793
Proceedings of probate of will, etc., void, when, etc.....	1791	In case of concurrent jurisdiction of sev- eral courts.....	1793

ARTICLE 1789. The county court shall have the general jurisdiction of a probate court. It shall probate wills, grant letters testamentary or of administration, settle the accounts of executors and administrators, and transact all business appertaining to the estates of deceased persons, including the settlement, partition and distribution of such estates.

Probate jurisdiction of the county court. (Const., art. 5, §16.)

ART. 1790. The district court shall have appellate jurisdiction and general control in probate matters over the county court established in each county for the probating of wills, granting letters testamentary or of administration, settling the accounts of executors and administrators, and for the transaction of business appertaining to estates, and original jurisdiction and general control over executors and administrators under such regulations as may be prescribed by law.

Probate jurisdiction of district court. (Const., art. 5, §8.)

ART. 1791. If a will be probated before the death of the testator, or if administration be granted upon the estate of a living person, the proceedings shall be void; but the bond or bonds of the executor or administrator shall not be void, but may be recovered upon as other bonds.

Proceedings of probate of will, etc., void, when, etc. (18 Texas, 195; 15 Texas, 617.)

ART. 1792. Wills shall be admitted to probate, and letters testamentary or of administration shall be granted—

In what counties wills shall be probated and letters granted. (Act Aug. 9, 1876, p. 93, §1.)

1. In the county where the deceased resided, if he had a domicile or fixed place of residence in the state.

2. If the deceased had no domicile or fixed place of residence in the state, but died in the state, then either in the county where his principal property was at the time of his death, or in the county where he died.

3. If he had no domicile or fixed place of residence in the state, and died without the limits of the state, then in any county in this state where his nearest kin may reside.

4. But if he had no kindred in this state, then in the county where his principal estate was situated at the time of his death.

ART. 1793. When two or more courts have concurrent jurisdiction of an estate, the court in which application for letters testamentary or of administration thereon is first filed, shall have and retain jurisdiction of such estate, to the exclusion of such other court or courts.

In case of concurrent jurisdiction of several courts.

CHAPTER TWO.

RECORD BOOKS.

	Article		Article
Judge's probate docket.....	1794	Record books shall be indexed, etc.....	1793
Probate minutes.....	1795	Shall be evidence.....	1799
Claim docket.....	1796	What papers shall be recorded in probate	
Probate fee book.....	1797	minutes.....	1800

ARTICLE 1794. There shall be kept by the clerk of the county court a record book to be styled "Judge's probate docket," in which shall be entered—

Judge's probate docket.



1. The name of each deceased person upon whose estate proceedings are had or sought to be had.

2. The name of the executor or administrator of such estate, or of the applicant for letters, as the case may be.

3. The date of the filing of the original application for the probate of a will, or for letters testamentary or of administration.

4. A minute of all orders, judgments, decrees and proceedings had in the estate, with the date thereof.

5. Each estate shall be numbered upon such docket in the order in which the proceedings therein have been commenced, and each paper filed in an estate shall be numbered with the docket number of such estate.

Probate minutes.

ART. 1795. Said clerk shall also keep a record book to be styled "Probate minutes," in which he shall enter in full all the orders, judgments, decrees and proceedings of the court, and in which shall be recorded all papers of estates required by law to be recorded.

Claim docket.  
(Act Aug. 15,  
1870.)  
P.D. 5673.

ART. 1796. Said clerk shall also keep a record book to be styled "Claim docket," in which shall be entered all claims presented against an estate for approval by the court. This docket shall be ruled at proper intervals from top to bottom, with a short note of the contents at the top of each column. One or more pages shall be assigned to each estate. In the first or marginal column shall be entered the names of the claimants in the order in which their claims are filed; in the second, the amount of the claim; in the third, its date; in the fourth, when due; in the fifth, the date from which it bears interest; in the sixth, the rate of interest; in the seventh, when allowed in whole or in part by the executor or administrator; in the eighth, the amount allowed; in the ninth, the date of rejection; in the tenth, the date of filing; in the eleventh, when approved; in the twelfth, the amount approved; in the thirteenth, when disapproved; in the fourteenth, the class to which the claim belongs; in the fifteenth, when established by judgment of a court; in the sixteenth, the amount of such judgment.

Probate fee book.

ART. 1797. Said clerk shall also keep a record book to be styled "Probate fee book," in which shall be entered each item of costs which accrue to the officers of the court, together with witness fees, if any, showing the party to whom such costs or fees are due, the date of the accrual of the same and the estate or party liable therefor.

Record books shall be indexed, etc.

ART. 1798. Each record book shall be provided by the clerk with a convenient index, and shall be open to the inspection of any person desiring to examine the same, but shall not be taken from the office of the clerk.

Shall be evidence.

ART. 1799. Said record books, or certified copies therefrom, shall be evidence in any of the courts of this state.

What papers shall be recorded in probate minutes.  
P.D. 5772.

ART. 1800. The following papers of an estate shall be recorded in the probate minutes:

1. All applications for the probate of wills when the probate has been granted.

2. The citation and return thereon in such cases.

3. The will and the testimony upon which the same was admitted to probate.

4. All bonds and the oaths of executors and administrators.

5. The notice to persons holding claims against an estate.

6. All inventories and appraisements and lists of claims.

7. All exhibits and accounts.

8. All reports of hiring, renting or sale.

9. All application for the sale of real estate.

10. All reports of commissioners of partition.

Papers which have been disapproved by the court, and vouchers and all other papers not above enumerated, shall not be recorded.

CHAPTER THREE.

GENERAL PROVISIONS.

	Article		Article
Decisions, etc., of court shall be rendered in open court.....	1801	Rights, etc., of executor, etc., regulated by common law, etc.....	1815
And shall be entered of record, etc.....	1802	Depositions and rules of evidence.....	1816
No trial by jury in probate matters.....	1803	In whom property vests upon death of testator or intestate.....	1817
Duty of clerk to file papers, etc.....	1804	Any person interested in an estate may file opposition, etc.....	1818
Clerk shall issue all notices, etc.....	1805	Duty of county judge to call dockets, etc.....	1819
Power of court to attach and imprison executors, etc.....	1806	Meaning of "term of court," "docket" and "minutes".....	1820
Person having will, etc., may be attached, etc.....	1807	Duty of judge to sign the minutes, etc.....	1821
Executions in probate matters.....	1808	Attachment for property of estate may issue, when.....	1822
County judge may enforce orders, etc., of previous court.....	1809	Twenty days' notice of filing of exhibit shall be given, etc.....	1823
Requisites of citation in probate matters.....	1810	When an executor or administrator shall be deemed to have qualified.....	1824
Service of citation.....	1811	Depositions and rules of evidence.....	1825
Service by posting.....	1812	Titles made by executor, etc., valid, although, etc.....	1826
Mode of posting citation and return of same.....	1813		
Citation by publication.....	1814		

ARTICLE 1801. All decisions, orders, decrees and judgments of the county court in probate matters shall be rendered in open court, and at a regular term of such court for civil and probate business, unless in cases where it is otherwise specially provided.

Decisions, etc., of court shall be rendered in open court, etc

ART. 1802. All such decisions, orders, decrees and judgments shall be entered on the records of the court, during the term at which the same are rendered, and any such decision, order, decree or judgment shall be a nullity unless entered of record.

And shall be entered of record.

ART. 1803. There shall be no trial by jury in probate matters, except when expressly provided by law.

No trial by jury in probate matters. P.D. 5481.

ART. 1804. The clerk of the county court shall receive and file all applications, complaints, petitions and all other papers permitted or required by law to be filed in said court in estates of decedents, and shall indorse on each paper the date when it was filed, and sign his name officially to such indorsement, and shall also place thereon the docket number of the estate to which it belongs.

Duty of clerk to file papers, etc.

ART. 1805. Said clerk shall issue all necessary notices, citations, writs and process from said court in probate matters without any order from the county judge, unless such order is required by some provision of this title.

Clerk shall issue all notices, etc. (Act Aug. 9, 1876, p. 129, §138.)

ART. 1806. The county judge shall have power to enforce obedience to all his lawful orders against executors and administrators, by attachment and imprisonment, but no such imprisonment shall exceed three days for any one offense, except in the case provided for in the succeeding article.

Power of court to attach and imprison executor, etc. *Id.*, p. 129, §135.

ART. 1807. When complaint shall be made in writing to any county judge that any person has the last will of any testator or testatrix, or any papers belonging to the estate of a testator or intestate, said county judge shall cause said person to be cited to appear before him, either in term time or vacation, and show cause why he should not deliver such will to the court for probate, or why he should not deliver such papers to the executor or administrator, and upon the return of such citation served, unless such will or papers are so delivered or good cause be shown to the court for not delivering the same, the county judge, if satisfied that such person had such will or papers at the time of the complaint being filed, may cause him to be arrested and imprisoned until he shall so deliver them.

Person having will, etc., may be attached, etc. *Id.*, p. 128, §126.

ART. 1808. Executions issued from the county court in probate matters shall be directed to the sheriff or any constable of a county, shall be made returnable in sixty days, and shall be tested and signed by the clerk

Executions in probate matters. *Id.*, p. 129, §135

officially and sealed with the seal of the court, and all proceedings under such executions shall be governed by the laws regulating proceedings under executions issued from the district court in so far as the same may be applicable.

County judge may enforce orders, etc., of previous court *Id.*, p. 130, §140.

ART. 1809. The county judge shall have the same power to enforce all orders, decrees and judgments heretofore made and rendered in the probate court of his county, as if such orders, decrees or judgments had been made and rendered under the provisions of this title.

Requisites of citation in probate matters.

ART. 1810. All citations in probate matters shall be in writing, dated and signed by the clerk officially, and sealed with the seal of the court, and shall state substantially the nature of the proceeding which the party to be cited is called upon to answer, and the time when and place where such party is required to appear.

Service of citation.

ART. 1811. A citation is served either by posting, by delivery in person, or by publication, and when the mode of service is not expressly provided by law, it must be served upon the party to be cited in person, by delivering to him a true copy of such citation at least ten days, exclusive of the day of service, before the day upon which he is required to appear and answer.

Service by posting. P. D. 5475.

ART. 1812. When citation is required to be posted, it means for ten days, exclusive of the day of posting, before the day upon which the party is required to appear and answer, at three of the most public places in the county, one of which shall be at the court-house door, and no two of which shall be in the same city or town, unless the contrary be expressed by the law which provides for such citation.

Mode of posting citation and return of same.

*Id.*

ART. 1813. When a citation is required to be posted, the clerk shall place the original citation, together with three copies thereof, in the hands of the sheriff or any constable of the proper county, who shall post such copies as required by the preceding article, and shall return the original to the clerk, stating in a written return thereon the time when, and the place where, he posted such copies.

Citation by publication. (Act Aug. 9, 1876, p. 129, §137.)

ART. 1814. In all cases where it is necessary to cite any person by publication, and the manner of citing such person is not otherwise provided for, the citation by publication shall be made in like manner as in suits in the district court.

Rights, etc., of executors, etc., regulated by common law, etc. *Id.*, p. 130, §141.

ART. 1815. The rights, powers and duties of executors and administrators shall be governed by the principles of the common law, when the same do not conflict with any of the provisions of the statutes of this state.

Depositions and rules of evidence. *Id.*, p. 129, §136.

ART. 1816. In all proceedings in the county court, arising under the provisions of this title, the depositions of witnesses may be taken and read in evidence under the same regulations and rules as in the district court, and all laws in relation to witnesses and evidence which govern in the district court shall apply to proceedings in the county court, in so far as the same are applicable.

In whom property vests upon death of testator or intestate. *Id.*, p. 127, §125.

ART. 1817. When a person dies, leaving a lawful will, all of his estate devised or bequeathed by such will shall vest immediately in the devisees or legatees; and all the estate of such person, not devised or bequeathed, shall vest immediately in his heirs at law; but all of such estate, whether devised or bequeathed or not, except such as may be exempted by law from the payment of debts, shall still be liable and subject in their hands to the payment of the debts of such testator or intestate; and whenever a person dies intestate all of his estate shall vest immediately in his heirs at law, but with the exceptions aforesaid shall still be liable and subject in their hands to the payment of the debts of the intestate; but upon the issuance of letters testamentary or of administration upon any such estate, the executor or administrator shall have the right to the possession of the estate as it existed at the death of the testator or intestate, with the exception aforesaid; and it shall be the duty of such executor or

administrator to recover possession of and hold such estate in trust to be disposed of in accordance with law.

ART. 1818. Any person interested in an estate may, at any time before any application, petition, exhibit, account, claim or other proceeding is decided upon by the court, file opposition thereto in writing, and shall be entitled to process for witnesses and evidence, and to be heard upon such opposition as in other suits.

Any person interested in an estate may file opposition, etc.

ART. 1819. It shall be the duty of the county judge, at each regular term of his court for probate business, to call the estates in their regular order upon his docket, and also to call the claim docket, and to make such orders as may be necessary. It shall also be his duty to see that executors, administrators and officers perform the duties enjoined upon them by law in all matters pertaining to such estates.

Duty of county judge to call dockets, etc.

ART. 1820. When a term of the county court is mentioned in this title, a regular term of said court for probate business is meant, and when the word "docket" is used, the probate docket is meant, and when the word "minutes" is used, the probate minutes are meant.

Meaning of "term of court," "docket," and "minutes."

ART. 1821. It shall be the duty of the county judge, whenever he enters an order upon the minutes in vacation, to date and sign the same officially; and at the close of each term of his court he shall in open court sign the minutes of such term officially, after ascertaining that all orders, judgments, decrees and proceedings of the term have been properly entered, and that all papers required to be recorded therein have been so recorded.

Duty of judge to sign the minutes, etc.

ART. 1822. Whenever complaint in writing, under oath, shall be made to the county judge, by any person interested in the estate of a decedent, that the executor or administrator of such estate is about to remove said estate or any part thereof beyond the limits of this state, such judge shall have power to order a writ to issue, directed to the sheriff or any constable of any county in the state, commanding him to seize such estate, or any part thereof, and hold the same subject to such further order as such judge may make on such complaint; *provided*, that no such writ shall issue, unless the complainant shall give bond with two or more good and sufficient sureties, in such sum as the said judge may require, payable to the executor or administrator of such estate, conditioned for the payment of all damages and costs that may be recovered for the wrongful suing out of such writ.

Attachment for property of estate may be issued, when. (Act Aug. 9, 1876, p. 129, §139.)

ART. 1823. All exhibits made by executors or administrators, showing a list of claims allowed and approved, or established against the estate they represent, or showing the condition of said estate, and an account of the moneys received and of the moneys paid out on account of said estate, returned to the court before the filing of the account for final settlement of said estate, shall be filed with the clerk, unless otherwise specially provided in this title. Notice of such filing shall be posted on the courthouse door of the county for which such court is held; and no other action shall be had thereon until the expiration of at least twenty days from the posting of said notice, after which time the county judge shall, in term time, examine said exhibit, and if the same be found to be correct, render judgment of approval thereon and order said exhibit to be recorded.

Twenty days' notice of filing of exhibit shall be given, etc. (Act Aug. 9, 1876, p. 109, §68.)

ART. 1824. An executor or administrator shall be deemed to have duly qualified when he shall have taken the oath required by law, and when he shall have given the bond required by law, and when said bond has been approved and filed. In the case of an executor where no bond is required, he shall be deemed to have been duly qualified when he shall have taken the oath required by law.

When an executor or administrator shall be deemed to have qualified.

ART. 1825. In all proceedings in the county court arising under the provisions of this title, the depositions of witnesses may be taken and read in evidence, under the same rules and regulations as in the district court,

Depositions and rules of evidence.

and all laws in relation to witnesses and evidence which govern the district court shall apply to all proceedings in the county court, under the provisions of this title so far as they are applicable.

Titles made by executor, etc., valid, although, etc.

ART. 1826. When an executor or administrator, legally qualified as such, has performed any acts as such executor or administrator in conformity with his authority and with law, such acts shall continue to be valid to all intents and purposes, so far as regards the rights of innocent purchasers of any of the property of the estate from such executor or administrator, for a valuable consideration, in good faith, and without notice of any illegality in the title to the same, notwithstanding such acts or the authority under which they were performed may afterwards be set aside, annulled and declared invalid.

CHAPTER FOUR.

APPLICATIONS FOR THE PROBATE OF WILLS AND FOR LETTERS.

	Article		Article
Application for letters must be filed within four years after death of testator or intestate.....	1827	Citation to issue, and shall state, what.....	1836
Wills shall not be probated after lapse of four years.....	1828	Service of such citation, how made.....	1837
Administration not barred, when.....	1829	Citation where will can not be produced, or where it is nuncupative.....	1838
Applications shall be in writing and filed..	1830	Service of such citation, how made.....	1839
Application for probate of written will produced in court shall state, what.....	1831	Service of such citation by publication, when.....	1840
Will shall be filed with the application, etc.	1832	No action shall be had until service of citation.....	1841
What the application shall state where the will can not be produced in court.....	1833	Application may be made, by whom.....	1842
Application for probate of nuncupative will shall state, what.....	1834	Administration may be prevented, now...	1843
Application for letters of administration shall state what.....	1835	One creditor may apply in behalf of several, etc.....	1844
		Bond shall be filed, etc.....	1845
		Lien upon estate to secure bond.....	1846

Application for letters must be filed within four years after death of testator or intestate.  
(Act Aug. 9, 1876, p. 94, §2.)  
P.D. 5505.

Will shall not be probated after a lapse of four years, unless, etc.

Administrator not barred, when.  
P.D. 5507.

Applications shall be in writing and filed.  
(Act Aug. 9, 1876, p. 94, §2.)  
Application for probate of written will produced in court shall state what.

ARTICLE 1827. All applications for the grant of letters testamentary or of administration upon an estate, must be filed within four years after the death of the testator or intestate, and if four years have elapsed between the death of such testator or intestate and the filing of such application, such application shall be refused and dismissed.

ART. 1828. No will shall be admitted to probate after the lapse of four years from the death of the testator, unless it be shown by proof that the party applying for such probate was not in default in failing to present the same for probate within the four years aforesaid, and in no case shall letters testamentary be issued where a will is admitted to probate after the lapse of four years from the death of the testator.

ART. 1829. Where letters testamentary or of administration shall have once been granted, any person interested in the administration may proceed, after any lapse of time, to compel a settlement of the estate when it does not appear from the record that the administration thereof has been closed.

ART. 1830. All applications for the probate of wills, or for letters testamentary or of administration, shall be in writing and filed with the clerk of the county court of the proper county.

ART. 1831. An application for the probate of a written will produced in court shall state—

1. The name of the testator and that he is dead, and the time and place of his death.
2. The facts necessary to show that the court has jurisdiction of the estate.
3. The nature and probable value of the estate.
4. The name and residence of the executor named in the will, if any,

and if none be named in the will, then the name and residence of the applicant.

5. That such executor or applicant, as the case may be, is not disqualified by law from accepting letters, if letters be desired.

ART. 1832. The written will shall be filed with the application for the probate thereof, and shall thereafter remain in the office of the clerk with whom it is filed, unless removed therefrom by order of the county or district court.

Will shall be filed with the application, etc.

ART. 1833. An application for the probate of a written will which can not be produced in court, in addition to the requirements of article 1831, shall state—

What the application shall state where the will can not be produced in court.

1. The reason why such will can not be produced.
2. The contents of such will as far as known.
3. The date of such will and the executor appointed therein, if any, and the names of the subscribing witnesses thereto, if any.
4. The names and residence, if known, of all the heirs at law of the testator, and if not known, that fact shall be stated.

Such application shall be sworn to by the applicant or some credible person.

ART. 1834. An application for the probate of a nuncupative will, in addition to the requirements of article 1831, shall state—

Application for nuncupative will shall state what.

1. The substance of the testamentary words spoken.
2. The names and residence of the witnesses thereto.
3. The names and residence, if known, of the heirs at law of the testator, and if not known, that fact shall be stated.

Such application shall be sworn to by the applicant or some credible person.

ART. 1835. An application for letters of administration shall state—

Application for letters of administration shall state what.

1. The name of the deceased; that he is dead, and the time and place of his death, and that he died intestate.
2. The facts necessary to show that the court has jurisdiction of the estate.

3. The nature and probable value of the estate.
4. That a necessity exists for an administration upon such estate, setting forth the facts which show such necessity.
5. That the applicant is not disqualified by law to act as administrator.

ART. 1836. When an application for the probate of a written will, together with such will, is filed with the clerk, or when an application for letters of administration is filed, the clerk shall issue a citation to all parties interested in such estate, which citation shall state—

Citation to issue, and shall state what.

1. That such application has been filed, and the nature of it.
2. The name of the deceased and of the applicant.
3. The time when and the court by which the application will be acted upon.

4. It shall cite all persons interested in the estate to appear at the time therein named and contest said application should they desire to do so.

ART. 1837. The citation provided for in the preceding article shall be served by posting for at least ten days, exclusive of the day of posting, before the first day of the term of the court to which such citation is returnable.

Service of such citation, how made.

ART. 1838. When the application is for the probate of a written will which can not be produced in court, or for the probate of a nuncupative will, the citation shall contain substantially the statements made in the application, and the time when, place where and court before which such application will be acted upon.

Citation when will can not be produced, or where it is nuncupative.

ART. 1839. If the heirs of the testator be residents of this state and their residence be known, the citation provided for in the preceding article shall be served upon them by delivering to each of them in person a true copy of such citation, at least ten days, exclusive of the day of

Service of such citation, how made.

service, before the first day of the term of the court to which such citation is returnable.

Service of such citation by publication.

ART. 1840. Service of such citation may be made by publication thereof in a newspaper published in the county in which such citation is issued, if there be one, and if there be none, then in the newspaper which is published nearest to the court-house of such county, for four successive weeks previous to the first day of the term of the court to which such citation is returnable, in the following cases:

1. When the heirs are non-residents of this state.
2. When their names or their residences are unknown.
3. When they are transient persons.

No action shall be had until service of citation.

ART. 1841. No application shall be acted upon until the service of citation has been made in the manner and for the length of time in such case required by the preceding articles of this chapter.

Application may be made to whom (Act Aug. 9, 1876, p. 95, §6.)

ART. 1842. Applications for the probate of a will may be made by the testamentary executor, or by any person interested in the estate of the testator, and application for letters of administration upon an estate may be made by any person.

Administration may be prevented, how. P.D. 5558.

ART. 1843. When application is made for letters of administration upon an estate by a creditor, and those interested in the estate do not desire an administration thereupon, they can defeat such application—

1. By the payment of the claim of such creditor.
2. By proof to the satisfaction of the court that such claim is fictitious, fraudulent, illegal or barred by limitation.

3. By executing a bond with two or more good and sufficient sureties, payable to and to be approved by the county judge, in double the amount of such creditor's debt, conditioned that the obligors will pay the debt of such applicant upon the establishment thereof by suit in any court having jurisdiction of the amount in the county having jurisdiction of such estate.

One creditor may apply in behalf of several, etc. P.D. 5559.

ART. 1844. Several creditors may authorize one of their number to apply for letters in behalf of them all; and in such case, the grant of letters can not be defeated without complying with the requirements of the preceding article as to all the claims so represented.

Bond shall be filed, etc.

ART. 1845. The bond provided for in article 1843, when given and approved, shall be filed with the clerk of the county court and recorded in the minutes, and any creditor, to secure the payment of whose debt the same was executed, may sue thereon in his own name for the recovery of his debt.

Lien upon estate to secure bond.

ART. 1846. A lien shall exist on all of the estate in the hands of the distributees of such estate, and those claiming under them with notice of such lien, to secure the ultimate payment of the bond provided for in article 1843.

## CHAPTER FIVE.

### PROBATE OF WILLS.

Article		Article
1847	How a written will which is produced in court may be proved.....	1853
1848	How written will not produced may be proved.....	1854
1849	Nuncupative will shall not be proved, when.....	1855
1850	Nuncupative will must be proved, how.....	1855
1851	Facts which must be proved.....	1856
1852	Further proof in case of will which can not be produced in court.....	1856
		1853
		1854
		1855
		1856

How a written will which is produced in court may be proved. (Act Aug. 9, 1876, p. 94, §3.)

ARTICLE 1847. A written will produced in court may be proved—

1. By the written affidavit of one of the subscribing witnesses thereto, taken in open court and subscribed by such witness.
2. If all the witnesses are non-residents of the county, or those resi-

dent in the county are unable to attend court, it may be proved by the testimony of any one or more of them taken by deposition.

3. If none of the witnesses are living it may be probated on proof by two witnesses of the handwriting of the subscribing witnesses thereto, and also of the testator, if he was able to write, which proof may be either by affidavit taken in open court and subscribed by the witnesses or by deposition.

4. If the will was wholly written by the testator it may be probated on proof by two witnesses of his handwriting, which proof may also be made by affidavit taken in open court and subscribed by the witnesses or by deposition.

ART. 1848. A written will which can not be produced in court, upon proof of that fact may be proved in the same manner as provided in the preceding article, and the same amount and character of testimony shall be required to prove such will as is required to prove a written will produced in court.

How written will not produced may be proved. (Tyner v. Paschal, 27 Tex., 286.)

ART. 1849. No nuncupative will shall be proved within fourteen days after the death of the testator; nor shall any such will be probated after six months have elapsed from the time of speaking the pretended testamentary words, unless the same, or the substance thereof shall have been committed to writing within six days after making such will; nor shall any such will be probated unless it be made in the time of the last sickness of the deceased, at his habitation, or where he has resided for ten days next preceding, except when the deceased is taken sick away from home and dies before he returns to such habitation.

Nuncupative will shall not be proved, when, etc. *Ib.* p. 95, §4. P.D. 1264.

ART. 1850. No nuncupative will shall be probated unless it be proved by three credible witnesses that the testator called on some person to take notice or bear testimony that such is his will, or words of like import, and if the testimony of such witnesses differs materially as to the testamentary words spoken, or as to the testator's calling upon some one to witness the same, the will shall not be admitted to probate.

Nuncupative will must be proved, how. *Ib.* (10 Texas, 121; 20 Texas, 384.) P.D. 1264.

ART. 1851. Before admitting a will to probate it must be proved to the satisfaction of the court—

Facts which must be proved. (Act to adopt and establish R.C.S., passed Feb. 21, 1879.)

1. That the testator, at the time of executing the will, was at least twenty-one years of age, or was married, that he was of sound mind, and that he is dead.

2. That the court has jurisdiction of his estate.

3. That citation has been served and returned in the manner and for the length of time required by law.

4. That the testator executed the will with the formalities and solemnities and under the circumstances required by law to make it a valid will.

5. That such will has not been revoked by the testator.

ART. 1852. If the will be a written will which can not be produced in court, the cause of its non-production must be proved, and such cause must be sufficient to satisfy the court that it can not by any reasonable diligence be produced, and the contents of such will must be substantially proved by the testimony of a credible witness who has read the same or who has heard it read.

Further proof in case of will which can not be produced in court.

ART. 1853. All testimony taken in open court upon the hearing of an application to probate a will, shall be committed to writing at the time it is taken, and subscribed in open court by the witness or witnesses, and filed by the clerk.

All testimony shall be committed to writing, etc. *Ib.* p. 95, §7.

ART. 1854. Upon the hearing of an application for the probate of a will, if the court be satisfied from the evidence that such will should be admitted to probate, an order to that effect shall be entered upon the minutes, and such will, together with the application for the probate thereof, and all the testimony in the case, shall be recorded in the minutes; *provided*, that the substance only of depositions shall be so recorded.

Order shall be entered, will, etc., shall be recorded, when.



Certified copy of record may be read in evidence.  
*Ib.* p. 95, §7.

Will probated in another state or country may be filed and recorded in this state.  
*Ib.* §5.

ART. 1855. A certified copy of such record of testimony may be read in evidence on the trial of the same matter in any other court when taken there by appeal or otherwise.

ART. 1856. When application is made for the probate of a will which has been probated according to the laws of any of the United States or territories, or of any country out of the limits of the United States, a copy of such will and the probate thereof attested by the clerk of the court in which such will was admitted to probate, and the seal of the court annexed, if there be a seal, together with a certificate from the judge or presiding magistrate of such court, that the said attestation is in due form, may be filed and recorded in the court, and shall have the same force and effect as the original will, if probated in said court; *provided*, that the validity of such will may be contested in the same manner as the original might have been.

## CHAPTER SIX.

### GRANTING LETTERS.

	Article		Article
Who are disqualified from being executors or administrators.....	1857	Letters shall not be revoked, except upon application and citation.....	1867
Where a will has been probated letters testamentary shall be granted.....	1858	Where will is discovered after grant of administration.....	1868
When administration shall be granted....	1859	Executor of will proved in another state, entitled to letters within this state, when	1869
Administration shall not be granted, unless, etc.....	1860	Bond shall be required as in other cases....	1870
Order in which letters shall be granted....	1861	Further administration shall be granted, when.....	1871
Where applicants are equally entitled.....	1862	Executor, etc., who has been removed, shall not afterward be appointed, etc.....	1872
Certain persons entitled to letters may waive right in favor of another, how....	1863	What facts must appear before granting letters testamentary.....	1873
Letters revoked and granted to person having prior right.....	1864	What facts must appear before grant of letters of administration.....	1874
Letters revoked and granted to executor upon attaining lawful age.....	1865	Order of court granting letters.....	1875
Executor absent from state, etc., may qualify, within what time, etc.....	1866	Grant of letters may be opposed, etc.....	1876

Who are disqualified from being executors or administrators.  
(Act Aug. 9, 1876, p. 96, §10.)

When a will has been probated letters testamentary shall be granted.  
*Ib.* p. 95, §8.

When administration shall be granted.  
*Ib.* §9.

Administration shall not be granted, unless, etc.

Order in which letters shall be granted.  
*Ib.* P.D. 5508.

ARTICLE 1857. Letters testamentary or of administration shall not be granted to any person who is under twenty-one years of age, or of unsound mind; *provided, however*, that such letters may be granted to a surviving husband or wife who may be under twenty-one years of age.

ART. 1858. When a will shall have been probated, it shall be the duty of the court to grant letters testamentary to the executor or executors appointed by such will, if any there be, or to such of them as are not disqualified, and are willing to accept the trust and qualify according to law within twenty days after such probate, except in the case provided for in article 1828.

ART. 1859. When any person shall die intestate, or where no executor is named in a will, or where the executor renounces, dies, becomes of unsound mind, or is removed, or is disqualified, or shall neglect to accept and qualify within twenty days after the probate of the will, or shall neglect for a period of thirty days after the death of the testator to present the will for probate, then administration of the estate of such intestate, or administration with the will annexed of the estate of such testator shall be granted, should administration appear to be necessary.

ART. 1860. No administration upon any estate shall be granted unless it be made to appear to the satisfaction of the court that there exists a necessity therefor, such necessity to be determined by the court hearing the application.

ART. 1861. Letters testamentary or of administration shall be granted to persons who are qualified to act, in the following order:

1. To the person named as executor in the will of the deceased.
2. To the surviving husband or wife.
3. To the principal devisee or legatee of the testator.

4. To any devisee or legatee of the testator.
5. To the next of kin of the deceased, the nearest in the order of descent first, and so on.
6. To a creditor of the deceased.
7. To any person of good character residing in the county.

ART. 1862. When applicants are equally entitled, the letters shall be granted to the applicant who, in the judgment of the court, is most likely to administer the estate advantageously, or they may be granted to any two or three of such applicants.

Where applicants are equally entitled.  
P.D. 5512.

ART. 1863. The surviving husband or wife, or, if there be no such survivor, the heirs or any one of the heirs of the deceased, to the exclusion of any person not equally entitled, may, in open court or by power of attorney, duly authenticated and filed with the clerk of the county court of the county having jurisdiction of the estate, renounce his right to the administration in favor of some other qualified person, and thereupon the court may grant letters to such other person.

Certain persons entitled to letters may waive right in favor of another, how.

ART. 1864. Where letters have been granted to one, and another, whose right thereto is prior and who has not waived such right and who is not disqualified, makes application for letters, the letters previously granted shall be revoked and other letters shall be granted to the person thus entitled.

Letters revoked and granted to person having prior right.  
*Ib.* p. 96, §§13, 14  
P.D. 5518.

ART. 1865. Whenever any person named as executor in a will is under age, and letters of administration with the will annexed have been granted to any other person, such executor shall, upon proof that he has attained the age of twenty-one years and is not disqualified otherwise, be entitled to have such letters of administration revoked and letters testamentary granted to himself. And when two or more persons are named executors in a will, any one or more of whom are minors when such will is admitted to probate, and letters testamentary have been issued to such only as are of full age, such minor or minors, upon attaining the age of twenty-one years, if not disqualified, shall be permitted to qualify and receive letters.

Letters revoked and granted to executor upon attaining lawful age.  
*Ib.* p. 96, §11.

ART. 1866. Whenever any person named as executor in a will shall have been absent from the state when the testator died or when the will was proved, whereby he was prevented from presenting the will for probate within thirty days after the death of the testator, or from accepting and qualifying as executor within twenty days after the probate of the will, or whenever he shall have been prevented by sickness from so presenting the will or from so accepting and qualifying, he shall be allowed to accept and qualify as executor at any time within sixty days after his return to the state or his recovery from sickness, upon making proof to the court that he was so absent or prevented by sickness; and if in the meantime letters of administration have been granted such letters shall be revoked.

Executor absent from the state, etc., may qualify within what time, etc.  
*Ib.* p. 96, §12.

ART. 1867. Letters shall not be revoked and other letters granted under the provisions of either of the four preceding articles, unless application therefor has been filed and the executor or administrator has been cited to appear at a regular term of the court and show cause why such application should not be granted; but in such cases when the letters are revoked, other letters may be granted without the posting of citation as in other cases.

Letters shall not be revoked except upon application and citation.

ART. 1868. Whenever letters of administration shall have been granted upon an estate, and it shall afterward be discovered that the deceased left a lawful will, such will may be proved in the manner provided for the proof of wills; and if an executor is named in such will, and he is not disqualified, he shall be allowed to qualify and accept as such executor, and the letters previously granted shall be revoked; but if no such executor be named in the will, or if the executor named be disqualified, or shall renounce the executorship, or shall neglect to accept and qualify within twenty days after the date of the probate of the will, or shall neglect for

When will is discovered after grant of administration  
*Ib.* p. 97, §15.

a period of thirty days after the discovery of such will to present it for probate, then administration with the will annexed of the estate of such testator, shall be granted as in other cases. All acts done by the first administrator, previous to the qualification of the executor or administrator with the will annexed, shall be as valid as if no such will had been discovered.

Executor of will proved in another state entitled to letters within this state, when.  
*Ib.* p. 97, §16.  
P.D. 5517.

ART. 1869. When a will has been admitted to probate in any of the United States or territories thereof, or in the District of Columbia, or in any country out of the limits of the United States, and the executor named in such will has qualified, and a copy of such will and the probate thereof has been filed and recorded in any county court of this state having jurisdiction of the estate, and letters of administration have been granted by such court to any person other than such executor, upon the application of such executor, and after citation served upon the person to whom such letters have been granted, such letters shall be revoked, and letters testamentary shall be granted to such applicant.

Bond shall be required as in other cases.  
P.D. 5517.

ART. 1870. In the case provided for in the preceding article the executor shall be required to give bond as in other cases, notwithstanding any provision to the contrary in the will, and the order revoking the former letters shall not take effect until such executor has qualified in accordance with law.

Further administration shall be granted, when.  
*Ib.* p. 97, §18.

ART. 1871. Whenever an estate is unrepresented by reason of the death, removal or resignation of the executor or administrator, the court shall grant further administration upon such estate when necessary, and with the will annexed, where there is a will, in the same manner and under the same regulations provided for the appointment of original executors or administrators.

Executor, etc., who has been removed, shall not afterward be appointed, etc.  
*Ib.* p. 100, §28.

ART. 1872. Whenever any person has been removed from the executorship or administration of an estate, he shall not afterward be appointed administrator thereof.

What facts must appear before granting letters testamentary.  
*Ib.* p. 94, §2.

ART. 1873. Before granting letters testamentary, it must appear to the court—

1. That the person is dead.
2. That four years have not elapsed since his decease prior to the application.
3. That the court has jurisdiction of the estate.
4. That the will has been proved as prescribed by law.
5. That the person to whom the letters are to be granted is named as executor in the will.
6. That the person named as executor is not disqualified by law.

The first three subdivisions of this article have no application where letters of administration upon such estate have been previously granted in said court.

What facts must appear before grant of letters of administration.  
*Ib.* p. 94, §2.

ART. 1874. Before granting letters of administration it must appear to the court—

1. That the person is dead.
2. That four years have not elapsed since his decease prior to the application.
3. That the court has jurisdiction of the estate.
4. That there is a necessity for an administration upon such estate.
5. That the person to whom the letters are about to be granted is entitled thereto by law and is not disqualified.

The first three subdivisions of this article have no application when letters testamentary or of administration have been previously granted upon such estate by said court.

Order of court granting letters.

ART. 1875. When letters testamentary or administration are granted by the court, an order to that effect shall be entered upon the minutes, which order shall state—

1. The name of the testator or intestate.
2. The name of the person to whom the grant of letters is made.
3. If bond is required, the amount thereof.
4. The order shall require the clerk of the court to issue letters in accordance with such order, when the person to whom such letters are granted shall have qualified according to law.

ART. 1876. When application is made for letters of administration, any person may at any time before the said application is granted, file his opposition thereto in writing, and may apply for the grant of letters to himself or to any other person; and upon the trial the court shall grant letters to the person that may seem best entitled to them, having regard to the provisions of this title, without further notice than that of the original application.

Grant of letters may be opposed, etc.

## CHAPTER SEVEN.

### TEMPORARY ADMINISTRATION.

	Article		Article
County judge may appoint temporary administrator, when.....	1877	Pending contest, the county judge may appoint temporary administrator.....	1881
Appointment may be made without application, etc.....	1878	Rights and powers of temporary administrator.....	1882
Oath and bond required.....	1879	List, return of sales, exhibit and account shall be made.....	1883
Appointment shall cease to be of force, when.....	1880	List, etc., shall be acted upon by the court.	1884

ARTICLE 1877. Whenever it may appear to the county judge that the interest of an estate requires the immediate appointment of an administrator, he shall either in open court or in vacation, by writing under his hand and the seal of the court, attested by the clerk, appoint some suitable person temporary administrator with such limited powers as the circumstances of the case may require.

County judge may appoint temporary administrator, when. (Act Aug. 9, 1876, p. 98, §20.)

ART. 1878. Such appointment may be made either upon written application or without such application, and without citation. It shall define the powers conferred, and before being delivered to the person appointed shall be recorded in the minutes of the court, and the clerk shall indorse thereon a certificate that it has been so recorded, and until such record and certificate are made such appointment shall not take effect.

Appointment may be made without application, etc. *Ib.* p. 98, §20.

ART. 1879. Such appointment shall not be delivered or take effect until the person appointed has taken the oath and has given bond as required by law.

Oath and bond required. *Ib.* p. 98, §22.

ART. 1880. Such appointment shall cease to be of force on the day designated for taking up probate business at the first term of the court held next after the date thereof, unless at such term it be continued in force by an order entered upon the minutes in open court; and in no case shall such appointment continue in force beyond the day designated.

Appointment shall cease to be of force when. *Ib.* p. 98, §20

ART. 1881. Pending any contest relative to the probate of a will, or the granting of letters of administration, whether such contest be in the county court or in the district court, it shall be the duty of the county judge, should he deem it necessary, to appoint a temporary administrator in the manner prescribed in the preceding articles in this chapter, with such limited powers as the circumstances of the case may require; and such appointment may continue in force until the termination of the contest and the appointment of an executor or administrator with full powers.

Pending contest the county judge may appoint temporary administrator. *Ib.* p. 98, §21.

ART. 1882. Temporary administrators shall have and exercise only such rights and powers with regard to the estate, or such portions thereof as may be committed to their charge, as are specifically and clearly expressed in the order of the court appointing them, and any acts performed by them as such administrators that are not so expressly authorized shall be void.

Rights and powers of temporary administrator.

List, return of sales, exhibit and account shall be made. P.D. 5531.

ART. 1883. At the expiration of the time for which a temporary administrator has been appointed, he shall file with the clerk of the court a list of all the property of the estate which has come to his hands, a return of all sales made by him, and a full exhibit and account of all his acts as such administrator, all of which shall be verified by his affidavit.

List, etc., shall be acted upon by the court.

ART. 1884. The list, return, exhibit and account required to be made by the temporary administrator under the preceding article shall be acted upon by the court at the same or a subsequent term, and whenever temporary letters shall expire, or cease to be of effect from any cause, the court shall immediately, either in term time or in vacation, enter an order upon the probate minutes requiring such temporary administrator to forthwith deliver the estate remaining in his possession to the person legally entitled to the possession of the same.

## CHAPTER EIGHT.

### OATH AND BOND OF EXECUTORS AND ADMINISTRATORS.

	Article		Article
Oath of executor or administrator with will annexed.....	1885	When new bond may be required.....	1896
Oath of administrator.....	1886	Duty of county judge to require new bond, when.....	1897
Oath of temporary administrator.....	1887	Any person interested in an estate may demand new bond.....	1898
Oath may be taken before any officer authorized to administer oaths.....	1888	Sureties may ask to be discharged, and for new bonds.....	1899
Bond of executors and administrators.....	1889	Citation to executor or administrator.....	1900
Form of bond.....	1890	Order requiring new bond.....	1901
Oath and bond, within what time.....	1891	After order requiring new bond, functions of executor, etc., suspended.....	1902
Bonds shall be filed and recorded.....	1892	Sureties discharged when new bond is approved.....	1903
Where will provides that no bond shall be required.....	1893	Bond shall not be void on first recovery, etc.....	1904
Bond of married woman.....	1894		
Bond of husband or wife, who is a minor.....	1895		

Oath of executor or administrator with will annexed. (Act Aug. 9, 1876, p. 100, §30.)

ARTICLE 1885. Before the issuance of letters testamentary or of administration with the will annexed, the person named executor or appointed administrator with the will annexed, shall take and subscribe an oath in form as follows: "I do solemnly swear that the writing which has been offered for probate is the last will of....., so far as I know or believe, and that I will well and truly perform all the duties of executor of said will (or 'of administrator with the will annexed,' as the case may be) of the estate of said....."

Oath of administrator. Ib. p. 100, §31.

ART. 1886. Before the issuance of letters of administration, the person appointed administrator shall take and subscribe an oath in form as follows: "I do solemnly swear that....., deceased, died without leaving any lawful will, so far as I know or believe; and that I will well and truly perform all the duties of administrator of the estate of said deceased."

Oath of temporary administrator. Ib. p. 98, §22.

ART. 1887. Before the issuance of temporary letters of administration, the person appointed temporary administrator shall take and subscribe an oath in form as follows: "I do solemnly swear that I will well and truly perform the duties of temporary administrator of the estate of....., deceased, in accordance with law, and with the order of the court appointing me such administrator."

Oath may be taken before any officer authorized to administer oaths, etc.

ART. 1888. The oaths prescribed by the three preceding articles may be taken before any officer authorized to administer oaths, and shall be filed with the clerk of the court granting the letters, and shall be recorded in the minutes of such court.

Bond of executors and administrators. Ib. p. 100, §32.

ART. 1889. Before the issuance of letters testamentary or of administration, the person to whom letters are granted shall enter into bond with at least two good and sufficient sureties who shall be *bona fide* residents of this state, to be approved by and payable to the county judge of the county, in such penalty as he may direct, not less than double the estimated value of the estate of the testator or intestate, except in the

case of a temporary administrator, when the bond shall be in such sum as the county judge may direct.

ART. 1890. The following form, or the same in substance, may be used for the bonds of executors and administrators: Form of bond.  
Ib. p. 101, §34.

“THE STATE OF TEXAS, }  
“County of ..... }

“*Know all men by these presents*, That we, A B as principal, and C D and E F as sureties, are held and firmly bound unto the county judge of the county of....., and his successors in office, in the sum of .....dollars; conditioned that the above-bound A B, who has been appointed executor of the last will and testament of J C, deceased, (or ‘has been appointed by the county judge of.....county, administrator with the will annexed of the estate of J C, deceased,’ or, ‘has been appointed by the county judge of.....county, administrator of the estate of J C, deceased,’ or, ‘has been appointed by the county judge of.....county, temporary administrator of the estate of J C, deceased,’ as the case may be) shall well and truly perform all the duties required of him under said appointment.

“A B,  
“C D,  
“E F.”

ART. 1891. The oath of an executor or administrator may be taken and subscribed, or his bond may be given and approved, either in term time or vacation, at any time before the expiration of twenty days from the probate of the will or the order granting the letters, or before his letters shall have been revoked for a failure to qualify within the time allowed. Oath and bond  
within what  
time.  
Ib. p. 101, §33.

ART. 1892. All bonds of executors and administrators when approved shall be filed with the clerk of the court and shall be recorded in the minutes of the court. Bond shall be  
filed and re-  
corded.  
Ib. p. 101, §33.

ART. 1893. When any testator shall direct in his will that no security shall be required of the person named therein as executor, letters testamentary shall be issued to such person without any bond being required, except in the case provided for in article 1870, in which case bond is required, notwithstanding the will may provide to the contrary. When will pro-  
vides that no  
bond shall be  
required.  
Ib. p. 101, §32.

ART. 1894. When a married woman may be appointed executrix or administratrix, she may jointly with her husband, or without her husband, if he be absent from the state, or insane, or refuses to join with her, execute such bond as the law requires and acknowledge the same before the county judge, county clerk or any notary public of the county where the will was proved or letters were granted; and such bond shall bind her separate estate in the same manner as if she were unmarried, but shall not bind her husband as surety unless he sign and be approved as such. Bond of mar-  
ried woman.  
Ib. p. 101, §25.  
P.D. 5671.

ART. 1895. When a surviving husband or wife under twenty-one years of age shall wish to accept and qualify as executor or executrix, or administrator or administratrix, he or she may execute such bonds as the law requires and acknowledge the same before the county judge, county clerk or any notary public of the county in which the will was proved or letters of administration were granted, and such bonds shall be as valid as if he or she were of lawful age. Bond of a hus-  
band or wife  
who is a minor.  
Ib. p. 101, §36.

ART. 1896. An executor or administrator may be required to give a new bond in the following cases: When new  
bond may be  
required.  
Ib. pp. 101, 102,  
§§37, 39.

1. When the sureties upon the bond or any one of them shall die, remove beyond the limits of the state or become insolvent.
2. When in the opinion of the county judge the sureties upon any such bond are insufficient.
3. When in the opinion of the county judge any such bond is defective.
4. When the amount of any such bond is insufficient.

5. When the sureties or any one of them petition the court to be discharged from future liability upon such bond.

6. When the bond and the record thereof have been lost or destroyed.

Duty of county judge to require new bond, when.

ART. 1897. When it shall come to the knowledge of the county judge that any such bond is in any respect insufficient or that it has, together with the record thereof, been lost or destroyed, it shall be his duty without delay to cause the executor or administrator to be cited to show cause why he should not give a new bond.

Any person interested in estate may demand new bond. *Ib.* p. 102, §38.

ART. 1898. Any person interested in an estate may, upon application in writing filed with the county clerk of the county where the administration is pending, alleging that the bond of the executor or administrator is insufficient or defective, or has been, together with the record thereof, lost or destroyed, cause such executor or administrator to be cited to appear and show cause why he should not give a new bond.

Sureties may ask to be discharged, and for new bond. *Ib.* §39.

ART. 1899. The sureties upon the bond of an executor or administrator, or any one of these, may, at any time, present a petition to the county judge praying that such executor or administrator may be required to give a new bond, and that he or they may be discharged from all liability for the future acts of such executor or administrator, whereupon such executor or administrator shall be cited to appear and give a new bond.

Citation to executor or administrator.

ART. 1900. The citations required in the three preceding articles may be issued either in term time or in vacation, and shall require the party cited to appear before the county judge on some day named therein, not later than ten days from the date of such citation, either in term time or in vacation, and five days service thereof, exclusive of the day of service, shall be sufficient.

Order requiring new bond. *Ib.* p. 102.

ART. 1901. Upon the return of any such citation served, the county judge shall, on the day named in such citation for the hearing of the matter, whether it be in term time or in vacation, proceed to inquire into the sufficiency of the reasons for requiring a new bond, and if satisfied that a new bond should be required he shall enter an order to that effect upon the minutes, stating in such order the amount of such new bond, and the time within which it shall be given, which shall not be later than twenty days from the date of such order.

After order requiring new bond, functions of executor, etc., suspended. *Ib.* p. 102, §40.

ART. 1902. Whenever an executor or administrator has been required to give a new bond, the order requiring such bond shall have the effect to suspend the powers of such executor or administrator, and he shall not thereafter pay out any money of said estate or do any other official act except to preserve the property of the estate, until such new bond has been given and approved.

Sureties discharged when new bond is approved. *Ib.* §39.

ART. 1903. When a new bond has been given and approved the sureties upon the former bond of such executor or administrator are thereby discharged from all liability for the future acts of such executor or administrator, and an order to that effect shall be entered upon the minutes of the court.

Bond shall not be void on first recovery, etc.

ART. 1904. The bonds of executors and administrators shall not become void upon the first recovery, but may be put in suit and prosecuted from time to time, until the whole amount thereof shall have been recovered.

## CHAPTER NINE.

### ISSUANCE OF LETTERS.

<p>Clerk shall issue letters, when. (Act Aug. 9, 1876, p. 97, §10.)</p>	<p>Article 1905 1906 1907</p>	<p>Letters shall issue to each one qualifying Other letters may be issued, when.</p>	<p>Article 1908 1909</p>
<p>Clerk shall issue letters, when. (Act Aug. 9, 1876, p. 97, §10.)</p>		<p>Letters shall issue to each one qualifying Other letters may be issued, when.</p>	<p>Article 1908 1909</p>

ARTICLE 1905. Whenever an executor or administrator has been qualified in the manner required by law, it shall be the duty of the clerk of

the court granting the letters testamentary or of administration to forthwith issue and deliver the letters to such executor or administrator.

ART. 1906. Letters testamentary or of administration shall be a certificate of the clerk of the court granting the same, attested by the seal of such court, and stating that such executor or administrator, as the case may be, has duly qualified as such as the law requires, the date of such qualification and the name of the deceased.

What constitutes letters.  
*Ib.*

ART. 1907. Such letters, or a certificate of the clerk of the court which granted the same, under the seal of such court, that such letters have been issued, shall be sufficient evidence of the appointment and qualification of an executor or administrator and of the date of such qualification.

Letters and certificate of letters made evidence.  
*Ib.*  
P.D. 1286.

ART. 1908. When two or more persons qualify as executors or administrators, letters shall be issued to each one of them so qualifying.

Letters shall issue to each one qualifying.

ART. 1909. When letters have been lost or destroyed the clerk may issue other letters in their stead, which shall have the same force and effect as the original letters.

Other letters may be issued, when.

## CHAPTER TEN.

### INVENTORY, APPRAISEMENT AND LIST OF CLAIMS.

	Article		Article
Appointment of appraisers.....	1910	May be cited to make, etc.....	1921
Same subject.....	1911	Order requiring additional inventory, etc..	1922
Inventory and appraisal.....	1912	Erroneous inventory or list may be corrected.....	1923
Appraisal shall be sworn to.....	1913	New appraisal may be required.....	1924
List of claims.....	1914	Order for same.....	1925
Inventory and list shall be sworn to.....	1915	New appraisal in place of original.....	1926
Shall be returned within sixty days.....	1916	Not more than one re-appraisal.....	1927
Court shall approve or disapprove.....	1917	Shall be evidence, to what extent.....	1928
Order of approval.....	1918	Where more than one executor, etc., qualifies, and some neglect to return inventory, etc.....	1929
Order of disapproval.....	1919		
Duty of executor to make additional inventory.....	1920		

ARTICLE 1910. Whenever letters testamentary or of administration shall be granted, the county judge shall, by an order entered on the minutes of the court, appoint three or more disinterested persons, citizens of the county, any two of whom may act, to appraise the estate of the deceased.

Apportionment of appraisers.  
(Act Aug. 9, 1876, p. 103, §43.)

ART. 1911. If from any cause such appointment be not made, or if the appraisers, or any of them so appointed fail to act, or if from any other cause a new appointment is required, the county judge shall by a like order, either in term time or vacation, appoint another appraiser or appraisers, as the case may require.

Same subject.

ART. 1912. Every executor or administrator shall, immediately after he has qualified as such, with the assistance of any two or more of the appraisers appointed by the county judge, make, or cause to be made, a full inventory and appraisal of all the estate of the testator or intestate, both real and personal, specifying in such inventory what portion of said estate is the separate property of the deceased, and what portion, if any, is represented as common property.

Inventory and appraisal.  
*Ib.* p. 103, §44.

ART. 1913. The appraised value of each article of property shall be stated opposite such article in the inventory, and such appraisal shall be sworn to and subscribed by the appraisers making the same before some officer of the county where the same is made, authorized by law to administer oaths.

Appraisal shall be sworn to.  
*Ib.* p. 103, §44.

ART. 1914. Such executor or administrator shall also make and attach to such inventory a full and complete list of all claims due or owing to the testator or intestate, stating the nature of such claims, the names of the parties owing the same, the date thereof and the date when due, and the rate of interest each one bears, and shall also specify what portion of

List of claims  
*Ib.* p. 103, §44.



such claims is the separate property of the deceased, and what portion, if any, is represented as common property.

Inventory and list shall be sworn to.  
*Ib.* p. 103, §44.

ART. 1915. Such executor or administrator shall also attach to such inventory and list his affidavit in writing, subscribed and sworn to by him, before some officer of the county authorized by law to administer oaths, that the said inventory and list is a full and complete inventory and list of the property and claims of his testator or intestate that have come to his knowledge.

Shall be returned within sixty days.  
*Ib.* p. 103, §45.

ART. 1916. The inventory, appraisement and list required to be made by the preceding articles of this chapter, shall be returned to the court granting the letters, either in term time or in vacation, within sixty days from the date of granting such letters.

Court shall approve or disapprove same.  
*Ib.*

ART. 1917. Upon the return of any such inventory, appraisement and list, it shall be the duty of the judge, either in term time or in vacation, to examine the same, and to either approve or disapprove the same.

Order of approval.

ART. 1918. Should the inventory, appraisement and list be approved by the judge, he shall cause an order to that effect to be entered upon the minutes, either in term time or in vacation, and shall cause such inventory and list to be recorded upon said minutes.

Order of disapproval.

ART. 1919. Should the inventory, appraisement and list, or either of them, be disapproved, an order to that effect shall be entered upon the minutes, either in term time or in vacation, and such order shall further require the executor or administrator to return another inventory, appraisement and list, or either of them, within a time which shall be specified in such order, not to exceed ten days from the date of such order; and the judge may also, if he deems it necessary, appoint new appraisers.

Duty of executor, etc., to make additional inventory.  
*Ib.* p. 103, §46.

ART. 1920. Whenever property or claims of the testator or intestate other than such as may be included in the inventory and list, which have been returned, shall come to the knowledge of the executor or administrator, he shall make and return an additional inventory or list or both of such newly discovered property or claims or both without delay; and upon the return of any such additional inventory, the county judge shall, either in term time or in vacation, appoint appraisers and cause the property named in such additional inventory to be appraised as in the case of original appraisements.

May be cited to make, etc.  
*Ib.* p. 103, §46.

ART. 1921. Any executor or administrator, on the complaint in writing of any person interested in the estate, shall be cited to appear before the court in which the administration was granted, at a regular term thereof, and show cause why he should not be required to make and return an additional inventory or list of claims or both.

Order requiring additional inventory.  
*Ib.* p. 103, §46.

ART. 1922. Upon the hearing of such complaint the court shall, on sufficient proof being made that any property or claims of the estate have not been included in the inventory and list returned, require an additional inventory or list, or both, as the case may be, to be made and returned, including such property or claims in like manner as original inventories and lists, and within such time as may be fixed by the court by an order to that effect entered upon the minutes.

Erroneous inventory or list may be corrected.

ART. 1923. Any executor or administrator, on complaint in writing of any person interested in the estate, setting forth that an error has been made in the inventory or list of claims returned, and pointing out such error, shall be cited to appear at a regular term of the court and show cause why such alleged error should not be corrected; and if, upon the hearing of such complaint it appear to the satisfaction of the court that such inventory or list is in any particular erroneous, such error shall be corrected and an order to that effect shall be entered upon the minutes, specifying such error and the correction thereof.

New appraisement may be required.  
*Ib.* p. 104, §48.

ART. 1924. Any person interested in the estate, who may deem any appraisement returned therein unjust or erroneous, may, upon complaint in writing, cause the executor or administrator to appear at a regular

term of the court and show cause why a new appraisalment should not be made.

ART. 1925. Upon the hearing of such complaint, if the court be satisfied that such appraisalment was manifestly unjust or erroneous, an order shall be entered upon the minutes appointing appraisers and requiring a new appraisalment to be made and returned in like manner as original appraisalments.

Order for same. *Ib.*

ART. 1926. When any such new appraisalment is made, returned and approved by the court, it shall stand in the place of the original appraisalment of the same property.

New appraisalment stands in place of original.

ART. 1927. Not more than one re-appraisalment shall be made, but any person interested in the estate may contest the approval of any appraisalment by filing his objections thereto in writing at any time before such appraisalment has been approved by the court.

*Ib.* p. 104, §48. Not more than one re-appraisalment. *Ib.*

ART. 1928. All inventories and appraisalments and lists of claims which have been taken, returned and approved in accordance with the provisions of this chapter, or the record thereof, or certified copies of either the originals or the record thereof, may be given in evidence in any of the courts of this state in any suit, by or against the executor or administrator, but shall not be conclusive for or against him, if it be shown—

Shall be evidence to what extent. *Ib.* p. 104, §47.

1. That there is other property belonging to the estate not inventoried; or,
2. That there are other claims belonging to the estate other than those named in the list; or,
3. That certain property or claims named in the list did not belong to the estate; or,
4. That the property was not separate or common property as specified in such inventory or list; or,
5. That the property or any part thereof was sold legally and in good faith for less than the appraised value thereof.

ART. 1929. If there be more than one executor or administrator qualified as such, any one or more of them, on the neglect of the others, may return an inventory and appraisalment and list of claims as required by the provisions of this chapter; and the executor or administrator so neglecting shall not thereafter interfere with the estate or have any power over the same; but the executor or administrator so returning shall have thereafter the whole administration unless within sixty days after the return the delinquent or delinquents shall assign to the court in writing and under oath some reasonable excuse which the court may deem satisfactory; and if no such sufficient excuse shall be assigned within said time, an order shall be entered upon the minutes removing such delinquent or delinquents and revoking his or their letters.

Where more than one executor or administrator qualifies and some neglect to return inventory, etc. *Ib.* p. 98, §23.

## CHAPTER ELEVEN.

### CERTAIN RIGHTS, DUTIES AND POWERS OF EXECUTORS AND ADMINISTRATORS.

	Article		Article
What care to take of property of estate....	1930	Property may be purchased, compromises made, etc., under order of the court.....	1934
Duty in regard to plantation, manufactory, or business.....	1931	Power to release mortgages.....	1935
Action of executor, etc., in regard to plantation, etc., may be controlled by court..	1932	Acts of one co-executor or co-administrator valid.....	1936
Ordinary diligence shall be used to collect claims and recover property of estate....	1933	Preceding article does not apply, when....	1937

ARTICLE 1930. It shall be the duty of the executor or administrator to take such care of the property of the estate of his testator or intestate as a prudent man would take of his own property, and if there be any buildings belonging to the estate it shall be his duty to keep the same in

What care to take of property of estate. (Act Aug. 9, 1876, p. 104, §49.)

tenantable repair, extraordinary casualties excepted, unless directed not to do so by an order of the court.

Duty in regard to plantation, manufactory or business.  
*Ib.* p. 104, §50.

ART. 1931. If there be a plantation, manufactory or business belonging to the estate, and the disposition thereof is not specially directed by will, and if the same be not required to be at once sold for the payment of debts, it shall be the duty of the executor or administrator to carry on the plantation, manufactory or business, or cause the same to be done, or to rent the same, as shall appear to him to be most for the interest of the estate. In coming to a determination he shall take into consideration the condition of the estate and the necessity that may exist for future sale of such property for the payment of claims or legacies, and shall not extend the time of renting any of the property beyond what may consist with the speedy settlement of the estate.

Action of executor, etc., in regard to plantation, etc., may be controlled by court.  
*Ib.* p. 104, §50.

ART. 1932. Any person interested in the estate may, upon complaint in writing, after citation of the executor or administrator, at a regular term of the court upon good cause shown, obtain an order of the court, which shall be entered upon the minutes controlling the action of such executor or administrator in regard to such plantation, manufactory or business.

Ordinary diligence shall be used to collect claims and recover property of estate.  
*Ib.* p. 104, §52.

ART. 1933. Every executor or administrator shall use ordinary diligence to collect every claim due to the estate he represents, and to recover possession of all property to which the estate has a right; *provided*, there is a reasonable prospect that such claim can be collected or such property recovered, and if any executor or administrator shall neglect to use such diligence, he and the sureties on his bond shall be liable, at the suit of any person interested in the estate, for the use of the estate, for the amount of such claims or the value of such property as may have been lost by his neglect to use such diligence.

Property may be purchased, compromises made, etc., under order of the court.  
*Ib.* p. 105, §54.  
P.D. 5632.

ART. 1934. Whenever an executor or administrator may deem it for the interest of the estate he represents to purchase any property or to exchange any property, or take any claims or property for the use and benefit of the estate in payment of any debt due the estate, or to compound bad or doubtful debts due the estate, or to make compromises or settlements in relation to property or claims in dispute or litigation, it shall be his duty to present an application in writing to the county court, at a regular term thereof, representing the facts; and if the court upon the hearing of such application, shall be satisfied that it will be for the interest of the estate to grant the same, an order to that effect shall be entered upon the minutes, setting forth fully the authority granted.

Power to release mortgage.  
*Ib.* p. 105, §55.  
P.D. 5638.

ART. 1935. When a mortgagee dies his executor or administrator, on receipt of the amount due on the mortgage, is authorized to release such mortgage.

Acts of one co-executor or co-administrator valid.

ART. 1936. Should there be more than one executor or administrator of the same estate at the same time, the acts of one of them as such executor or administrator shall be as valid as if all had acted jointly, and in case of the death, resignation or removal of an executor or administrator, if there be a co-executor or co-administrator of such estate, he shall proceed with the administration as if no such death, resignation or removal had occurred.

Preceding article does not apply, when.

ART. 1937. The preceding article shall not be construed to authorize one of several executors to convey real estate, but in such case all the executors who have qualified as such and who are acting as such shall join in such conveyance.

CHAPTER TWELVE.

ADMINISTRATION UNDER A WILL.

	Article		Article
Directions in will to be executed, unless, etc	1938	Upon failure to give bond estate shall be administered under direction of the court	1950
Proceedings to annul directions in will	1939	Bond shall be filed and recorded	1951
Citation to executor, etc., in such case	1940	Creditor may sue on bond, etc.	1952
Order of the court in such case	1941	Costs of such proceedings to be paid by whom	1953
Testator may provide that no action be had in court, except probate of will, etc.	1942	Executor may sell property without order of court, when	1954
Creditor may sue executor, in such case	1943	Personal property reserved from sale by will	1955
Executor without bond may be required to give bond, when	1944	Administration under will same as in intestates' estates, except, etc.	1956
Order requiring bond	1945	Legatee or devisee may obtain order for delivery of legacy or bequest, when and how	1957
Bond in such case	1946	Naming an executor in a will does not release him from a debt, etc.	1958
Should the executor fail to give required bond, etc.	1947		
Estate shall be partitioned and divided by court, when	1948		
Heirs, etc., may be required to give bond, when	1949		

ARTICLE 1938. When a will has been probated, its provisions and directions shall be executed, unless the same are annulled or suspended by order of the court probating the same in a proceeding instituted for that purpose by some person interested in the estate.

Directions in will to be executed, unless, etc.  
P. D. 5623.

ART. 1939. Such proceeding shall be by application in writing, filed with the clerk of the court, setting forth the provisions and directions in the will that are objected to, and the grounds of objection.

Proceedings to annul directions in will.

ART. 1940. Upon the filing of such application the clerk shall issue a citation for the executor or administrator with the will annexed to appear at a regular term of such court and answer such application, the substance of which application shall be set forth in the citation, and such citation shall further direct such executor or administrator to refrain from executing the provisions and directions in the will that are objected to, until such application has been heard and decided by the court.

Citation to executor, etc., in such case.

ART. 1941. If it appear upon the hearing of such application that no material injury to the interests of the applicant will be occasioned by executing the provisions and directions of the will, and that such provisions and directions are legal, the objections shall be overruled, and the provisions and directions objected to shall be confirmed and executed, and an order to that effect shall be entered upon the minutes; otherwise an order shall be entered upon the minutes of the court annulling the provisions and directions in the will to which objections are sustained, or suspending the execution of the same until the further order of the court.

Order of the court in such case.

ART. 1942. Any person capable of making a will may so provide in his will that no other action shall be had in the county court in relation to the settlement of his estate than the probating and recording of his will, and the return of an inventory, appraisalment and list of claims of his estate.

Testator may provide that no action be had in the court, except probate of will, etc.  
(Act Aug. 9, 1876, p. 124, §117.)

ART. 1943. In the cases mentioned in the preceding article any person having a debt or claim against said estate may enforce the payment of the same by suit against the executor of such will, and when judgment is recovered against the executor, the execution shall run against the estate of the testator in the hands of the executor that may be subject to such debt; but no such executor shall be required to plead to any suit brought against him for money until the expiration of twelve months from the date of the probate of such will.

Creditor may sue executor in such case.  
Ib. p. 124, §117.

ART. 1944. In cases where no bond has been required of an executor, any person having a debt, claim or demand against the estate, to the justice of which oath has been made by himself, his agent or attorney, or any person interested in such estate, whether in person or as the representative of another, may, by complaint in writing filed in the court

Executor without bond may be required to give bond, when.  
Ib. p. 124, §117.

where such will was probated, cause such executor to appear before such court at some regular term and show cause why he should not be required to give bond as such executor.

Order requiring bond.  
*Ib.* p. 124, §117.

ART. 1945. Upon the hearing of such complaint if it be made to appear by proof to the satisfaction of the court that such executor is wasting, mismanaging or misapplying said estate, and that thereby said creditor may probably lose his debt, or such person his interest in the estate, it shall be the duty of the court to enter an order upon the minutes requiring such executor to give bond within ten days from the date of such order.

Bond in such case.  
*Ib.* p. 125, §117.

ART. 1946. Such bond shall be signed by the executor with two or more good and sufficient sureties for an amount equal to double the full value of the estate, to be approved by and payable to the county judge of the county, conditioned that said executor will well and truly administer such estate, and that he will not waste, mismanage or misapply the same; which bond shall be filed, and when approved by the county judge shall be recorded in the minutes, and may be recovered upon as other bonds given by executors and administrators.

Should executor fail to give required bond.  
*Ib.* p. 125, §117.

ART. 1947. Should such executor fail to give such bond within ten days after the order requiring him to do so, then it shall be the duty of the county judge, without citation, and either in term time or in vacation, to remove such executor and appoint some competent person in his stead, whose duty it shall be to administer said estate according to the provisions of such will, and who, before he enters upon the administration of said estate, shall take the oath required of executors and shall give the bond required in the preceding article.

Estate may be partitioned and divided by court, when.  
*Ib.* p. 125, §117.

ART. 1948. If such will does not distribute the entire estate of the testator, or provide a means for partition of said estate, the executor shall have the right to file his final account in the court in which the will was probated, and ask partition and distribution of the estate, and the same shall be partitioned and distributed in the manner provided for the partition and distribution of estates administered under the direction of the court.

Heirs, etc., may be required to give bond, when.  
*Ib.* p. 125, §123.

ART. 1949. When it is provided in a will that no action shall be had in the county court except to probate and record the will and return an inventory of the estate, any person having a debt against such estate may, by complaint in writing filed in the court where such will was probated, cause all the persons entitled to any portion of such estate under the will or as heirs at law to be cited to appear before such court at some regular term and execute an obligation, with two or more good and sufficient sureties, for an amount equal to the full value of such estate as shown by the inventory and list of claims, such obligation to be payable to the county judge, and to be approved by him, and conditioned that the obligors shall pay all debts that may be established against such estate in the manner provided by law.

Upon failure to give bond estate shall be administered under direction of the court.  
*Ib.* p. 126, §123.

ART. 1950. Upon the return of the citation served, unless such persons so entitled to any portion of the estate, or some of them, or some other person for them, shall execute such obligation to the satisfaction of the county judge, such estate shall thereafter be administered and settled under the direction of the court as other estates are required to be settled.

Bond shall be filed and recorded.  
*Ib.*

ART. 1951. If the obligation provided for in article 1949 is executed and approved, it shall be filed and recorded in the minutes of the court, and no further action shall be had in said court in relation to said estate, except in the case mentioned in article 1948, in which case the action therein provided for may be had.

Creditor may sue on bond, etc.  
*Ib.*

ART. 1952. Every creditor of such estate shall have the right to sue on such obligation in any court having jurisdiction of the debt, and shall be entitled to judgment thereon for such debt as he may establish against

the estate, or such creditors may have their action against those in possession of the estate.

ART. 1953. All costs of the proceedings, provided for in the four last preceding articles, shall be paid by the persons entitled to such estate, according to their respective interests in such estate.

Costs of such proceeding to be paid by whom.

ART. 1954. Whenever in a will, power is given to an executor to sell any property of the testator, no order of the county judge shall be necessary to authorize the executor to make such sale, and when any particular directions are given by a testator in his will respecting the sale of any property belonging to his estate, the same shall be followed, unless such directions have been annulled or suspended by order of the court as hereinbefore provided.

*Ib.*  
Executor may sell property without order of court, when, etc.  
*Ib.* p. 113, §82.

ART. 1955. If a testator in his will directs his personal estate or any part thereof not to be sold, the same shall be reserved from sale, unless such sale be necessary for the payment of debts.

Personal property reserved from sale by will.  
*Ib.* p. 130, §146.

ART. 1956. The administration of an estate under a will shall in all respects be governed by the provisions of the law respecting the administration of intestates' estates, except where it is otherwise provided by law or by the provisions and directions of the will.

Administration under will same as intestates' estates, except, etc.

ART. 1957. Any devisee or legatee may obtain from the county judge of the county where the will was proved an order for the executor or administrator, with the will annexed, to deliver to him the property devised or bequeathed, whenever it shall appear to such county judge that there will remain in the hands of such executor or administrator, with the will annexed, after such delivery, a sufficient amount of the estate for the payment of all debts against said estate; *provided*, such devisee shall have first caused the executor or administrator, and the other devisees or legatees, if any, and the heirs, if any of the estate is coming to them, to be cited to appear and show cause why such order should not be made.

Legatee or devisee may obtain order for delivery of legacy or bequest, when and how.  
*Ib.* p. 110, §70.

ART. 1958. The naming an executor in a will shall not operate to extinguish any just claim which the deceased had against him; and in all cases where an executor or administrator may be indebted to his testator or intestate, he shall account for the debt in the same manner as if it were so much money in his hands; *provided, however*, that if said debt was not due at the time of receiving letters, he shall only be required to account for it from the date when it shall become due.

Naming an executor in a will does not release him from a debt, etc.  
*Ib.* p. 105, §58.

## CHAPTER THIRTEEN.

### SUBSEQUENT EXECUTORS AND ADMINISTRATORS.

Article	Article
Subsequent administrator under a will shall succeed to rights of executor, except, etc..... 1959	How subsequent administration shall proceed..... 1961
Powers of subsequent administrators..... 1960	Same as to executor after administration... 1962
	Inventories, etc., to be returned in one month..... 1963

ARTICLE 1959. When an administrator of the estate not administered has been or shall be hereafter appointed he shall succeed to all the rights, powers and duties of the former executor or administrator, except such rights and powers conferred on the former executor by the will of the testator as are different from those conferred by this title on executors generally.

Subsequent administrator under a will shall succeed to rights of executor, except, etc. (Act Aug. 9, 1876, p. 98, §24.)

ART. 1960. Such administrator shall have power to make himself a party to all suits prosecuted by the former executor or administrator of the estate, and may be made a party to all suits prosecuted against the former executor or administrator of the estate. He shall have power to

Powers of subsequent administrator.  
*Ib.*

settle with the former executor or administrator of the estate, and to receive and receipt for all such portion of the estate as remains in his hands. He shall have power to bring suit on the bond or bonds of the former executor or administrator, in his own name as administrator, for all the estate that has not been accounted for by such former executor or administrator.

How subse-  
quent adminis-  
tration shall  
proceed.  
*Ib.*

ART. 1961. Such administrator shall proceed to administer such estate in like manner as if his administration was a continuation of the administration of the former executor or administrator, with the exceptions hereinafter named.

Same as to  
executor after  
administration  
*Ib.*

ART. 1962. Whenever an executor shall accept and qualify as such after letters of administration shall have been granted upon the estate, such executor shall, in like manner, succeed to the previous administrator, and he shall proceed to administer the estate in like manner as if his administration was a continuation of the former one, subject, however, to any legal directions of the testator contained in his will, in relation to the estate.

Inventories,  
etc., to be  
returned in one  
month.  
*Ib.* p. 98, §24.

ART. 1963. An executor or administrator who has been qualified as such to succeed a prior administrator or executor shall make and return to the court an inventory and appraisal and list of claims of the estate, within one month after being qualified, in like manner as is required of original executors and administrators; and they shall also in like manner return additional inventories and lists of claims.

## CHAPTER FOURTEEN.

### WITHDRAWING ESTATES FROM ADMINISTRATION.

	Article		Article
Persons entitled to estate may cause executor or administrator to be cited, etc.....	1964	Creditor whose claim may be allowed, etc., may sue on bond .....	1969
May give bond to pay debts of estate, etc..	1965	Other creditor may sue and recover, to what extent.....	1970
Bond shall be filed and recorded and order of court thereon.....	1966	Creditor may also sue distributee.....	1971
Partition may be had of estate.....	1967	Order discharging executor or administrator, and closing estate.....	1972
Lien on property in hands of distributees..	1968		

Persons entitled to estate may cause executor or administrator to be cited, etc., (Act Aug. 9, 1876, p. 126, §124.)

ARTICLE 1964. At any time after the return of the inventory, appraisal and list of claims of a deceased person, any one entitled to a portion of said estate as heir, devisee or legatee, or his guardian, if he be a minor, may, by a complaint in writing, filed in the court where such inventory, appraisal and list of claims have been returned, cause the executor or administrator of the estate to be cited to appear at some regular term of the court, and render an exhibit under oath of the condition of such estate.

May give bond to pay debts of estate, etc.,  
*Ib.*

ART. 1965. Upon the return of such citation served, the persons so entitled to such estate, or any of them, or any persons for them, may execute and deliver to the county judge an obligation payable to him, with two or more good and sufficient sureties, to be approved by such county judge, for an amount equal to at least double the appraised value of the estate as ascertained by the appraisal and list of claims returned, conditioned that the persons who execute such obligation shall pay all the debts against the estate not paid, that have been allowed by the executor or administrator and approved by the county judge, or that have been established by suit, or that may be established by suit against said estate, and will pay to the executor or administrator any balance that may be found to be due him by the judgment of the court on his exhibit.

Bond shall be filed and recorded and order of court thereon.  
*Ib.* p. 126, §124.

ART. 1966. When the bond provided for in the preceding article has been given and approved, it shall be filed and recorded in the minutes of the court, and the court shall thereupon enter an order upon the minutes directing and requiring the executor or administrator to deliver forthwith

to such person or persons the portion or portions of such estate to which he or they are entitled.

ART. 1967. Any of the persons so entitled to any portion of the estate may, on application in writing to the court, cause a partition and distribution of such estate to be made among the persons entitled thereto, in accordance with the provisions of this title respecting the partition and distribution of estates. Partition may be had of estate. *Ib.*

ART. 1968. A lien shall exist on all of said estate in the hands of the distributees, and those claiming under them, with notice of such lien, to secure the ultimate payment of the aforesaid obligation. Lien on property in hands of distributees. *Ib.*

ART. 1969. Any creditor of such estate whose claim is yet unpaid, and which claim has been allowed by the executor or administrator previous to the filing of such obligation, and approved by the county judge or established by suit against the executor or administrator previous to the filing of such obligation, shall have the right to sue on such obligation in his own name, and shall be entitled to judgment thereon for the amount of his claim. Creditor whose claim has been allowed, etc., may sue on bond. *Ib.*

ART. 1970. Any other creditor of such estate whose claim is not barred by the laws of limitation shall have the right to sue on such obligation, and shall be entitled to judgment thereon for such debt as he may establish against the estate. Other creditor may sue and recover, to what extent. *Ib.*

ART. 1971. Any creditor may sue any distributee, or he may sue all the distributees together, who have received any of the estate, but no one of such distributees shall be liable beyond his just proportion according to the estate he may have received in the distribution. Creditor may also sue distributee. *Ib.*

ART. 1972. When an estate has been withdrawn from further administration under the provisions of this chapter, an order shall be entered upon the minutes discharging the executor or administrator and declaring the administration closed. Order discharging executor or administrator and closing estate.

## CHAPTER FIFTEEN.

### REMOVAL OF EXECUTORS AND ADMINISTRATORS.

	Article		Article
In what cases may be removed without notice.....	1973	Citation need not be served, when.....	1975
In what cases may be removed with notice	1974	Order of removal shall set forth cause.....	1976

ARTICLE 1973. Executors and administrators may be removed by the county judge without notice, at a regular term of the court, by an order entered on the minutes of the court, in the following cases: In what cases may be removed without notice. (Act Aug. 9, 1876, p. 99, §26.)

1. When they neglect to qualify in the manner and within the time required in this title.
2. When they neglect to return to the court an inventory and appraisal, and list of claims of the estate, in the manner and within the time required in this title.
3. When they have been required to give a new bond and neglect to do so within the time prescribed by the court.
4. When they absent themselves from the state for a period of three months at one time, without permission of the court.
5. In such other cases as are specially provided for in this title.

ART. 1974. Executors and administrators may be removed by the county judge on his own motion, or on the complaint of any person interested in the estate, after being cited to answer such motion or complaint, at a regular term of the court, in the following cases: In what cases may be removed with notice. *Ib.* p. 99, §27.

1. When they shall fail to make to the court any exhibit that they are required to make by the provisions of this title.
2. When there shall appear sufficient grounds to believe that they have misapprehended, embezzled or removed from the state the property, or any part



thereof, committed to their charge, or that they are about to misapply, embezzle or remove from the state any of such property.

3. When it is proved that they have been guilty of gross neglect or mismanagement in the performance of their duties as such executors or administrators.

4. When they fail to obey any order of the court consistent with this title made in relation to the estate committed to their charge.

5. When an executor or administrator becomes of unsound mind, or from any other cause is incapable of performing the duties of his trust.

Citation need not be served, when.  
*Ib.* p. 99, §27.

ART. 1975. In the cases enumerated in the preceding article, when proof is made that the executor or administrator has removed from the state, or is eluding the process of the court, the motion or complaint may be heard though the citation be not served.

Order of removal shall set forth cause.  
*Ib.*  
P.D. 5734.

ART. 1976. In all cases when an executor or administrator is removed, an order to that effect shall be entered upon the minutes of the court, which order shall set forth the cause of such removal.

## CHAPTER SIXTEEN.

### RESIGNATION OF EXECUTORS AND ADMINISTRATORS.

	Article		Article
Application to resign must be accompanied by exhibit and account.....	1977	Exhibit and account shall be examined, etc., by court.....	1980
Citation in such case.....	1978	Order approving exhibit and account.....	1981
How served.....	1979	Order of discharge.....	1982
		Shall not be discharged until, etc.....	1983

Application to resign must be accompanied by exhibit and account.  
(Act Aug. 9, 1876, p. 100, §29.)

ARTICLE 1977. If at any time an executor or administrator shall wish to resign the administration of the estate that has been committed to his charge, he shall present to the court in which the administration is pending an application in writing, stating such wish, and shall accompany said application with a full and complete exhibit of the condition of the estate, together with his administration account, which exhibit and account shall both be verified by affidavit.

Citation in such case.  
*Ib.*

ART. 1978. Upon the filing of such application, exhibit and account, it shall be the duty of the clerk to make out a citation, returnable to some regular term of the court, which citation shall state the presentation of such application, exhibit and account, the term of the court at which the same will be acted upon, and shall require all those interested in the estate to appear and contest the said exhibit and account if they see proper.

How served.  
*Ib.*

ART. 1979. Such citation shall be published for at least twenty days in some newspaper printed in the county, if there be one; if not, then by posting copies thereof for a like period in the manner required for posting other citations.

Exhibit and account shall be examined, etc., by the court.  
*Ib.*

ART. 1980. At the return term of such citation, or at some other term to which it may have been continued, upon the county judge being satisfied that such citation has been published or posted, as the case may be, he shall proceed to examine such exhibit and account, and to hear all proof that may be offered in support of the same, and all objections, exceptions and proof offered against the same, and shall, if necessary, re-state such exhibit and account, and shall audit and settle the same.

Order approving exhibit and account.  
*Ib.* p. 100, §29.

ART. 1981. If upon such examination and settlement it shall appear that such executor or administrator has accounted for all said estate according to law, the county judge shall enter an order upon the minutes, approving such exhibit and account, and requiring such executor or administrator to deliver the estate, if there be any remaining in his possession, to some person qualified by law to receive it.

Order of discharge.  
*Ib.*

ART. 1982. When such executor or administrator has delivered the estate in accordance with the order of the court to some person qualified to receive it and has produced to the court satisfactory evidence of that

fact, the court shall enter an order upon the minutes, either in term time or in vacation, accepting the resignation of such executor or administrator and discharging him from such trust.

ART. 1983. No executor or administrator shall be discharged until the exhibit and account required have been made, returned, settled and approved as provided in this chapter, nor until he has delivered the estate, if there be any remaining in his possession, as hereinbefore required.

Shall not be discharged until, etc.

## CHAPTER SEVENTEEN.

### ALLOWANCE TO WIDOW AND MINOR CHILDREN.

	Article		Article
Allowance to widow and minor children to be made, when.....	1984	Widow or guardian may take property for allowance.....	1989
Amount of allowance, and with reference to what time.....	1985	Sale shall be ordered to raise allowance, when.....	1990
Allowance shall not be made, when.....	1986	Allowance to be paid in preference to other debts or charges, except, etc.....	1991
Order fixing allowance.....	1987	Allowance apportioned, how.....	1992
To whom allowance shall be paid.....	1988		

ARTICLE 1984. At the first regular term of the court after the original grant of letters testamentary or of administration, or at any subsequent term thereafter, within twelve months after the grant of such original letters, it shall be the duty of the court to fix the amount of an allowance for the support of the widow and minor children of the deceased.

Allowance to widow and minor children to be made, when.  
(Act Aug. 9, 1876, p. 105, §56.)

ART. 1985. Such allowance shall be of an amount sufficient for the maintenance of such widow and minor children for the term of one year from the time of the death of the testator or intestate, and such allowance to be fixed with regard to the facts existing during the first year after the death of such testator or intestate.

Amount of allowance and with reference to what time.  
*Ib.*

ART. 1986. No such allowance shall be made for the widow when she has separate property adequate to her maintenance; nor shall such allowance be made for the minor children when they have property in their own right adequate to their maintenance.

Allowance shall not be made, when.  
*Ib.*

ART. 1987. When an allowance has been fixed an order shall be entered upon the minutes stating the amount thereof, and directing the executor or administrator to pay the same in accordance with law.

Order fixing allowance.

ART. 1988. The executor or administrator shall pay such allowance—  
1. To the widow, if there be one, for the use of herself and the minor children if such children be hers.

To whom allowance shall be paid.

2. If the widow is not the mother of such minor children, or of some of them, the portion of such allowance necessary for the support of such minor child or children of which she is not the mother, shall be paid to the guardian or guardians of such minor child or children.

3. If there be no widow the allowance to the minor child or children shall be paid to the guardian or guardians of such minor child or children.

ART. 1989. The widow, or the guardian of the minor children as the case may be, shall have the right to take in payment of such allowance or any part thereof, any of the personal property of the estate at its appraised value as shown by the appraisal returned.

Widow or guardian may take property for allowance.  
*Ib.*

ART. 1990. If there be no personal effects of the deceased that the widow or guardian is willing to take for such allowance, or not a sufficiency of them, and if there be no funds or not sufficient funds in the hands of such executor or administrator to pay such allowance or any part thereof, then it shall be the duty of the county judge, so soon as the inventory and appraisal and list of claims are returned and approved, to order a sale of so much of the estate for cash as will be sufficient to raise the amount of such allowance, or a part thereof, as the case may require.

Sale shall be ordered to raise allowance, when.  
*Ib.*

Allowance to be paid in preference to other debts or charges, except, etc.

Allowance apportioned, how.

ART. 1991. The allowance made for the support of the widow and minor children of deceased shall be paid in preference to all other debts or charges against the estate, except the funeral expenses and expenses of last sickness of deceased, which claims shall be first paid, if presented within the time prescribed by law entitling them to such preference.

ART. 1992. The allowance provided for in this chapter shall be paid as follows:

1. If there be both widow and minor child or children, the widow shall be entitled to one-half and the minor child or children to the other half.
2. If there be a widow and no minor child or children, the widow shall receive the whole.
3. If there be a minor child or children and no widow, such minor child or children shall receive the whole.

### CHAPTER EIGHTEEN.

#### SETTING APART THE HOMESTEAD AND OTHER EXEMPT PROPERTY TO WIDOW AND CHILDREN.

	Article	Article
Court shall set apart exempt property, etc.	1993	Where estate proves to be insolvent..... 2002
Allowance in lieu of exempt articles.....	1994	Exempt property, etc., not to be considered in ascertaining solvency..... 2003
Such allowance shall not exceed, what.....	1995	When homestead shall not be partitioned.. 2004
To whom the exempt property shall be delivered.....	1996	When homestead may be partitioned..... 2005
Allowance shall be paid, how.....	1997	No distinction between separate and community homestead..... 2006
To whom allowance shall be paid.....	1998	Homestead not liable for debts, except, etc. 2007
Sale to raise allowance, when.....	1999	Other exempt property, liable for what debts..... 2008
Property upon which liens exist shall not be set aside, etc.....	2000	Homestead rights of surviving husband... 2009
Where estate proves to be solvent.....	2001	

Court shall set apart exempt property, etc. (Act Aug. 9, 1876, p. 106, §57.)

ARTICLE 1993. At the first term of the court after an inventory, appraisement and list of claims have been returned, it shall be the duty of the court, by an order entered upon the minutes, to set apart for the use and benefit of the widow and minor children and unmarried daughters remaining with the family of the deceased, all such property of the estate as may be exempt from execution or forced sale by the constitution and laws of the state, with the exception of any exemption of one year's supply of provisions.

Allowance in lieu of exempt articles. *ib.*

ART. 1994. In case there should not be among the effects of the deceased all or any of the specific articles so exempted, it shall be the duty of the court to make a reasonable allowance in lieu thereof, to be paid to such widow and children, or such of them as there may be, as hereinafter directed.

Such allowance shall not exceed what. *ib.*

ART. 1995. The allowance in lieu of a homestead shall in no case exceed five thousand dollars, and the allowance for other exempted property shall in no case exceed five hundred dollars, exclusive of the allowance provided in the preceding chapter.

To whom the exempt property shall be delivered.

ART. 1996. The exempted property set apart to the widow and children shall be delivered by the executor or administrator without delay, as follows:

1. If there be a widow and no children, or if the children be the children of the widow, the whole of such property shall be delivered to the widow.
2. If there be children and no widow such property shall be delivered to such children if they be of lawful age, or to their guardian if they be minors, or the same may be equally divided among them, except the homestead.
3. If there be children of the deceased of whom the widow is not the mother, the share of such children in such exempted property, except the homestead, shall be delivered to such children if they be of lawful age, or

to their guardian if they be minors, or may be equally divided between them.

4. In all cases the homestead shall be delivered to the widow, if there be one, and if there be no widow to the guardian of the minor children and unmarried daughters, if any, living with the family.

ART. 1997. The allowances made in lieu of any of the exempted property shall be paid either in money out of the funds of the estate that may come to the hands of the executor or administrator, or in any property of the deceased that such widow or children if they be of lawful age, or their guardian if they be minors, may choose to take at the appraisement, or a part thereof, or both, as they may select.

Allowance shall be paid, how. *Ib.*

ART. 1998. Such allowance shall be paid by the executor or administrator in the following manner:

To whom allowance shall be paid. *Ib.* p. 106, §57.

1. If there be a widow and no children, the whole to be paid to such widow.

2. If there be children and no widow the whole to be paid to such children if they be of lawful age, or to their guardian if they be minors, or to be equally divided among them.

3. If there be both widow and children the whole to be paid to such widow if she be the mother of such children, but if she be not the mother of such children one-half to be paid to such widow and the other half to such children if they be of lawful age, or to their guardian if they be minors, or to be equally divided among them.

ART. 1999. If there be no property of the deceased that such widow or children are willing to take for such allowance, or not a sufficiency, and there be no funds, or not sufficient funds of the estate in the hands of such executor or administrator to pay such allowance, or any part thereof, it shall be the duty of the county judge, on the application in writing of such widow and children, to order a sale of so much of the estate for cash as will be sufficient to raise the amount of such allowance, or a part thereof, as the case may require.

Sale to raise allowance, when. *Ib.* p. 106, §57.

ART. 2000. No property upon which liens have been given by the husband and wife, acknowledged in a manner legally binding upon the wife to secure creditors, or upon which a vendor's lien exists, shall be set aside to the widow or children as exempted property or appropriated to make up the allowances made in lieu of exempted property, until the debts secured by such liens are first discharged.

Property upon which liens exist shall not be set aside, etc. *Ib.*

ART. 2001. If upon a final settlement of such estate it shall appear that the same is solvent, the exempted property, except the homestead, which has been set apart to the widow or children, or both, together with any allowance that has been received by them in lieu thereof, shall be subject to partition and distribution among the heirs and distributees of such estate in like manner as the other property of the estate.

When estate proves to be solvent. *Ib.*

ART. 2002. Should the estate, upon final settlement, prove to be insolvent, the title of the widow and children to all the property and allowances set apart or paid to them, under the provisions of this and of the preceding chapter, shall be absolute, and shall not be taken for any of the debts of the estate except as hereinafter provided.

When estate proves to be insolvent. *Ib.*

ART. 2003. In ascertaining whether an estate is solvent or insolvent the exempt property set apart to the widow or children, or the allowance in lieu thereof, and the allowance provided for in the preceding chapter, shall not be estimated or considered as assets of the estate.

Exempt property, etc., not to be considered in ascertaining solvency, etc.

ART. 2004. The homestead shall not be partitioned among the heirs of the deceased during the lifetime of the widow, or so long as she may elect to use or occupy the same as a homestead, or so long as the guardian of the minor children of the deceased may be permitted, under the order of the proper court having the jurisdiction, to use and occupy the same.

When homestead shall not be partitioned. (Const., art. 16, §52.)

When homestead may be partitioned.

ART. 2005. When the widow dies or sells her interest in the homestead, or elects to no longer use or occupy the same as a homestead, and when the proper court no longer permits the guardian of the minor children to use and occupy the same as a homestead, it may be partitioned among the respective owners thereof in like manner as other property held in common.

No distinction between separate and community homestead.

ART. 2006. The homestead rights of the widow and children of deceased are the same whether the homestead be the separate property of the deceased or community property between the widow and the deceased, and the respective interests of such widow and children shall be the same in one case as in the other.

Homestead not liable for debts, except, etc. (Const., art. 16, §50.)

ART. 2007. The homestead shall not be liable for the payment of any of the debts of the estate, except for the purchase money thereof, the taxes due thereon or for work and material used in constructing improvements thereon; and in this last case only when the work and material are contracted for in writing, with the consent of the wife, given in the same manner as required in making a sale and conveyance of the homestead.

Other exempt property, liable for what debts.

ART. 2008. The exempted property, other than the homestead, or any allowance made in lieu thereof, shall be liable for the payment of the funeral expenses, and the expenses of last sickness of deceased, when presented within the time prescribed therefor; but such property shall not be liable for any other debts of the estate.

Homestead rights of surviving husband (Const., art. 16, §51.)

ART. 2009. On the death of the wife, leaving a husband surviving, the homestead shall descend and vest in like manner as other real property of the deceased, and shall be governed by the same laws of descent and distribution, but it shall not be partitioned among the heirs of the deceased during the lifetime of such surviving husband, or so long as he may elect to use or occupy the same as a homestead.

## CHAPTER NINETEEN.

### PRESENTMENT, ETC., OF CLAIMS AGAINST AN ESTATE.

	Article		Article
Notice of issuance of letters shall be given.	2010	Claims shall be acted upon by the court.	2025
Copy of notice to be filed and recorded.	2011	Action of the court upon claims.	2026
Same subject.	2012	Any person interested in estate may oppose approval of a claim.	2027
One notice sufficient.	2013	When claim has been rejected the owner may bring suit.	2028
Penalty for neglect to give notice.	2014	Judgment establishing claim shall be filed, etc.	2029
Claims shall be postponed if not presented in twelve months.	2015	Costs of suit to be adjudged against claimant, when.	2030
Claims for funeral expenses and of last sickness to be presented in sixty days.	2016	Action of court on claim a judgment, etc.	2031
Time of absence of executor, etc., not to be computed.	2017	Claim of executor or administrator.	2032
Affidavit to claim.	2018	Action of the court thereon, etc.	2033
Claim lost or destroyed may be presented, how.	2019	Provisions of this chapter do not apply to certain claims.	2034
Affidavit made before whom.	2020	Claim shall not be allowed after order for partition.	2035
Allowance or approval without affidavit, void.	2021	Judgment shall not be rendered in favor of claim which has not been presented and rejected.	2036
Memorandum of allowance or rejection.	2022		
Failure to indorse or annex memorandum.	2023		
When claim is allowed, shall be presented for approval, etc.	2024		

Notice of issuance of letters shall be given. (Act Aug. 9, 1876, p. 206, §58.)

ARTICLE 2010. It shall be the duty of an executor or administrator, within one month after receiving letters, to publish in some newspaper printed in the county where the letters were issued, if there be one, a notice requiring all persons having claims against the estate of the testator or intestate, to present the same within the time prescribed by law, which notice shall state the time of the original grant of letters testamentary or of administration, and the residence and post-office address of such executor or administrator, and shall be published once a week for four successive weeks.

ART. 2011. A copy of such printed notice, together with the affidavit of the publisher, sworn to and subscribed before some officer authorized to administer oaths, that it was published once a week for four successive weeks, shall be filed and recorded in the court from which the letters were issued, and a certified copy thereof, or of such record, may be given in evidence in any court in any action by or against the executor or administrator.

Copy of notice, etc., to be filed and recorded.  
*Ib.*

ART. 2012. When no newspaper is printed in the county, the notice required shall be posted at the court-house door of the county where the letters were issued, for four successive weeks, and a copy of such notice, with the return that such notice has been posted according to law, shall be filed and recorded, and shall be evidence as provided in the preceding article in the case of a printed notice.

Same subject.  
*Ib.*

ART. 2013. If such notice has been given by a former executor or administrator, a subsequent executor or administrator need not give it, and such notice given by one executor or administrator, where several are acting as such, shall be sufficient for all.

One notice sufficient.

ART. 2014. If the executor or administrator fail to give such notice or cause the same to be given, he and his sureties upon his bond shall be liable for any damage which any person may sustain by reason of such neglect, unless it appear that such person had such notice otherwise; and such executor or administrator shall be removed by the county judge at any regular term of the court on the complaint of any person interested in the estate, after being cited to answer such complaint.

Penalty for neglect to give notice.  
*Ib.* p. 107, §60.

ART. 2015. Every claim for money against a testator or intestate shall be presented to the executor or administrator within twelve months after the original grant of letters testamentary or of administration, or the payment thereof shall be postponed until the claims which have been presented within said twelve months and allowed by the executor or administrator and approved by the county judge have been first entirely paid.

Claims shall be postponed, if not presented in twelve months.

ART. 2016. Claims for funeral expenses and expenses of last sickness of the deceased shall be presented within sixty days after the original grant of letters testamentary or of administration, or the exempted property set apart to the widow and children, or allowances made them under the provisions of chapters seventeen and eighteen of this title, shall no longer be liable to the payment of such claims or any part thereof.

Claims for funeral expenses and of last sickness to be presented in sixty days, or, etc.

ART. 2017. If the executor or administrator absent himself from the state, the time of such absence shall not be computed in estimating the twelve months or sixty days time mentioned in the two preceding articles.

Time of absence of executor, etc., not to be computed.  
*Ib.* §59.

ART. 2018. No executor or administrator shall allow any claim for money against his testator or intestate, nor shall any county judge approve the same unless such claim is accompanied by an affidavit in writing that the claim is just and that all legal offsets, payments and credits known to affiant have been allowed. Such affidavit, if made by any other person than the owner of the claim, shall state further that the affiant is cognizant of the facts contained in his affidavit.

Affidavit to claim.  
*Ib.* §61.

ART. 2019. If the claim has been lost or destroyed, the claimant or some one for him may make an affidavit of the fact of such loss or destruction, stating the amount, date and nature of such claim and when due, and that the same is just, and that all legal offsets, payments and credits known to affiant have been allowed, and that the claimant is still the owner of the same; but in such case, before such claim shall be approved, it must be proved by disinterested testimony taken in open court, or by deposition.

Claim lost or destroyed may be presented, how.

ART. 2020. The affidavit may be made before any officer authorized to administer oaths and give certificates thereof.

Affidavit made before whom. (Act to adopt and establish R.C.S., passed Feb. 21, 1879.)

Allowance or approval without affidavit, void.

*Ib.* §61.

Memorandum of allowance or rejection.

*Ib.* §63.

Failure to indorse or annex memorandum.

*Ib.* p. 108, §64.

When claim is allowed, shall be presented for approval.

Claims shall be acted upon by the court.

Action of the court upon claims.

Any person interested in estate may oppose the approval of a claim.

When claim has been rejected the owner may bring suit.

*Ib.* §63.

Judgment establishing claim shall be filed, etc.

*Ib.*

ART. 2021. If any such claim is allowed or approved without such affidavit as is required by the preceding articles of this chapter, such allowance or approval shall be of no force or effect.

ART. 2022. When any claim for money against an estate shall be presented to the executor or administrator, if the same be properly authenticated in the manner required by this chapter, he shall indorse thereon or annex thereto a memorandum in writing signed by him, stating the time of its presentation, and that he allows or rejects the claim, or what portion thereof he allows or rejects, as the case may be.

ART. 2023. When a claim for money against the estate of a deceased person shall be presented to the executor or administrator for his action, and he shall fail to indorse thereon or annex thereto a memorandum in writing as required by the last preceding article, such failure shall be deemed equivalent to a rejection of the claim, and shall authorize the claimant to bring a suit for the establishment thereof in like manner as if such claim had been so rejected, and such executor or administrator shall be removed on the complaint of any person interested in such claim, after being cited to appear and answer such complaint, and upon proof being made of such failure.

ART. 2024. If a claim or a part thereof be allowed by an executor or administrator, it shall be presented within twelve months after the issuance of original letters testamentary or of administration to the clerk of the county court of the proper county, who shall enter the same in its proper place upon the claim docket, and unless such claim is so presented within said time, the payment thereof, should it be approved either in whole or in part, shall be postponed until all other claims which have been allowed and approved within the time prescribed have been first entirely paid.

ART. 2025. All claims that have been allowed by the executor or administrator and entered upon the claim docket for the period of ten days, shall be acted upon by the court at a regular term, and either approved in whole or in part or rejected, as to the court may seem right, and they shall also at the same time be classified by the court.

ART. 2026. When the court has acted upon a claim its action shall be entered upon the claim docket and the date thereof, and the county judge shall also indorse upon such claim or annex thereto a memorandum in writing signed by him officially and dated, stating the action of the court upon such claim, whether approved or disapproved, or if approved in part and rejected in part, stating the amount approved, and also stating the classification of such claim.

ART. 2027. Any person interested in an estate may, at any time before the court has acted upon a claim, appear and object to the approval of the same or any part thereof in writing, and in such case the court shall hear proof and render such judgment as the facts and the law may require.

ART. 2028. When a claim for money against an estate has been rejected by the executor or administrator, either in whole or in part, the owner of such claim may, within ninety days after such rejection, and not thereafter, bring a suit against the executor or administrator for the establishment thereof in any court having jurisdiction of the same; and on the trial of such suit the memorandum in writing of the executor or administrator, indorsed on or annexed to such claim may be given in evidence to prove the facts therein stated, without proof of the handwriting of such executor or administrator, unless the same be denied under oath.

ART. 2029. No execution shall be issued on a judgment obtained in any such suit, but a certified copy of such judgment shall be filed with the clerk of the county court where the estate is pending within thirty days after the rendition of such judgment, and entered upon the claim

docket, and shall be classified by the county judge, and have the same force and effect as if the amount thereof had been allowed by the executor or administrator, and approved by the county judge.

ART. 2030. In any suit that may be brought by the holder of a claim to establish the same after rejection, if he fails to recover judgment thereon for a greater amount than was allowed by the executor or administrator, he shall be adjudged to pay all costs of such suit.

Costs of suit to be adjudged against claimant, when.  
*Ib.* p. 107, §62.

ART. 2031. The action of the court in approving or disapproving a claim shall have the force and effect of a final judgment, and when the claimant, or any person interested in the estate, shall be dissatisfied with such action, he may appeal therefrom to the district court, as from other judgments of the county court rendered in probate matters.

Action of court on claim a judgment, etc.

ART. 2032. The provisions of this chapter respecting the presentation of claims against an estate, shall not be construed to apply to any claim of the executor or administrator against his testator or intestate, but any such executor or administrator holding any such claim shall file the same in the court granting his letters, verified by affidavit as required in other cases, within six months after he has qualified as such executor or administrator, or such claim shall be barred.

Claim of executor or administrator.  
*Ib.* p. 110, §71.

ART. 2033. When such claim has been entered upon the claim docket, and acted upon by the court as in other cases of claims, an appeal from the judgment of the court may be taken as in other cases.

Action of the court thereon, etc.

ART. 2034. The provisions of this chapter respecting the presentation of claims, shall not be so construed as to apply to the claim of any heir, devisee or legatee when claiming as such, nor to any claim that accrues against the estate after the granting of letters testamentary or of administration for which the executor or administrator has contracted.

Provisions of this chapter do not apply to certain claims.  
*Ib.* §70.

ART. 2035. No claim for money against his testator or intestate shall be allowed by an executor or administrator, nor shall any suit be instituted against him on any such claim after an order for partition and distribution has been made; but the owner of any such claim not barred by the laws of limitation, shall have his action thereon against the heirs, devisees or legatees of the estate, but they shall not be bound beyond the value of the property they may receive in such partition and distribution.

Claim shall not be allowed after order for partition.  
*Ib.* §69.

ART. 2036. No judgment shall be rendered in favor of a claimant upon any claim for money, which has not been legally presented to the executor or administrator, and rejected by such executor or administrator, either in whole or in part.

Judgment shall not be rendered in favor of claim which has not been presented and rejected.  
P.D. 5683.

## CHAPTER TWENTY.

### CLASSIFICATION AND PAYMENT OF CLAIMS.

	Article		Article
Classification of claims.....	2037	Penalty for failure to return exhibit.....	2044
Claims to be paid <i>pro rata</i> , when.....	2038	Order for the payment of claims in full....	2045
Order of payment of claims.....	2039	Order for the payment of claims <i>pro rata</i> ..	2046
Claim shall not be paid, unless, etc.....	2040	Claims presented after twelve months, paid when.....	2047
Owner of claim may obtain order for payment, when.....	2041	Exhibit may be required, when.....	2048
Proceeds of sale of property on which there is a mortgage or other lien.....	2042	Liability of executor, etc., for failure to pay money, etc.....	2049
Exhibit of condition of estate after twelve months.....	2043	Executor or administrator shall not purchase claim against estate.....	2050

ARTICLE 2037. The claims against an estate shall be classed and have priority of payment as follows:

Classification of claims.  
(Act Aug. 9, 1876; p. 115, §68.  
P.D. 5674.

1. Funeral expenses and expenses of last sickness.
2. Expenses of administration and the expenses incurred in the preservation, safe-keeping and management of the estate.
3. Claims secured by mortgage or other liens so far as the same can be paid out of the proceeds of the property subject to such mortgage or other lien, and when more than one mortgage or lien shall exist upon the



same property the oldest shall be first paid; but no preference shall be given to such claims secured by mortgage or lien further than regards the property subject to such mortgage or other lien.

4. All claims legally exhibited within one year after the original grant of letters testamentary or of administration.

5. All claims legally exhibited after the lapse of one year from the original grant of letters testamentary or of administration.

Claims to be paid *pro rata*, when. *Ib.* P.D. 5674.

ART. 2038. Where there is a deficiency of assets to pay all claims of the same class they shall be paid *pro rata*, and no executor or administrator shall be allowed to pay any claims whether the estate is solvent or insolvent, except with their *pro rata* amount of the funds of the estate that have come to hand.

Order of payment of claims. *Ib.* §89.

ART. 2039. Executors and administrators, whenever they have funds in their hands belonging to the estate they represent, shall pay—

1. Funeral expenses and expenses of last sickness, if the claims therefor have been presented within sixty days from the original grant of letters testamentary or of administration, but if not presented within such time their payment shall be postponed until the allowances made to the widow and children, or either, are paid.

2. Allowances made to the widow and children, or either.

3. Expenses of administration and the expenses incurred in the preservation, safe-keeping and management of the estate.

4. Other claims against the estate in the order of their classification.

Claim shall not be paid, unless, etc.

ART. 2040. No claim for money, or any part thereof, shall be paid until it has been approved by the county judge or established by the judgment of a court of competent jurisdiction.

Owner of claim may obtain order for payment, when. *Ib.*

ART. 2041. Whenever an executor or administrator has funds of the estate in his hands sufficient to pay a claim, or any part thereof, against the estate, and fails to make such payment when required to do so by the owner of such claim, such owner may obtain an order of the county court, at a regular term thereof, directing such payment to be made, upon making proof that such executor or administrator has funds of the estate in his hands which should be paid upon such claim, and that he fails to make such payment; *provided*, such executor or administrator shall have first been cited on the complaint in writing of such claimant, filed with the clerk, to appear and show cause why such order should not be made.

Proceeds of sale of property on which there is a mortgage or other lien. *Ib.* p. 116, §90.

ART. 2042. Whenever any executor or administrator shall have in his hands the proceeds of a sale that has been made for the satisfaction of a mortgage or other lien, and such proceeds or any part thereof are not required for the payment of any debts against the estate that have a preference over such mortgage or other lien, it shall be the duty of such executor or administrator, within twelve months after the grant of letters testamentary or of administration, to pay over such proceeds, or so much thereof as may not be required for the payment of any debts against the estate that have a preference over such mortgage or other lien, to the creditor or creditors having a right thereto; and if any executor or administrator shall fail so to do, such creditor or creditors, upon proof thereof, may obtain an order from the county court, in like manner as is provided in the preceding article, directing such payment to be made.

Exhibit of condition of estate after twelve months. *Ib.* p. 109, §86.

ART. 2043. At the first term of the court after the expiration of twelve months from the original grant of letters testamentary or of administration, it shall be the duty of the executor or administrator to return to the court an exhibit in writing, sworn to and subscribed by him, setting forth a list of all claims against the estate that were presented to him within twelve months after the said original grant of letters testamentary or of administration, specifying which have been allowed by him; which have been rejected and the date when rejected; which have

been sued upon and the condition of the suit; also setting forth fully the condition of the estate.

ART. 2044. Should such executor or administrator fail to return the exhibit as required by the preceding article, any person interested in the estate may, upon complaint in writing, filed with the clerk, cause such executor or administrator to be cited to appear at a regular term of the court and show cause why his letters should not be revoked and why he should not be fined for such failure, and upon the hearing of such complaint, unless good cause be shown for such failure, the court shall revoke the letters of such executor or administrator and shall fine him in a sum not to exceed one hundred dollars.

Penalty for failure to return exhibit.  
*Ib.*

ART. 2045. Upon the return of such exhibit, if it shall appear therefrom, or from any other evidence that the estate is solvent, taking into consideration as well the claims presented before the expiration of twelve months from said granting of letters testamentary or of administration on which suit has been or can yet be instituted, as those so presented, allowed and approved, or established by judgment, and that the executor or administrator has in his hands sufficient funds for the payment of all the aforesaid claims, it shall be the duty of the county judge to order immediate payment to be made of all the claims allowed and approved or established by judgment.

Order for the payment of claims in full.  
*Ib.* p. 116, §91.

ART. 2046. If it appear that the funds on hand are not sufficient for the payment of all the said claims, or if the estate be insolvent and the executor or administrator has any funds in his hands, it shall be the duty of the county judge to order such funds to be applied to the payment of all claims having a preference in the order of their priority, if they or any of them be still unpaid, and then to the payment *pro rata* of the other claims allowed and approved or established, taking into consideration also the claims that were presented within the twelve months, and in suit or on which suit may yet be instituted.

Order for payment of claims *pro rata*.  
*Ib.*

ART. 2047. Claims for money against the estate of a deceased person, which may be presented to the executor or administrator after the expiration of twelve months from the original grant of letters testamentary or of administration, and allowed and approved or established by judgment, shall be paid by the executor or administrator at any time before the estate is finally closed, when he has funds of the estate in his hands over and above what may be sufficient to pay all debts of every kind against the estate that were presented within the twelve months and allowed and approved or established by judgment, or that may be so established, and an order for the payment of any such claim upon proof that the executor or administrator has such funds, may be obtained from the county judge in like manner as is provided in this chapter, for creditors to obtain payment.

Claims presented after 12 months, paid when.  
*Ib.* p. 116, §92.

ART. 2048. At the third regular term after the expiration of twelve months from the original grant of letters testamentary or of administration, or at any term of the court thereafter, any person interested in the estate may, by a complaint in writing filed in the county court, cause the executor or administrator to be cited to appear at a regular term of the court and make an exhibit in writing, under oath to the court, setting forth fully, in connection with the previous exhibits, the condition of the estate he represents; and if it shall appear to the court by said exhibit, or by other evidence, that said executor or administrator has any funds of the estate in his hands subject to distribution among the creditors of the estate, it shall be the duty of the county judge to order the same to be paid out to them according to the provisions of this chapter, or any executor or administrator may voluntarily present such exhibit to the court, and if he has any of the funds of the estate in his hands subject to distribution among the creditors of the estate, a like order shall be made.

Exhibit may be required, when, etc.  
*Ib.* §93.

Liability of executor, etc., for failure to pay money, etc.  
76. p. 119, §101.

ART. 2049. In all cases where an order shall be made by any county judge, under the provisions of this title, for an executor or administrator to pay over money to any person other than the treasurer of the state, and such executor or administrator shall neglect to make such payment when it is demanded by the person entitled thereto, his agent or attorney, such executor or administrator shall be liable on his official bond to the person in whose favor such order of payment was made, for damages upon the amount he shall so neglect to pay at the rate of five per cent. per month for each and every month he shall so neglect to make such payment after the same was so demanded; such damages to be recovered by suit against such executor or administrator and the sureties upon his bond before any court having jurisdiction of the amount claimed, exclusive of interest and such damages.

Executor or administrator shall not purchase claim against estate.  
76. p. 114, §86.

ART. 2050. It shall not be lawful for any executor or administrator to purchase for his own use, either directly or indirectly, any claim against the estate he represents, and should he do so any person interested in the estate may, upon complaint in writing, cause him to be cited to appear before the court, and upon proof of such complaint the court shall enter an order upon the minutes cancelling the claim so purchased, and such executor or administrator shall not be allowed to receive from the estate any portion of such claim.

## CHAPTER TWENTY-ONE.

### HIRING AND RENTING.

	Article	Article
Executor, etc., may hire out or rent property of estate.....	2051	Note with security for hire or rent, shall be taken..... 2054
May obtain order of the court to hire out or rent same.....	2052	Report of hiring or renting..... 2055
When, without order of court, responsible, etc.....	2053	Action of court on report..... 2056
		Person interested in estate may file complaint to have property hired or rented... 2057

Executor, etc., may hire out or rent property of estate. (Act Aug. 9, 1876, p. 104, §51.)

ARTICLE 2051. When an executor or administrator thinks it would be to the interest of the estate to hire out any of the personal property of the estate, or to rent any of the real estate, he shall do so either at public auction or privately, for cash or on credit, as he may deem most advantageous to the estate.

May obtain order of the court to hire or rent same.

ART. 2052. Should such executor or administrator prefer not to act without an order of the court, he may file an application in writing with the clerk of the county court, setting forth the property which he thinks should be hired or rented, and should the county judge be of the opinion that it would be to the interest of the estate to grant the application, he shall do so by an order entered upon the minutes, either in term time or in vacation, which order shall name the property to be hired or rented, and state whether such hiring or renting shall be at public auction or privately, and whether for cash or on credit, and if on credit the length of such credit, and shall also state the period of time for which such property shall be hired or rented.

When, without order of court responsible, etc.

ART. 2053. When an executor or administrator hires or rents property belonging to an estate without an order of the court authorizing him to do so, he shall be held responsible to the estate for the reasonable value of the hire or rent of such property, to be ascertained by the court by satisfactory evidence.

Note with security for hire or rent shall be taken.

ART. 2054. When property is hired or rented on a credit, possession thereof shall not be delivered to the person hiring or renting the same until such person has executed and delivered to the executor or administrator a note with good personal security for the amount of such hire or rent, and any executor or administrator who shall deliver possession of any property so hired or rented on a credit without first receiving such

note with good personal security, shall be responsible upon his bond as such executor or administrator for the full amount of such hire or rent.

ART. 2055. When any property of the estate has been hired or rented the executor or administrator shall, within thirty days after such hiring or renting, return to the court a report in writing, signed by him and sworn to before some officer authorized to administer oaths, stating—

Report of hiring or renting.

1. The property hired or rented.
2. When the same was so hired or rented, and whether at public auction or privately.
3. Whether for cash or on a credit, and if on a credit, the length of such credit.
4. The name of the person hiring or renting the same.
5. The amount for which the same was hired or rented.

ART. 2056. When any such report of hiring or renting is returned to the court it shall be filed, and at a regular term of the court thereafter it shall be examined and if found to be just and reasonable it shall be approved and confirmed by an order of the court entered upon the minutes, and shall be recorded in the minutes; but if disapproved by the court an order to that effect shall be entered, and also adjudging against such executor or administrator the reasonable value of the hire or rent of such property, where it appears that by reason of any fault of such executor or administrator such property has not been hired or rented for its reasonable value.

Action of court on report.

ART. 2057. Any person interested in an estate may, upon complaint in writing filed in the county court, cause an executor to be cited to appear at a regular term of such court and show cause why he should not hire or rent any of the property belonging to the estate, and upon the hearing of such complaint the court shall make such order as may seem most for the interest of the estate.

Person interested in estate may file complaint to have property hired or rented.

## CHAPTER TWENTY-TWO.

### SALES.

Article	Article	Article	
Advantage of estate to be considered in ordering sale.....	2058	Real estate shall be sold on twelve months' credit, except, etc.....	2073
No sale without order of court.....	2059	May be sold for cash, etc., when.....	2074
Sale may be on what term.....	2060	Sale of real estate may be private, when.....	2075
Sales at public auction of personal property same as under execution.....	2061	Twenty days' notice of sale to be given.....	2076
Purchaser shall give note and security, when, etc.....	2062	What notice of sale shall state.....	2077
Property liable to perish or be wasted shall be sold.....	2063	Time and place of sale.....	2078
Sale of crops.....	2064	Sale may be ordered to be made in county where land is situated.....	2079
Duty of executor, etc., to sell personal property, etc.....	2065	Order of court for sale of property.....	2080
Sale of stock.....	2066	Any person interested in an estate may apply for an order of sale.....	2081
Order for sale of property mortgaged, etc.....	2067	Any person interested in an estate may oppose an application for sale.....	2082
Duty of executor, etc., to apply for sale of real estate, when.....	2068	Executor or administrator shall not purchase property of the estate.....	2083
Requisites of such application.....	2069	Bidder failing to comply with bid shall be liable, etc.....	2084
Citation in such case.....	2070	Public sale may be continued from day to day.....	2085
Posting and return of citation.....	2071	Notice of private sale need not be given, unless, etc.....	2086
Action of the court on application.....	2072		

ARTICLE 2058. All sales for the payment of the debts owing by the estate shall be ordered to be made of such property as may be deemed most advantageous to such estate to be sold.

ART. 2059. No sale of any property belonging to an estate shall be made by an executor or administrator without an order of the court authorizing the same.

ART. 2060. The court may order a sale of property, to be made for cash or on a credit, at public auction or privately, as it may consider most to the advantage of the estate, except when herein otherwise specially provided.

Advantage of estate to be considered in ordering sale. (Act Aug. 9, 1876, p. 112, §76.)

No sale without order of court.

Sale may be on what terms.

Sales at public auction same as under execution.

*Ib.* p. 130, §148.

Purchaser shall give note and security, when.

ART. 2061. All sales of personal property at public auction shall be governed by the rules governing sales of personal property under execution, unless herein otherwise provided.

ART. 2062. When personal property is sold on a credit it shall not be for a longer time than six months from the date of such sale, and the purchaser shall be required to give his note for the amount of such purchase, with good and solvent personal security, before such property shall be delivered to him.

Property liable to perish or be wasted shall be sold.

*Ib.* p. 111, §74.

ART. 2063. Whenever there is property belonging to the estate of a deceased person that is perishable or liable to waste, upon the application in writing of the executor or administrator, or any heir, devisee or legatee of the deceased, or any creditor of the estate whose claim has been allowed and approved or established by suit, the county judge, by an order entered on the minutes of the court, either in term time or in vacation, may direct the sale of such property, or any part thereof.

Sale of crops.

*Ib.* p. 112, §75.

ART. 2064. The county judge may, either in term time or in vacation, by an order entered on the minutes of the court, direct the crops belonging to the estate of a deceased person, or any part thereof, to be sold at private sale, upon the application in writing of the executor or administrator, or any heir, devisee or legatee of the deceased, or any creditor of the estate whose claim has been allowed and approved or established by suit; *provided*, that no crops shall be sold under any such order at a less price than their fair market value.

Duty of executor, etc., to sell personal property.

*Ib.* p. 130, §145.

ART. 2065. The executor or administrator, as soon as practicable after his qualification as such, shall sell, at public or private sale, as the court may order, all personal property belonging to the estate, except such bonds, securities or other personal property as may, in the opinion of the county judge, be of a character not liable to waste or loss, and except property exempt from forced sale, specific legacies and personal property necessary to carry on a plantation, manufactory or business, which it may be thought best to carry on, giving such credit as such executor or administrator or county judge may deem most advantageous to the estate, not exceeding six months, and taking notes with one or more sufficient sureties, for the purchase money.

Sale of stock.

*Ib.* p. 131, §150.

ART. 2066. If the executor or administrator shall represent to the court on oath in writing that there is stock belonging to the estate which he is unable to collect or command, the court may order that the same be sold at public auction, on such credit as the court may deem reasonable, not exceeding twelve months, taking notes with good and sufficient sureties for the purchase money, and such sale shall be advertised, made, returned and confirmed in the same manner as the sale of real property.

Order for sale of property mortgaged, etc.

*Ib.* p. 112, §77.

ART. 2067. Any creditor of a deceased person holding a claim secured by mortgage or other lien, which claim has been allowed and approved or established by suit, may obtain at a regular term of the court, from the county court of the county where the letters testamentary or of administration were granted, an order for the sale of the property upon which he has such mortgage or other lien, or so much of said property as may be required to satisfy such claim, by making his application in writing and having such executor or administrator cited to appear and answer the same. And in case the mortgage or other lien shall be upon real property, the same notice shall be given of said application as is required to obtain an order for the sale of such property.

Duty of executor, etc., to apply for sale of real estate, when.

*Ib.* p. 111, §72.

ART. 2068. It shall be the duty of the executor or administrator, so soon as he shall ascertain that it is necessary, to apply to the county judge, at some regular term of the court for an order to sell so much of the real estate belonging to the estate he represents as he shall think to be sufficient to pay the local charges and claims against the estate.

Requisites of such application.

*Ib.*

ART. 2069. Such application shall be in writing and shall describe the real estate sought to be sold, and shall be accompanied by an exhibit in

writing, verified by the affidavit of such executor or administrator, showing fully and particularly the charges and claims against said estate that have been approved or established by suit, or that have been rejected and may yet be established and the amount due, or claimed to be due on each, and the estimated expenses of administration, and the property of said estate remaining on hand liable for the payment of such charges and claims.

ART. 2070. Upon the filing of such application and exhibit it shall be the duty of the clerk to issue a general citation to all persons interested in the estate, describing the land sought to be sold, and requiring such persons to appear at the term named in such citation, and show cause why such sale should not be made should they choose to do so.

Citation in such case. *Ib.*

ART. 2071. Such citation shall be posted in the manner required for other citations, for at least thirty days before the first day of the term of the court at which such application is to be heard, and shall be returned and the citation and return recorded in like manner as other citations and returns thereon.

Posting and return of citation. *Ib.*

ART. 2072. Upon the return of such citation served it shall be the duty of the court at a regular term thereof to hear such application and to hear evidence in favor of or against the same, and if satisfied that a necessity exists for such sale, to order the same to be made; but if not satisfied that a necessity exists for such sale, or if satisfied that there is other property of the estate that it would be more to the interest of the estate to have sold than the property sought to be sold, the application shall be refused by an order to that effect entered upon the minutes.

Action of the court on application. *Ib.*

ART. 2073. All sales of real estate for the payment of debts shall be made at public auction to the highest bidder on a credit of twelve months, except when otherwise specially provided by law.

Real estate shall be sold on twelve months' credit, except, etc. *Ib.* p. 112, §80. May be sold for cash, etc., when. *Ib.*

ART. 2074. Sales of real estate may be made at public auction for cash or on such credit as the county judge may direct not exceeding twelve months, in the following cases:

1. When the sale is made for the purpose of raising the amount or any part of the amount of any allowance made to the widow and children, or either, under the provisions of this title.
2. When the sale is made for the satisfaction of a mortgage or other lien upon such real estate.
3. When such sale is made in accordance with directions contained in a will.

ART. 2075. When it shall appear to be for the interest of the estate the county judge may order a sale of real estate to be made for cash or on a credit of not more than twelve months, as he may direct, at private sale; but in all such cases, before the county judge shall order a confirmation of the sale, it must be shown in addition to the other requirements of this chapter, that the sale was made for a fair price.

Sale of real estate may be private, when. *Ib.* p. 112, §81.

ART. 2076. All public sales of real estate shall be advertised at least twenty days before the day of sale. The manner of advertising shall be by posting a notice of such sale at the court-house of the county where the land is to be sold, and at two other public places in the county where the sale is to be made, but not in the same city or town.

Twenty days' notice of sale to be given. *Ib.* p. 113, §83.

ART. 2077. Such notice shall state the time and place of sale, the terms of sale, shall describe the property to be sold and shall be signed by the executor or administrator.

What notice of sale shall state.

ART. 2078. All public sales of real estate should be made in the county where the letters testamentary or of administration were granted, at the court-house door of such county, or at the place in such county where sales of real estate are specially authorized by law to be made; and all such sales shall be made on the first Tuesday of the month, between the hours of 10 A. M. and 4 P. M.

Time and place of sale.

Sale may be ordered to be made in county where land is situated.  
*Ib.* p. 113, §83.

ART. 2079. When the county judge shall deem it for the advantage of the estate, he may order the sale of real estate to be made in the county where it is situated, and in all cases where such public sale is ordered to be made in any other county than that in which the letters testamentary or of administration were granted, such sale shall be advertised in both counties.

Order of court for sale of property.  
*Ib.* 112, §79.

ART. 2080. Whenever any property of an estate is ordered to be sold by the county judge, such order shall be entered on the minutes of the court, shall describe the property to be sold, the time and place of sale, and the terms of such sale.

Any person interested in estate may apply for an order of sale.  
*Ib.* p. 111, §73.

ART. 2081. When any executor or administrator shall neglect to apply for an order to sell sufficient property of the estate he represents to pay the charges and claims against the estate that have been allowed and approved or established by suit, any person interested in the estate may, upon application in writing, cause such executor or administrator to be cited to appear at a regular term of the court and make a full exhibit of the condition of such estate as required in article 2043, and show cause why a sale of the property of the estate should not be ordered, and upon the hearing of such application, if the court is satisfied from the proof that a necessity exists for the sale, the same shall be ordered as in other cases.

Any person interested in estate may oppose the application for sale.  
*Ib.* p. 112, §78.

ART. 2082. When an application is made to the county judge for an order to sell any property belonging to the estate of a deceased person, any person interested in such estate may, at any time before an order is made thereon, file his opposition in writing to such sale, or may make application in writing for sale of other property of the estate, and upon hearing of the matter in controversy, the county judge shall make such order thereon as the circumstances of the case may require, having due regard to the provisions of this title.

Executor or administrator shall not purchase property of the estate.  
*Ib.* p. 114, §86.

ART. 2083. It shall not be lawful for any executor or administrator to take the estate of his testator or intestate, or any part thereof, at its appraised value, or to become the purchaser, either directly or indirectly, of any property of the estate sold by him; and if any executor or administrator should either directly or indirectly become the purchaser of any of the property of his testator or intestate, at a sale made by him or his co-executor or co-administrator, upon the complaint in writing of any person interested in such estate, and service of citation upon such executor or administrator, and upon proof of such complaint, such sale shall be declared void by the county judge, and such executor or administrator decreed to hold the property so purchased in trust as assets of the estate, and an order to that effect shall be entered upon the minutes of the court.

Bidder failing to comply with his bid shall be liable, etc.  
*Ib.* p. 113, §84.

ART. 2084. When any person shall bid off property offered for sale, rent or hire, at public auction, by an executor or administrator, and shall fail to comply with the terms of sale, renting or hiring, such property shall be re-advertised and sold, rented or hired without any further order of the court for that purpose, and the person so failing to comply, shall be liable to pay such executor or administrator for the use of the estate ten per cent. on the amount of his bid; and also the deficiency in price on the second sale, renting or hiring, if any such deficiency there be; to be recovered by such executor or administrator by suit in any court of the county where such sale, hiring or renting was made, having jurisdiction of the amount claimed.

Public sale may be continued from day to day.  
*Ib.* §83.

ART. 2085. Public sales may be continued from day to day, in case the day set apart for such sale shall be insufficient to complete the same, by giving public notice of such continuance at the conclusion of the sale of each day, and the continued sale shall commence and close within the same hours.

Notice of private sale need not be given, unless, etc.

ART. 2086. When property is ordered by the court to be sold at private sale no notice of such sale shall be required, unless the court ordering such sale shall direct otherwise.

CHAPTER TWENTY-THREE.

REPORT OF SALES, Etc.

	Article		Article
Sales shall be reported in thirty days.....	2087	Conveyance of real estate.....	2092
Requisites of report of sale.....	2088	Conveyance of real estate shall not be de-	
Report may be made, when.....	2089	livered, until, etc.....	2093
Action of court on report of sale.....	2090	Penalty for neglect to take note and mort-	
Sale shall be set aside, when.....	2091	gage.....	2094
Conveyance of property sold.....	2091a	Note holds vendor's lien.....	2095

Sales shall be reported in thirty days. (Act Aug. 9, 1876, p. 113, §85.) Requisites of report of sale.

ARTICLE 2087. All sales of property of an estate shall be reported to the court ordering the same, within thirty days after the same are made.

ART. 2088. The report of sale shall be in writing, and shall be subscribed and sworn to by the executor or administrator before some officer authorized to administer oaths, and shall show—

1. The time and place of the sale.
2. The property sold, describing the same.
3. The name of the purchaser of such property.
4. The amount for which each article of property sold.
5. The date of the order of the court authorizing the sale.
6. The terms of the sale, and whether at public auction or made privately.

ART. 2089. The report of sale may be made in term time or in vacation, and when returned shall be filed by the clerk, and the filing thereof noted upon the judge's docket.

Report may be made, when, etc.

ART. 2090. At any time after the expiration of five days from the filing of a report of sale, it shall be the duty of the county judge, at a regular term of his court, to inquire into the manner in which such sale was made, and to hear evidence in support of or against such report, and if satisfied that such sale was fairly made, and in conformity with law, he shall enter upon the minutes of the court a decree confirming such sale, and order the report of sale to be recorded by the clerk, and the proper conveyance of the property to be made by the executor or administrator to the purchaser upon compliance by such purchaser with the terms of sale.

Action of court on report of sale. (Act Aug. 9, 1876, p. 113, §85.)

ART. 2091. If the court is not satisfied that the sale was fairly made and in conformity with law, an order shall be entered upon the minutes setting the same aside and ordering a new sale to be made if necessary.

Sale shall be set aside, when, *Ib.*

ART. 2091a. After a sale has been confirmed by a decree of the court, upon the purchaser complying with the terms of the sale, the executor or administrator shall execute and deliver to the purchaser a proper conveyance of the property purchased by him. In the case of personal property no conveyance shall be necessary, but the decree of the court confirming the sale shall vest the right and title of the testator or intestate to the property sold in the purchaser, and shall be *prima facie* evidence that all the requirements of the law have been complied with in making the sale.

Conveyance of property sold. *Ib.* p. 13, §86.

ART. 2092. If the property sold be real estate the conveyance shall be by deed, and shall recite the decree of the court confirming the sale and ordering the conveyance to be made, and such conveyance shall vest the right and title that the testator or intestate had in such real estate in the purchaser, and shall be *prima facie* evidence that all the requirements of the law have been complied with in making such sale.

Conveyance of real estate. *Ib.*

ART. 2093. No conveyance of real estate sold shall be executed and delivered by the executor or administrator to the purchaser until the terms of sale have been complied with by such purchaser, and when such sale has been made on a credit it shall be the duty of the executor or administrator before delivering a conveyance of the property to the purchaser, to take from such purchaser a note with good personal security, together with a mortgage containing power of sale upon the property

Conveyance of real estate shall not be delivered until, etc. *Ib.* p. 114, §87.



sold to secure the payment of the purchase money, and to file such mortgage for record in the county where such real estate is situated.

Penalty for neglect to take note and mortgage.  
*Id.*

ART. 2094. Should the executor or administrator neglect to take such note, security and mortgage, and file such mortgage for record in the proper county before delivery of such deed, he and the sureties on his bond shall be liable at the suit of any person interested in the estate, for the use of the estate, for the full amount of such sale.

Note holds vendor's lien.  
*Id.*

ART. 2095. All notes executed for the purchase money of real estate purchased under the provisions of this chapter, shall hold the vendor's lien on the real estate for which they were given against all persons having notice, express or implied, in favor of the estate, whether the mortgage be recorded or not, and such lien shall in no case be waived.

## CHAPTER TWENTY-FOUR.

### ENFORCING SPECIFIC PERFORMANCE OF CONTRACTS.

	Article	Article
Proceedings to enforce specific performance of bond, etc.	2096	Action of the court on complaint..... 2097 Conveyance under this chapter..... 2098

Proceedings to enforce specific performance of bond, etc.  
(Act Aug. 9, 1876, p. 108, §65.)

ARTICLE 2096. When any person shall sell property and enter into bond or other written agreement to make title thereto, and shall depart this life without having made such title, the owner of such bond or written agreement, or his legal representatives, may file a complaint in writing in the county court of the county where the letters testamentary or of administration were granted, and cause the executor or administrator to be cited to appear at a regular term of the court, and show cause why a specific performance of such bond or other written agreement should not be decreed, and such bond or other written agreement shall be filed with such complaint, or good cause shown under oath why the same can not be so filed, and in case it can not be so filed, the same or the substance thereof shall be set forth in the complaint.

Action of the court on complaint.  
*Id.*

ART. 2097. When the citation has been returned served, the court shall hear such complaint and the evidence in support thereof, or against the same, and if satisfied from the proof that such bond or written agreement was legally executed by the testator or intestate, and that the complainant has the right to demand a specific performance thereof, a decree shall be entered upon the minutes ordering the executor or administrator to make title to the property so sold by his testator or intestate according to the tenor of the bond or other written agreement, and such property shall be fully described in such decree.

Conveyance under provisions of this chapter.

ART. 2098. When a conveyance is made under the provisions of this chapter it shall recite the decree of the court authorizing it, and when delivered shall have the effect to vest in the person to whom made all the right and title which the testator or intestate had to the property conveyed, and such conveyance shall be *prima facie* evidence that all the requirements of the law have been complied with in obtaining the same.

CHAPTER TWENTY-FIVE  
PARTITION AND DISTRIBUTION.

	Article		Article
Application for partition and distribution	2099	New appraisalment of property, when	2119
Citation in such cases	2100	If no distributee take property it shall be sold, etc.	2120
Service of citation	2101	Distributee purchasing at sale shall pay only the excess of his share	2121
Executor, etc., shall also be cited	2102	Court may order sale, when	2122
Application may be made, when	2103	If property is not sold, commissioners in county where it is situated shall be appointed, etc.	2123
Upon return of citation served, court shall proceed, etc.	2104	Majority of commissioners may act	2124
Court shall ascertain what facts	2105	Court shall order executor or administrator to deliver property, when	2125
Shall appoint guardians for minors, etc.	2106	To whom property shall be delivered	2126
Decree of partition	2107	Damages for neglect to deliver property, etc.	2127
Where estate consists of money or debts only	2108	Surviving husband or wife may have partition of common property	2128
Court shall appoint commissioners, when	2109	Action of court, and bond in such case	2129
Writ of partition shall issue	2110	Lien upon property delivered, etc.	2130
Service of writ	2111	Common property shall be held by executor, etc., until, etc.	2131
Manner of making partition by commissioners	2112	Joint owners with estate may have partition	2132
Report of commissioners when division is made	2113	Expenses of partition to be paid by whom	2133
Action of court upon report of commissioners	2114	Court may appoint another guardian, etc., when, etc.	2134
Property incapable of division to be specially reported	2115		
Distributee may pay appraised value and take property incapable of division	2116		
May take it on credit, when	2117		
Decree of court in such cases vesting title	2118		

ARTICLE 2099. All applications for the partition and distribution of an estate shall be in writing, and shall be filed with the clerk of the court in which the administration of the estate is pending. Such application shall state—

Application for partition and distribution. (Act Aug. 9, 1876, p. 120, §102.)

1. The name of the person whose estate is sought to be partitioned and distributed.
2. The names and residences of all persons entitled to a share of such estate, and whether such persons are adults or minors, and if these facts be unknown to the applicant, it shall be so stated in the application; such application may be filed by any person interested in the estate.

ART. 2100. Upon the filing of any such application, it shall be the duty of the clerk to issue a citation returnable to some regular term of the court, which citation shall state the name of the person whose estate is sought to be partitioned and distributed, the term of the court to which such citation is returnable, and shall require all persons interested in the estate to appear and show cause why such partition and distribution should not be made.

Citation in such cases. *Id.*

ART. 2101. Such citation shall be personally served by leaving a copy thereof with each person entitled to a share of the estate, who is known and is a resident of this state, and if there be any persons so entitled who are not known, or who are not residents of this state, such citation shall be published for at least four successive weeks in some newspaper printed in the county, if there be one; if not, then it shall be published in like manner in one of the nearest newspapers published in the state. A copy of such publication, and the affidavit of the publisher or printer attached thereto, shall accompany the report of the officer serving such citation.

Service of citation. *Id.*

ART. 2102. When the application is made by any other person than the executor or administrator of the estate, such executor or administrator shall also be cited to appear and answer such application, and to file in court a full and complete exhibit and account of the condition of the estate, verified by affidavit, as in case of final settlement of such estate.

Executor, etc. shall also be cited, etc.

ART. 2103. At any time after the first term of the court after the expiration of twelve months from the original grant of letters testamentary or of administration, the heirs, devisees or legatees of the estate, or any of them, may, by their application in writing, filed in the county court, cause the executor or administrator, and the heirs, devisees and legatees of the estate, to be cited to appear at a regular term of the court

Application may be made, when. *Id.* p. 117, §94

and show cause why a partition and distribution of the residue of such estate should not be made.

Upon return of citation served court shall proceed, etc.  
*Ib.*

ART. 2104. Upon the return of any such citation served at the return term thereof, or at some succeeding term to which the application may be continued, if it shall appear that such citation has been served or published as required by law, and that there is a residue of the estate on hand subject to partition and distribution, the court shall proceed to have such residue partitioned and distributed among the persons entitled thereto in the manner hereinafter provided.

Court shall ascertain, what facts.  
*Ib.* p. 120, §108.

ART. 2105. In proceeding to partition an estate, the court shall ascertain—

1. The residue of the estate subject to partition and distribution, which shall be ascertained by deducting from the entire assets of such estate remaining on hand the amount of all debts and expenses of every kind which have been approved or established by judgment, or which may yet be established by judgment, and also the probable future expenses of administration.

2. The persons who are by law entitled to partition and distribution, and their respective shares.

3. Whether advancements have been made to any of the persons so entitled, their nature and value, and shall require the same to be placed in hotchpotch as required by the law governing descents and distributions.

Shall appoint guardians for minors, etc.  
*Ib.*

ART. 2106. If there are any persons entitled to any portion of the estate who are known, and are minors, and have no guardian in this state, or whose guardians are also entitled to a portion of such estate, the court shall appoint a guardian *ad litem* to represent such minors in the partition of the estate; and if there be any persons so entitled who are not known or not residents of the state, and no person appears who is authorized to represent them, the court shall appoint an attorney to represent such persons in the partition.

Decree of partition.  
*Ib.*

ART. 2107. The court shall then proceed to enter a decree, which shall state—

1. The name and residence, if known, of each person entitled to a share of the estate, specifying those who are known to be minors and the name of their guardian, or guardian *ad litem*, and the name of the attorney appointed to represent those who are unknown or are not residents of the state.

2. The proportional part of the estate to which each is entitled.

3. It shall contain a full description of all the estate to be distributed.

4. It shall direct the executor or administrator to retain in his hands for the payment of debts and expenses of administration a sufficient amount of money or property for that purpose, specifying the amount of money or the property to be so retained.

Where estate consists of money or debts only.  
*Ib.*

ART. 2108. If the estate to be distributed shall consist only of money or debts due the estate, or both, the court shall fix the amount to which each distributee is entitled, and order the payment and delivery thereof by the executor or administrator.

Court shall appoint commissioners, when.  
*Ib.*

ART. 2109. If the estate do not consist entirely of money or debts due the estate, or both, the court shall appoint three or more discreet and disinterested persons as commissioners to make a partition and distribution of the estate.

Writ of partition shall issue.  
*Ib.*

ART. 2110. When commissioners are appointed the clerk shall issue a writ of partition directed to the commissioners appointed, commanding them to proceed forthwith to make such partition and distribution in accordance with the decree of the court, a copy of which decree shall accompany the writ, and also commanding them to make due return of said writ, with their proceedings under it, at some term of the court to be named in the writ.

ART. 2111. Such writ shall be served by delivering the same and the accompanying copy of the decree of partition to any one of the commissioners appointed, and by notifying the other commissioners, verbally or otherwise, of their appointment, and such service may be made by any person. Service of writ.

ART. 2112. It shall be the duty of the commissioners of partition under this chapter to make a fair, just and impartial partition and distribution of the estate in the following order: Manner of making partition by commissioners  
*Ib.* p. 121, §104.

1. Of the land or other property by allotment to each distributee of a part in each parcel or of parts in one or more parcels, or of one or more parcels, either with or without the addition of a part or parts of other parcels, as shall be most for the interest of the distributees; *provided*, the said real estate is capable of being so divided without manifest injury to all or any of the distributees.

2. If the real estate is not capable of a fair, just and equal division in kind, but may be made so by allotting to one or more of the distributees a proportion of money or other personal property to supply the deficiency or deficiencies, the commissioners shall have power to make, as near as may be, an equal division of the real estate and supply the deficiency of any share or shares from the money or other property.

3. The commissioners shall proceed to make a like division in kind, as near as may be, of the money and other personal property, and shall determine by lot among equal shares to whom each particular share shall belong.

ART. 2113. Said commissioners having divided the whole or any part of the estate, shall make to the court a report in writing, subscribed and sworn to by them, containing a statement of the property divided by them, and also a particular description of the property allotted to each distributee and its value. And if it be real estate that has been divided, said report shall contain a general plat of said land with the division lines plainly set down and the number of acres in each share. Report of commissioners when division is made.  
*Ib.* p. 122, §105.

ART. 2114. Upon the return of such report it shall be the duty of the court at some regular term to examine the same carefully and to hear all exceptions and objections made thereto, and to hear evidence in favor of or against the same, and if it be merely informal to cause said informality to be corrected; and if such division shall appear to have been fairly made according to law, and no valid exceptions are taken to it, the court shall approve it and order it to be recorded, and shall enter a decree vesting title in the distributees of their respective shares or portions of the property as set apart to them by the commissioners; but if said division shall not appear to have been fairly made according to law or any valid exceptions are taken to it, the court shall set aside said report and division and order a new partition to be made. Action of court upon report of commissioners  
*Ib.*

ART. 2115. When, in the opinion of the commissioners, the whole or any portion of the estate is not capable of a fair and equal division among the distributees, the said commissioners shall make a special report in writing, subscribed and sworn to by them, specifying therein the property that is so incapable of division and the value of the same duly appraised by them. Property incapable of division to be specially reported.  
*Ib.* p. 121, §105.

ART. 2116. Upon such special report being made to the court any one or more of the distributees, at a regular term of the court, by the payment to the executor or administrator of the appraised value of the property so reported as incapable of division, shall have the right to take such property. Distributees may pay appraised value and take property incapable of division.  
*Ib.*

ART. 2117. Should the court think it for the interest of the distributees to allow a credit, any one or more of such distributees shall have the right to take said property, by executing his or their obligations with two or more good and sufficient sureties in favor of each of the other distributees for their share of the appraised value of such property, payable May take it on credit, when.  
*Ib.*

at such time, not exceeding twelve months from the date thereof, as the court may designate, and when such obligations are executed a lien shall exist upon such property by operation of law to secure the payment of the same.

Decree of court in such cases vesting title.  
*Ib.*

ART. 2118. Should any one or more of the distributees take the said property as aforesaid, it shall be the duty of the court to enter upon the minutes a decree stating the facts, and on the entry of such decree the property shall vest as fully and absolutely in the person or persons taking the same as the deceased was vested therewith, subject to the lien for the purchase money thereof, as provided in the preceding article.

New appraisal of property, when.  
*Ib.*

ART. 2119. If any of the distributees shall file in this court his exception to the appraisal of the commissioners before any of the distributees shall have so taken such property, the court shall hear proof thereon, and if satisfied that such appraisal is unjust or erroneous, shall order a new appraisal of such property to be made, and shall appoint three or more disinterested citizens of the county to make such new appraisal, as in other cases of appraisal.

If no distributee take property it shall be sold, etc.  
*Ib.*

ART. 2120. If no distributee take the said property as aforesaid, the court shall order the sale of the same, either for cash or on a credit, as may be most for the interest of the distributees, and the proceeds of sale when collected shall be distributed by the court among those entitled thereto.

Distributee purchasing at sale shall pay only the excess of his share.  
*Ib.*

ART. 2121. At any such sale, if any distributee shall bid off any of said property, he shall be required to pay, or secure as the case may be, only such amount of his bid as may exceed the amount of his share of such property.

Court may order sale, when.  
*Ib.* p. 123, §107.

ART. 2122. When any portion of the estate to be partitioned lies in another county and can not be fairly partitioned without prejudice to the interests of the distributees, the commissioners may report such facts to the county judge in writing, whereupon he may, at some regular term of the court, if satisfied that the said property can not be fairly and advantageously divided, or that its sale would be more advantageous to the distributees, order a sale thereof for cash, or on a credit of not more than twelve months, at his discretion; and when the proceeds of such sale have been collected they shall be distributed by him among those entitled thereto.

If property is not sold, commissioners in county where it is situated shall be appointed, etc.  
*Ib.*

ART. 2123. If the court is not satisfied that such property can not be fairly and advantageously divided, or that its sale would be more advantageous to the distributees, three or more commissioners may be appointed in each county where any portion of the estate so reported is situated, and the same proceedings shall be had thereon as is provided in this chapter for commissioners to make partition.

Majority of commissioners may act.  
*Ib.* p. 123, §109.

ART. 2124. In all cases where commissioners to make partition are appointed under this chapter the report of a majority of them shall be sufficient.

Court shall order executor or administrator to deliver property, when.  
*Ib.* §113.

ART. 2125. When the report of any commissioners to make partition shall have been approved and ordered to be recorded, the court shall order the executor or administrator to deliver to the distributees their respective shares of the estate on demand, including all the title deeds and papers belonging to the same.

To whom property shall be delivered.  
*Ib.*

ART. 2126. If any distributee be a minor his share shall be delivered to his guardian, and if such minor has no guardian and is a resident of this state, the executor or administrator shall retain his share until a guardian of such minor shall be appointed and qualified.

Damages for neglect to deliver property, etc.  
*Ib.*

ART. 2127. If any executor or administrator shall neglect to deliver to the person entitled thereto, his agent or attorney, when demanded, any portion of an estate so ordered to be delivered, such executor or administrator shall be liable to pay out of his own estate to the person so entitled, damages on the amount or value of the share so withheld, at the

rate of ten per cent. per month for each and every month he shall so neglect to deliver such share after such demand, which damages may be recovered by suit before any court having competent jurisdiction.

ART. 2128. When any husband or wife shall die, leaving any common property, the survivor may, at any time after letters testamentary or of administration have been granted, and an inventory, appraisement and list of claims of the estate have been returned, make application in writing to the court which granted such letters for a partition of such common property, which application shall be acted upon at some regular term of the court.

Surviving husband or wife may have partition of common property. *Ib.* p. 122, §108.

ART. 2129. If upon the hearing of such application there appear to be any such common property, and such surviving husband or wife shall execute and deliver to the county judge an obligation with two or more good and sufficient sureties, payable to and approved by said county judge, for an amount equal to the value of his or her interest in such common property, conditioned for the payment of one-half of all debts existing against such common property, then the county judge shall proceed to make a partition of said common property into two equal moieties, one to be delivered to the survivor and the other to the executor or administrator of the deceased; and all the provisions of this chapter respecting the partition and distribution of estates shall apply to any partition made under the provisions of this article, so far as the same may be applicable.

Action of court and bond in such case. *Ib.*

ART. 2130. Whenever any such partition shall be made a lien shall exist upon the property delivered to such survivor to secure the payment of the aforesaid obligation, and such obligation shall be filed with the clerk and recorded in the minutes of the court, and any creditor of said common property may sue in his own name on such obligation, and shall have judgment thereon for one-half of such debt as he may establish, and for the other half he shall be entitled to be paid by the executor or administrator of the deceased.

Lien upon property delivered, etc. *Ib.*

ART. 2131. Until any such partition of common property is applied for and made as herein provided, the executor or administrator of the deceased shall have the right, and it shall be his duty, to recover possession of all such common property and hold the same in trust for the benefit of the creditors and others entitled thereto under the provisions of this title.

Common property shall be held by executor, etc., until, etc. *Ib.*

ART. 2132. Any person having a joint interest with the estate of a decedent in any property, real or personal, may make application to the county court from which letters testamentary or of administration have been granted on said estate, to have a partition thereof; whereupon the court shall proceed to make a partition of said property between the applicant and the estate of the deceased; and all the rules and regulations contained herein in relation to the partition and distribution of estates shall govern partitions under this article, so far as the same are applicable.

Joint owners with estate may have partition. *Ib.* p. 122, §112.

ART. 2133. All expenses incurred in the partition of estates shall be paid by the parties interested in the partition, each party paying in proportion to the share he may receive. The portion of the estate allotted to each distributee shall be liable for his portion of such expenses, and if not paid the court may order execution therefor in the names of the persons entitled thereto.

Expenses of partition to be paid, by whom. *Ib.* §111.

ART. 2134. In any case where the county judge shall appoint a guardian *ad litem* for minors, or an attorney to represent a distributee who is absent from the state or unknown, under the provisions of this title, if such guardian *ad litem*, or attorney, shall neglect to attend to the duties of such appointment, the county judge shall appoint others in their places by an order entered on the minutes of the court, and such guardian *ad litem* and attorney shall be allowed by the county judge a reasonable compensation for their services, to be paid out of the estate of the person

Court may appoint another guardian, etc., when. *Ib.* §110.

they represent, and an order to that effect shall be entered upon the minutes, and if such allowance is not paid an execution may issue therefor in the name of the person entitled thereto.

## CHAPTER TWENTY-SIX.

### FINAL SETTLEMENT, Etc.

	Article		Article
Duty of executor to present account for final settlement, when.....	2135	Service and return of citation....	2140
What the account shall show.....	2136	County judge may order other notice to be given.....	2141
What shall be sufficient under the preceding article.....	2137	Action of court upon account.....	2142
Executor, etc., may be cited to present such account.....	2138	Partition of estate on hand shall be made..	2143
Citation shall issue.....	2139	Executor, etc., shall be discharged, when..	2144
		Order for discharge of executor, etc., when, etc.....	2145

**Duty of executor, etc., to present account for final settlement, when.**  
(Act Aug. 9, 1876, p. 117, §95.)

ARTICLE 2135. When all the debts known to exist of every kind against the estate of a deceased person have been paid, or when they have been paid so far as the assets of the estate in the hands of the executor or administrator will permit, it shall be the duty of the executor or administrator of such estate to present to the court his account for final settlement of such estate, verified by affidavit.

**What the account shall show.**

ART. 2136. Such accounts shall show—

1. The property that has come into the hands of such executor or administrator, belonging to the estate.
2. The disposition that has been made of any of such property.
3. The debts that have been paid.
4. The debts and expenses, if any, still owing by the estate.
5. The property of the estate, if any, still remaining on hand.
6. The persons entitled to receive any portion of such estate, and their residence, if known, and whether adults or minors, and if minors the names of their guardians.

7. Any advancements or payments that may have been made by the executor or administrator from such estate to any such person.

8. Said account shall be accompanied by proper vouchers in support of each item thereof, and such account and vouchers shall be filed with the clerk, either in term time or in vacation.

**What shall be sufficient under the preceding article.**

ART. 2137. It shall be sufficient, under the preceding article, to refer to the inventory without giving each item in detail; also to refer to and adopt reports of sale, exhibits and accounts of the executor or administrator, including vouchers, which had previously been approved and filed according to law, without re-stating the items thereof.

**Executor, etc., may be cited to present such account.**  
*1b.*

ART. 2138. Should the executor or administrator neglect to present such account, it shall be the duty of the county judge, either of his own motion or upon the complaint of any person interested in the estate, to cause such executor or administrator to be cited to present such account within a time specified in such citation.

**Citation shall issue.**  
*1b.*

ART. 2139. Upon the presentation of an account for final settlement it shall be the duty of the clerk to issue a citation, which shall state the presentation of said account, the term of the court when it will be acted on, and shall require all persons interested to appear and contest the same if they see proper.

**Service on return of such citation.**

ART. 2140. Such citation shall be published for at least twenty days in a newspaper printed in the county, if there be one, if not then by posting such notice at the court-house and at two other public places in the county, not in the same town or city, for at least twenty days. When the citation has been published, the affidavit of the publisher or printer attached to a copy thereof that the same has been published for at least twenty days, shall accompany the return of the officer who executes such

citation. When the citation has been posted, the original citation, with the return of the officer posting the same indorsed thereon or attached thereto, shall be filed.

ART. 2141. In addition to the citation required in the two preceding articles, the county judge may order such other notice to be given as he shall deem expedient, by an order entered upon the minutes of the court. County judge may order other notice to be given. *Ib.*

ART. 2142. At the term of court named in such citation, or at some subsequent term to which the same has been continued, upon return being made that citation has been served in the manner required, it shall be the duty of the court to examine said account and the vouchers accompanying the same, and after hearing all exceptions and objections thereto, and the evidence that may be offered in support of or against such account, to re-state said account, if necessary, and audit and settle the same. Action of court upon account. *Ib.*

ART. 2143. Upon a settlement of an estate, if there is any of the estate remaining in the hands of the executor or administrator, and the heirs, devisees or legatees of the estate, or their assignee, or either or of them are present or represented in court, it shall be the duty of the county judge to order a partition and distribution of the estate to be made among them, upon satisfactory proof being made that they are entitled to receive it. Partition of estate on hand shall be made. *Ib.*

ART. 2144. If upon such settlement there be none of the estate remaining in the hands of the executor or administrator, he shall be discharged from his trust by an order of the court entered upon the minutes, and such order shall declare said estate closed. Executor, etc. shall be discharged, when. *Ib.*

ART. 2145. Whenever in any case the executor or administrator has fully administered the estate in accordance with the provisions of this title, and in accordance with the order of the court, and has filed proper vouchers, it shall be the duty of the court to enter upon the minutes an order discharging said executor or administrator from his trust and declaring said estate to be closed. Order for discharge of executor, etc., when, etc.

## CHAPTER TWENTY-SEVEN.

### PAYMENT OF ESTATES INTO THE TREASURY.

Article	Article
If distributee does not demand his portion in six months after the partition, same shall be paid to state treasurer.....	2146
When those entitled to estate do not appear and claim, shall be paid to state treasurer.....	2147
Property uncalled for shall be sold, etc.....	2148
Executor, etc., shall make report.....	2149
While property remains under control of executor, etc., distributees may have partition.....	2150
Certified copy of order for payment to treasurer shall be sent by the clerk to the treasurer.....	2151
Clerk shall take certificate of postmaster, etc.....	2152
Penalty for neglect of such duty.....	2153
Executor, etc., shall take receipt of treasurer, etc.....	2154
Distributees shall recover funds paid into treasury.....	2155
Mode of recovery.....	2156
Citation to county or district attorney.....	2157
Proceedings in suit to recover funds.....	2158
Costs shall be paid by plaintiff.....	2159
Penalty when executor, etc., fails to pay funds to treasurer.....	2160
Treasurer may apply to county court to enforce payment, and duty of court in such case.....	2161
Treasurer may also sue upon bond.....	2162
Duty of county or district attorney to represent state.....	2163

ARTICLE 2146. If any person entitled to a portion of an estate, except a minor who resides in this state and has no guardian, shall not demand the portion to which he is entitled from the executor or administrator within six months after an order approving the report of commissioners of partition, the county judge, by an order entered upon the minutes, shall require the executor or administrator to pay so much of said portion as may be in money to the state treasurer, and such portion as may be in other property he shall order the executor or administrator to sell on such terms as the court may think best, and when the proceeds of such sale are collected he shall order the same to be paid to the treasurer of the state; in all such cases allowing to the executor or administrator reasonable compensation for his services.

If distributee does not demand his portion in six months after partition, same shall be paid to state treasurer. (Act Aug. 9, 1876, p. 124, §114.)



When those entitled to estate do not appear and claim, shall be paid to state treasurer.  
*Ib.* §96.

ART. 2147. Upon the settlement of the final account of any executor or administrator, if the heirs, devisees or legatees of the estate, or assignees, or any of them, do not appear or are not represented in the court, and there are any funds of such estate remaining in the hands of the executor or administrator, it shall be the duty of the county judge to enter an order upon the minutes requiring such executor or administrator to pay such funds to the treasurer of the state.

Property uncalled for shall be sold, etc.  
*Ib.* p. 118, §96.

ART. 2148. If in such case there shall be any property of the estate that has not been sold, or any debts due the state that may be collected, it shall be the duty of the county judge, by an order entered upon the minutes, to require the executor or administrator to sell such property on such terms as the county judge may think best, and to collect such debts and to pay the proceeds of such sale and amount collected of such debts to the state treasurer as soon as received; in all such cases allowing to the executor or administrator reasonable compensation for his services.

Executor, etc., shall make report, etc.

ART. 2149. The executor or administrator, while he has any of such estate under his control, shall, from time to time, as he receives money, report the same to the court in writing under oath, and should he neglect to report to the court the condition of the estate at reasonable periods of time, it shall be the duty of the court to cause him to be cited to appear and make such report either in term time or in vacation, and the court shall thereupon make such order as the circumstances of the case may require.

While the property remains under control of executor, etc., distributees may have partition,  
*Ib.*

ART. 2150. While such estate or any portion thereof remains under the control of the executor or administrator, the heirs, devisees, legatees or their assignees, or any of them, may obtain from the county judge, at a regular term of the court, an order to have the same partitioned and distributed among them, according to their respective interests in the same, upon causing the executor or administrator to be cited, and upon making satisfactory proof of their right to the same.

Certified copy of order for payment to treasurer shall be sent by the clerk to treasurer.  
*Ib.* p. 118, §97

ART. 2151. Whenever an order shall be made by the county judge for an executor or administrator to pay over any funds to the treasurer of the state, under the provisions of this chapter, it shall be the duty of the clerk of the court in which such order may be made, to transmit to said treasurer, by mail, a certified copy of such order within thirty days after said order shall have been made.

Clerk shall take certificate of postmaster, etc.  
*Ib.*

ART. 2152. Whenever the clerk mails such copy he shall take from the postmaster with whom it is mailed a certificate stating that such certified copy was mailed in his office, directed to the treasurer of the state, at the seat of government, and the date when it was mailed, which certificate shall be recorded in the minutes of the court.

Penalty for neglect of such duty.  
*Ib.*

ART. 2153. Any clerk who shall neglect to transmit a certified copy of such order within the time prescribed, and to take such certificate and have it so recorded, as required in the preceding article, shall be liable in a penalty of one hundred dollars, to be recovered by an action in the name of the state, before any court of the county having jurisdiction of the amount, on the information of any citizen of the county, one-half of which penalty shall be paid to the informer and the other half to the state.

Executor, etc., shall take receipt of treasurer, etc.  
*Ib.* p. 119, §98.

ART. 2154. Whenever an executor or administrator shall pay over to the treasurer of the state any funds of the estate he represents, under the provisions of this chapter, he shall take from such treasurer a receipt for such payment, with his official seal attached, and file the same with the clerk of the court ordering such payment, and such receipt shall be recorded on the minutes of such court, and a certified copy of the same, or of such record, shall be evidence of such payment.

Distributees may recover funds paid into the treasury.  
*Ib.* §99.

ART. 2155. Whenever any funds of an estate shall have been paid to the treasurer of the state, under the provisions of this chapter, any heir, devisee or legatee of such estate, or their assignees, or any of them, may

recover the portion of such funds to which he or they would have been entitled, as if the same had not been so paid to the treasurer.

ART. 2156. In such case the person claiming such funds, or any portion thereof, shall institute his suit therefor, by petition filed in the county court of the county in which the estate was administered, against the treasurer of the state, setting forth the petitioner's right to such funds, and the amount claimed by him.

Mode of recovery.  
*Ib.*

ART. 2157. Upon the filing of such petition the clerk shall issue a citation for the county attorney of the county, or the district attorney of the district, to appear and represent the interest of the state in such suit, and it shall be the duty of such county or district attorney to do so.

Citation to county or district attorney.

ART. 2158. The proceedings in such suit shall be governed by the same rules as are provided for civil suits in the county court, and should the plaintiff establish his right to the funds claimed, he shall have a judgment therefor which shall specify the amount to which he is entitled, and a certified copy of such judgment shall be sufficient authority for the treasurer to pay the same.

Proceedings in suit to recover funds.

ART. 2159. The costs of any such suit shall, in all cases, be adjudged against the plaintiff, and he may be required, as in other cases, to secure the costs.

Costs shall be paid by plaintiff.  
*Ib.*

ART. 2160. Whenever any executor or administrator shall fail to pay to the treasurer of the state any funds of the estate that he represents which he has been ordered by the county judge so to pay, within three months after such order has been made, such executor or administrator shall be liable to pay out of his own estate, to the state treasurer, damages thereon at the rate of five per cent. per month for each month he may neglect to make such payment after the three months from such order.

Penalty when executor, etc., fails to pay funds to treasurer.  
*Ib.* \$100.

ART. 2161. The treasurer of the state shall have the right in the name of the state to apply to the court in which the order for payment was made, by application in writing, to enforce the payment of such funds, together with the payment of any damages that may have accrued under the provisions of the preceding article, and it shall be the duty of the court to enforce such payment in like manner as other orders of payment are required to be enforced.

Treasurer may apply to county court to enforce payment, and duty of court in such case.  
*Ib.*

ART. 2162. The treasurer shall also have the right to institute suit in the name of the state against such executor or administrator and the sureties on his bond for the recovery of the funds so ordered to be paid, and damages, if any have accrued, which suit may be instituted in any court of competent jurisdiction in the county where the order of payment was made.

Treasurer may also sue upon bond.  
*Ib.*

ART. 2163. It shall be the duty of the county or district attorney, as the case may be, to attend to and represent the interests of the state in all matters arising under any of the provisions of this chapter, and for which services he shall receive such compensation as may be provided by law.

Duty of county or district attorney to represent state

CHAPTER TWENTY-EIGHT.

ADMINISTRATION OF COMMUNITY PROPERTY.

	Article		Article
Community property liable for community debts, etc.	2164	New appraisalment and bond may be required.	2174
Where there is no child administration is not required.	2165	Duty of survivor to pay debts.	2175
Where there is a child survivor holds subject, etc.	2166	Creditor may have survivor to make exhibit, when.	2176
Application for community administration	2167	Action of court upon exhibit.	2177
Court shall appoint appraisers.	2168	Sureties on survivor's bond shall be cited, when.	2178
Inventory, etc., shall be returned in twenty days.	2169	Creditor may sue upon bond, when.	2179
Bond of survivor.	2170	Action of court when survivor fails to make exhibit.	2180
Action of court upon inventory, etc.	2171	Surviving wife shall have same rights, etc.	2181
After order of court, survivor has control, etc.	2172	Rights of wife cease when she marries again.	2182
Survivor shall keep account, etc.	2173	Persons entitled to estate may have partition, when.	2183

Community property liable for community debts, etc. (Act Aug. 9, 1876, p. 124, §115.)

ARTICLE 2164. The community property of the husband and wife, except such as is exempt from forced sale, shall be liable for all the debts contracted during marriage. And in the settlement of such community estates it shall be the duty of the survivor, executor or administrator to keep a separate and distinct account of all the community debts allowed or paid in the settlement of such estates.

Where there is no child, administration not required. P.D. 5498.

ART. 2165. Where the husband or wife dies intestate, leaving no child or children and no separate property, the common property passes to the survivor charged with the debts of the community, and no administration thereon is required.

Where there is child, survivor holds subject, etc. *Ib.* p. 127, §116. F.D. 4647.

ART. 2166. Where the wife dies leaving a surviving husband and a child or children, the surviving husband shall have the exclusive management, control and disposition of the community property after her death, in the same manner as during her lifetime, subject to the provisions of this chapter.

Application for community administration

ART. 2167. The surviving husband shall, within four years after the death of his wife, when there is a child or children, file a written application in the county court of the proper county, stating—

1. The death of his wife and the time and place of her death.
2. That she left a child or children surviving her, giving the name, residence and age of each child.
3. That there is a community estate between his deceased wife and himself.
4. Such facts as show the jurisdiction of the court over the estate.
5. Asking for the appointment of appraisers to appraise such estate.

Court shall appoint appraisers.

ART. 2168. Upon the filing of such application the county judge shall, without citation, and either in term time or in vacation, by an order entered upon the minutes of the court, appoint appraisers to appraise such estate as in other administrations.

Inventory shall be returned in twenty days.

ART. 2169. It shall be the duty of the surviving husband, with the assistance of any two of the appraisers, to make out a full, fair and complete inventory and appraisalment of such community estate, and the husband shall attach thereto a list of all community debts due the estate, and such inventory, appraisalment and list shall be sworn to and subscribed and returned to the court within twenty days from the date of the order appointing appraisers, and in like manner as in other administrations.

Bond of survivor. *Ib.* p. 124, §116.

ART. 2170. The surviving husband shall, at the same time he returns the inventory, appraisalment and list of claims, present to the court his bond with two or more good and sufficient sureties, payable and to be approved by the county judge, in a sum equal to the whole of the value of such community estate as shown by the appraisalment, conditioned that he will faithfully administer such community estate, and pay over one-half the surplus thereof after the payment of the debts with which

the whole of such property is properly chargeable, to such person or persons as shall be entitled to receive the same.

ART. 2171. When any such inventory, appraisalment, list of claims and bond are returned to the county judge, he shall, either in term time or in vacation, examine the same and approve or disapprove them by an order to that effect entered upon the minutes of the court, and when approved the same shall be recorded upon the minutes of the court, and the order approving the same shall also authorize such survivor to control, manage and dispose of such community property in accordance with the provisions of this chapter.

Action of court upon inventory, etc.

ART. 2172. When the order mentioned in the preceding article has been entered, such survivor, without any further action in the county court, shall have the right to control, manage and dispose of such community property, real or personal, in such manner as may seem best for the interest of the estate and of suing and being sued with regard to the same, in the same manner as during the lifetime of the deceased, and a certified copy of the order of the court mentioned in the preceding article shall be evidence of the qualification and right of such survivor.

After order of court, survivor has control, etc.  
P.D. 4648.

ART. 2173. The survivor shall keep a fair and full account and statement of all community debts and expenses paid by him, and of the disposition made of such community property, and upon final partition of said estate shall account to the legal heirs of the deceased for their interest in such estate, and the increase and profits of the same, after deducting therefrom all community debts, unavoidable losses, necessary and reasonable expenses, and a reasonable commission for the management of the same.

Survivor shall keep an account, etc.  
P.D. 4648.

ART. 2174. Any person interested in such community estate may cause a new appraisalment to be made of the same, or a new bond may be required of the survivor for the same causes, and in like manner as provided in other administrations.

New appraisalment and bond may be required.

ART. 2175. It shall be the duty of the survivor to pay all just and legal community debts as soon as practicable, and according to the classification and in the order prescribed for the payment of debts in other administrations.

Duty of survivor to pay debts.

ART. 2176. Any creditor of the estate whose claim has not been paid in full may, after the lapse of one year from the filing of the inventory, appraisalment list of claims and bond by the survivor, cause such survivor to be cited to appear at a regular term of the court in which such bond has been filed, and make an exhibit to the court in writing and under oath, showing fully and specifically—

Creditor may have survivor so make exhibit, when.

1. The debts that have been presented to him against such community estate and their class.

2. The debts that have been paid by him and those that remain unpaid and the class of each.

3. The property that has been disposed of by him and the amount received therefor.

4. The property remaining on hand.

5. An account of losses, expenses and commissions.

ART. 2177. When such exhibit has been returned to the court and filed, the court shall, at a regular term, examine the same and hear exceptions and objections thereto and evidence in support of or against the same, and if satisfied that the estate has been fairly administered and in conformity to law, and that there remains no further property of such estate for the payment of debts, the court shall enter an order upon the minutes approving such exhibit and directing the same to be recorded in the minutes, and shall also in such order declare such administration closed.

Action of court upon exhibit.

Sureties on survivor's bond shall be cited, when.

ART. 2178. But should it appear to the court from such exhibit or from other evidence that such estate has been improperly administered, or that there are still assets of said estate that are liable for the payment of the applicant's debt or any part thereof, and if said debt be for the amount of one thousand dollars or less, exclusive of interest, the court shall order citation to issue for the sureties upon the bond of such survivor, citing them to appear before such court at a regular term thereof, and show cause why judgment should not be rendered against them for such debt and costs, which citation shall be returnable as in other civil suits, and the proceedings in such case shall be the same as in other civil suits in said court.

Creditor may sue upon bond, when.

ART. 2179. Should the amount due and payable to such creditor exceed one thousand dollars, exclusive of interest, the court shall enter an order upon the minutes requiring the survivor to pay such debt or a part thereof, as the evidence may show to be proper, and should he neglect to pay the same for thirty days after the date of such order, the creditor may have his action in the district court of the county where the survivor's bond is filed, against such survivor and the sureties upon his bond, and in such case a certified copy of such bond or the record thereof, and of the proceedings and orders of the county court in the estate, shall be evidence in any other court.

Action of court when survivor fails to make exhibit.

ART. 2180. Should the survivor, after being duly cited, fail to file an exhibit as required, the court shall proceed, in accordance with the provisions of the two preceding articles, as if the creditor's right to the payment of his claim had been fully established.

Surviving wife shall have same rights, etc.

ART. 2181. The surviving wife may retain the exclusive management, control and disposition of the community property of herself and her deceased husband in the same manner, and subject to the same rights, rules and regulations as provided in the case of a surviving husband, until she may marry again.

*Ib.*  
P.D. 4652.

Rights of wife cease when she marries again.

ART. 2182. Upon the marriage of the surviving wife she shall cease to have such control and management of said estate or the right to dispose of the same, and said estate shall be subject to administration as in other cases of deceased persons' estates.

Persons entitled to estate may have partition, when.

ART. 2183. After the lapse of twelve months from the filing of the bond by the survivor, the persons entitled to the deceased's share of such community estate, or any portion thereof, shall be entitled to demand and have a partition and distribution thereof in the same manner as in other administrations.

## CHAPTER TWENTY-NINE.

### TRANSFER OF ADMINISTRATION.

	Article	Article
Court shall transfer administration on application, when.....	2184	Administration of estate shall be proceeded with as if commenced originally in the county to which transfer is made.....
Applicant shall pay fees due.....	2185	2188
Order of court for transfer.....	2186	Administration in district court shall be transferred to county court.....
Duty of clerk to record all papers not recorded.....	2187	2189

Court shall transfer administration on application, when.  
(Act Aug. 9, 1876, p. 125, §118.)

ARTICLE 2184. It shall be the duty of the county judge of any county from which any county or part thereof has been taken, upon the written application of the executor, administrator, or the majority of the heirs of an estate, to transmit all original papers relating to the settlement of a deceased person's estate, who was at the time of his decease a resident of that part of the territory of the county which has been or may hereafter be taken to form any new county, or that may be added to any other county, to the county court of such new county, or county to which such territory has been added; and he shall also transmit with

such original papers a transcript certified by the clerk under the seal of the court, of the records of all orders, judgments and decrees of the court had in relation to such estate.

ART. 2185. At the time of filing such application the applicant shall pay all fees due on account of such estate, and the order for the transfer of such estate shall not be made until such fees have been paid. Applicant shall pay fees due. *Ib.*

ART. 2186. When the fees due have been paid the county judge shall, either in term time or in vacation, hear such application, and if satisfied that the facts exist which authorize the transfer of such estate, he shall enter an order upon the minutes directing such transfer, and ordering all original papers of the estate that have not been recorded to be recorded previous to such transfer. Order of court for transfer.

ART. 2187. Upon the entry of such order it shall be the duty of the clerk to record all original papers belonging to the estate that have not been previously recorded, for which the same fee shall be allowed him as is allowed for other recording, which fees shall be paid by the applicant before any such transfer shall be made. Duty of clerk to record all papers not recorded. *Ib.* p. 125, §119.

ART. 2188. In all cases where papers and proceedings relating to the settlement of an estate shall be transmitted to any court in the manner provided for in this chapter, such papers and proceedings shall be filed in such court, and such estate shall be proceeded with and settled in such court in like manner as if the settlement of such estate had been originally commenced in such county, and the transcript of the record transmitted in the manner provided herein shall have the same force and effect in evidence as the record itself might or could have. Administration of estate shall be proceeded with as if commenced originally in the county to which transfer is made. *Ib.* §120.

ART. 2189. All proceedings in relation to the settlement, partition and distribution of estates of deceased persons, remaining unsettled in the district courts of this state, shall be transferred to the county court of the county having jurisdiction thereof, and shall be conducted and concluded in such county court under the provisions of this title. Administration in district court shall be transferred to county court. *Ib.*, p. 130, §144.

## CHAPTER THIRTY.

### COSTS.

	Article		Article
Commissions allowed executors and administrators.....	2190	Costs of commissioners.....	2195
Commissions not allowed on certain moneys.....	2191	When costs shall be adjudged against executor, etc.....	2196
Shall be allowed expenses, etc.....	2192	Same subject.....	2197
Account for expenses shall be filed and acted upon by the court.....	2193	When application, etc., is defeated, costs shall be adjudged against applicant, etc.....	2198
Costs of appraisers.....	2194	Security for costs may be required, when.....	2199

ARTICLE 2190. Executors and administrators shall be entitled to receive and may retain in their hands five per cent. on all sums they may actually receive in cash, and the same per cent. on all sums they may pay away in cash in the course of their administration. Commission allowed executors and administrators. (Act Aug. 9, 1876, p. 126, §121.)

ART. 2191. The commission allowed by the preceding article shall not be allowed or received for receiving any cash which was on hand at the time of the death of the testator or intestate, nor for paying out money to the heirs or legatees as such. Commissions not allowed on certain moneys. *Ib.*

ART. 2192. Executors and administrators shall also be allowed all reasonable expenses necessarily incurred by them in the preservation, safe-keeping and management of the estate, and all reasonable attorney's fees that may be necessarily incurred by them in the course of the administration. Shall be allowed expenses, etc. *Ib.*

ART. 2193. All such charges as are provided for in the preceding article shall be made in writing, showing specifically each item of expense and the date thereof, and shall be verified by the affidavit of the executor Account for expenses shall be filed and acted upon by the court.

or administrator, and filed with the clerk and entered upon the claim docket, and shall be acted upon by the court in like manner as other claims against the estate.

Costs of appraisers.

ART. 2194. Appraisers appointed under the provisions of this title shall be entitled to receive two dollars per day each for every day that they may be necessarily engaged in the performance of their duties as such appraisers.

Costs of commissioners.

ART. 2195. Commissioners appointed under the provisions of this title to partition and distribute an estate, or any part thereof, shall be entitled to receive two dollars each for every day that they may be necessarily engaged in the performance of their duties as such commissioners, to be taxed and paid as other costs in cases of partition.

When costs shall be adjudged against executor, etc. *Ib.* p. 129, §133.

ART. 2196. In all cases where an executor or administrator shall neglect the performance of any duty required by this title, and any costs are incurred on account thereof, he and his sureties on his bond shall be liable for all such costs, and the same shall be adjudged against him and his sureties, and execution issue therefor as in other cases.

Same subject. *Ib.*

ART. 2197. Whenever an executor or administrator shall be removed for any of the causes set forth in this title, the costs of such proceeding shall likewise be adjudged against him and the sureties upon his bond.

When application, etc., is defeated costs shall be adjudged against applicant, etc. *Ib.* p. 129, §134.

ART. 2198. In all cases where a party shall file any application, complaint or opposition in the court, under the provisions of this title, and on the trial thereof he shall be defeated, or fail in the object for which his application, complaint or opposition was filed, all costs occasioned by the filing of the same shall be adjudged against him.

Security for costs may be required, when.

ART. 2199. When any person except the executor or administrator of an estate files any application, complaint or opposition in relation to the estate, the clerk may require him to give security for the probable costs of such proceeding before filing the same, or any one interested in the estate, or any officer of the court may, at any time before the trial of such application, complaint or opposition, obtain from the court, upon written motion, an order requiring such party to give security for the costs of such proceedings, and the rules governing the proceedings in civil suits in the county court respecting this subject shall govern in such case.

## CHAPTER THIRTY-ONE.

### APPEALS TO THE DISTRICT COURT.

	Article	Article
Right of appeal.....	2200	Transcript to be transmitted, when, etc... 2205
Appeal-bond.....	2201	Duty of district clerk, who receives transcript, etc..... 2206
Bond not required of executors, etc., unless, etc.....	2202	Appeals shall be tried <i>de novo</i> in regular order upon the docket..... 2207
Affidavit that party is too poor to give bond.....	2203	Certified copy of judgment of district court to be transmitted to county court..... 2208
Duty of county clerk to make and transmit transcript, etc.....	2204	

Right of appeal. (Act Aug. 9, 1876, p. 128, §130.)

ARTICLE 2200. Any person who may consider himself aggrieved by any decision, order, decree or judgment of the county court, shall have the right to appeal therefrom to the district court of the county upon complying with the provisions of this chapter.

Appeal-bond. *Ib.*

ART. 2201. He shall, within fifteen days after such decision, order, judgment or decree shall have been rendered, file with the county clerk a bond with two or more good and sufficient sureties, payable to the county judge, and to be approved by the clerk, conditioned that the appellant shall prosecute said appeal to effect, and perform the decision, order, decree or judgment which the district court shall make thereon, in case the cause shall be decided against him.

ART. 2202. When an appeal is taken by an executor or administrator no bond shall be required unless such appeal personally concern him, in which case he must give the bond.

Bond not required of executor, etc., unless, etc.

ART. 2203. Where the party who desires to appeal is unable to give the appeal-bond, it shall be sufficient if he file with the county clerk within the time prescribed for giving such bond, an affidavit in writing that he has made diligent efforts to give such bond and is unable to do so by reason of his poverty, and such affidavit shall operate a perfection of the appeal in respect to the matter of costs.

Affidavit that party is too poor to give bond.  
P. D. 6180.

ART. 2204. Upon such appeal-bond or affidavit being filed in the county clerk's office it shall be his duty immediately to make out a certified transcript of the papers and proceedings relating to the decision, order, judgment or decree appealed from, together with such decision, order, judgment or decree, and transmit the same to the clerk of the district court, together with the appeal-bond or affidavit that has been made in lieu of such bond, on or before the first day of the next term of such court.

Duty of county clerk to make and transmit transcript, etc.  
Ib. §131.

ART. 2205. In case the county clerk shall be unable for want of time, to make out such transcript before the first day of the next term of the district court of the county, after such appeal is taken, then such transcript shall be transmitted to the next succeeding term of such district court.

Transcript to be transmitted, when, etc.  
Ib. §132.

ART. 2206. When the transcript and appeal bond or affidavit have been received by the clerk of the district court he shall file and number the same, and enter the case upon the civil docket of such court to be called and disposed of in its regular order.

Duty of district clerk who receives transcript, etc.

ART. 2207. All causes removed by appeal to the district court shall be tried anew as if originally brought in such court, and if no appearance is entered upon the docket for the appellee the cause shall proceed to trial in its regular order upon the docket as if both parties were present.

Appeals shall be tried *de novo* in regular order upon the docket.

P. D. 480.  
(10 Texas, 471.)

ART. 2208. When the judgment of the district court has been rendered a certified copy thereof shall forthwith be transmitted by the clerk of the district court to the clerk of the county court from which the case was appealed for the observance of such court, and the clerk of the county court upon receiving such certified copy of judgment shall file the same and record it upon the minutes of the court and note it upon the docket, and the county judge shall make such order as may be necessary to the enforcement of such judgment.

Certified copy of judgment of district court to be transmitted to county court.



TITLE XXXVIII.

Evidence.

CHAPTER ONE.

PERSONAL ATTENDANCE OF WITNESSES.

	Article		Article
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Form of subpoena.....	2210	Privileged from arrest.....	2215
Service of.....	2211	Party may be examined as a witness.....	2216
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Fees of witness.....	2213		

Witnesses subpoenaed.  
(Act March 13, 1846, p. 363, §1.)  
P.D. 3719.

Form of subpoena.  
*Ib.*

Service of.  
(Act May 13, 1846, p. 363, §16.)  
P.D. 1434.

Witness shall attend, etc.  
*Ib.*  
P.D. 3720.

Fees of witnesses.  
*Ib.*  
P.D. 3724.

Witness refusing to testify.  
*Ib.*  
P.D. 3725.

Privileged from arrest.  
*Ib.*  
P.D. 3728.

ARTICLE 2209. The clerk of the district or county court, or justice of the peace, as the case may be, shall, at the request of any party to a suit pending in his court, or of his agent or attorney, issue a subpoena for any witness or witnesses who may be represented to reside within the county or be found therein at the time of the trial.

ART. 2210. The style of the subpoena shall be "The State of Texas." It shall state the names of the parties to the suit, the court in which the same is pending, the time and place at which the witness is required to appear, and the party at whose instance he is summoned. It shall be dated and tested by the clerk or justice, but need not be under the seal of the court, and the date of its issuance shall be noted thereon.

ART. 2211. Subpoenas may be executed and returned at any time before the trial of the cause, and shall be served by being read to the witness, and service thereof may be accepted by any witness by a written memorandum, signed by him, attached to the subpoena.

ART. 2212. Every witness summoned in any suit shall attend the court from day to day, and from term to term, until discharged by the court or party summoning him; and if any witness, after being duly summoned, shall fail to attend, he may be fined by the court as for a contempt of court, and an attachment may issue against the body of such witness to compel his attendance; but no such fine shall be imposed, nor shall such attachment issue in a civil suit until it shall be shown to the court, by affidavit of the party, his agent or attorney, that his lawful fees have been paid or tendered to such witness.

ART. 2213. Witnesses shall be allowed a fee of one dollar for each and every day they may be in attendance on the court, and six cents for every mile they may have to travel in going to and returning therefrom, which shall be paid on the certificate of the clerk, by the party summoning them; which certificate shall be given on the affidavit of the witness before the clerk; and such compensation and mileage of witnesses shall be taxed in the bill of costs as other costs.

ART. 2214. Any witness refusing to give evidence may be committed to the county jail, there to remain without bail until he shall consent to give evidence.

ART. 2215. Witnesses shall be privileged from arrest, except in cases of treason, felony and breach of the peace, during their attendance at court, and in going to and returning therefrom, allowing one day for each twenty-five miles from their place of abode.

ART. 2216. Either party to a suit may examine the opposing party as a witness, and shall have the same process to compel his attendance as in the case of any other witness. His examination shall be conducted, and his testimony shall be received under the same rules applicable to other witnesses.

Party may be examined as a witness. (Act Feb. 15, 1858, p. 110, §3.) P.D. 3754.

ART. 2217. The court may, when necessary, appoint interpreters, who may be summoned in the same manner as witnesses, and shall be subject to the same penalties for disobedience, and shall be entitled to the same fees.

Interpreters may be summoned and appointed. (Act May 13, 1846, p. 363, §98.) P.D. 3761.

## CHAPTER TWO.

### DEPOSITIONS OF WITNESSES.

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	Objections to depositions	
	Depositions to be read in evidence, subject, etc.	
	Matters not responsive stricken out	

ARTICLE 2218. Depositions of witnesses may be taken in the following cases:

Depositions of witnesses may be taken, when (Act May 13, 1846, p. 363, §67.) P.D. 3726.

1. When the witness is a female.
2. When by reason of age, infirmity, sickness, or official duty, it is probable that the witness will be unable to attend the court.
3. When the witness resides without the state or the county in which the suit is pending.
4. When the witness has left or is about to leave the state or the county in which the suit is pending, and will not probably be present at the trial.
5. When the party desires to perpetuate the testimony of a witness.

NOTE.—Chapter 116, acts 1879, provides “That depositions of witnesses may be taken in all civil suits, heretofore or hereafter brought in this state, whether the witness resides in the county where the suit is brought, or out of it; *provi ed*, the failure to secure the deposition of a male witness residing in the county in which the suit is pending, shall not be regarded as want of diligence, where diligence has been used to secure his personal attendance by the service of subpoena or attachment, under the rules of law, unless by reason of age, infirmity or sickness or official duty, the witness will be unable to attend the court; or, unless, he is about to leave or has left the state or county in which the suit is pending, and will not probably be present at the trial.”—L.

Same subject.

ART. 2219. The party wishing to take the deposition of a witness in a suit pending in court, shall file with the clerk or justice of the peace, as the case may be, a notice of his intention to apply for a commission to take the answers of the witness to interrogatories attached to such notice. The notice shall state the name and residence of the witness, or the place where he is to be found, and the suit in which the deposition is to be used, and a copy thereof and of the attached interrogatories shall be served upon the adverse party or his attorney of record five days before the issuance of a commission.

Notice, and service thereof *Id.*

ART. 2220. In all civil suits where it shall be shown to the court, by affidavit filed therein, that either party is beyond the jurisdiction of the court, or that he can not be found, or has deceased since the commencement of the suit, and such death has been suggested at a prior term of the court, so that the notice and copy of interrogatories can not be served upon him for the purpose of taking depositions, and such party has no attorney of record upon whom they can be served; or if he be deceased, and if the persons entitled to claim by or through such deceased defend-

When notice may be given by publication. *Id.* §79. P.D. 3737.

ant have not made themselves parties to the suit, and are unknown, the party wishing to take depositions may file his interrogatories in the court where said suit is pending, and the clerk of such court or justice of the peace shall thereupon cause a notice to be published in some newspaper for thirty days, stating the number of the suit, the names of the original parties, in what court the suit is pending, the name and residence of the witnesses to whom interrogatories are propounded, and that a commission will issue on or after the thirtieth day after such publication to take the deposition of such witness; at the expiration of which time such clerk or justice shall, on the application of the party filing such interrogatories, his agent or attorney, issue a commission as in other cases.

When process was served by publication. (Act April 1, 1861, p. 26, §1.) P.D. 3738.

ART. 2221. In suits where service of process has been made by publication and the defendant has not answered within the time prescribed by law, service of notice of filing interrogatories may be made at any time after the day when the defendant is required to answer, by filing such notice among the papers of the suit at least twenty days before the issuance of a commission; service of notice may also be made in the manner prescribed in the preceding article.

When suit has not been commenced. (Act April 15, 1874, p. 103, §1.) P.D. 68236.

ART. 2222. When any person may anticipate the institution of a suit in which he may be interested, and may desire to perpetuate the testimony of a witness to be used in such suit, he, his agent or attorney, may file a written statement in the proper court of the county where such suit could be instituted, representing the facts and the names and residences, if known, of the persons supposed to be interested adversely to said person; a copy of which statement and writ shall be served on the persons interested adversely; or where such person, his agent or attorney, shall, at the time of filing such statement, make affidavit that the names and residences of the heirs, successors, or legal representative of any deceased person, are unknown to the affiant, or reside beyond the jurisdiction of the state, the clerk of the court or justice shall issue a like writ, which shall be served on such unknown or non-resident persons by publication in some newspaper, in the mode and manner designated by law for the service of original process upon non-residents or unknown parties; after which the depositions of such witness may be taken and returned by the parties making the said statement in the form and under the rules prescribed for taking testimony by deposition, and such testimony may be used in any suit which may be thereafter instituted by or between any of the parties to the statement, or those claiming under them, in like manner as if such depositions had been taken after the institution of such suit or suits; and when such suits have been instituted all such depositions so taken and returned shall be subject to the like exceptions as other depositions.

Cross-interrogatories. *Ib.* §72. P.D. 3731.

ART. 2223. Whenever one party may file interrogatories for the purpose of taking the deposition of a witness, the opposite party may file cross-interrogatories at any time before the commission issues, and a copy of the same shall accompany the direct interrogatories, and shall be answered and returned therewith.

Commission to take deposition. *Ib.* §67. P.D. 3736.

ART. 2224. After the service of the notice of filing the interrogatories has been completed, the clerk or justice shall issue a commission to take the deposition of the witness named in the notice.

Requisites of. *Ib.*

ART. 2225. The style of the commission shall be "The State of Texas," and it shall be dated and tested as other process; it shall be addressed to the several officers named in the succeeding article, and shall authorize and require them, or either of them, to summon the witness before him forthwith, and to take his answers under oath to the direct and cross-interrogatories, if any, a copy of which shall be attached to such commission, and to return without delay the commission and interrogatories, and the answers of the witness thereto, to the clerk or justice of the proper court, giving his official and post-office address.

ART. 2226. The commission shall be addressed to the following officers, Officers au-  
either of whom may execute and return the same: thorized to  
execute.

1. If the witness be alleged to reside or be within the state, to any clerk of the district court, any judge or clerk of the county court, or any notary public of the proper county. P. D. 3726, 3736.

2. If the witness be alleged to reside or be without the state, and within the United States, to any clerk of a court of record having a seal, or a notary public, or any commissioner of deeds duly appointed under the laws of this state, within some other state or territory.

3. If the witness is alleged to reside or be without the United States, to any notary public, or any minister, commissioner or *chargé d'affaires* of the United States resident in and accredited to the country where the deposition may be taken, or any consul-general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul or consular agent of the United States resident in such country.

ART. 2227. Upon the receipt of such commission by any officer to whom it is addressed residing in this state, if the witness does not voluntarily appear, he shall issue a subpoena directed to the sheriff or any constable of his county, requiring him to summon the witness to appear and answer interrogatories at a time and place named in the subpoena. Witness to be  
summoned.  
*Ib.* §68.  
P. D. 3727.

ART. 2228. If the witness after being duly summoned shall fail to appear, or having appeared shall refuse to answer the interrogatories, such officer shall have power to issue an attachment against such witness and to fine and imprison him in like manner as the district and county courts are empowered to do in like cases. Refusing to  
answer, may  
be attached.  
*Ib.*

ART. 2229. Upon the appearance of the witness, the officer to whom the commission is directed shall proceed to take his answers to the interrogatories. The answers shall be reduced to writing, and shall be signed and sworn to by the witness. The officer shall certify that the answers of the witness were signed and sworn to by the witness before him, and shall seal them up in an envelope, together with the commission and interrogatories and cross-interrogatories, if any, and shall write his name across the seal, and indorse on the envelope the names of the parties to the suit and of the witnesses, and shall direct the package to the clerk of the court or justice of the peace from which the commission issued. Execution of  
the commis-  
sion.  
*Ib.* §69.  
P. D. 3728.

ART. 2230. The officer executing such commission shall have authority, when he shall deem it expedient, to summon and swear an interpreter to facilitate the taking of the deposition. Interpreter.

ART. 2231. Depositions may be returned to the court either by mail, by a party interested in taking the same, or by any other person. If sent by mail, the postmaster or his deputy mailing the same shall indorse thereon that he received them from the hands of the officer before whom they were taken; and the clerk or justice taking them from the post-office shall indorse on them that he received them from the post-office, and sign his name thereto. If sent otherwise than by mail, the person delivering them into court shall make affidavit before the clerk or justice that he received them from the hands of the officer before whom they were taken; that they have not been out of his possession since, and that they have undergone no alteration. Return of  
depositions.  
(Act March 10,  
1848, p. 106,  
§16.)  
P. D. 3729.

ART. 2232. Depositions after being filed may be opened by the clerk or justice at the request of either party or his counsel; and the clerk or justice shall indorse on such depositions upon what day and at whose request they were opened, signing his name thereto, and they shall remain on file for the inspection of either party. Depositions  
opened.  
(Act May 13,  
1846, p. 363,  
§77.)  
P. D. 3741.

ART. 2233. When cross-interrogatories have been filed and answered, either party has the right to use the depositions on the trial. Either party  
may use depo-  
sitions, when.  
*Ib.* §76.  
P. D. 3740.

Deposition not read, except, etc.  
(Act March 16, 1848, p. 106, §17.)  
P.D. 3733.

ART. 2234. No deposition of a witness, except when the witness is a female, shall be permitted to be read in evidence unless the party offering the same, his agent, attorney or some competent person, shall first make oath that the witness is without the limits of the county where the suit is pending, or that such witness is dead, or that by reason of age, sickness, infirmity or official duty, such witness is unable to attend the court.

NOTE.—See note to article 2218; and query, would the oath in the above article be required since the enactment of chapter 146, acts 1879, page 126?—L.

Objections to depositions.  
(Act May 13, 1846, p. 363, §78.)  
P.D. 3742.

ART. 2235. When a deposition shall have been filed in the court at least one entire day before the day on which the trial commences, no objections to the form thereof, or to the manner of taking the same shall be heard, unless such objections are in writing, and notice thereof is given to the opposite counsel before the trial of suit commences.

Depositions to be read in evidence, subject, etc.  
(Act March 16, 1848, p. 106, §17.)  
P.D. 3733.

ART. 2236. Depositions may be read in evidence upon the trial of any suit in which they are taken, subject to all legal exceptions which might be made to the interrogatories and answers, were the witness personally present before the court giving evidence.

Matter not responsive stricken out.  
(Act May 13, 1846, p. 363, §73.)  
P.D. 3732.

ART. 2237. If any deposition shall contain any testimony not pertinent to the direct and cross-interrogatories propounded, such matter shall be deemed surplusage, and may be stricken out by the court upon objection thereto.

### CHAPTER THREE.

#### DEPOSITIONS OF PARTIES.

	Article		Article
Party may take his own deposition.....	2238	Answer may embrace what—Contradiction of.....	2242
May take deposition of adverse party.....	2239	Refusal to answer, etc.....	2243
Not necessary to give notice, etc.....	2240	Objection to interrogatories.....	2244
Taken and returned as other depositions..	2241		

Party may take his own deposition.

ARTICLE 2238. The deposition of either party to a suit who is a competent witness therein may be taken in his own behalf, in the same manner and with like effect with the depositions of other witnesses.

May take deposition of adverse party.  
(Act Feb. 15, 1858, p. 110, §3.)  
P.D. 3754.

ART. 2239. Either party to a suit may examine the opposing party as a witness, upon interrogatories filed in the cause, and shall have the same process to obtain his testimony as in the case of any other witness, and his examination shall be conducted and his testimony received in the same manner and according to the same rules which apply in the case of any other witness, subject to the provisions of the succeeding articles of this chapter.

Not necessary to give notice, etc.

ART. 2240. It shall not be necessary to give notice of the filing of the interrogatories, or to serve a copy thereof on the adverse party before a commission shall issue to take the answers thereto, nor shall it be any objection to the interrogatories that they are leading in their character.

*Ib.*

Taken and returned as other depositions.

ART. 2241. A commission to take the answers of the party to the interrogatories filed shall be issued by the clerk or justice and be executed and returned by any authorized officer as in other cases.

Answer may embrace, what.  
Contradiction of.

ART. 2242. The party interrogated may, in answer to questions propounded, state any matter connected with the cause and pertinent to the issue to be tried; and the adverse party may contradict the answers by any other competent testimony, in the same manner as he might contradict the testimony of any other witness.

*Ib.* §4.  
P.D. 3755.

Refusal to answer, etc.  
*Ib.* §5.  
P.D. 3756.

ART. 2243. If the party interrogated refuse to answer, the officer executing the commission shall certify such refusal, and any interrogatory which the party refuses to answer, or which he answers evasively, shall be taken as confessed.

Objections to interrogatories, etc.

ART. 2244. The party interrogated may upon the trial of the case take exception to the interrogatories on the ground that they are not pertinent, and to the answers that they are not competent evidence.

CHAPTER FOUR.

GENERAL PROVISIONS.

	Article		Article
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Color or interest does not disqualify.....	2246	without proof, when.....	2257
Husband or wife not disqualified, except,	2247	Certified copy of instrument sued on is	2258
etc.....	2247	evidence, when.....	2258
In actions by or against executors, etc.,	2248	Certified copies from heads of departments	2259
certain testimony not allowed.....	2248	evidence.....	2259
Religious opinion, etc., does not disqualify	2249	Assessment or payment of taxes may be	2260
Printed statutes, evidence when.....	2250	proven, how.....	2260
Certified copy of acts, etc., evidence.....	2251	Rate of interest of this state presumed,	2261
Copies of records of public officers and	2252	unless, etc.....	2261
courts to be <i>prima facie</i> evidence.....	2252	Execution of notes and other instruments	2262
Copies and certificates from certain officers	2253	presumed, unless, etc.....	2262
are evidence.....	2253	Copies of certain transcribed records made	2263
Notarial acts and copies thereof are evi-	2254	evidence.....	2263
dence.....	2254	Evidence of appointment and qualification	2264
In suits against delinquent officers trans-	2255	of executor, etc.....	2264
cript from comptroller's office is evi-	2255	Certain titles not evidence, unless, etc.....	2265
dence.....	2255	Suit on sworn account.....	2266
Copies of certain instruments prior to 1837	2256		
are evidence.....	2256		

ARTICLE 2245. The common law of England as now practiced and understood shall, in its application to evidence, be followed and practiced by the courts of this state, so far as the same may not be inconsistent with this title or any other law.

Common law rules of evidence. (Act Dec. 20, 1836.) P.D. 3706.

ART. 2246. No person shall be incompetent to testify on account of color, nor because he is a party to a suit or proceeding or interested in the issue tried.

Color or interest does not disqualify. (Act May 19, 1871, p. 108.) P.D. 6826.

ART. 2247. The husband or wife of a party to a suit or proceeding, or who is interested in the issue to be tried, shall not be incompetent to testify therein, except as to confidential communications between such husband and wife.

Husband or wife not disqualified, except, etc.

ART. 2248. In actions by or against executors, administrators or guardians, in which judgment may be rendered for or against them as such, neither party shall be allowed to testify against the others as to any transaction with, or statement by, the testator, intestate or ward, unless called to testify thereto by the opposite party; and the provisions of this article shall extend to and include all actions by or against the heirs or legal representatives of a decedent arising out of any transaction with such decedent.

In actions by or against executors, etc., certain testimony not allowed. *Ib.* P.D. 6827.

ART. 2249. No person shall be incompetent to testify on account of his religious opinions, or for want of any religious belief.

Religious opinion, etc., does not disqualify. (Const., art. 1, §5.)

ART. 2250. The printed statute books of this state, of the United States, of the District of Columbia, or of any state or territory of the United States, or of any foreign government purporting to have been printed under the authority thereof, shall be received as evidence of the acts and resolutions therein contained.

Printed statutes evidence, when. (Act May 13, 1846.) P.D. 3712.

ART. 2251. A certified copy under the hand and seal of the secretary of state of this state, of any act or resolution contained in any of such printed statute books deposited in his office, or of any law or bill, public or private, deposited in his office in accordance with law, shall be received as evidence thereof.

Certified copies of acts, etc., evidence. *Ib.*

ART. 2252. Copies of the records of all public officers and courts of this state, certified to under the hand and seal (if there be one) of the lawful possessor of such records, shall be admitted as evidence in all cases where the records themselves would be admissible; translated copies of all records in the land office, certified to under the hand of the translator, and the commissioner of the general land office, attested with the seal of said office, shall be *prima facie* evidence in all cases where the original records would be evidence.

Copies of records of public officers and courts to be *prima facie* evidence. *Ib.* P.D. 3715.

Copies and certificates from certain officers are evidence. (Act March 20, 1848.)  
P.D. 3806.

Notarial acts and copies thereof are evidence. (Act June 24, 1876, p. 30, §9.)  
P.D. 4697.

In suits against delinquent officers, transcript from comptroller's office is evidence. (Act Feb. 8, 1861, p. 14.)  
P.D. 3704.

Copies of certain instruments prior to 1837 are evidence. (Act May 13, 1846.)  
P.D. 3717.

Recorded instruments admitted in evidence without proof, when.  
*Id.*  
P.D. 3716.

Certified copy of instrument sued on, is evidence, when.  
*Id.*  
P.D. 3718.

ART. 2253. It shall be the duty of the secretary of state, attorney-general, commissioner of the general land office, comptroller, treasurer, adjutant-general and commissioner of insurance, statistics and history, to furnish any person who may apply for the same, with a copy of any paper, document or record in their respective offices, and also to give certificates, attested by the seals of their respective offices, certifying to any fact or facts contained in the papers, documents or records of their offices, to any person applying for the same, and the same shall be received in evidence in all cases in which the originals would be evidence.

ART. 2254. All declarations and protests made and acknowledgments taken by notaries public, and certified copies of their records and official papers shall be received as evidence of the facts therein stated in all the courts of this state.

ART. 2255. In suits by the state against any officer or agent thereof, on account of any delinquency or failure to pay to the state any money, a transcript from the papers, books, records and proceedings of the office of comptroller of public accounts, purporting to contain a true statement of accounts between the state and such party, authenticated under the seal of said office, shall be admitted as *prima facie* evidence, and the court trying the cause may thereupon render judgment accordingly; and all copies of bonds, contracts or other papers relating to or connected with any account between the state and an individual, sued as aforesaid, when certified by the comptroller of public accounts to be true copies of the originals on file in said office, and authenticated under the seal of said office, may be annexed to such transcript, and shall be entitled to the same degree of credit that would be due to the original papers if produced and proved in court; but when such suit is brought upon a bond or other written instrument, and the defendant shall by plea under oath deny the execution of such instrument, the court shall require the production and proof thereof.

ART. 2256. Copies of all conveyances and other instruments of writing between private individuals, which were filed in the office of any alcalde or judge in Texas previous to the first Monday in February, 1837, shall be admissible in evidence, and shall have the same force and effect as the originals thereof; *provided*, such copies are certified under the hand and official seal of the officer with whom the originals are now deposited.

ART. 2257. Every instrument of writing which is permitted or required by law to be recorded in the office of the clerk of the county court, and which has been or may be so recorded after being proven or acknowledged in the manner provided by the laws in force at the time of its registration shall be admitted as evidence without the necessity of proving its execution; *provided*, that the party who wishes to give it in evidence shall file the same among the papers of the suit in which he proposes to use it, at least three days before the commencement of the trial of such suit, and give notice of such filing to the opposite party or his attorney of record; and unless such opposite party, or some other person for him shall, within three days before the trial of the cause, file an affidavit stating that he believes such instrument of writing to be forged. And whenever any party to a suit shall file among the papers of the cause an affidavit stating that any instrument of writing, recorded as aforesaid, has been lost, or that he can not procure the original, a certified copy of the record of any such instrument shall be admitted in like manner as the original could be.

ART. 2258. If suit be brought on any instrument or note in writing, filed in any suit brought thereupon in any other court of this state, a certified copy of such instrument or note in writing, under the hand and seal of the clerk of the court in which the original may be filed, shall be

admitted as evidence in like manner as such original might be; but if the defendant shall plead and file an affidavit under oath that such original instrument or note in writing has not been executed by him, or by his authority, the clerk of the court having the custody of such original shall, on being subpoenaed as a witness, attend with the same on trial of the cause.

ART. 2259. Certified copies, under the hands and official seals of the heads of departments, of all notes, bonds, mortgages, bills, accounts, or other documents, properly on file in any of the departments of this state, shall be received in evidence on an equal footing with the originals, in all suits now pending and which may be hereafter instituted in this state, where the originals of such notes, bonds, mortgages, bills, accounts, or other documents would be evidence.

Certified copies from heads of departments evidence. (Act Aug. 11, 1870, p. 62.) P.D. 6825.

ART. 2260. Whenever in any cause it may be material to prove the assessment of any property for taxes, or the payment of any taxes, the certificate of the comptroller of such assessment from the rolls deposited in his office, or that the payment of such taxes is shown by the records of his office, shall be admissible in evidence to prove the same.

Assessment or payment of taxes may be proven, how. (Act Feb. 15, 1858.) P.D. 3708.

ART. 2261. The rate of interest in any other state, territory or country is presumed to be the same as that established by law in this state, and may be recovered accordingly without allegation or proof of the rate of interest in such other state, territory or country, unless the rate of interest in such other country be alleged and proved.

Rate of interest in this state presumed, unless, etc. 16.

ART. 2262. When any petition, answer, or other pleading shall be founded, in whole or in part, on any instrument or note in writing, charged to have been executed by the other party or by his authority, and not alleged therein to be lost or destroyed, such instrument or note in writing shall be received as evidence without the necessity of proving its execution, unless the party by whom or by whose authority such instrument or note in writing is charged to have been executed, shall file his affidavit in writing denying the execution thereof; and the like rule shall prevail in all suits against indorsers and sureties upon any note or instrument in writing. When any such instrument or note in writing is charged to have been executed by any testator or intestate, it shall be received in evidence in like manner, unless some suspicion is cast upon it by the affidavit of the executor or administrator of such testator or intestate.

Execution of notes and other instruments presumed, unless, etc. (Act May 13, 1846.) P.D. 1443.

ART. 2263. Where a county has been heretofore, or may hereafter be created out of the territory of any organized county, and the records of deeds and other instruments required or permitted by law to be recorded, relating to lands or other property in such new county have been transcribed and placed on record in such new county, in accordance with law, certified copies of such transcribed records in the new county may be admitted in evidence with like effect as certified copies of the original records.

Copies of certain transcribed records made evidence.

NOTE.—See chapter 97, section 3, acts 1879, page 106.—L.

ART. 2264. Whenever it may be necessary to make proof of the appointment and qualification of an executor, administrator or guardian, the letters issued to them in the manner provided by law, or a certificate of the proper clerk under his official seal that such letters have been issued, shall be sufficient evidence of the appointment and qualification of such executor, administrator or guardian.

Evidence of appointment and qualification of executor, etc. (Act Feb. 25, 1863, p. 5.) P.D. 1286.

ART. 2265. Titles to land which may have been deposited in the general land office subsequently to the time when the land embraced by such titles had been located or surveyed, by virtue of valid land warrants or certificates, shall not be received as evidence of superior title to the land, against any such location or survey, unless such elder title had been duly recorded in the office of the county clerk of the county where the land may have been situated prior to the location and survey, or unless the

Certain titles not evidence, unless, etc. (Act Oct. 20, 1866, p. 32.) P.D. 5825.



party having such location or survey made had actual notice of the existence of such elder title before he made such location or survey.

Suit on sworn  
account.  
(Act April 2,  
1874, p. 52, §1.)

ART. 2266. When any action or defense is founded upon an open account, supported by the affidavit of the party, his agent or attorney, taken before some officer authorized to administer oaths, to the effect that such account is, within the knowledge of the affiant, just and true, that it is due, and that all just and lawful offsets, payments and credits have been allowed, the same shall be taken as *prima facie* evidence thereof, unless the defendant shall, at least one day before the trial, file a written denial under oath, stating that such account is not just or true, in whole or in part, and if in part only, stating the items and particulars which are unjust. Where he fails to file such affidavit he shall not be permitted to deny the account or any item therein, as the case may be.

TITLE XXXIX.

Execution.

	Article		Article
Execution on judgments of district and county court issued, when	2267	Defendant may give delivery bond and keep property	2300
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Duty of officer as to property in his hands	2298	Death of defendant operates supersedeas, when	2330
Expenses of keeping property	2299	Death of plaintiff does not abate writ	2331
		Execution docket	2332
		Index to execution docket	2333
		Penalty for failing to keep docket and index	2334

ARTICLE 2267. From and after the adjournment of every district or county court it shall be the duty of the clerk thereof to tax the costs in every case in which a final judgment has been rendered against the party liable therefor under such judgment, and which have not been paid by him, and to issue execution for the enforcement of such judgment and the collection of such costs.

Execution on judgment of district and county court, issued when. (Act June 4, 1873, p. 209, §1.) P.D. 3772.

NOTE.—In counties where the civil and criminal jurisdiction (or either) of the county courts has been transferred to the district courts, the county clerk is required to certify copies of all judgments rendered in the county court unsatisfied, and transmit them to the clerk of the district court. The district clerk is required to record the same in the minutes of his court and the district court is to enforce them by execution or otherwise, as its own judgments. See acts 1879, extra session, chapter 14.—L.

County court judgments to be transferred to district court, when.

ART. 2268. After the expiration of twenty days from and after the rendition of a final judgment in the district or county court, and after the overruling of any motion therein for a new trial or in arrest of judgment, if no supersedeas bond on appeal or writ of error has been filed and approved, the clerk shall issue execution upon such judgment upon the application of the successful party.

Execution before adjournment, when. *Id.*

Execution issued before adjournment, superseded, when.

ART. 2269. When an execution has been issued under the preceding article, and a supersedeas bond is afterward filed and approved within the time prescribed by law, the clerk shall immediately issue a writ of supersedeas suspending all further proceedings under such execution.

Execution from justice's court.

ART. 2270. Executions from the justices' courts shall issue as provided in the title relating to said courts.

Execution issued on removal of property, etc.  
(Act Jan. 27, 1842, p. 66, §3.)  
P.D. 3774.

ART. 2271. Upon the filing of an affidavit that the party against whom a judgment for money, other than a judgment for costs only has been rendered, is about to remove his property out of the county, or is about to transfer or secrete his property for the purpose of defrauding his creditors, the clerk may issue execution immediately.

On death of plaintiff execution issued, how.  
(Act Feb. 5, 1853.)  
P.D. 13.

ART. 2272. Where a sole plaintiff, or one of the several plaintiffs, shall die after judgment, execution shall issue on such judgment in the name of the legal representative of such deceased sole plaintiff, or in the name of the surviving plaintiffs, and the legal representative of the deceased plaintiff, as the case may require, upon an affidavit of such death being filed with the clerk, together with a certificate of the appointment of such representative, under the hand and seal of the clerk of the court wherein such appointment was made.

On death of executor, etc.  
*Ib.*

ART. 2273. When an executor, administrator, guardian or trustee of an express trust dies or ceases to be such executor, administrator, guardian or trustee after judgment, execution shall issue on such judgment in the name of his successor, upon an affidavit of such death being filed with the clerk, together with the certificate of the appointment of such successor, under the hand and seal of the clerk of the court wherein such appointment was made.

On death of nominal plaintiff.

ART. 2274. When a person in whose favor a judgment is rendered for the use of another dies after judgment, execution shall issue in the name of the party for whose use the suit was brought, upon an affidavit of such death being filed with the clerk.

On death of defendant, no execution for money.  
(Act Feb. 5, 1853.)  
P.D. 14.

ART. 2275. Where a sole defendant dies after judgment for money against him, execution shall not issue thereon, but the judgment may be proved up and paid in due course of administration.

On death of defendant, execution for property.  
*Ib.*

ART. 2276. In all cases of judgments other than money judgments, where the sole defendant or one or more of several joint defendants shall die after judgment, upon an affidavit of such death being filed with the clerk, together with the certificate of the appointment of a representative of such decedent, under the hand and seal of the clerk of the court wherein such appointment was made, the proper process on such judgment shall issue against such representative.

Terms "plaintiff" and "defendant" defined.

ART. 2277. By the term "plaintiff," as used in this title, is meant the party in whose favor judgment is rendered, and by the term "defendant" is meant the party against whom judgment was rendered.

County to which execution for money shall issue.  
(Act Jan. 27, 1842.)  
P.D. 3784.

ART. 2278. Where the execution requires that the judgment shall be made out of the property of the debtor, it shall be issued in the first instance to the county in which the judgment is rendered, and upon the return thereof that no property can be found, or not sufficient to satisfy the same, execution may be issued to any other county in the state.

Execution for property shall issue.

ART. 2279. Where the execution or any writ in the nature thereof requires the sale or delivery of specific, real or personal property, it may be issued to the county where the property or some part thereof is situated.

To different counties.

ART. 2280. Process in the nature of an execution which requires only the delivery of real or personal property, may be issued at the same time to different counties.

**ART. 2281.** The style of the execution shall be "The State of Texas." It shall be directed to the sheriff or any constable of the proper county, and shall be signed by the clerk or justice officially, and sealed with the seal of the court, if issued out of the district or county court. It shall correctly describe the judgment, stating the court wherein and the time when rendered, the names of the parties, the amount, if it be for money, and the amount actually due thereon, if less than the original amount, the rate of interest, if other than eight per cent., and shall have the following requisites:

Requisites of an execution. (Const., art. 5, §12.) (Act June 4, 1873, p. 309, §§1, 2.) P.D. 3772.

1. The several items of the bill of costs to be collected under the execution shall be indorsed thereon in intelligible words and figures.

2. If the judgment be for money simply, it shall require the officer to satisfy the judgment out of the property of the debtor, subject to execution.

3. If the judgment commands the sale of particular property for the satisfaction thereof, the writ shall be framed accordingly.

4. If the judgment be for the delivery of the possession of real or personal property, the writ shall require the officer to deliver the possession of the same, particularly describing it to the party entitled thereto, and may, at the same time, require the officer to satisfy any costs, damages or rents and profits recovered by the same judgment, out of any property subject to execution of the party against whom it is rendered.

5. If the judgment be for the recovery of personal property or its value, the writ shall command the officer, in case a delivery thereof can not be had, to levy and collect the value thereof for which the judgment was recovered, to be specified therein out of any property of the party against whom the judgment was rendered, liable to the execution.

6. It shall require the officer to satisfy the costs adjudged against the party, and the further costs of executing the writ, out of any property liable to execution of the party against whom the judgment was rendered.

7. When an *alias* or *pluries* execution is issued, it shall show upon its face the number of previous executions which have been issued on the judgment.

**ART. 2282.** The execution shall be returnable to the first day of the next term of the court, or in thirty, sixty or ninety days, if so directed by the plaintiff, his agent or attorney.

Returnable, when. (Act June 4, 1873.) P.D. 3775.

**ART. 2283.** The officer receiving an execution shall indorse thereon the exact hour and day when he received it, and if he receives more than one on the same day against the same person, he shall number them as received; and on failure so to do, or in case of false indorsement, he and his sureties shall be liable, on motion in the court from whence the execution issued, three days' notice being given, to a judgment in favor of the plaintiff in execution for twenty per cent. on the amount of the execution, together with such damages as the plaintiff in execution may have sustained by such failure or such false indorsement.

Indorsements by officer. (Act Jan. 27, 1842.) P.D. 3780.

**ART. 2284.** If it appear upon the face of an execution, or by the indorsement of the clerk, that of those against whom it is issued any one is surety for another, the levy of the execution shall first be made upon the property of the principal subject to execution and situate in the county in which the judgment is rendered. But if property of the principal can not be found which will in the opinion of the officer be sufficient to make the amount of the execution, the levy shall be made on so much property of the principal as may be found, if any, and upon so much of the property of the surety as may be necessary to make the amount of the execution.

Execution levied on property of surety, when. (Act Feb. 5, 1853.) P.D. 4786.

**ART. 2285.** If the officer receiving an execution die or go out of office before the return of any execution, his successor or other officer author-

On death, etc., of officer, enforced by successor.

- ized to discharge the duties of the office in such case, shall proceed therein in the same manner that such officer should have done.
- Enforced without delay.** ART. 2286. When an execution against the property of any person is issued to an officer, he shall proceed without delay to levy the same upon the property of the defendant not exempt from execution, unless otherwise directed by the plaintiff, his agent or attorney.
- Levy of execution.**  
(Act June 4,  
1873, p. 209, §2.)  
P.D. 3775. ART. 2287. The officer shall first call upon the defendant, if he can be found, or if absent, upon his agent within the county, if known, to point out property to be levied upon; and a levy shall first be made upon the property designated by the defendant or his agent; *provided*, that if it be personal property the defendant or his agent deliver the same into the officer's possession; or, if it be real estate that he deliver to the officer a description thereof by metes and bounds, and that it be situated in whole or in part within the county. If, in the opinion of the officer, the property so designated will not sell for enough to satisfy the execution and costs of sale, he shall notify the defendant or his agent thereof; whereupon the latter may make an additional designation.
- Failure of defendant to designate property.**  
*Ib.* §3. ART. 2288. If no property be thus designated, or if an insufficient amount of property be designated, it shall be the duty of the officer to levy the execution upon the property of the debtor, subject to execution in the following order:
1. On personal or movable property.
  2. On uncultivated lands, and,
  3. Upon cultivated lands.
- Property not to be designated.** ART. 2289. A defendant in execution can not point out property which he has sold, mortgaged or conveyed in trust, or property exempt from forced sale.
- Property sold, etc., can not be levied on, when.** ART. 2290. Property which the judgment debtor has sold, mortgaged or conveyed in trust shall not be seized in execution if the purchaser, mortgagee or trustee, shall point out other property of the debtor in the county sufficient to satisfy the execution.
- Levy on real estate.** ART. 2291. In order to make a levy on real estate it shall not be necessary for the officer to go upon the ground, but it shall be sufficient for him to indorse such levy on the writ.
- On personal property.** ART. 2292. A levy upon personal property is made by taking possession thereof, when the defendant in execution is entitled to the possession; where the defendant in execution has an interest in personal property, but is not entitled to the possession thereof, a levy is made thereon by giving notice thereof to the person who is entitled to the possession, or one of them when there are several.
- On stock running at large.** ART. 2293. A levy upon horses, mules, jacks, jennets, horned cattle or hogs running at large in a range, and which can not be herded and penned without great inconvenience and expense, may be made by designating by reasonable estimate the number of animals and describing them by their marks and brands, or either; such levy shall be made in the presence of two or more credible persons, and notice thereof shall be given in writing to the owner, or his herder or agent, if residing within the county and known to the officer.
- Levy on shares of stock, etc.**  
(Act March 13,  
1875, p. 102.)  
Interest of partner. ART. 2294. A levy on the stock of any corporation or joint stock company is made by leaving a notice thereof with any officer of such company.
- ART. 2295. A levy upon the interest of a partner in partnership property is made by leaving a notice with one or more of the partners, or with a clerk of the partnership.
- Goods pledged or mortgaged.** ART. 2296. Goods and chattels pledged, assigned or mortgaged as security for any debt or contract, may be levied upon and sold on execution against the person making the pledge, assignment or mortgage subject thereto; and the purchaser shall be entitled to the possession when it is held by the pledgee, assignee or mortgagee, on complying with the conditions of the pledge, assignment or mortgage.

**ART. 2297.** Shares of stock in any joint stock or incorporated company may be sold on execution against the person owning such stock.

Shares of stock may be sold. (Act March 13, 1875, p. 102.)

**ART. 2298.** The officer shall keep securely all personal property levied on by him, for which no delivery-bond has been given; and if any injury or loss should result to any party interested by his negligence, he and his sureties shall be liable to pay the value of the property so lost, or the amount of injury sustained, and ten per cent. thereon, to be recovered by the party injured, on motion—three days' notice being given—in the court from which the execution issued.

Duty of officer as to property in his hands. (Act Jan. 27, 1842.) P.D. 3782.

**ART. 2299.** The officers shall be authorized to retain out of the proceeds of personal property sold upon execution all reasonable expenses incurred by him in making the levy and keeping the property.

Expenses for keeping property. *Ib.*

**ART. 2300.** Any personal property taken in execution may be returned to the defendant by the officer, upon the delivery by the defendant to him of a bond, payable to the plaintiff, with two or more good and sufficient sureties, to be approved by the officer, to the effect that the property shall be delivered to the officer at the time and place named in the bond, to be sold according to law, or for the payment to the officer of the fair value thereof, which shall be stated in the bond.

Defendant may give delivery-bond and keep property. (Act Jan. 27, 1842.) P.D. 3778.

**ART. 2301.** Where property has been replevied, as provided in the preceding article, the defendant may sell or dispose of the same, paying the officer the stipulated value thereof.

Property may be sold by defendant.

**ART. 2302.** In case of the non-delivery of the property according to the terms of the bond, and non-payment of the value thereof, the officer shall forthwith return the bond, indorsed "forfeited," to the clerk of the court from which execution issued; whereupon, if the judgment remain unsatisfied in whole or in part, the clerk shall issue execution against the principal debtor and the sureties on the bond for the amount due, not exceeding the stipulated value of the property, upon which execution no delivery-bond shall be taken, which fact shall be indorsed by the clerk on the execution.

Forfeited delivery-bond. *Ib.* P.D. 3779.

**ART. 2303.** Real property taken by virtue of any execution shall be sold at public auction, at the court-house door of the county, on the first Tuesday of the month, between the hours of ten o'clock A. M. and four o'clock P. M.

Real property sold, how. *Ib.* P.D. 3776.

**ART. 2304.** Where by law the public sales of lands in any county are directed to be made at any other place than the court-house door, the sales herein provided to be made at the court-house door shall be made at the place designated by such law.

Sale of lands, etc., elsewhere than at court-house door.

**ART. 2305.** If real property situated in any town or city, taken in execution, consist of several lots, tracts or parcels, each shall be offered separately, unless the same be not susceptible of a separate sale by reason of the character of the improvements thereon.

Lots in a city or town, how sold.

**ART. 2306.** When lands not situated in any town or city are taken in execution, the defendant in such writ, in whom the legal or equitable title to such land may be vested, shall have the right to present to the officer holding said execution, at any time before the sale so as not to delay the same being made as advertised, a plat of said land as actually surveyed, in lots of not less than fifty acres, by the county surveyor of the county wherein said premises are situated. The plat shall be accompanied by the field-notes of each lot as numbered, with the certificate of the county surveyor that the same are correct, and the defendant shall have the right to designate the order in which the lots shall be sold.

Lands not in a city, etc., sold in lots, when. (Act Feb. 22, 1875, p. 50.)

**ART. 2307.** When a sufficient number of such lots are sold to satisfy the amount due on the execution, the sale shall cease at the request of the defendant.

Sale of lots shall cease, when. *Ib.*

**ART. 2308.** The expenses of the survey and all other expenses attending the sale of said land in lots as hereinbefore provided shall be paid by

Expenses of selling lots, how paid. *Ib.*

the defendant, and shall in no case constitute any additional cost in said case.

Notice of sale of real estate. (Act Jan. 27, 1841.)

ART. 2309. The time and place of making sale of real estate, in execution, shall be publicly advertised by the officer for at least twenty days successively next before the day of sale, by posting up written or printed notices thereof at three public places in the county, one of which shall be at the door of the court-house of the county.

To be published in newspaper, when.

NOTE.—Chapter 139, acts 1879, provides that real property levied on under an execution, or subject to sale on a *venditioni exponas*, shall, if the defendant request it in writing, be advertised by the officer for sale, by notice published in a newspaper of his county for three consecutive weeks. The notice must contain a statement of the authority of the sale, the time of levy, time and place of sale, a brief description of the property, the number of acres, name of original survey, its locality in the county and the name by which the land is most generally known, but need not contain the field-notes. The publisher is to receive seventy-five cents per square (ten lines in type not larger than brevier) for the first insertion, and fifty cents per square for each subsequent insertion to be paid and taxed as other costs.—L.

“Court-house door” defined.

ART. 2310. By the “court-house door” of a county is meant either of the principal entrances to the house provided by the proper authority for the holding of the district court; and where, from any cause, there is no such house, the door of the house where the district court was last held in that county shall be deemed to be the court-house door. Where the court-house, or house used by the court, has been destroyed by fire or other cause, and another has not been designated by the proper authority, the place where such house stood shall be deemed to be the court-house door.

Sale of personal property. (Act Jan. 27, 1842.) P.D. 3776.

ART. 2311. Personal property taken in execution shall be sold on the premises where it is taken in execution, or at the court-house door of the county, or at some other place if, owing to the nature of the property, it is more convenient to exhibit it to purchasers at such place.

Notice of sale of personal property. *Ib.*

ART. 2312. Previous notice of the time and place of the sale of any personal property on execution shall be given for ten days successively, by posting up written or printed notices thereof in at least three public places in the county, one of which shall be at the court-house door of the county and one at the place where the sale is to be made.

Personal property present at sale, except.

ART. 2313. Personal property shall not be sold unless the same be present and subject to the view of those attending the sale, when it is susceptible of being thus exhibited, except shares of stock in joint stock or incorporated companies, and in cases where the defendant in execution has merely an interest without right to the exclusive possession, in which case the interest of the defendant may be sold and conveyed without the presence or delivery of the property.

Sale of stock running in range.

ART. 2314. When a levy is made upon horses, mules, jacks, jennets, horned cattle or hogs running at large in the range, under article 2293 of this chapter, it is not necessary that such stock or any part thereof should be present at the place of sale, and the purchaser at such sale is authorized to gather and pen such stock and select therefrom the number purchased by him.

When execution not satisfied.

ART. 2315. When the property levied on does not sell for enough to satisfy the execution, the officer shall proceed anew, as in the first instance, to make the residue.

Conveyance to purchaser. *Ib.* P.D. 3795.

ART. 2316. When a sale has been made and the terms thereof complied with, the officer shall execute and deliver to the purchaser a conveyance of all the right, title, interest and claim which the defendant in execution had in and to the property sold.

When the state or a county is purchaser.

NOTE.—See Acts 1879, extra session, chapter 13, as to purchases of property by the state, where sold under execution upon judgment in favor of the state; and as to purchases by a county under like circumstances. See also appendix for the act in full.—L.

**ART. 2317.** In case the purchaser, having complied with the terms of the sale, shall die before a conveyance shall have been executed to him, the officer shall convey the property sold to the purchaser, nevertheless, and the conveyance shall have the same effect as if it had been executed in the lifetime of the purchaser.

Conveyance made after death of purchaser.

**ART. 2318.** A purchaser at sale under execution shall be deemed to be an innocent purchaser without notice in all cases where he would be deemed to be such had the sale been made voluntarily by the defendant in person.

Purchaser deemed innocent.

**ART. 2319.** Any officer who shall sell any property without giving the previous notice herein directed, or who shall sell the same otherwise than in the manner herein prescribed, shall forfeit and pay to the party injured not less than ten nor more than two hundred dollars in addition to such other damages as the party may have sustained, to be recovered, on motion, five days' notice thereof being given, from such officer and his sureties.

Penalty for making sale otherwise than as authorized by law.

**ART. 2320.** If any officer making sale of property on execution, or his deputy, shall directly or indirectly purchase the same, the sale shall be void.

Officer or deputy shall purchase.

**ART. 2321.** If any person shall bid off property at any sale made by virtue of an execution, and shall fail to comply with the terms of the sale, he shall be liable to pay to the plaintiff in execution twenty per cent. on the value of the property thus bid off, besides costs, to be recovered on motion, five days' previous notice of such motion being given to the defendant; and should the property on a second sale bring less than on the former, he shall be liable to pay to the defendant in execution all loss which he sustains thereby, to be recovered on motion as above provided.

Purchaser failing to comply.  
*Ib.*  
P.D. 3786.

**ART. 2322.** When the terms of the sale shall not be complied with by the bidder, the sheriff shall proceed to sell the property again on the same day, if there be sufficient time; but if not, he shall re-advertise and sell the same as in the first instance.

Re-sale of property.  
*Ib.*  
P.D. 3787.

**ART. 2323.** When an execution is issued to any county other than the one in which the judgment is rendered, return may be made by mail; but money can not be thus sent except by direction of the party entitled to receive the same or his attorney of record.

Return of execution by mail.

**ART. 2324.** When an officer has collected money on execution he shall pay over the same to the party entitled thereto at the earliest opportunity.

Money to be paid over.

**ART. 2325.** Should an officer fail or refuse to pay over money collected under an execution, when demanded by the person entitled to receive the same, he shall be liable to pay to such person the amount so collected, with damages at the rate of five per cent. per month thereon, besides interest and costs, which may be recovered of him and his sureties by the party entitled to receive the same, on motion before the court from which said execution issued, five days' previous notice thereof being given to said officer and his sureties.

Failure to pay over money.  
*Ib.*  
P.D. 3781.

**ART. 2326.** Should an officer fail or refuse to levy upon or sell any property justly liable to execution, when the same might have been done, he and his sureties shall be liable to the party entitled to receive the money collected on such execution for the full amount of the debt, interest and costs, to be recovered on motion before the court from which said execution issued, five days' previous notice thereof being given to said officer and his sureties.

Failure to levy or sell, penalty for.  
*Ib.*  
P.D. 3796.

**ART. 2327.** Should an officer neglect or refuse to return any execution, as required by law, or should he make a false return thereon, he and his sureties shall be liable to the party entitled to receive the money collected on such execution for the full amount of the debt, interest and costs, to be recovered as provided in the preceding article.

Failure to return execution.  
*Ib.*  
P.D. 3796.

**ART. 2328.** If, on the sale of property, more money is received than is sufficient to pay the amount of the execution or executions in the hands

Surplus to be paid to defendant.  
*Ib.*  
P.D. 3777.



of the officer, the surplus shall be immediately paid over to the defendant, his agent or attorney.

Return of execution.

ART. 2329. Every execution shall be returned forthwith, upon being satisfied by the collection of the money, or upon order of the plaintiff or his attorney indorsed thereon.

Death of defendant operates as supersedeas, when.

ART. 2330. The death of the defendant after the execution is issued shall operate as a supersedeas thereof; but the lien of the execution, when one has been acquired by a levy, shall be recognized and enforced by the county court in the payment of the debts of the deceased.

Death of plaintiff does not abate writ.

ART. 2331. An execution shall not be abated by the death of the plaintiff therein after the execution has been issued, but the same shall be executed and returned in the same manner as if the plaintiff was still living.

Execution docket.

*Ib.*  
P.D. 3773.  
(Act to adopt and establish R.C.S., passed Feb. 21, 1879.)

ART. 2332. The clerk of each of the several courts shall keep an execution docket in which he shall enter a statement of all executions as they are issued by him, specifying the names of the parties, the amount of the judgment, the amount due thereon, the rate of interest when it exceeds eight per cent., the costs, the date of issuing the execution, to whom delivered, and the return of the officer thereon, with the date of such return, and such docket entries shall be taken and deemed to be a record.

Index to execution docket.

ART. 2333. The clerk shall keep an index and cross-index to the execution docket, and when execution is in favor of or against several persons it shall be indexed in the name of each person.

Penalty for failing to keep docket and index.

ART. 2334. Any clerk who shall fail to keep an execution docket and index thereto, as hereinbefore directed, or shall neglect to make the entries therein, shall, besides being punished as provided in the penal law, be liable to any person injured for the amount of damages sustained by such neglect, to be recovered in a suit against him and his sureties or his official bond.

TITLE XL.

Exemptions.

CHAPTER ONE.

PROPERTY, EXEMPT FROM FORCED SALE.

	Article		Article
Property exempt to every family.....	2335	Public property of counties, cities and towns	2339
"Homestead" defined.....	2336	Public libraries.....	2340
Property exempt to others than families.....	2337	Homestead exemption does not apply, when	2341
Ferry-boat, etc.....	2338	Other exemptions do not apply, when.....	2342

ARTICLE 2335. The following property shall be reserved to every family, exempt from attachment or execution, and every other species of forced sale for the payment of debts, except as hereinafter provided:

Property exempt from, to every family. (Const., art. 16, §28, 50.) (Acts Aug. 15, 1870, p. 127, §2; April 24, 1874, p. 137, §70.) P.D. 6834, 6003.

1. The homestead of the family.
2. All household and kitchen furniture.
3. Any lot or lots in a cemetery held for the purpose of sepulture.
4. All implements of husbandry.
5. All tools, apparatus and books belonging to any trade or profession.
6. The family library and all family portraits and pictures.
7. Five milch cows and their calves.
8. Two yoke of work oxen, with necessary yokes and chains.
9. Two horses and one wagon.
10. One carriage or buggy.
11. One gun.
12. Twenty hogs.
13. Twenty head of sheep.
14. All saddles, bridles and harness necessary for the use of the family.
15. All provisions and forage on hand for home consumption; and,
16. All current wages for personal services.

ART. 2336. The "homestead" of a family, not in a town or city, shall consist of not more than two hundred acres of land, which may be in one or more parcels, with the improvements thereon; the homestead in a city, town or village, consisting of a lot or lots, not to exceed in value five thousand dollars at the time of their designation as the homestead, without reference to the value of any improvements thereon; *provided*, that the same shall be used for the purposes of a home, or as a place to exercise the calling or business of the head of a family; *provided, also*, that any temporary renting of the homestead shall not change the character of the same when no other homestead has been acquired.

"Homestead" defined. (Const., art. 16, §51.)

ART. 2337. The following property shall be reserved to persons who are not constituents of a family, exempt from attachment, execution and every other species of forced sale:

Property exempt to others than families. (Act Aug. 15, 1870, p. 127, §2.) P.D. 6834. (Const., art. 16, §28.)

1. A lot or lots in a cemetery, held for the purpose of sepulture.
2. All wearing apparel.
3. All tools, apparatus and books belonging to any trade or profession.
4. One horse, saddle and bridle.
5. Current wages for personal services.

ART. 2338. There shall be reserved to every ferryman exempt from attachment, execution and every other species of forced sale, except as hereinafter provided, one ferry-boat, keel or flat-boat, used as a ferry-boat, with the necessary tackle for operating the same, not exceeding in value five hundred dollars; but such exemption shall not apply to any recovery for damages sustained by the negligence or other improper conduct on the part of such ferryman.

Ferry-boat, etc (Act Feb. 13, 1858, p. 21, §1.) P.D. 3802.

Public prop-  
erty of coun-  
ties, cities and  
towns exempt.  
(Const., art. 9,  
§9.)

ART. 2339. The property of counties, cities and towns, owned and held only for public purposes, such as public buildings and the sites therefor, fire engines and the furniture thereof, and all property used or intended for extinguishing fires, public grounds and other property devoted exclusively to the use and benefit of the public, shall also be exempt from forced sale; *provided*, that nothing herein shall prevent the enforcement of the vendor's lien, the mechanic's or builder's lien, or other liens existing on the eighteenth day of April, 1876, when the existing constitution went into effect.

Public libra-  
ries.  
(Act Aug. 15,  
1870, p. 127, §2.)  
P.D. 6834.

ART. 2340. All public libraries shall be exempt from attachment, execution and every other species of forced sale.

Homestead  
exemption  
does not apply,  
when  
(Const., art. 16,  
§50.)

ART. 2341. The exemption of the homestead provided for in this chapter shall not apply where the debt is due—

1. For the purchase money of such homestead or a part of such purchase money.

2. For taxes due thereon.

3. For work and material used in constructing improvements thereon; but in this last case such work and material must have been contracted for in writing, and the consent of the wife, if there be one, must have been given in the same manner as is by law required in making a sale and conveyance of the homestead.

Exemptions  
not to override  
claims for  
rents, etc.  
(Act April 2,  
1874, p. 56, §1.)

ART. 2342. The exemption of personal property, provided for in this chapter, shall not apply when the debt is due for rents and advances made by a landlord to his tenant, under the provisions of title lviii, or to other debts which are secured by a lien on such property.

## CHAPTER TWO.

### EXCESS OVER HOMESTEAD, ETC., HOW SET APART AND SUBJECTED TO EXECUTION.

	Article	Article	
Head of family may designate and set aside homestead.....	2343	Defendant failing, officer to appoint commissioners.....	2356
Mode of setting it apart.....	2344	Commissioners to designate homestead....	2357
Instrument to be recorded.....	2345	Requisites of designation by commissioners.....	2358
Excess over homestead subject to execution, etc.....	2346	To be returned and recorded—effect of....	2359
Owner to be notified to set apart, etc.....	2347	Sheriff's return.....	2360
Notice, what.....	2348	Compensation of commissioners and surveyor.....	2361
Service of notice.....	2349	Fee of clerk, etc.....	2362
Return of service.....	2350	Fees taxed as costs.....	2363
Return <i>prima facie</i> evidence.....	2351	Excess to be sold.....	2364
Defendant may designate his homestead..	2352	Defendant may change, but, etc.....	2365
Mode of making designation by defendant.	2353	Provisions of this chapter cumulative....	2366
Designation to be recorded.....	2354	Personal property may be designated, etc..	2367
Effect of, when made by defendant.....	2355		

Voluntary  
designation of  
homestead in  
the country.  
(Act May 7,  
1873, p. 64, §1,  
*et seq.*)  
P.D. 6994a *et*  
*seq.*

ARTICLE 2343. When the homestead of a family, not being in a town or city, is a part of a larger tract or tracts of land than is exempted from forced sale as such homestead, it shall be lawful for the head of the family to designate and set apart the homestead, not exceeding two hundred acres, to which the family is entitled under the constitution and laws of this state.

Mode of setting  
it apart.

ART. 2344. The party desiring so to designate and set apart the homestead shall file for record with the clerk of the county court of the county in which the land or a part thereof may be, an instrument of writing containing a description by metes or bounds, or other sufficient description to identify it, of the homestead so claimed by him, stating the name of the original grantee and the number of acres, and if more than one survey the number of acres in each.

Instrument to  
be recorded,  
etc.

ART. 2345. Such instrument shall be signed by the party and acknowledged or proven as other instruments for record, and shall state that the party has designated and set apart as his homestead the tract or

tracts of land so claimed by him; and such instrument shall be recorded by the clerk in the record of deeds of said county.

ART. 2346. Where the owner of such a homestead, part of a larger tract, as is described in article 2343, has failed to designate and set apart his homestead, as provided in the three preceding articles, the excess of such tract or tracts of land over and above the homestead exemption may be partitioned and separated from such homestead and subjected to levy and sale under execution, if otherwise subject, as hereinafter directed.

Excess over homestead subject to execution.  
*Ib.*

ART. 2347. The sheriff or constable holding an execution against the owner of such excess of land over and above his exempted homestead, and not separated and partitioned therefrom, may, on his own motion, and shall, if required by the plaintiff in execution, his agent or attorney, notify the defendant in execution to designate and set apart his homestead from the remainder of the lands so owned and occupied by him, and that on his failure so to do within ten days the sheriff or constable will proceed to have such partition made as provided by law.

Owner to be notified to set apart, etc.  
*Ib.*

ART. 2348. The notice mentioned in the preceding article shall be written or printed, and shall be signed by the sheriff or constable.

Notice, what.  
*Ib.*

ART. 2349. Such notice may be served on the defendant by the sheriff or constable by reading the same to him, or by leaving a copy of the same at his place of residence, with some person over fourteen years of age.

Service of notice.  
*Ib.*

ART. 2350. The sheriff or constable shall return said notice to the court from which the execution issued, with his return indorsed thereon, showing how he executed the same.

Return of service.  
*Ib.*

ART. 2351. The notice and return indorsed thereon shall be filed by the proper officer of the court, and shall be *prima facie* evidence of the facts stated.

Return *prima facie* evidence.  
*Ib.*

ART. 2352. On the service of such notice the defendant in execution shall have the right, within ten days thereafter, to designate and set apart his homestead from any excess of land owned by him, and deliver the same to the sheriff or constable.

Defendant may designate his homestead.  
*Ib.*

ART. 2353. The designation and setting apart so made by the defendant shall be such as is required by articles 2344 and 2345.

Mode of making designation by defendant.  
*Ib.*

ART. 2354. The sheriff or constable shall deliver the designation or setting apart of the homestead so made to the clerk of the county court of the county in which such homestead, or a part thereof is, and such clerk shall forthwith record the same in the record of deeds of his said county.

Designation to be recorded.  
*Ib.*

ART. 2355. Such designation and setting apart of the homestead made by the defendant under any of the preceding articles, shall operate as a relinquishment of all right of homestead in the excess of land so partitioned from the homestead, and shall be binding on the defendant and all others in privity with him, and the same or a certified copy of the record thereof shall be admitted in evidence of the facts stated therein.

Effect of, when made by defendant.  
*Ib.*

ART. 2356. If the defendant in execution shall fail or refuse, within ten days after such notice to so designate and set apart his homestead, the sheriff or constable holding such execution shall, at the earliest practicable time, summon either verbally or in writing, three disinterested freeholders of the county, neighbors of the defendant in execution, as commissioners to designate for the defendant his homestead.

Defendant failing, officer to appoint commissioners.  
*Ib.*

ART. 2357. The commissioners shall, as soon as practicable, proceed to partition the homestead of the defendant from the remainder of the tract or tracts, and may, if they deem it necessary, call in a surveyor to assist them. The action of such commissioners shall be reduced to writing and signed by them, or a majority of them, and shall be sworn to before some officer authorized to administer oaths, which shall be sufficient to admit the same to record.

Commissioners to designate homestead.  
*Ib.*

ART. 2358. The designation of the homestead by such commissioners shall contain all the requisites prescribed for a designation and setting

Requisites of designation by commissioners.  
*Ib.*

apart by the defendant, and in addition thereto shall state that the commissioners making the same were summoned by the sheriff or constable holding said execution to perform such duty, and that the designation of the homestead made by them is fair and just to the best of their judgment and belief.

To be returned  
and recorded.

ART. 2359. The commissioners shall return their said designation to the sheriff or constable, who shall deliver the same to the clerk of the county court to be recorded; and such designation, or a certified copy of the record thereof, shall have the same effect as if the defendant had made the same under the provisions of this chapter.

Effect of.  
*Ib.*

Sheriff's re-  
turn.

*Ib.*

ART. 2360. Whenever a homestead is designated under the provisions of this chapter, the sheriff or constable holding said execution shall make due return thereon, showing—

1. That notice to designate his homestead was given to the defendant in execution, referring to said notice and return thereon, which shall be returned with said execution.

2. That the designation of his homestead was delivered to him by the defendant, and has been filed by him with the county clerk, stating the dates of such delivery and filing.

3. If the defendant has failed or refused to deliver to him the designation of his homestead within the time prescribed by law, the return shall show that fact, and also that commissioners were duly appointed by him, and that the designation made by such commissioners was filed by him with the clerk of the county court, stating the times where said acts were done, and such return shall be *prima facie* evidence of the facts therein stated.

Compensation  
of commission-  
ers and sur-  
veyor.

*Ib.*

ART. 2361. The commissioners shall be entitled to receive for their services the sum of two dollars per day, and the surveyor the sum of five dollars per day, to include pay for chain carriers.

Fees of clerk,  
etc.

*Ib.*

ART. 2362. The sheriff or constable and clerk shall, for their services, be entitled to such fees as are or may be allowed by law.

Fees, etc.,  
taxed as costs.

*Ib.*

ART. 2363. Such fees and expenses shall be taxed as part of the costs of the execution against the defendant and collected as other costs.

Excess to be  
sold.

*Ib.*

ART. 2364. Whenever the homestead of the defendant in execution has been designated in either of the modes prescribed in this chapter, the officer holding said execution may proceed to sell the excess over and above the homestead, in accordance with the law governing sales under execution.

Defendant  
may change,  
etc., but, etc.

ART. 2365. The defendant may at any time after his homestead has been designated and set apart in either of the modes pointed out in this chapter, change the boundaries of his said homestead by an instrument executed and recorded in the manner provided for in articles 2344 and 2345, but such change shall not impair the rights of parties acquired prior to such change.

Provisions of  
this chapter  
cumulative.

*Ib.*

ART. 2366. The provisions of this chapter in regard to the designation of the homestead are cumulative, and shall not be construed so as to interfere with or abrogate any other mode or remedy not known to the law for subjecting the excess of the homestead tract of land over and above the exemption to forced sale, or any mode known to the law for procuring partition by the purchaser at such execution sale, between himself and the owner of the homestead.

Personal prop-  
erty may be  
designated, etc

ART. 2367. Where there is more personal property of the same kind than is exempt from execution, the head of the family or other person entitled to such exemption, may point out the portions to be levied on; but if he fail to do so within a reasonable time after being requested by the officer holding the execution, such officer may make the selection for himself; but such notice shall only be necessary when the defendant is at the time to be found within the county.

TITLE XLI.

Factors and Commission Merchants.

Article	Article
Factors, etc., prohibited from being interested in their own sales..... 2368	No charge allowed for mending, etc., unless the same has been actually done..... 2370
Factor to render account of sales and give particulars, under penalty ..... 2369	Drawbacks, rebates, etc., prohibited..... 2371

ARTICLE 2368. No factor or commission merchant to whom any cotton, sugar, produce or merchandise of any kind is consigned, for sale on commission or otherwise, shall purchase the same or reserve any interest whatever therein upon the sale of the same, either directly or indirectly in his own name or in the name or through the instrumentality of another, for his own benefit or for the benefit of another, or as factor or agent of any other person, without express license from the owner or consignor of such cotton, sugar, produce or other merchandise, or some person authorized by him, given in writing so to do, under a penalty of a forfeiture of one-half the value of cotton, sugar, produce or other merchandise so purchased or sold, to be recovered by the owner of the same by suit before any court of competent jurisdiction in the county where the sale took place, or wherein the offending party resides.

Factors, etc., prohibited from being interested in their own sales. (Act Feb. 11, 1860.)  
P.D. 3803

ART. 2369. Upon the sale of any cotton, sugar, produce or merchandise consigned for sale to any factor or commission merchant, it shall be his duty, within a reasonable time thereafter, to render to the owner or consignor thereof, a complete account of sales thereof, which shall state the date of the sale, the nature of the purchase, the terms of sale, and if cotton, sugar or other produce sold by weight, the weight of the same in gross, and the tare allowed, and be accompanied by the certificate or memorandum signed by the weigher who weighed the same, of the weight and condition, as required by law, under the penalty of not more than five hundred nor less than one hundred dollars, to be recovered as in the preceding article.

Factor to render account of sales and give particulars, under penalty.  
Ib.  
P.D. 3804.

ART. 2370. No commission merchant or factor shall be permitted to make any charge for mending, or patching, or roping bales, or for cooperage or repairing bales, or for labor, or hauling, or cartage, or for storage, marking, or weighing, unless the same has been actually done; and in case of any such charge, a bill of particulars shall be rendered, notwithstanding any usage or custom to the contrary to make such charge, by rate or average; and the person offending against the provisions of this chapter shall be liable to a penalty of not more than five hundred nor less than one hundred dollars, to be recovered by the owner or consignor, as in the two preceding articles.

No charge allowed for mending, etc., unless the same has been actually done.  
Ib.  
P.D. 3805.

ART. 2371. All drawbacks and rebatement of insurance, freight, transportation, carriage, wharfage, storage, compressing, baling, repairing, or for any other kind of labor or service, of or to any cotton, grain, or any other produce or article of commerce, paid or allowed, or contracted for, to any common carrier, shipper, merchant, commission merchant, factor, agent or middleman of any kind, not the true and absolute owner thereof, are forever prohibited.

Drawbacks, rebates, etc., prohibited. (Const., art. 16, §25.)

TITLE XLII.  
Fees of Office.

CHAPTER ONE.

OF CERTAIN STATE OFFICERS.

	Article	Article
Secretary of state, commissioner of general land office, and other officers to furnish copies and certificates.....	2372	Fees of commissioner of general land office 2376 Comptroller shall charge fee for examination..... 2377
Fees of such officers for copies and certificates.....	2373	Fees of commissioner of insurance, statistics and history..... 2378
Shall not charge officer of state for copies.....	2374	Shall keep fee books, and render account, etc., quarterly..... 2379
Fees of attorney-general.....	2375	

Secretary of state, commissioner general land office, and other officers to furnish copies and certificates.  
(Act March 20, 1848.)  
P.D. 3806.

ARTICLE 2372. It shall be the duty of the secretary of state, commissioner of the general land office, comptroller, treasurer, commissioner of insurance, statistics and history, adjutant-general, and attorney-general, to furnish any person who may apply for the same, with a copy of any paper, document or record in their respective offices, and also to give certificates, attested by the seals of their respective offices, certifying to any fact or facts contained in the papers, documents or records of their offices, to any person applying for the same.

Fees of such officers for copies and certificates.  
*Ib.*  
P.D. 3807.

ART. 2373. It shall be lawful for the officers named in the preceding article to demand and receive the following fees for the services mentioned therein:

- For copies of any paper, document, or record in their offices, in the English language, including certificate and seal, for each hundred words.....\$0 15
- For copies of any paper, document, or record in their offices, in any other language than the English, including certificate and seal, for each hundred words.....\$0 25
- For each translated copy of any paper, document, or record in their offices, including certificate and seal, for each hundred words....\$0 30
- For the copy of any plat or map in their offices, such fee as may be established by the officer in whose office the same is made, to be determined with reference to the amount of labor required.....
- For each certificate not otherwise provided for.....\$0 50

Shall not charge officers of state for copies.  
*Ib.*  
P.D. 3810.

ART. 2374. Nothing contained in the two preceding articles shall authorize either of the officers therein named to demand or receive fees from any officer of the state for copies of any papers, documents, or records in their offices, or for any certificate in relation to any matter in their offices when such copies or certificates are required in the performance of any of the official duties of such officer.

Fees of attorney-general.  
(Act Aug. 23, 1876, p. 284, §2.)

ART. 2375. The attorney-general shall be entitled to the following fees:

For each affirmance of judgment in cases to which the state may be a party involving pecuniary liabilities to the state, ten per cent. on the amount collected if under one thousand dollars, and five per cent. for all above that sum, to be paid out of the money when collected.

For all cases involving the forfeiture of charters, heard on appeal before the supreme court or court of appeals, twenty-five dollars.

But the whole amount of fees allowed the attorney-general shall not exceed the sum of two thousand dollars per annum, and the excess of

such fees over two thousand dollars per annum shall be paid into the state treasury.

ART. 2376. The commissioner of the general land office is authorized and required to charge for the use of the state the following fees for issuing certificates and patents for land, to wit:		Fees of commissioner of general land office.
For certificates for three hundred and twenty acres of land or less.	\$2 00	(Act June 2, 1873, p. 176.)
For certificates for over three hundred and twenty and up to and including six hundred and forty acres of land.....	4 00	P.D. 6844a.
For certificates for over six hundred and forty and up to and including one thousand two hundred and eighty acres of land..	5 00	(See acts 1879, ch. 55, for penalty for not paying fees and taking out patents-L.)
For certificates for over one thousand two hundred and eighty acres of land.....	7 00	
For patents for three hundred and twenty acres of land or less...	5 00	
For patents for over three hundred and twenty and up to and including six hundred and forty acres of land.....	6 00	
For patents for over six hundred and forty and up to and including one thousand two hundred and eighty acres of land.....	10 00	
For patents for over one thousand two hundred and eighty acres of land, and up to and including patents for one-third of a league.....	12 50	
For patents for over one-third of a league and less than one league and labor of land.....	15 00	
For patents for one league and labor of land.....	20 00	
For patents for each additional league or fraction of a league....	20 00	
For each set of field-notes filed, when the survey is for less than one league and labor.....	1 00	
For each set of field-notes for survey of more than one league and labor.....	2 00	
When an examination of the records of the office is demanded by any person other than the owner of the survey to be examined, his agent or attorney, such person shall be charged a fee of.....	25	
If such examination is extended beyond fifteen minutes he shall be charged in proportion to the time consumed at the rate for each hour of.....	1 00	
ART. 2377. The comptroller of public accounts, for examinations in which the state or any county has no interest, shall charge for each hour or fraction of an hour spent in such examination a fee of.....	50	Comptroller shall charge fee for examination.
For each sealed certificate issued.....	50	(Act March 15, 1875, p. 183, §2.)
ART. 2378. The commissioner of insurance, statistics and history shall charge and receive for the use of the state the following fees, to wit:		Fees of commissioner of insurance, statistics and history.
For filing each declaration or certified copy of charter of insurance company.....	\$25 00	(Act Aug. 21, 1876, p. 223, §12.)
For filing the annual statement of an insurance company, or certificate in lieu thereof.....	20 00	
For certificate of authority and certified copy thereof.....	1 00	
For every copy of any paper filed in his department, for each folio.....	20	
For affixing his official seal and certifying to the same.....	1 00	
For valuing policies of life insurance companies, for each one million of insurance or fraction thereof.....	10 00	
For official examinations of companies under the law, the actual expenses incurred, and ten dollars a day, not to exceed.....	250 00	
ART. 2379. It shall be the duty of the secretary of state, commissioner of the general land office, comptroller, treasurer, commissioner of insurance, statistics and history, adjutant-general and attorney-general, respectively, to keep a fee book in their several offices in which they shall enter all the fees received for any of the services named in this chapter, and they shall quarterly file with the comptroller an account of		Shall keep fee book and render account of fees quarterly. (Act March 20, 1848.) P.D. 3808.



all fees so received by them respectively; which account shall be verified by the affidavit of the officer rendering the same, and such officers shall also, at the end of each quarter, pay over to the treasurer of the state all money received by them respectively under the provisions of this chapter.

CHAPTER TWO.

CLERKS OF THE SUPREME COURT AND COURT OF APPEALS.

	Article		Article
Fees of clerks of supreme court.....	2380	Compensation for services not provided	
Fees of clerks of court of appeals.....	2381	for.....	2382

Fees of clerks of supreme court. (Act Aug. 23, 1876, p. 285. §4.

ARTICLE 2380. Clerks of the supreme court shall receive the following fees:

Entering appearance of either party, in person or by attorney, to be charged but once.....	\$ 50
Docketing each cause, to be charged but once.....	50
Filing the record in each cause.....	50
Entering each rule or motion.....	25
Entering the order of the court upon any rule or motion, or entering any interlocutory judgment.....	50
Administering an oath or affirmation without a certificate.....	15
Administering an oath or affirmation and giving certificate thereof, with seal.....	25
Entering each continuance.....	20
Entering each final judgment or decree.....	1 00
Each writ issued.....	1 00
Making out and transmitting the mandate and judgment of the supreme court to any inferior court.....	1 50
Making copies of any papers or records in their offices, including certificate and seal, for each one hundred words.....	15
Recording the opinions of the judges, for each one hundred words.....	20
Taxing the bill of costs in each case with copy thereof.....	50
Issuing attorney's license.....	5 00

Fees of clerks of court of appeals. *Ib.* §5.

ART. 2381. The clerks of the court of appeals shall, in civil cases, receive the same fees allowed to clerks of the supreme court for like services.

Compensation for services not provided for. *Ib.*

ART. 2382. The clerks of the supreme court and court of appeals, for every service not herein provided for, shall receive such fees as may be allowed by their respective courts, not to exceed the fees herein allowed for services requiring a like amount of labor.

CHAPTER THREE.

COUNTY OFFICERS.

	Article		Article
<i>1. County judge.</i>		<i>6. Constables.</i>	
Fees of county judge in probate matters.....	2383	Constables' fees.....	2400
Commissions allowed county judge.....	2384	Fees for services in district or county courts.....	2401
Fee in lunacy case.....	2385	<i>7. County commissioners.</i>	
Compensation for <i>ex officio</i> service.....	2386	Per diem pay of county commissioners....	2402
Fees for testing weights and measures....	2387	<i>8. County treasurer.</i>	
Fees for hiring out county convicts.....	2388	County treasurers' commissions.....	2403
<i>2. Clerks of the district court.</i>		Commissions not allowed, on what money.	2404
Fees of the clerk of the district court.....	2389	Commissions shall not exceed two thousand dollars, annually.....	2405
Fees in probate matters.....	2390	<i>9. District and county surveyors.</i>	
Fees for attorney's license.....	2391	District and county surveyors' fees.....	2406
Compensation for <i>ex officio</i> services.....	2392	<i>10. Inspectors of hides and animals.</i>	
<i>3. Clerks of the county court.</i>		Fees of inspectors of hides and animals....	2407
Fees of clerks of the county court.....	2393	<i>11. Notaries public.</i>	
Compensation for preserving records, etc....	2394	Fees of notaries public.....	2408
Compensation for <i>ex officio</i> services.....	2395	<i>12. Public weighers.</i>	
<i>4. Sheriffs.</i>		Fees of public weighers.....	2409
Sheriff's fees.....	2396		
Sheriff's fees for serving process from supreme court, etc.....	2397		
Compensation for <i>ex officio</i> services.....	2398		
<i>5. Justices of the peace.</i>			
Justices' fees.....	2399		

I. COUNTY JUDGE.

ARTICLE 2383. The county judge shall receive the following fees in probate matters:

Probating a will.....	\$2 00	Fees of county judge in probate matters. (Act Aug. 25, 1876, p. 254, §6.)
Granting letters testamentary of administration or of guardianship,	50	
Each order of sale.....	50	
Each approval and confirmation of sale.....	50	
Each decree refusing order of sale, or refusing confirmation of sale	50	
Each decree of partition and distribution.....	2 00	
Each decree approving or setting aside the report of commissioner of partition and distribution.....	2 00	
Each decree removing an executor, administrator or guardian, to be paid by such executor, administrator or guardian.....	1 00	
Each fiat or certificate.....	50	
Each continuance.....	10	
Each order, not otherwise provided for.....	50	
Administering oath or affirmation with certificate and seal.....	50	
Administering oath or affirmation without certificate and seal.....	25	

ART. 2384. There shall also be allowed the county judge a commission of one-half of one per cent. upon the actual cash receipts of each executor, administrator or guardian, upon the approval of the exhibits and the final settlement of the account of such executor, administrator or guardian, but no more than one such commission shall be charged on any amount received by any such executor, administrator or guardian.

ART. 2385. For every case of lunacy disposed of by the county judge he shall receive three dollars, to be paid out of the county treasury. For each civil cause finally disposed of by the county judge, by trial or otherwise, he shall receive a fee of three dollars, to be taxed against the party cast in the suit; *provided*, that if the party cast in the suit has filed his oath of inability to pay costs during the progress of the cause, or be unable to pay costs, then the county judge shall be allowed by the county commissioners' court such compensation as they may deem proper, not to exceed three dollars for each state case.

ART. 2386. For presiding over the commissioners' court, ordering elections and making returns thereof, hearing and determining civil causes, and transacting all other official business not otherwise provided for, the

county judge shall receive such salary from the county treasury as may be allowed him by order of the commissioners' court.

Fees for testing weights and measures, etc. P.D. 5358.

ART. 2387. For testing any steelyard, balance or beam, the county judge shall receive from the applicant a fee of fifty cents, and for every weight or measure ten cents.

Fees for hiring out county convicts. (Act Aug. 21, p. 230, §14.)

ART. 2388. The county judge shall receive the following fees for hiring out county convicts, in all cases to be paid in advance by the party hiring a convict, the same to be re-paid to the contractor or employer when demanded, out of the wages of such convict, viz:

For every bond required to be taken.....\$1 00  
 For the examination and approval of each bond..... 50

II. CLERKS OF THE DISTRICT COURT.

Fees of clerks of the district court. *Id.* §8. (Acts 1879, ch. 81, pp. 91-2.)

ART. 2389. Clerks of the district court shall receive the following fees:

For copy of petition, including certificate and seal, each one hundred words.....\$ 20  
 Each writ of citation..... 75  
 Docketing each cause, to be charged but once..... 20  
 Docketing each rule or motion..... 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 or affirmation with certificate and seal.... 50  
 Each subpoena issued..... 25  
 Each additional name inserted in each subpoena..... 15  
 Approving bond, except bond for costs..... 1 50  
 Swearing and impaneling a jury..... 35  
 Receiving and recording verdict of 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  
 Each order, judgment or decree..... 75  
 When the judgment or decree exceeds two hundred words, the additional fee for each one hundred words in excess of two hundred words shall be..... 15  
 Each execution, or order of sale, writ of possession, restitution or other writ not otherwise provided for..... 75  
 Recording return of any writ, when such return is required by law to be recorded..... 75  
 Each certificate to any facts contained in the records of his office.. 75  
 Making out and transmitting the records and proceedings in a cause to an inferior court, for each one hundred words..... 20  
 Making out and transmitting the mandate or judgment of the district court upon an appeal from the county court..... 1 00  
 Filing a record in a cause appealed to district court..... 50  
 Transcribing, comparing and verifying record books of his office, payable out of the county treasury upon warrants issued under order of commissioners' court, each one hundred words..... 10  
 Making transcript of the records and papers in any cause upon appeal or writ of error, with certificate and seal, each one hundred words..... 20  
 Making a copy of all records of judgments or papers on file in his office, for any party applying for the same, with certificate and seal, each one hundred words..... 20  
 Issuing a writ of *scire facias*, and making copy of same..... 1 00  
 Taxing the bill of costs in each cause with a copy of same..... 25  
 Issuing each license to an attorney and recording proceedings thereon..... 5 00

Filing and recording declaration of intention to become a citizen of the United States.....\$2 00  
 Issuing certificate of naturalization..... 2 50

ART. 2390. In matters relating to estates of deceased persons and minors, when the same are transacted in the district court, the clerk of such court shall receive the same fees that are allowed therefor to clerks of the county court.

Fees in probate matters.

ART. 2391. For each attorney's license issued by order of the district court, the clerk of such court shall be entitled to demand and receive from the person to whom such license is issued two dollars and fifty cents.

Fee for attorney's license.

ART. 2392. The clerk of the district court shall receive in addition to the fees herein allowed, for the care and preservation of the records of his office, keeping the necessary indexes, and other labor of the like class, to be paid out of the county treasury on the order of the commissioners' court, such sum as said commissioners' court shall determine.

Compensation for *ex officio* services.  
 (Act Aug. 23, 1876, p. 287, §8.)  
 (Acts 1879, ch. 81, p. 92.)

III. CLERKS OF THE COUNTY COURT.

ART. 2393. Clerks of the county court shall receive the following fees:

Filing each paper.....	\$	05	Fees of clerks of county court.
Issuing notices, including copies for posting or publication.....		75	<i>Ib.</i> §9.
Docketing each application, complaint, petition or proceeding, to be charged but once.....		10	(Act Aug. 23, 1876, p. 301, §26.)
Each writ or citation, including copy thereof.....		50	
Each copy of any paper that is required to accompany any writ or citation, with certificate and seal, for each one hundred words...		10	
Issuing letters testamentary, of administration or guardianship....		50	
Each judgment or decree.....		50	
When a judgment or decree exceeds two hundred words an additional fee for each one hundred words in excess of two hundred of		10	
Recording all papers required to be recorded by them in relation to estates of decedents or wards, for each one hundred words.....		10	
Administering oath to executor, administrator or guardian.....		10	
Administering oath or affirmation in other cases, without certificate and seal.....		15	
Administering oath or affirmation with a certificate and seal. ....		25	
Entering each order of the court approving or disapproving a claim against an estate.....		25	
Filing each paper, except subpoenas.....		05	
Each appearance, to be charged but once.....		10	
Entering each continuance, except in estates.....		10	
Each subpoena.....		25	
Each additional name inserted in each subpoena.....		10	
Approving bond, except bond for costs.....	1	00	
Swearing each witness.....		10	
Swearing and impaneling a jury.....		25	
Receiving and recording a verdict.....		25	
Assessing damages in each case not tried by a jury.....		50	
Each commission to take depositions.....		50	
Taking depositions, each one hundred words.....		15	
Each execution, order of sale, writ of possession, restitution or other writ not otherwise provided for.....		50	
Recording return on any writ where such return is required by law to be recorded.....		50	
Copies of interrogatories, cross-interrogatories and all other papers or records required to be copied by him, including certificate and seal, each one hundred words, when not otherwise provided for..		15	
Transcript in any case where appeal or writ of error is taken, with certificate and seal, each one hundred words.....		15	
Each certificate to any fact or facts contained in the records of his office, with certificate and seal, when not otherwise provided for.		50	

Taxing the bill of costs in each cause, with a copy thereof..... 25  
 Recording all papers required or permitted by law to be recorded,  
 not otherwise provided for, including certificate and seal, for each  
 one hundred words..... 15  
 Transcribing, comparing and verifying record books of his office,  
 payable out of the county treasury upon warrant issued under  
 the order of the commissioners' court, for each one hundred words 10  
 Issuing each marriage license..... 1 00  
 Recording each marriage license and return..... 50  
 Recording each mark and brand, or either..... 25  
 Issuing each license, other than a marriage license, where the law  
 provides for him to issue such license..... 1 00  
 Recording and certifying bills of sale under the stock laws, for each  
 one hundred words..... 15  
 Recording each mark and brand and giving certificate thereof.... 75  
 Revising the list of marks and brands, such compensation as the  
 county commissioners' court may allow.....  
 Qualifying a notary public..... 1 00

NOTE.—By section 8, chapter 127, acts 1879, the clerk is allowed a fee of twenty-five cents for filing and entering minute of chattel mortgages deposited in his office, and a like fee for entering satisfaction thereof. See appendix.—L.

Compensation for preserving the records, etc. (Act Aug. 23, 1876, p. 287, §9.)

ART. 2394. It shall be the duty of the county judge at each term of his court to inquire into and examine the amount of labor actually and necessarily performed by the clerk of his court, in the care and preservation of the records of his office, in the making and keeping of the necessary indexes thereto, and other labor of a like class, and to allow said clerk a reasonable compensation therefor, not to exceed the fees allowed him by law for like services, and not to exceed one hundred dollars annually, to be paid out of the county treasury upon the sworn account of such clerk, approved in writing thereon by the county judge.

Compensation for *ex officio* services. (Acts 1879, ch. 81, p. 92.)

ART. 2395. For all *ex officio* services in relation to roads, bridges and ferries, issuing jury scrip and all other public services not otherwise provided for, the clerk of the county court shall receive such sum as may be allowed by the commissioners' court, not to exceed one hundred dollars annually, to be paid out of the county treasury upon the order of the commissioners' court. No county clerk shall be compelled to file or record any instrument of writing, permitted or required by law to be recorded, until after payment or tender of payment of all legal fees for such filing or recording has been made; *provided*, that nothing herein shall be construed to include papers or instruments filed or recorded in suits pending in the county court.

IV. SHERIFFS.

Sheriff's fees. (Act Aug. 23, 1876, p. 289, §11.) (Acts 1879, ch. 81, pp. 92-3.)

ART. 2396. Sheriffs shall receive the following fees:  
 Serving each original citation in a civil suit.....\$1 50  
 Summoning each witness..... 50  
 Levying and returning each writ of attachment or sequestration... 2 50  
 Serving each writ of garnishment, injunction or other process not  
 otherwise provided for..... 1 00  
 Taking and approving each bond and returning the same to the  
 proper court when necessary..... 1 00  
 Indorsing the forfeitures of any bond required to be indorsed by him 50  
 Levying each execution..... 1 50  
 Returning each execution..... 75  
 Executing and returning each writ of possession or restitution.... 3 00  
 Posting the advertisements for sale under execution, or any order  
 of sale..... 1 00  
 Posting any other notices required by law not otherwise provided for 1 00  
 Executing a deed to each purchaser of real estate under execution  
 or order of sale..... 2 00

Executing a bill of sale to each purchaser of personal property under an execution or order of sale, when demanded by the purchaser . . \$1 00  
 For each case tried in the district or county court a jury fee shall be taxed for the sheriff of . . . . . 50

For services in designating a homestead . . . . . 2 00

For traveling in the service of any civil process, sheriffs and constables shall receive five cents for each mile going and coming; if two or more persons are mentioned in the writ, he shall charge for the distance actually and necessarily traveled in the service of the same. Collecting money on an execution or an order of sale, when the same is made by a sale, for the first one hundred dollars or less, four per cent.; for the second one hundred dollars, three per cent.; for all sums over two hundred dollars, two per cent. When the money is collected by the sheriff without a sale, one-half of the above rates shall be allowed him. For every day the sheriff or his deputy shall attend the district or county court, he shall receive two dollars a day, to be paid by the county, for each day that the sheriff by himself or a deputy shall attend said court.

ART. 2397. Sheriffs shall be allowed for all process issued from the supreme court or court of appeals, and served by them, the same fees as are allowed them for similar service upon process issued from the district court.

Sheriff's fees for serving process from supreme court, etc. (Act March 9, 1875, p. 70, §3.) Compensation for *ex officio* services. *Ib.*

ART. 2398. For summoning jurors in the district and county courts, serving all election notices, notices to overseers of roads, attending the district and county courts, and doing all other public business not otherwise provided for, the sheriff shall receive such sum as may be allowed by the commissioners' court, not to exceed three hundred dollars annually, to be paid out of the county treasury upon the order of said commissioners' court.

V. JUSTICES OF THE PEACE.

ART. 2399. Justices of the peace shall receive the following fees:

Each citation . . . . .	\$	50
Each subpoena for one witness . . . . .		25
Each additional name inserted in a subpoena . . . . .		05
Docketing each cause . . . . .		10
Each continuance . . . . .		20
Each bond not otherwise provided for . . . . .		50
Swearing each witness in court . . . . .		10
Administering an oath or affirmation without a certificate . . . . .		10
Administering an oath or affirmation with a certificate . . . . .		25
Administering the oath, approving bond and issuing a writ of attachment or sequestration . . . . .	1	50
Issuing any other writ or process not otherwise provided for . . . . .		50
Causing a jury to be summoned and swearing them . . . . .		25
Receiving and recording verdict of jury . . . . .		25
Each order in a cause not otherwise provided for . . . . .		25
Each final judgment . . . . .		50
Each application to set aside a judgment or for a new trial, with the final judgment thereon . . . . .		50
Each appeal-bond . . . . .		25
Each commission to take depositions . . . . .		50
Copy of interrogatories or cross-interrogatories, for each one hundred words, including certificate . . . . .		10
Making and certifying a transcript of the entries on his docket, and filing the same, together with the original papers in the case, in the proper court, in each case of appeal or certiorari . . . . .	1	50
Each execution or order of sale . . . . .		60
Each writ of possession or restitution . . . . .		75

Justice's fees. *Ib.* p. 291, §12.

Receiving and recording the return on each execution, order of sale, writ of possession or restitution, if a levy is returned or the writ executed.....	\$ 30
If no levy is returned or the writ not executed.....	10
Making copies of any papers or records in his office for any person applying for the same, for each one hundred words, including certificate.....	10
Taxing costs, including copy thereof, in each case.....	10
Each certificate not otherwise provided for.....	25
Taking acknowledgment for stay of judgment.....	50

VI. CONSTABLES.

Constable's fees.  
*Ib.* p. 291, §13.

ART. 2400. Constables shall receive the following fees for services rendered in business connected with courts of justices of the peace:

Serving each citation in civil suit.....	\$ 70
Serving each garnishment.....	70
Serving each notice for the taking of depositions and copy of interrogatories.....	70
Serving each subpoena.....	50
Levying and returning each writ of attachment or sequestration...	1 50
Levying each execution.....	70
Executing order of sale, writ of possession or restitution.....	1 00
Returning each execution, order of sale, writ of possession or restitution.....	40
Taking and approving each bond.....	1 00
Summoning a jury in justice's court.....	1 00
Advertising sale under execution or order of sale.....	70
Making title to purchaser of real estate under execution or order of sale.....	2 00
Making title to purchaser of personal property, under execution or order of sale, when demanded by purchaser.....	50

Taking care of property levied upon by virtue of any legal process, all reasonable and necessary expenses, to be taxed and allowed by the court to which such process is returnable. Collecting money under an execution or order of sale, when a sale is made, four per cent. on the amount actually collected by him. When the money is collected by him without a sale, two per cent. on the amount actually collected by him.

Fees for services in district or county courts.  
*Ib.*

ART. 2401. For all services performed by constables in business connected with the district and county courts, they shall receive the same fees allowed sheriffs for the same services.

VII. COUNTY COMMISSIONERS.

Per diem pay of county commissioners.  
(Act Aug. 23, 1876, p. 292, §14.)

ART. 2402. Each county commissioner, and the county judge when acting as such, shall receive from the county treasury, to be paid on the order of the commissioners' court, the sum of three dollars for each day he is engaged in holding a term of the commissioners' court, but such commissioners shall receive no pay for holding more than one special term of their court per month.

VIII. COUNTY TREASURER.

County treasurer's commissions.  
*Ib.* §15.

ART. 2403. The county treasurer shall receive commissions on the moneys received and paid out by him, said commissions to be fixed by order of the commissioners' court as follows: For receiving and paying out moneys belonging to the school fund, not exceeding one per cent.; for receiving all other moneys for the county, not exceeding two and one-half per cent., and not exceeding two and one-half per cent. for paying out the same.

Commissions not allowed on what money.  
*Ib.*

ART. 2404. The county treasurer shall receive no commissions for receiving money from his predecessor nor for paying over money to his successor in office.

ART. 2405. The commissions allowed to any county treasurer shall not exceed two thousand dollars annually.

Commissions shall not exceed \$2000 annually.

IX. DISTRICT AND COUNTY SURVEYORS.

*Ib.*  
(Acts 1879, ch. 69, p. 79.)

ART. 2406. District and county surveyors shall receive the following fees:

District and county surveyor's fees.  
*Ib.* §16.

Inspecting and recording the field-notes and plat of a survey for any tract of land over one-third of a league.....	\$3 00
One-third of a league.....	\$2 00
Less than one-third of a league.....	1 00
Examination of papers and records in his office at the request of any person.....	25
Copies of all field-notes and plats, or any other papers or records in his office, for each one hundred words, including certificate . . .	20
Surveying any tract of land, including all expenses in making the survey, and returning the plat and field-notes of the survey, for each English lineal mile actually run.....	3 00
Surveying any track of land, including all expenses of making the survey, and returning the plat and field-notes, when the distance actually run is less than one English lineal mile.....	2 50
For services in designating a homestead, to include pay for chain carriers, for each day's service.....	5 00

X. INSPECTORS OF HIDES AND ANIMALS.

ART. 2407. Inspectors of hides and animals for each county or district shall receive the following fees:

Fees of inspector of hides and animals.  
(Act Aug. 23, 1876, p. 301, §25.)  
*Ib.* §17; p. 302, §30.

For each hide or animal inspected.....	\$ 10
If more than fifty hides or animals are inspected in the same lot at the same time, for the same person, for each hide or animal in excess of fifty.....	03
For each certificate of acknowledgment.....	50

XI. NOTARIES PUBLIC.

ART. 2408. Notaries public shall receive the following fees:

Fees of notaries public.  
(Act Aug. 23, 1876, p. 293, §13.)

Protesting a bill or note for non-acceptance or non-payment, registering and seal.....	\$2 50
Each notice of protest.....	50
Protest in all other cases, for each one hundred words . . . . .	20
Certificate and seal to such protest.....	50
Taking the acknowledgment or proof of any deed or other instrument of writing for registration, including certificate and seal . . .	50
Taking the acknowledgment of a married woman to any deed or other instrument of writing authorized to be executed by her, including certificate and seal.....	1 00
Administering an oath or affirmation with certificate and seal.....	25
All certificates under seal not otherwise provided for.....	50
Copies of all records and papers in their office, including certificate and seal, if less than two hundred words.....	50
If more than two hundreds words, for each one hundred words in excess of two hundred, in addition to the fee of fifty cents.....	15
All notarial acts not otherwise provided for.....	50
Taking the depositions of a witness, for each one hundred words..	15
Swearing a witness to depositions, making certificate thereof with seal, and all other business connected with taking such deposition	50

XII. PUBLIC WEIGHERS.

ART. 2409. Public weighers shall receive the following fees:

Fees of public weigher.  
(Act March 15, 1875, p. 162, §7.)  
(Acts 1879, ch. 106, p. 117.)

For each bale of cotton weighed.....	\$ 10
For each bale of cotton picked, when instructed in writing by the factor to pick.....	25



For each bale or sack of wool weighed.....	10
For each hogshead of sugar weighed.....	50
For each barrel weighed.....	10
For each bale of hides weighed.....	10
For each loose hide weighed.....	2

And he shall not be obliged to deliver any such articles so weighed until his fee therefor has been paid.

## CHAPTER FOUR.

### GENERAL PROVISIONS.

	Article		Article
Office rent, stationery, etc., to clerks of the supreme court and court of appeals.....	2410	Fee bill shall be produced, etc., before fees are collectible.....	2420
Stationery, etc., allowed certain county officers.....	2411	Penalty for demanding, etc., fees unlawfully.....	2421
No fees allowed on motions for security for costs, etc.....	2412	Certain officers shall keep list of fees posted, etc.....	2422
Judgment containing several orders, one fee only shall be charged.....	2413	Fees shall not be demanded in advance, etc.....	2423
Fees of officers for taking acknowledgments, etc.....	2414	Execution for costs.....	2424
Clerks are prohibited from acting as conveyancers, etc.....	2415	Bill of costs shall accompany execution.....	2425
Fees in suit to be taxed against party cast.....	2416	Execution shall issue on demand of person entitled to costs.....	2426
No charge for copies of papers, when.....	2417	Each party liable for costs incurred by him.....	2427
No fee for examinations.....	2418	Preceding articles, etc., do not apply to executors, etc.....	2428
Officers shall keep fee books.....	2419	Execution for costs shall not issue, when.....	2429
		No fee allowed for filing certain papers.....	2430

Office rent, stationery, etc. to clerks of supreme court and court of appeals. (Act Aug. 23, 1876, p. 285, §4.) Stationery, etc., allowed certain county officers.

No fees allowed on motions for security for costs, etc. *Ib.* §9.

Judgment containing several orders, one fee only shall be charged. *Ib.*

Fees of officers for taking acknowledgments, etc.

Clerks are prohibited from acting as conveyancers, etc. *Ib.* §9.

Fees in suits to be taxed against party cast, etc. *Ib.* §20.

No charge for copies of papers, when. *Ib.*

ARTICLE 2410. There shall be allowed to the clerks of the supreme court and court of appeals, reasonable office rent, stationery and furniture for their offices, to be paid on the order and approval of their respective courts out of the appropriation for the contingent expenses of said courts.

ART. 2411. There shall be allowed to the county judges, clerks of the district and county courts, sheriffs and county treasurers such books, stationery and office furniture as may be necessary for their offices, to be paid for on the order of the commissioners' court out of the county treasury, and suitable offices shall also be provided by the commissioners' court for said officers at the expense of the county.

ART. 2412. Clerks of the district and county courts and justices of the peace shall receive no fees for motions or judgments upon motions for security for costs, nor for taking and approving a bond for costs.

ART. 2413. A judgment containing several orders shall be considered as one judgment, and only one fee shall be charged by the court, clerk or justice of the peace for rendering or entering the same.

ART. 2414. Clerks of the district and county courts and other officers authorized by law to take acknowledgment or proof of deeds or other instruments of writing, shall receive the same fees for taking such acknowledgment or proof as are allowed notaries public for the same services.

ART. 2415. All clerks and their deputies are prohibited from charging any fees or commissions for writing deeds, mortgages, bills of sale, or any other conveyance for any person, unless they pay the same tax, if any, which may be required by law to be paid by conveyancers or attorneys at law.

ART. 2416. The fees allowed in this title pertaining to suits or actions in courts, shall be allowed and taxed in the bill of costs against the party cast in the suit or action wherein any such services shall be rendered, except where it is otherwise provided by law or adjudged by the court.

ART. 2417. No copy of a paper not required by law to be copied shall be allowed and taxed in the bill of costs, and if any party or attorney shall take out copies of his own pleadings, or of papers filed by him in

any cause, it shall be at his own expense, and no charge for such copies shall be allowed in the bill of costs.

ART. 2418. No clerk of a court, justice of the peace or other officer, shall be allowed to charge any fee for the examination of any paper or record in his office. No fee for examinations. *Ib.* §21.

ART. 2419. Every officer entitled by law to charge fees for services shall keep a fee book and shall enter therein all fees charged for services rendered, which fee book shall at all times be subject to the inspection of any person wishing to see the amount of fees therein charged. Officers shall keep fee books. *Ib.* §22.

ART. 2420. None of the fees mentioned in this title shall be payable by any person whomsoever until there be produced, or ready to be produced, unto the person owing or chargeable with the same, a bill or account in writing containing the particulars of such fees, signed by the clerk or officer to whom such fees are due, or by whom the same are charged, or by the successor in office, or legal representative of such clerk or officer. Fee bill shall be produced, etc., before fees are collectible. *Ib.* §23.

ART. 2421. If any of the officers named in this title shall demand and receive any higher fees than are prescribed to them in this title, or any fees that are not allowed by this title, such officer shall be liable to the party aggrieved for fourfold the fees so unlawfully demanded and received by him, to be recovered in any court of competent jurisdiction, and may also be punished criminally for extortion, as prescribed in the Penal Code. Penalty for demanding, etc., fees unlawfully. *Ib.* §24. (See acts 1879, ch. 108, §9.—L.)

ART. 2422. It shall be the duty of county judges, clerks of the district and county courts, sheriffs, justices of the peace, constables and notaries public, of the several counties, to keep posted up at all times in a conspicuous place in their respective offices a complete list of the fees allowed by law to be charged by them respectively. Certain officers shall keep list of fees posted, etc. *Ib.* §25.

ART. 2423. Officers receiving any process to be executed shall not be entitled in any case to demand their fees for executing the same in advance of such execution, but their fees shall be taxed and collected as other costs in the case. Fees shall not be demanded in advance, etc.

ART. 2424. It shall be lawful for any clerk of a court or justice of the peace, when any suit is determined in their respective courts and the costs are not paid by the party against whom the same have been adjudged, to issue execution therefor against such party, under the same rules governing executions in other cases, to be levied and collected as in other cases. Execution for costs. *Ib.* §26.

ART. 2425. A bill of costs, showing each item thereof, for which the party against whom the execution issues is liable, shall accompany each execution or order of sale. Bill of costs shall accompany execution. *Ib.*

ART. 2426. Any person to whom any costs are due in a suit or action which has been determined, may demand that execution issue therefor, and thereupon it shall be the duty of the clerk or justice of the peace to issue execution for all costs due by such party at once. Execution shall issue on demand of person entitled to costs.

ART. 2427. Each party to a suit shall be liable for all costs incurred by him, and in case the costs can not be collected of the party against whom the same have been adjudged, execution may issue against any party in such suit, for the amount of costs incurred by such party, but no more. Each party liable for costs incurred by him.

ART. 2428. The preceding articles in relation to executions and payment of costs, do not apply to executors, administrators or guardians, but in cases where costs are adjudged against an estate of a deceased person, or of a ward, the same shall be collected as provided in the titles "Estates of Decedents" and "Guardian and Ward." Preceding articles, etc., do not apply to executors, etc. *Ib.* §26. (Acts 1879, ch. 81, p. 93.)

ART. 2429. No execution for costs shall issue in any case until after judgment rendered therefor by the court. Execution for costs shall not issue until, etc.

ART. 2430. No clerk or justice of the peace shall be entitled to any fee for filing any process or paper issued by him and returned into his court. No fee allowed for filing certain papers.

TITLE XLIII.

Fences.

	Article		Article
"Sufficient fence" defined.....	2431	Stock may be impounded, when.....	2433
Complaint before justices of the peace, when made.....	2432	Owner of cattle, etc., not liable, when.....	2434
		Persons injuring stock liable, when.....	2435

"Sufficient fence" defined. (Act Feb. 5, 1840, p. 179.) P.D. 3838. P.C. arts. 685-6.

Complaint before justice of the peace, when made.

Stock may be impounded, when. P.D. 6845.

Owner of cattle, etc., not liable, when. *Ib.* P.D. 6845. Persons injuring stock liable, when. P.D. 3840.

ARTICLE 2431. Every gardener farmer, or planter shall make a sufficient fence about his cleared land in cultivation, at least five feet high, and make such fence sufficiently close to prevent hogs from passing through the same.

ART. 2432. When any trespass shall have been done by any cattle, horses, hogs or other stock, on the cleared and cultivated ground of any person, it shall be lawful for such person to complain thereof to any justice of the peace for the county where such trespass shall have been done, and such justice is hereby authorized and required to cause two disinterested and impartial freeholders to be summoned, who, with such justice, shall view and examine on oath whether complainant's fence be sufficient or not, and what damages he hath sustained by such trespass, and certify the same in writing; and if it shall so appear that said fence be sufficient, then the owner of such cattle, horses, hogs or other stock, shall make full satisfaction for the trespass to the party injured, to be recovered before any tribunal having cognizance thereof.

ART. 2433. In case of a second trespass by the same cattle, horses, hogs or other stock, the owner, lessee or proprietor of the premises upon which the trespass is committed may, if he deem it necessary for the protection and preservation of his premises, or the crops growing thereon, cause such stock to be penned and turned over to the sheriff or constable and held responsible to the person damaged for all damages caused by said stock and all costs thereon.

ART. 2434. If it shall appear that the said fence is insufficient, then the owner of such cattle, horses, hogs or other stock, shall not be liable to make satisfaction for such damages.

ART. 2435. If any person whose fence shall be adjudged insufficient shall, with guns, dogs, or otherwise, maim, wound or kill any horses, cattle, hogs or other stock, or cause or procure the same to be done, such person so offending shall make full satisfaction to the person injured for all damages by such person sustained, to be recovered before any tribunal having cognizance thereof.

NOTE.—For a more particular definition of a lawful fence, and provisions as to damages for killing and wounding stock by persons having insufficient fences, and trespass by cattle, etc., see acts 1879, chapter 59, and see also chapter 101. See appendix.—L.

**TITLE XLIV.**  
**Fiscal Year.**

	Article		Article
Termination of fiscal year.....	2436	Secretary of state to have reports printed..	2438
Accounts to be closed and reports com- piled.....	2437	Legislators to be furnished with ten copies each.....	2439

ARTICLE 2436. The fiscal year of the state shall terminate on the thirty-first day of August of each year.

Termination  
of fiscal year.  
(Act Dec. 11,  
1857, p. 17, §1.)

ART. 2437. All officers who are required by law to report annually or biennially to the legislature or governor shall close their accounts at said date, and as soon thereafter as practicable shall prepare and compile their respective reports.

Accounts to be  
closed, and re-  
ports compiled  
*Ib.* §1.  
P.D. 3864.

ART. 2438. All reports intended for the use of the legislature shall be transmitted by the respective officers to the secretary of state on or before the first day of November before the assembling of the legislature; and the secretary of state shall cause the same to be printed, in accordance with the laws regulating the public printing, before the assembling of the legislature.

Secretary of  
state to have  
reports  
printed.  
*Ib.* §2.  
P.D. 3865.

ART. 2439. Upon the organization of the legislature, the secretary of state shall transmit to the presiding officers of both houses, ten copies of each printed report for the use of each member of the legislature.

Legislators to  
be furnished  
with ten copies  
each.  
*Ib.* §3.  
P.D. 3866.

TITLE XLV.

Forcible Entry and Detainer.

	Article		Article
In what cases the action will lie.....	2440	Impanelling the jury and verdict.....	2452
“Forcible entry” defined.....	2441	Judgment of the court, etc., writ, etc.....	2453
Other cases of forcible detainer.....	2442	Writ of restitution not to issue for two days.....	2454
Venue.....	2443	May appeal, and how.....	2455
Citation.....	2444	Form of appeal-bond.....	2456
Requisites of the complaint.....	2445	Duty of justice in case of appeal.....	2457
Service and return of citation.....	2446	Trial <i>de novo</i> .....	2458
Precept for a jury, and service, etc.....	2447	Damages may be proved, when.....	2459
Other jurors may be summoned, when.....	2448	Judgment by default, when.....	2460
Shall be docketed and tried as other cases.....	2449	Judgment of county court final.....	2461
Right of possession the only issue, etc.....	2450	Writ of restitution, etc.....	2462
Trial may be postponed for cause.....	2451	Shall not bar action for trespass, etc.....	2463

In what cases the action will lie. (Act Aug. 17, 1876, p. 155, §1.)

ARTICLE 2440. If any person (1) shall make an entry into any lands, tenements or other real property, except in cases where entry is given by law, or (2) shall make any such entry by force, or (3) if any person shall willfully and without force hold over any lands, tenements or other real property after the termination of the time for which such lands, tenements or other real property were let to him, or to the person under whom he claims, after demand made in writing for the possession thereof by the person or persons entitled to such possession, such person shall be adjudged guilty of forcible entry and detainer, or of forcible detainer, as the case may be.

“Forcible entry” defined.

ART. 2441. A “forcible entry” or an entry where entry is not given by law within the meaning of this chapter is—

1. An entry without the consent of the person having the actual possession.

2. As to a landlord, an entry upon the possession of his tenant at will or by sufferance, whether with or without the tenant’s consent.

Other cases of forcible detainer.

ART. 2442. A person shall be adjudged guilty of forcible detainer also in the following cases:

1. Where a tenant at will or by sufferance refuses, after demand made in writing as aforesaid, to give possession to the landlord after the determination of his will.

2. Where the tenant of a person who has made a forcible entry refuses to give possession, after demand as aforesaid, to the person upon whose possession the forcible entry was made.

3. Where a person who has made a forcible entry upon the possession of one who acquired it by forcible entry refuses to give possession on demand, as aforesaid, to him upon whose possession the first forcible entry was made.

4. Where a person who has made a forcible entry upon the possession of a tenant for a term, refuses to deliver possession to the landlord, upon demand as aforesaid, after the term expires; and if the term expire whilst a writ of forcible entry sued out by the tenant is pending, the landlord may, at his own cost and for his own benefit, prosecute it in the name of the tenant.

It is not material whether the tenant shall have received possession from his landlord or have become his tenant after obtaining possession.

Venue. *Ib.* §4.

ART. 2443. Any justice of the peace of the precinct where the property is situated shall have jurisdiction to hear and determine any case arising under this title.

ART. 2444. Whenever the party aggrieved, or his authorized agent, shall file his complaint in writing and under oath with such justice of the peace, it shall be his duty immediately to issue his citation to the sheriff or any constable of his county, commanding him to summon the person against whom complaint is made, to appear before such justice, at a time and place named in such citation, such time being for not more than ten nor less than six days from date of the citation.

Citation.  
*Ib.* §4.

ART. 2445. The complaint named in the preceding article shall describe the lands, tenements or premises, the possession of which is claimed, with certainty sufficient to identify the same; and it shall also state the facts which entitle the complainant to the possession and authorize the action under the first three articles of this title.

Requisites of  
the complaint  
*Ib.*

ART. 2446. The sheriff or constable receiving such citation shall execute the same by reading it to the defendant, or by leaving a copy thereof with some person over the age of sixteen years, at his usual place of abode, at least five days before the return day thereof; and he shall return such citation, with his action written thereon, to the justice of the peace who issued the same, on the day assigned for trial.

Service and  
return of  
citation.  
*Ib.*

ART. 2447. The justice of the peace shall also, at the time of issuing said citation, issue a precept to the sheriff or any constable of the county, commanding him to summon a jury of six men, qualified jurors of the county, to appear before him on the day set for trying said complaint, to serve as jurors on the trial of the case, which precept may be served by reading the same to the juror, and shall be returned, with the names of the jurors written thereon, to said justice of the peace on the day assigned for trial.

Precept for a  
jury, and ser-  
vice, etc.  
*Ib.*

ART. 2448. If any of the jurors summoned as aforesaid, shall fail or refuse to attend, or shall be excused after being challenged, a jury shall be completed by causing other qualified jurors to be summoned immediately.

Other jurors  
may be sum-  
moned, when.  
*Ib.*

ART. 2449. The cause shall be docketed and tried as other cases and the justice of the peace shall have authority to issue subpoenas for witnesses, to enforce their attendance, and to punish for contempts.

Shall be dock-  
eted and tried  
as other  
cases, etc.  
*Ib.*

ART. 2450. On the trial of any case of forcible entry, or of forcible detainer, under the provisions of this title, the only issue shall be as to the right to actual possession; and the merits of the title shall not be inquired into.

Right of pos-  
session the  
only issue.

ART. 2451. For good cause shown, supported by affidavit by either party, the trial may be postponed for a time not exceeding six days.

Trial may be  
postponed for  
cause.  
*Ib.*

ART. 2452. On the day named in the citation for trial, or on the day to which the case may be postponed according to the provisions of the preceding article, the jury shall be impaneled and sworn as in other cases, and after hearing the evidence they shall return their verdict of guilty or not guilty of the charge as stated in the complaint.

Impanelling  
the jury, and  
verdict.  
*Ib.*

ART. 2453. If the jury find the defendant *guilty*, the said justice of the peace shall give judgment thereon for the plaintiff to have restitution of the premises and for costs, and he shall award his writ of restitution, and may also issue execution for the costs; but should the jury find the defendant *not guilty*, judgment shall be given in favor of the defendant and against the plaintiff for all costs and execution may issue therefor.

Judgment of  
the court, and  
writ, etc.  
*Ib.*

ART. 2454. No writ of restitution shall issue until the expiration of two days from the rendition of the judgment.

Writ of restitu-  
tion not to is-  
sue for two  
days.  
*Ib.*

ART. 2455. Either party, his agent or attorney, may appeal from any final judgment rendered by the justice of the peace in such case to the county court of the county in which the judgment is rendered, by giving notice thereof in open court and by filing with such justice of the peace, within five days after the rendition of said judgment, a bond with two or

May appeal,  
when and how.  
*Ib.* p. 163, §21.

more good and sufficient sureties, to be approved by said justice of the peace and payable to the adverse party, conditioned that he will prosecute his appeal with effect, or pay all costs and damages which may be adjudged against him; and no motion for a new trial shall be necessary to authorize such appeal.

Form of appeal-bond.

ART. 2456. The appeal-bond named in the preceding article may be substantially as follows:

“THE STATE OF TEXAS, }  
 “County of ..... }

“Whereas, Upon a writ of forcible entry (or forcible detainer) in favor of A B and against C D, tried before ....., a justice of the peace of ..... county, a judgment was rendered in favor of the said A B on the ..... day of ..... A. D. ...., and against the said C D, from which the said C D has appealed to the county court; now, therefore, the said C D and ..... his sureties, covenant that he will prosecute his said appeal with effect and pay all costs and damages which may be adjudged against him.

“Given under our hands this ..... day of ..... A. D. ....”

Duty of justice in case of appeal.

ART. 2457. Whenever such appeal-bond shall be executed and filed, the justice of the peace shall stay all further proceedings on the judgment, and he shall immediately make out a transcript of all the entries made on his docket of the proceedings had in the case before him; and he shall file the same, together with all the original papers, with the clerk of the county court of the county in which the trial was had, on or before the first day of the first term of said court, or if there be insufficient time, on or before the first day of the next succeeding term thereof.

Trial *de novo*.

ART. 2458. The clerk of the county court shall docket the cause, and the same shall be tried *de novo*, with or without a jury, as in other cases.

Damages may be proved, when.

ART. 2459. On the trial of said cause in the county court the appellee shall be permitted to prove the damages for withholding the possession of the premises from the appellee during the pendency of the appeal, and for the reasonable expenses of the appellee in prosecuting or defending the cause in the county court, and if the possession of the premises be not adjudged to the appellant, the said court shall render judgment also in favor of the appellee and against said appellant and the sureties on his bond, for the damages proven and all costs.

Judgment by default, when. *Ib.*

ART. 2460. Should the defendant, by himself, or his attorney, fail to enter an appearance upon the docket of the county court on appearance day, and before the case is called regularly for trial, the facts alleged in the complaint may be taken as admitted, and judgment by default may be entered accordingly.

Judgment of county court, final, etc., except, etc.

ART. 2461. After a trial upon the merits the proper judgment shall be rendered upon the law and the facts, or upon the verdict of the jury, as the case may be; and the judgment of the county court finally disposing of the cause shall be conclusive of the litigation, and no further appeal shall be allowed, except where the judgment shall be for damages in an amount exceeding one hundred dollars.

Writ of restitution, etc., by whom issued and served.

ART. 2462. The writ of restitution, or execution, or both, shall be issued by the clerk of the county court according to the judgment rendered, and the same shall be executed by the sheriff or constable, as in other cases; and such writ of restitution shall not be suspended, or superseded in any case by any appeal taken from such final judgment in the county court.

Shall not bar action for trespass, etc.

ART. 2463. The proceedings under a forcible entry, or forcible detainer, shall not bar an action for trespass, damages, waste, rent or mesne profits.

**TITLE XLVI.**

**Frauds and Fraudulent Conveyances.**

	Article		Article
Written memorandum required to maintain certain actions.....	2464	Voluntary conveyances.....	2466
Conveyances to defraud creditors, etc., void	2465	Gift of goods, etc.,.....	2467
		Loan of chattels.....	2468

**ARTICLE 2464.** No action shall be brought in any of the courts in any of the following cases, unless the promise or agreement upon which such action shall be brought, or some memorandum thereof, shall be in writing and signed by the party to be charged therewith, or by some person by him thereunto lawfully authorized:

Written memorandum required to maintain certain actions. (Act Jan. 18, 1840.) P.D. 3875.

1. To charge any executor or administrator upon any promise to answer any debt or damages due from his testator or intestate, out of his own estate; or,
2. To charge any person upon a promise to answer for the debt, default or miscarriage of another; or,
3. To charge any person upon any agreement made upon consideration of marriage; or,
4. Upon any contract for the sale of real estate or the lease thereof for a longer term than one year; or,
5. Upon any agreement which is not to be performed within the space of one year from the making thereof.

**ART. 2465.** Every gift, conveyance, assignment, or transfer of, or charge upon any estate, real or personal, every suit commenced, or decree, judgment, or execution suffered or obtained, and every bond or other writing given with intent to delay, hinder or defraud creditors, purchasers, or other persons of or from what they are or may be lawfully entitled to, shall, as to such creditors, purchasers, or other persons, their representatives or assigns, be void. This article shall not affect the title of a purchaser, for valuable consideration, unless it appear that he had notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

Conveyance to defraud creditors, etc., void. P.D. 3876.

**ART. 2466.** Every gift, conveyance, assignment, transfer or charge made by a debtor, which is not upon consideration deemed valuable in law, shall be void as to prior creditors unless it appears that such debtor was then possessed of property within this state subject to execution sufficient to pay his existing debts; but such gift, conveyance, assignment, transfer or charge shall not on that account merely be void as to subsequent creditors, and though it be decreed to be void as to a prior creditor, because voluntary, it shall not for that cause be decreed to be void as to subsequent creditors or purchasers.

Voluntary conveyances. P.D. 3876-77.

**ART. 2467.** No gift of any goods or chattels shall be valid unless by deed or will, duly acknowledged or proven up and recorded, or unless actual possession shall have come to and remained with the donee or some one claiming under him.

Gift of goods, etc. P.D. 3876.

**ART. 2468.** Where any loan of goods or chattels shall be pretended to have been made to any person with whom, or those claiming under him, possession shall have remained for the space of two years without demand made and pursued by due process of law on the part of the pre-

Loan of chattels. P.D. 3876.



tended lender; or when any reservation or limitation shall be pretended to have been made of a use of property, by way of condition, reversion, remainder or otherwise in goods and chattels, the possession whereof shall have remained in another as aforesaid, the same shall be taken as to the creditors and purchasers, of the persons aforesaid so remaining in possession, to be fraudulent within this chapter, and that the absolute property is with the possession, unless such loan, reservation or limitation of use of property were declared by will, or by deed or other instrument in writing, duly acknowledged or proved and recorded.

TITLE XLVII.

Guardian and Ward.

CHAPTER ONE.

GENERAL PROVISIONS.

Article	Article		
Jurisdiction of county court over.....	2469	Provisions, etc., governing estates of decedents govern guardianships, etc.....	2477
Jurisdiction of district court over.....	2470	Any person may contest proceedings, etc..	2478
Who are minors.....	2471	Cases of guardianship shall be called at each term.....	2479
Who are persons of unsound mind.....	2472	Meaning of "term of court".....	2480
Who is an habitual drunkard.....	2473	Appeals, etc., may be taken under the rules, etc., provided by law.....	2481
Record books of estates shall be used, etc.	2474		
What papers shall be recorded.....	2475		
Order, etc., of court shall be at a regular term, unless, etc.....	2476		

ARTICLE 2469. The county court shall appoint guardians of minors, persons of unsound mind and habitual drunkards; settle accounts of guardians and transact all business appertaining to the estates of minors, persons of unsound mind and habitual drunkards.

Jurisdiction of county court over. (Const., art. 5, §16.) (Act June 16, 1876, p. 19, §4.)

ART. 2470. The district court shall have appellate jurisdiction over the county court in all matters of guardianship, and original control and jurisdiction over guardians and wards, under such regulations as may be prescribed by law.

Jurisdiction of district court over. (Const., art. 5, §8.)

ART. 2471. Male persons under twenty-one years of age, and females under twenty-one years of age, who have never been married, are minors.

Who are minors. (Act Aug. 18, 1876, p. 173, §2.)

ART. 2472. Persons of unsound mind are idiots, lunatics or insane persons.

Who are persons of unsound mind. *Ib.* §8.

ART. 2473. An habitual drunkard is one whose mind has become so impaired by the use of intoxicating liquors or drugs that he is incapable of taking care of himself or property.

Who is an habitual drunkard. *Ib.*

ART. 2474. The record books used for the business of estates of decedents shall also be used for the business of guardianships.

Record books of estates shall be used, etc.

ART. 2475. The following papers shall be copied at length into the minutes of the court:

What papers shall be recorded. *Ib.* p. 191, §186.

1. All applications, citations and returns upon citations.
2. All notices, whether published or posted, with the returns thereon.
3. All bonds and official oath.
4. All inventories, appraisements and lists of claims, after the same have been approved by the court.
5. All reports of sales, renting or leasing of property, and of loaning or investing money, after such reports have been approved by the court.
6. All accounts and exhibits of the guardian, after the same have been approved by the court.

ART. 2476. All decisions, orders and judgments of the court in matters of guardianship, shall be rendered and entered on the minutes of the court at a regular term thereof, and in open court, except in cases where it is otherwise specially provided.

Orders, etc., of court shall be at regular term, unless, etc.

ART. 2477. The provisions, rules and regulations which govern estates of decedents shall apply to and govern such guardianships, whenever the same are applicable and not inconsistent with any of the provisions of this title.

Provisions, etc. governing estates of decedents govern guardianships, etc.

Any person may contest proceedings. *Ib.* p. 170, §18.

Case of guardianship shall be called at each term.

Meaning of "term of court." Appeals, etc., may be taken under the rules provided by law.

ART. 2478. Any person has the right to appear and contest the appointment of a particular person as guardian, or to contest any proceeding which he deems to be injurious to the ward, or to commence any proceeding which he considers beneficial to the ward, such person being liable for the costs occasioned by him in case of his failure.

ART. 2479. It shall be the duty of the county judge at each regular term of his court to call each case of guardianship upon his docket, and to make such orders therein as may be necessary, and to see that such orders, together with all papers required to be recorded, are entered upon the minutes, and to hold guardians and the officers of his court to a strict accountability for the performance of their duties with reference to guardianships.

ART. 2480. Whenever a term of the county court is mentioned in this title it is meant a term of such court held for the transaction of probate business.

ART. 2481. The judgments, orders, decrees and proceedings of the court in relation to guardianships may be appealed from to the district court by any person who may consider himself aggrieved thereby, or the same may be revised and corrected by certiorari, or bill of review, in the manner and under the rules and regulations provided by law.

## CHAPTER TWO.

### IN WHAT COUNTY PROCEEDINGS SHALL BE COMMENCED.

	Article		Article
Guardianship of estate of minor shall be commenced where parents reside. (Act Aug. 18, 1876, p. 176, §19.)	2482	Proceedings for guardianship of an orphan shall be commenced, where.....	2484
	2483	Persons of unsound mind, and drunkards. Where a guardian has been appointed by will.....	2485 2486

Where parents reside in different counties. *Ib.* §20.

Proceeding for guardianship of an orphan, shall be commenced, where. *Ib.* §21.

Persons of unsound mind and drunkards.

Where a guardian has been appointed by will. (9 Texas, 109.)

ARTICLE 2482. A proceeding for the appointment of a guardian for the estate of a minor shall be commenced in the county where the parents of such minor reside.

ART. 2483. If the parents of the minor do not reside in the same county, the proceedings for such guardianship shall be commenced in the county where the parent who has the custody of the minor resides.

ART. 2484. A proceeding for the appointment of a guardian of the person and estate of an orphan, or of either, shall be commenced in the county where the last surviving parent of such orphan resided at the time of the death of such parent; or, where such orphan is found; or, where the principal estate of such orphan may be.

ART. 2485. A proceeding for the appointment of a guardian of the person or estate, or of either, of a person of unsound mind, or an habitual drunkard, shall be commenced in the county where such person of unsound mind or habitual drunkard resides.

ART. 2486. Where a guardian has been appointed by will, proceedings for letters of guardianship shall be commenced in the county where the will has been admitted to probate.

## CHAPTER THREE.

### COMMENCEMENT OF PROCEEDINGS.

	Article		Article
Commenced by written application. Who may make application, and what the same may contain.....	2487	Return of citation.....	2491
	2488	Minor fourteen years old, or over, shall be personally cited.....	2492
Clerk shall issue citation, which shall state what.....	2489	County judge shall commence proceedings, when.....	2493
Citation shall be served how.....	2490		

Commenced by written application. (Act Aug. 18, 1876, p. 177, §23.)

ARTICLE 2487. A proceeding for the appointment of a guardian is commenced by written application, filed in the county court of the county having jurisdiction of the case.

- ART. 2488.** The application may be made by any person, and it shall state—
1. The name, sex, age and residence of the minor.
  2. The estate of such minor, if any, and the probable value thereof.
  3. Such facts as show the jurisdiction of the court over the case.
- ART. 2489.** Upon the filing of such application the clerk shall immediately issue citation, which shall state that an application has been filed, and by whom, for the guardianship of the person or estate or both, as the case may be, of the minor, naming such minor, and shall cite all persons interested in the welfare of such minor to appear at a term of the court named in such citation, and contest such application if they see proper to do so.
- ART. 2490.** Such citation shall be served by posting copies thereof, for not less than ten days before the first day of the term of the court at which the application is to be acted upon, one of which copies shall be posted at the court-house, and two other copies at two other public places in the county, not in the same city or town.
- ART. 2491.** The sheriff or other officer serving such citation shall return the same, stating thereon in writing the time and places, when and where he posted such copies, and shall sign such return officially.
- ART. 2492.** If the minor be fourteen years of age or over, such minor shall be personally served with citation to appear and answer such application, or such minor may, by writing filed with the clerk, waive the issuance of such citation and make choice of a guardian.
- ART. 2493.** Whenever it shall come to the knowledge of the county judge that there is within his county any minor without a guardian of his person or estate, he shall cause a citation to be posted to all persons interested in the welfare of such minor to show cause at a regular term of his court why a guardian of such minor should not be appointed, and if such minor be fourteen years of age, or over, he shall be personally cited.

Who may make application, and what the same shall contain.  
*Ib.* §24.

Clerk shall issue citation which shall state what.

Citation shall be served, how.

Return of citation.

Minor 14 years old or over shall be personally cited.  
*Ib.* §27.

County judge shall commence proceedings, when.  
*Ib.* §28.

## CHAPTER FOUR.

### PERSONS ENTITLED TO BE APPOINTED GUARDIANS, AND PERSONS WHO ARE DISQUALIFIED.

	Article		Article
Father entitled, where parents live together	2494	Where no one who is entitled applies, court shall appoint, etc.	2501
Parents equally entitled, when	2495	Who entitled in case of person of unsound mind, etc.	2502
Surviving parent entitled to	2496	Court shall appoint proper person, when	2503
Surviving parent may appoint guardian by will, etc.	2497	Who are not qualified to be guardians	2504
Who entitled to guardianship of orphan	2498	Minor fourteen years of age may select his guardian	2505
Where ascendants are equally entitled	2499		
Collateral kin entitled, when	2500		

**ARTICLE 2494.** Where the parents of the minor live together the father is the natural guardian of the person of the minor children by the marriage, and is entitled to be appointed guardian of their estates.

Father entitled where parents live together. (Act Aug. 18, 1876, p. 175, §8.)

**ART. 2495.** Where the parents do not live together their rights are equal, and the guardianship of their minor children shall be assigned to one or the other, according to the circumstances of each case, taking into consideration the interest of the child alone.

Parents equally entitled, when.  
*Ib.* §9.

**ART. 2496.** Where one of the parents is dead the survivor is the natural guardian of the persons of the minor children, and entitled to be appointed guardian of their estates.

Surviving parent entitled.  
*Ib.* §10.

**ART. 2497.** The surviving parent of a minor may, by will or written declaration, appoint any person not disqualified to be guardian of the persons of his or her children after the death of such parent; and such person shall be entitled to be appointed guardian of their estates, also, after the death of such parent.

Surviving parent may appoint guardian by will, etc.  
*Ib.* §11.

Who entitled to guardianship of orphans.  
*Ib.* §12.

ART. 2498. Where the minor is an orphan, and no one has been appointed by the parent to be the guardian of such minor, as provided in the preceding article, the nearest ascendant in the direct line of such minor, if not disqualified, is entitled to the guardianship of both the person and estate of such minor.

Where ascendants are equally entitled.  
*Ib.* §13.

ART. 2499. If there be more than one ascendant in the same degree in the direct line, they are equally entitled, and the guardianship shall be given to one or the other, according to circumstances, taking into consideration the interest of the orphan alone.

Collateral kin entitled, when.  
*Ib.* §14.

ART. 2500. In case the orphan has no ascendant in the direct line, the guardianship shall be given to the nearest of kin in the collateral line, who comes immediately after the presumptive heir or heirs of the orphan; and if there be two or more in the same degree, the guardianship shall be given to one or the other, according to circumstances, taking into consideration the interest of the orphan alone.

Where no one who is entitled applies, court shall appoint, etc.

ART. 2501. If there be no relative of the minor qualified to take the guardianship, or if no person entitled to such guardianship applies therefor, the court shall appoint some proper person to be such guardian.

Who entitled in case of person of unsound mind, etc.

ART. 2502. In the case of a person of unsound mind, or an habitual drunkard, the nearest of kin to such person, who is not disqualified, shall be entitled to the guardianship, and where two or more are equally entitled the guardianship shall be given to one or the other, according to circumstances, taking into consideration the interest of the ward alone. If such ward have a husband or wife who is not disqualified, such husband or wife shall be entitled to the guardianship in preference to any other person.

Court shall appoint proper person, when.

ART. 2503. If no person who is entitled to such guardianship and who is qualified shall apply therefor, the court shall appoint some proper person to be such guardian.

Who are not qualified to be guardians.  
*Ib.* §16.

ART. 2504. The following persons shall not be appointed guardians:

1. Minors, except the father or mother.
2. Persons whose conduct is notoriously bad.
3. Persons of unsound mind.
4. Habitual drunkards.

5. Those who are themselves or whose father or mother are parties to a lawsuit, on the result of which the condition of the minor or part of his fortune may depend.

6. Those who are debtors to the minor, unless they discharge the debt prior to such appointment; but this subdivision does not apply to the father or mother of such minor.

Minor 14 years of age may select his own guardian.

ART. 2505. A minor who is fourteen years of age or over has the right to select a guardian, either of his person or estate, or both, which selection may be made in open court, in person or by attorney, and the person selected, if qualified, shall be entitled to be appointed guardian, except in the case where the surviving parent of such minor has appointed a guardian by will or written declaration, in which case the person so appointed shall be entitled to the guardianship.

CHAPTER FIVE.

APPOINTMENT OF GUARDIANS.

Article	Article
Court may proceed to appoint, when..... 2506	Guardian of minor continues in office, until, etc..... 2512
What facts must appear before appointment is made..... 2507	Guardian of person of unsound mind, etc., continues in office until, etc..... 2513
Only one guardian of the person or estate shall be appointed, except, etc..... 2508	Court may appoint a receiver, when..... 2514
Order of appointment shall contain, what. 2509	Guardianship of estate of non-resident minor..... 2515
Minor having guardian may select another, when..... 2510	Letters shall issue, when, and shall state, what..... 2516
Another guardian shall be appointed, when 2511	

ARTICLE 2506. At a regular term of the court, after notice shall have been given by citation duly served as required by law, the court may proceed to the appointment of a guardian.

Court may proceed to appoint, when.

ART. 2507. Before appointing a guardian the court must be satisfied—

What facts must appear before appointment is made.

1. That the person for whom a guardian is sought to be appointed is a minor, a person of unsound mind or an habitual drunkard.

2. That the court has jurisdiction of the case.

3. That the person to be appointed guardian is not disqualified to act as such and is entitled thereto, or in case no person who is entitled thereto applies therefor, that the person appointed is a proper person to act as such guardian.

ART. 2508. Only one guardian can be appointed of the person or estate; but one person may be appointed guardian of the person and another of the estate whenever the court shall be satisfied that it will be for the advantage of the ward to do so. Nothing in this article shall be held to prohibit the joint appointment of husband and wife.

Only one guardian of the person or estate shall be appointed, except, etc. (Act Aug. 15 1870.) P. D. 6926.

ART. 2509. The order of the court appointing a guardian shall be entered upon the minutes of the court, and shall specify—

Order of appointment shall contain, what.

1. The name of the person appointed.

2. The name of the ward.

3. Whether the guardian is of the person, of the estate, or of both the person and estate of such ward.

4. The amount of the bond required of such guardian.

5. If it be a guardianship of the estate the order shall also appoint three or more discreet and disinterested persons to appraise such estate and return such appraisement to the court.

6. It shall direct the clerk to issue letters of guardianship to the person appointed when such person has qualified according to law.

ART. 2510. A minor having a guardian of his person or estate, appointed by the court, may, upon attaining the age of fourteen years, by application in writing filed in the court in which such guardianship is pending, select another guardian of his person, or of his estate, and if the court is satisfied that the person selected is suitable and competent, the appointment of such person as guardian shall be made, and the letters of guardianship to the former guardian shall be revoked; except in the case where such former guardian has been appointed by the will or written declaration of the parent of such minor, in which case the minor shall not be permitted to select another guardian, unless such appointed guardian die, resign, or is removed from such guardianship.

Minor having guardian may elect another, when.

ART. 2511. Whenever a person appointed guardian fails to qualify as such, according to law, or dies, resigns, or is removed, the court shall appoint another guardian in his stead.

Another guardian shall be appointed, when.

ART. 2512. The guardian of a minor continues in office, unless sooner discharged according to law, until the minor arrives at the age of twenty-one years, or, being a female, marries, or until such minor shall die.

Guardian of minor continues in office, until, etc. (Act Aug. 18, 1876, p. 178, §38.)

Guardian of person of unsound mind, etc., continues in office, until, etc.  
*Ib.* p. 188, §146.  
 Court may appoint a receiver, when.

ART. 2513. The guardian of a person of unsound mind, or an habitual drunkard, shall continue in office unless sooner discharged according to law, until the ward shall be restored to sound mind, or to correct, sober habits, as the case may be, or shall die.

ART. 2514. When from any cause the estate of a minor, person of unsound mind, or of an habitual drunkard, is without a guardian, and such estate is likely to injure or waste, the county judge shall, upon application or without application, either in term time or in vacation, appoint some suitable person to take charge of such estate as receiver until a guardian can be regularly appointed, and shall make such other orders as may be necessary for the preservation of such estate. Such appointment and orders shall be recorded in the minutes of the court, and shall specify the duties and powers of such receiver, and the provisions of the law governing in the case of a temporary administration upon the estate of a decedent shall govern in the case of a receiver appointed under this article, so far as the same are applicable.

Guardianship of estate of non-resident minor.  
*Ib.* p. 176, §22.

ART. 2515. When a minor, or person of unsound mind, resides out of the state and owns property in this state, guardianship of the estate of such minor or person of unsound mind may be granted when it is made to appear that a necessity exists for such guardianship, in like manner as if such minor or person of unsound mind resided in this state; and the court making such grant of guardianship shall take all such action and make all such orders in reference to the estate of the ward, for the maintenance and support or education and care of such ward, out of the proceeds of such ward's estate, in like manner as if the ward had resided in this state, and guardianship of the person of said ward had been granted by said court, and the ward had been sent abroad by the order of the court for education or treatment.

Letters shall issue, when, and shall state, what. (Act to adopt and establish R.C.S., passed Feb. 21, 1879.)

ART. 2516. When a person appointed guardian has qualified as such by taking the oath and giving the bond required by law, the clerk shall issue to him a certificate attested by the seal of the court, stating the fact of such appointment and qualification, and the date thereof; which certificate shall constitute letters of guardianship, and be evidence of the authority of the person to whom issued to act as guardian.

## CHAPTER SIX.

### OATH AND BOND OF GUARDIANS.

	Article		Article
Oath of guardian.....	2517	Bond of father or mother under twenty-one years of age, valid.....	2524
Bond of guardian of the person.....	2518	New bond may be required, etc.....	2525
Bond of guardian of the estate.....	2519	Guardian shall cease to act as such, when.....	2526
Two or more sureties required.....	2520	Surety may be relieved in same manner, etc.....	2527
Bond where same person is guardian of both person and estate.....	2521	Oath and bond to be presented within twenty days.....	2528
No bond required when will, etc., has dispensed with it.....	2522	Oath and bond to be recorded, etc.....	2529
Bond of married woman as guardian.....	2523	Sureties released when, etc.....	2530

Oath of guardian. (Act Aug. 18, 1876, p. 177, §35.)

ARTICLE 2517. The guardian shall take an oath faithfully to discharge the duties of guardian of the person (or of the estate, or of the person and estate, as the case may be) of the ward, according to law, which oath shall be indorsed on the bond of such guardian, and may be taken before any officer of the county in which the proceedings for such guardianship are pending, authorized to administer oaths generally.

Bond of guardian of the person. *Ib.* §31.

ART. 2518. The bond of a guardian of the person of a ward shall be in an amount to be fixed by the court granting such guardianship, not to exceed one thousand dollars, and shall be made payable to the county judge of the county where such guardianship is pending, and to be approved by such county judge; conditioned that such guardian will faithfully discharge the duties of guardian of the person of such ward.

ART. 2519. The bond of the guardian of the estate of a ward shall be in an amount equal to double the estimated value of the property belonging to such estate, payable to the county judge of the county where such guardianship is pending, and to be approved by such county judge; conditioned that such guardian will faithfully discharge the duties of guardian of the estate of such ward according to law.

Bond of guardian of the estate.  
*Ib.* §32.

ART. 2520. Any bond required by the provisions of this chapter to be given by a guardian, shall be subscribed by such guardian, and by at least two good and sufficient sureties, to be approved by the county judge of the county in which the guardianship is pending.

Two or more sureties required.

ART. 2521. Where the same person is appointed guardian of both the person and estate of a ward, only one bond shall be given by such guardian, varying the form thereof to suit the case.

Bond where same person is guardian of both person and estate.  
*Ib.* §34.

ART. 2522. When the surviving parent of a minor has provided by will, regularly probated, that a guardian appointed by such will shall not be required to give bond for the management of the estate devised by such will, the direction shall be observed, unless it be made to appear at any time that such guardian is mismanaging the property, or is about to betray his trust, in which case, upon proper proceedings had for that purpose, such guardian may be required by the court to give bond as in other cases.

No bond required when will, etc., has dispensed with it.  
*Ib.* §33.

ART. 2523. Where a married woman may be appointed guardian, she may, jointly with her husband, or without her husband if he be absent from the state, or refuse to join in the bond with her, execute such bond as guardian as the law requires, and acknowledge the same before any officer authorized by law to take acknowledgments of married women to written instruments; and such bond shall bind her estate in the same manner as if she were unmarried, but shall not bind her husband as surety unless he sign and be approved as such.

Bond of married woman as guardian.  
*Ib.* §39.

ART. 2524. A bond executed by the father or mother of a minor, as guardian of such minor, when such father or mother is under twenty-one years of age, shall be as valid as if he or she were of full age.

Bond of father or mother under 21 years of age valid.  
*Ib.* §40.

ART. 2525. The county judge shall have power to require new bonds of guardians in all cases where he has power to require new bonds of executors or administrators, and under the same rules and regulations and with like effect.

New bond may be required, etc.

ART. 2526. When a guardian has been required to give a new bond he shall thereafter refrain from acting as such guardian, except to preserve the property committed to his charge, until he has given such new bond and the same has been approved.

Guardian shall cease to act as such, when.  
*Ib.* §43.

ART. 2527. A surety upon the bond of a guardian may be relieved from his bond in the same manner and with like effect as is provided in the case of a surety upon the bond of an executor or administrator.

Surety may be relieved in same manner, etc.  
*Ib.*

ART. 2528. The oath and bond of a guardian shall be presented to the county judge within twenty days after the order appointing such guardian, either in term time or in vacation, for the action of such judge.

Oath and bond to be presented within 20 days.

ART. 2529. The oaths of guardians and their bonds, when approved, shall be immediately filed with the clerk of the county court and recorded in the minutes of the said court and safely preserved.

Oaths and bonds shall be recorded.

ART. 2530. When a new bond has been given and approved the sureties upon the former bond of such guardian shall not be liable for any misconduct of such guardian occurring after the approval of such new bond, and shall be released from all liability for the acts of such guardian occurring after the approval of such new bond.

Sureties relieved, when, etc.  
*Ib.* §44.



CHAPTER SEVEN.

INVENTORY, APPRAISEMENT AND LIST OF CLAIMS.

	Article		Article
Inventory shall be returned in thirty days.....	2531	Appraisers to be appointed in such case, when.....	2536
List of claims.....	2532	Additional inventory may be required, when.....	2537
Affidavit of guardian to inventory, etc.....	2533	Inventory, etc., may be corrected, etc.....	2538
Property held in common shall be specified.....	2534	Inventories, etc., evidence.....	2539
Additional inventory, when.....	2535		

Inventory shall be returned in thirty days, etc. (Act Aug. 18, 1876, p. 179, §50.)

ARTICLE 2531. It shall be the duty of every guardian of an estate, as soon as he shall have collected the estate, and within thirty days after he has taken the oath and given bond, with the assistance of any two of the appraisers appointed by the court, to make and return to the court a true and perfect inventory of all the property, real and personal, belonging to said estate, which has come to the knowledge of such guardian, and each article of such property shall be appraised by such appraisers, and the appraised value thereof stated opposite the same in the inventory, and the same shall be subscribed and sworn to by such appraisers before any officer of the county, in which the inventory is made, authorized by law to administer oaths generally.

List of claims. *Ib.* §50.

ART. 2532. The guardian shall also make out and attach to such inventory and appraisement a list of all claims due or to become due belonging to the estate. Such list shall state—

1. The name of each person indebted to the estate.
2. The nature of such indebtedness, whether by note, bill, bond or other written obligation, or by account or verbal contract.
3. The date of such indebtedness and the date when the same was due or will be due.
4. The amount of each claim and the rate of interest thereon, and the time for which the same bears interest.

Affidavit of guardian to inventory, etc.

ART. 2533. The guardian shall annex to the inventory, appraisement and list of claims an affidavit in substance as follows: "I, A B, guardian of the estate of C D, do solemnly swear that the inventory and list of claims annexed hereto are a true and perfect inventory and list of all the property, real and personal, belonging to said estate that has come to my knowledge;" which affidavit shall be subscribed and sworn to by such guardian before some officer of the county, in which the same is made, who is authorized to administer oaths generally.

Property held in common shall be specified. *Ib.* §52.

ART. 2534. If any property be held or owned by the ward in common with another or others, it shall be distinctly stated in the inventory or list of claims, as the case may be, the items thereof that are so held or owned, the names and the relationship, if any, of the other part owner or owners, and the interest or share of such ward in such property.

Additional inventory, when. (Act March 20, 1848.) P.D. 3899.

ART. 2535. Whenever any guardian of an estate shall discover any property belonging to such estate which has not been inventoried and appraised, or any claim that has not been embraced in the list of claims, he shall forthwith make out and return to the court an additional inventory or list of claims, embracing such property or claims, as the case may be.

Appraisers to be appointed in such case, when, etc.

ART. 2536. Where an additional inventory of property has been returned by the guardian, the court shall appoint appraisers to appraise such property, as in the case of original inventories, or such appraisers may be appointed before the return of such additional inventory, either in term time or in vacation, by an order of the court entered upon the minutes.

Additional inventory, etc., may be required, when. *Ib.*

ART. 2537. Whenever it shall be shown to the county judge that any guardian has not returned to the court an inventory and appraisement and list of claims of all the property belonging to his ward, such judge shall cause such guardian to be cited, either in term time or in vacation, and require him to return to the court an additional inventory and

appraisement, or an additional list of claims, as the case may be, in the same manner as in the case of original inventories and appraisements and lists of claims are required to be returned, and within the same time; but such inventory and appraisement and list of claims shall only embrace such property as has been omitted in previous inventories and appraisements and lists of claims.

ART. 2538. Erroneous inventories, appraisements and lists of claims may be corrected, and new appraisements may be ordered under the same rules and regulations as are provided in the case of estates of decedents. Inventories, etc., may be corrected, etc.

ART. 2539. All inventories, appraisements or lists of claims, when approved by the court, or the record thereof, or copies of the same or of the record thereof, duly certified under the seal of the clerk of the county court having charge thereof, may be given in evidence in any suit by or against such guardian, but shall not be conclusive against the ward if it be shown that there is other property or claims of such ward not included therein, or that the estate or claims were actually worth more than the value at which they are set down in such inventories, appraisements or lists. Inventories, etc., evidence. *Ib.* P.D. 3900.

## CHAPTER EIGHT.

### POWERS AND DUTIES OF GUARDIANS.

	Article		Article
Of the person.....	2540	May take property for debt due ward,	
Same subject.....	2541	when.....	2547
Guardian of the estate.....	2542	Guardian of estate shall pay to guardian of	
Of both person and estate.....	2543	person, etc.....	2548
Guardian of the estate shall manage same		Education and maintenance of ward.....	2549
prudently.....	2544	Property held in common with others.....	2550
Duty to collect estate.....	2545	Guardian shall not dispute ward's title, ex-	
Shall use diligence to collect claims, etc.....	2546	cept, etc.....	2551

ARTICLE 2540. The guardian of the person is entitled to the charge and control of the person of the ward, and the care of his support and education, and his duties shall correspond with his rights. Of the person. (Act Aug. 18, 1876, p. 181, §75.)

ART. 2541. It is the duty of the guardian of the person of a minor to take care of the person of such minor, to treat him humanely, and to see that he is educated in a manner suitable to his condition; and if necessary for his support, that he learn a trade or adopt some useful profession. Same subject. *Ib.* §7.

ART. 2542. The guardian of the estate is entitled to the possession and management of all property belonging to the ward; to collect all debts, rents or claims due such ward; to enforce all obligations in his favor; to bring and defend suits, by or against him; but in the management of the estate the guardian shall be governed by the provisions of this title. Guardian of the estate. *Ib.* §76.

ART. 2543. The guardian of both person and estate has all the rights and powers, and shall perform all the duties of the guardian of the person and of the guardian of the estate. Of both person and estate. *Ib.* §79.

ART. 2544. It is the duty of the guardian of the estate to take care of and manage such estate as a prudent man would manage his own property, and he shall account for all such rents, profits and revenues as the estate would have produced by such prudent management. Guardian of the estate shall manage same prudently. *Ib.* §77.

ART. 2545. It is the duty of the guardian of the estate, immediately after receiving letters, to collect and take into possession the personal property, books, title papers, and other papers belonging to the estate. Duty to collect estate. *Ib.* §48.

ART. 2546. The guardian of the estate shall use due diligence to collect all claims or debts owing to the ward, and to recover possession of all property to which the ward has a title or claim; *provided*, there is a reasonable prospect of collecting such claims or debts, or of recovering such property; and if he neglects to use such diligence he and his sureties shall be liable for all damages occasioned by such neglect. Shall use diligence to collect claims, etc. *Ib.* §78.

May take prop-  
erty for debt  
due ward,  
when.  
*Ib.* §92.

ART. 2547. The guardian of the estate may receive property in pay-  
ment of any debt due to the ward, in all cases where he shall be of the  
opinion that the interest of his ward will be advanced thereby, being  
responsible for a prudent exercise of the discretion hereby conferred.

Guardian of  
estate shall  
pay to guard-  
ian of person,  
etc.  
*Ib.* §93.

ART. 2548. When different persons have the guardianship of the per-  
son and estate of a ward, the guardian of the estate must pay over to the  
guardian of the person, semi-annually, a sufficient amount of money, to be  
fixed by the court, for the education and maintenance of the ward, and  
on failure shall be compelled to do so by order of the court, after being  
duly cited.

Education and  
maintenance  
of ward.  
*Ib.* §94.

ART. 2549. The court may direct the guardian of the person to expend  
for the education and maintenance of his ward, a specific sum, although  
such sum may exceed the income of the ward's estate; but without such  
direction of the court the guardian shall not be allowed, in any case, for  
the education and maintenance of the ward, more than the clear income  
of the estate.

Property held  
in common  
with others.  
*Ib.* §49.

ART. 2550. If the ward holds or owns any property in common, or as  
part owner with another person, the guardian shall be entitled to posses-  
sion thereof in common with the other part owner or owners, in the  
same manner as other owners in common, or joint owners, would be  
entitled.

Guardian shall  
not dispute  
ward's title,  
except, etc.  
*Ib.* §69.

ART. 2551. The guardian, or his heirs, executors, administrators or  
assigns shall not dispute the right of the ward to any property that shall  
have come into the possession of such guardian, as guardian, except such  
property as shall have been recovered from the guardian, or there be a  
personal action pending on account of it.

## CHAPTER NINE.

### RENTING AND LEASING PROPERTY, AND INVESTING AND LOANING MONEY, OF WARD.

	Article		Article
Guardian may carry on or rent farm, etc., under order of the court.....	2552	Notice of application to invest in real estate	2561
Duty of guardian to rent out property, when, etc.....	2553	Order of the court on such application.....	2562
May rent improved property, other than, etc., without order.....	2554	Contract of investment must be approved by the court.....	2563
Court may order improved property rented	2555	Title to be made to ward, and property to be inventoried, etc.....	2564
Unimproved land may be leased.....	2556	Guardian may be cited to show cause why he should not invest or loan money.....	2565
Guardian may be cited to show cause why he should not rent land out, etc.....	2557	County judge shall see that money is in- vested, etc.....	2566
Money shall be invested, how.....	2558	When guardian is liable for interest.....	2567
Note and mortgage shall be taken for money loaned.....	2559	Shall not be personally responsible for money loaned, when.....	2568
Investing money in real estate.....	2560	Shall report renting, etc., to court.....	2569

Guardian may  
carry on or  
rent farm, etc.,  
under order of  
the court.  
(Act Aug. 18,  
1876, p. 182,  
§86.)

ARTICLE 2552. If there be a farm, plantation, manufactory or business  
belonging to the estate, and if the same be not required to be at once  
sold for the payment of debts, it shall be the duty of the guardian of  
such estate, upon an order of the court, to carry on such farm, plantation,  
manufactory or business, or rent the same as shall appear for the best  
interest of the estate. In coming to a determination the court shall take  
into consideration the condition of the estate, and the necessity that may  
exist for the future sale of such property for the payment of debts or the  
education and maintenance of the ward, and shall not extend the time of  
renting any such property beyond what may consist with the interests of  
the estate and of the ward.

Duty of guard-  
ian to rent out  
property,  
when, etc.  
*Ib.* §87.

ART. 2553. When an order of the court is made directing property to  
be rented, it shall be the duty of the guardian to obey such order, and  
rent the property for the best price that can be obtained therefor, taking  
good security for the payment of the rent, and that the tenant will not

commit, nor permit any other person to commit, waste on the rented premises.

ART. 2554. The guardian may rent the improved property of the ward, other than such property as is named in article 2552, without an order of the court authorizing him to do so, and either at public or private renting, but when he rents without an order of court, he shall be required to account to the estate of the ward for the reasonable value of the rent of such property for the time the same was so rented.

May rent improved property other than, etc., with out order.

ART. 2555. The court may order the farm, plantation, manufactory, business, or any improved property of the estate to be rented either at public or private renting, for any length of time not exceeding one year, and upon such terms and conditions as the court may deem for the best interest of the ward.

Court may order improved property rented, etc.

ART. 2556. If the ward own wild or unimproved real property, the guardian may let out the same on improvement leases, under order of the court, for such length of time and upon such terms and conditions as the court may direct in its order.

Unimproved land may be leased. *Ib.* §88.

ART. 2557. Any person, upon complaint in writing, filed with the clerk of the county court, may cause the guardian of the estate of a ward to be cited to appear at a regular term of the court, and show cause why he should not be required to rent out the farm, plantation or other improved property of the ward, or why he should not be required to lease for improvement the wild or unimproved lands of the ward, and upon the hearing of such complaint the court shall make such order as may in its judgment be for the best interest of the estate.

Guardian may be cited to show cause why he should not rent land out, etc.

ART. 2558. If at any time the guardian of the estate shall have on hand any money belonging to the ward beyond what may be necessary for the education and maintenance of such ward, such guardian shall, under the direction of the court, invest such money in the bonds of the United States or of the State of Texas, or loan the same for the highest rate of interest that can be obtained therefor.

Money shall be invested, how. *Ib.* §89.

ART. 2559. When the guardian loans the money he shall take the note of the borrower with good personal security, and shall also take a mortgage with power of sale, upon unincumbered real estate situated in this state, worth at least the full amount of such note and interest, and he shall not deliver such money until such note and mortgage have been taken and approved by the county judge of the county in which the guardianship is pending, which approval shall be by an order of such judge entered upon the minutes of his court, either in term time or in vacation.

Note and mortgage shall be taken for money loaned. *Ib.*

ART. 2560. When the guardian may think it best for his ward to have any surplus money on hand invested in real estate, he shall file an application in writing in the court where the guardianship is pending, asking for an order of such court authorizing him to make such investment. Such application shall state the nature of the investment sought to be made, and the reasons why the guardian is of the opinion that it would be for the benefit of the ward to have the same made.

Investing money in real estate. *Ib.*

ART. 2561. When any such application is filed, notice of the same shall be given in the same manner as in the case of an application to sell real estate belonging to the ward, and for the same length of time.

Notice of application to invest in real estate. *Ib.*

ART. 2562. Upon the hearing of any such application at a regular term of the court, after notice thereof has been given as required, if the court be satisfied that such investment will be beneficial to the ward, an order authorizing the same to be made shall be entered upon the minutes, which order shall specify the investment to be made, and shall contain such other directions as the court may think it advisable to make.

Order of the court on such application. *Ib.*

Contract of investment must be approved by the court.  
*Ib.*

ART. 2563. Where any contract has been made for the investment of money in real estate, under order of the court, such contract shall be reported in writing to the court by the guardian at the next regular term of such court thereafter, and it shall be the duty of the court to inquire fully into the same, and if satisfied that such investment will benefit the estate of the ward, and that the title to such real estate is valid and unincumbered, the court may approve the contract and authorize the guardian to pay over the money in performance of the same; but no money shall be paid out by the guardian on any such contract until such contract has been approved by the court by an order to that effect entered upon the minutes of the court.

Title to be made to ward and property to be inventoried, etc.

ART. 2564. When the money of the ward has been invested in real estate, the title to such real estate shall be made to such ward, and such real estate shall be inventoried, appraised, managed and accounted for by the guardian as other real estate of the ward.

Guardian may be cited to show cause why he should not invest or loan money.

ART. 2565. When there is any surplus money of the estate in the hands of the guardian, any person may, by complaint in writing filed in the court in which such guardianship is pending, cause such guardian to be cited to appear at a regular term of such court to show cause why such surplus money should not be invested or loaned at interest, in accordance with the provisions of this chapter, and upon the hearing of such complaint the court shall enter upon the minutes such order as the law and the facts may require.

County judge shall see that money is invested, etc.

ART. 2566. It shall be the duty of the county judge, whenever it is made known to him in any manner that there is surplus money belonging to the ward in the hands of the guardian, to cause such guardian to be cited to appear at a regular term of the court and show cause why said money should not be invested, or why it should not be loaned at interest under the provisions of this chapter.

When guardian is liable for interest.  
*Ib.* §90.

ART. 2567. If the surplus money in the hands of the guardian belonging to the ward can not be invested or loaned at interest as directed in this chapter, after due diligence to do so by the guardian, he shall be liable for the principal only of such money. But if the guardian neglects to invest such money or loan the same at interest when he could do so by the use of reasonable diligence, he shall be liable for the principal and also for the highest legal rate of interest upon such principal for the time he so neglects to invest or loan the same.

Shall not be personally responsible for money loaned, when.  
*Ib.* §91.

ART. 2568. The guardian shall not be personally responsible for money loaned under the direction of the court, on security approved by the court, in case of the inability of the borrower to pay the same, and the failure of the security, unless such guardian has been guilty of fraud or negligence in respect to such loan or the collection of the same, in which case he and the sureties upon his bond shall be liable for whatever loss his ward may have sustained by reason of such fraud or negligence.

Shall report renting, etc., to court.

ART. 2569. The guardian shall report to the court in writing, and verified by his affidavit, the renting or leasing of property belonging to the estate, or the investment or loaning of money belonging to the estate, within thirty days after any such transaction, stating fully the facts of such transaction.

CHAPTER TEN.

SALES.

	Article		Article
Perishable property shall be sold.....	2570	When real estate is sold on credit, note,	
Sales of wild stock.....	2571	etc., to be taken.....	2581
When real estate may be sold.....	2572	Guardian shall not purchase property be-	
Guardian shall apply for order to sell real		longing to ward.....	2582
estate, when.....	2573	Bidder failing to comply with bid shall be	
Guardian shall be cited, when.....	2574	liable, etc.....	2583
Citation upon application for sale of real		Sale may be continued from day to day....	2584
estate.....	2575	Guardians' sales governed by the same	
No order of sale shall be made until citation		rules as execution sales.....	2585
has been served, etc.....	2576	Notice of private sale not required.....	2586
Advantage of estate to be considered in		Sale of mortgaged property.....	2587
ordering sale.....	2577	Sale to be made on such terms as court	
Sale may be for cash or on credit, public or		may direct.....	2588
private.....	2578	Mortgage or lien may be discharged with-	
Order of sale shall state, what.....	2579	out sale.....	2589
In what county real estate shall be sold....	2580		

ARTICLE 2570. The guardian of the estate, as soon as practicable after appraisalment, shall apply for an order of the court to sell at public or private sale, for cash or on a credit not exceeding six months, all the personal property belonging to the ward that is liable to perish, waste or deteriorate in value, or that will be an expense or disadvantage to the estate to keep on hand.

Perishable property shall be sold. (Act Aug. 18, 1876, p. 181, §80.)

ART. 2571. If the guardian shall represent to the court on oath that there is stock belonging to the estate which he is unable to collect or command, the court may order that the same be sold at public auction, on such credit as the court may deem reasonable, not exceeding twelve months, taking notes bearing interest at the rate of ten per cent. per annum from the day of sale, with good and sufficient security for the purchase money. Such sale shall be advertised, made, returned and acted upon by the court the same as sales of real estate.

Sales of wild stock. *Ib.* §§84, 85.

ART. 2572. When the income of the ward's estate, and the personal property thereof, and the proceeds of previous sales, are insufficient for the education and maintenance of the ward, or to pay the debts against the estate, the guardian of the person, or of the estate, or any person holding a valid claim against the estate, or any person interested in the ward, may, by application in writing to the court in which such guardianship of the estate is pending, ask for an order for a sufficient amount of real estate to be sold to make up the deficiency.

When real estate may be sold. *Ib.* §§101-2.

ART. 2573. It is the duty of the guardian to apply for such order whenever it appears that a necessity exists therefor, and to set forth fully in his application such necessity, and accompany the application with an exhibit, under oath, showing fully the condition of the estate.

Guardian shall apply for order to sell real estate, when. *Ib.* §105.

ART. 2574. When the application for the sale of real estate is made by any other person than the guardian of the estate, the guardian of the estate shall be cited to appear at a regular term of the court and show cause why the order should not be made, and also to present to the court an exhibit, under oath, showing fully the condition of the estate.

Guardian shall be cited, when.

ART. 2575. Whenever an application for the sale of real estate is filed, it shall be the duty of the clerk immediately to issue a citation to all persons interested in the ward to appear at a regular term of the court, to be named in such citation, and show cause why such application should not be granted, which citation shall state the property sought to be sold, and shall be served by posting, as in the case of sales of real estate of the estates of decedents, for at least twenty days before the first day of the term of the court to which such citation is made returnable.

Citation upon application for sale of real estate. *Ib.* §104.

ART. 2576. No order for the sale of real property shall be made unless the citation provided for in the preceding article has been served in the manner and for the length of time thereby required and returned into court by the officer who served the same.

No order of sale shall be made until citation has been served, etc. *Ib.*

Advantage of estate to be considered in ordering sale.  
*Ib.* §103.

ART. 2577. When a sale of real estate is ordered, it shall be of the property which the court may deem most advantageous to the estate to be sold.

Sale may be for cash or on credit—public or private.  
*Ib.* §§107, 112.

ART. 2578. A sale of real estate may be ordered by the court for cash, or on credit not exceeding twelve months, at public auction, or at private sale, as it may appear to the court to be most to the advantage of the estate.

Order of sale shall state, what.  
*Ib.* §109.

ART. 2579. An order for the sale of real estate shall state—

1. The property to be sold, giving such a description of it as will identify it.
2. Whether it is to be sold for cash or on credit, and if on credit the length of such credit.
3. Whether it is to be sold at public auction or at private sale, and if at public auction the time and place of such sale.
4. The necessity and purpose of such sale.
5. It shall require the sale to be made and the report thereof returned to the court in accordance with law.

In what county real estate shall be sold.  
*Ib.* §108.

ART. 2580. All sales of real property shall be made in the county where the guardianship is pending, unless such real property is situated in another county, in which case the court may order the sale to take place in the county where the real estate is situated. In all such cases the sale shall be advertised in both counties.

When real estate is sold on credit, note, etc., to be taken.  
*Ib.* §114.

ART. 2581. The terms of sale of real estate, in all cases when made on credit, shall be that the purchaser give his note bearing ten per cent. interest per annum from date, with good personal security, payable in the county where the guardianship is pending, and secured by mortgage containing power of sale on the property purchased, said note and mortgage to be executed and delivered to the guardian before the conveyance is made by the guardian to the purchaser.

Guardian shall not purchase property belonging to ward.

ART. 2582. It shall not be lawful for the guardian to take the estate of his ward or any part thereof, at its appraised value, or to become the purchaser, either directly or indirectly, of any property of the estate sold by him; and if any guardian shall, either directly or indirectly, become the purchaser of any property of his ward, at a sale made by such guardian, upon the complaint in writing of any person, and after service of citation upon such guardian, and upon proof of such complaint, such sale shall be declared void by the court, and shall be set aside, and an order to that effect entered upon the minutes, and the costs of such sale, and of the proceeding to set the same aside, shall be adjudged against such guardian individually.

Bidder failing to comply with bid shall be liable, etc.

ART. 2583. When any person shall bid off property offered for sale by a guardian, and shall fail to comply with the terms of the sale, the facts shall be reported to the court by the guardian, and such person so failing to comply, shall be liable to pay such guardian, for the use of the estate, ten per cent. on the amount of his bid; and also the deficiency in price on the second sale of such property, if any such deficiency there be, to be recovered by suit in any court of the county where such sale was made having jurisdiction of the amount claimed.

Sale may be continued from day to day.

ART. 2584. Public sales may be continued from day to day in case the day set apart for any such sale shall be insufficient to complete the same, by giving public notice verbally of such continuance at the conclusion of the sale each day, and the continued sale shall commence and conclude within the hours prescribed for public sales under execution.

Guardians' sales governed by same rules as execution sales.  
*Ib.* §§82, 111.

ART. 2585. The law regulating sales under execution, so far as the same relate to the advertisement and sale of property and the proceedings incidental thereto, and are not inconsistent with the provisions of this title, shall apply to and govern public sales by a guardian of the property of the ward.

ART. 2586. When a private sale of the property of the ward is made by a guardian, notice of such sale is not required to be given. Notice of private sale not required.

ART. 2587. Any person holding a claim against the estate of a ward, secured by mortgage or other lien, may obtain an order for the sale of the property upon which he has such mortgage or other lien, or so much thereof as may be required to satisfy the claim, by causing citation to be posted and the guardian to be cited to appear at a regular term of the court and show cause why such order should not be made. Sale of mortgaged property. *Ib.* §100.

ART. 2588. The sale provided for in the preceding article shall be made upon such terms as the court may direct, which terms shall be stated in the order of sale, and the notice and other proceedings shall be the same as in other sales by guardians. Sale to be made on such terms as court may direct. *Ib.* §107.

ART. 2589. Should it appear to the court that the discharge of such mortgage or other lien, out of the general assets, would be beneficial to the estate, the payment may be ordered to be so made, instead of ordering a sale of the property. Mortgage or lien may be discharged without sale. *Ib.* §106.

## CHAPTER ELEVEN.

### REPORTS OF SALES AND ACTION OF THE COURT THEREON.

	Article		Article
Sales shall be reported in thirty days.....	2590	No conveyance until terms of sale have been complied with.....	2597
Report of sale and its requisites.....	2591	Penalty for neglect to take note and mortgage.....	2598
Report may be in term time or vacation....	2592	Vendor's lien on real estate sold, retained.	2599
Action of the court on report of sale.....	2593	When property is not sold at time ordered, etc.....	2600
Sale shall be set aside, when.....	2594		
Conveyance of property sold.....	2595		
Conveyance of real estate.....	2596		

ARTICLE 2590. All sales of the property of the ward shall be reported to the court, in which the guardianship is pending, by the guardian, within thirty days after the sale is made. Sales shall be reported in 30 days.

ART. 2591. The report of any sale shall be in writing, and shall be subscribed and sworn to by the guardian before some officer authorized to administer oaths. It shall show— Report of sale and its requisites.

1. The time and place of the sale.
2. The property sold, giving a description of the same.
3. The name of the purchaser of the property.
4. The amount for which each article of property was sold.
5. The date of the order of sale.
6. Whether such sale was at public auction or was a private sale.
7. The terms of the sale.
8. Whether or not the purchaser has complied with the terms of the sale.

ART. 2592. A report of sale may be made in term time or in vacation, and when returned shall be filed by the clerk, and the filing thereof noted in the case upon the judge's docket. Report may be in term time or vacation.

ART. 2593. At any time after the expiration of five days from the filing of a report of sale, it shall be the duty of the court in which the same has been filed, at a regular term thereof, to inquire into the manner in which such sale was made, and to hear evidence in support of or against such report, and if satisfied that such sale was fairly made and in conformity with law, the court shall cause to be entered upon its minutes a decree confirming such sale, and order the report of sale to be recorded by the clerk, and the proper conveyance of the property sold to be made by the guardian to the purchaser, upon compliance by such purchaser with the terms of sale. Action of the court on report of sale. (Act Aug. 13, 1876, p. 185, §113.)

ART. 2594. If the court is not satisfied that the sale was fairly made, and in conformity with law, an order shall be entered upon the minutes, Sale shall be set aside, when.



setting the same aside, and ordering the property to be again sold, if necessary.

Conveyance of property sold.

ART. 2595. After a sale has been confirmed by a decree of the court, and after the purchaser has complied with the terms of the sale, the guardian shall execute and deliver to the purchaser a proper conveyance of the property purchased by him. In the case of a sale of personal property no conveyance shall be necessary, but the decree of the court confirming the sale shall vest the right and title of the ward to the property sold in the purchaser, and shall be *prima facie* evidence that all the requirements of the law have been complied with in making such sale.

Conveyance of real estate. *Ib.* §115.

ART. 2596. If the property sold be real estate the conveyance shall be by deed, and shall refer to the decree of the court confirming the sale and ordering the conveyance to be made, by giving the date and term of the court of such order, and such conveyance shall vest the right and title of the ward to such real estate in the purchaser, and shall be *prima facie* evidence that all the requirements of the law have been complied with in making such sale.

No conveyance until terms of sale have been complied with.

ART. 2597. No conveyance of real estate sold shall be executed and delivered by the guardian to the purchaser until the terms of sale have been complied with by such purchaser, and when such sale has been made on a credit it shall be the duty of the guardian, before delivering a conveyance of the property to the purchaser, to take from such purchaser a note with good personal security, payable in the county in which the guardianship is pending, bearing ten per cent. interest per annum for the purchase money, together with a mortgage containing a power of sale upon such real estate to secure the payment of such note, and to file such mortgage for record in the county where such real estate is situated.

Penalty for neglect to take note and mortgage, etc.

ART. 2598. Should the guardian neglect to take the note, security and mortgage, and file such mortgage for record in the proper county before delivering to the purchaser a deed, as required by the preceding article, such guardian and the sureties upon his bond shall be liable for whatever loss may accrue to the estate of the ward by reason of such neglect.

Vendor's lien on real estate sold, retained.

ART. 2599. All notes executed for the purchase money of real estate, under the provisions of this chapter, shall hold the vendor's lien on the real estate for which such notes were given, against all persons having notice, express or implied, in favor of the estate, whether the mortgage be recorded or not, and such lien shall in no case be waived.

When property is not sold at the time ordered, etc. *Ib.* §116.

ART. 2600. If from any cause the guardian should fail to sell any real estate ordered to be sold, at the time specified in the order, he shall report the facts to the court or judge, accompanied by his affidavit of the truth thereof, and the court or judge, either in term time or vacation, may, by an order entered upon the minutes, appoint another day for such sale, and so on from time to time until the sale is completed.

## CHAPTER TWELVE.

### ANNUAL ACCOUNTS.

	Article		Article
Annual account of guardian of the person.	2601	Account must be proved by vouchers or other evidence.	2605
Annual account of guardian of estate.	2602	Action of the court on the account.	2606
Annual account shall be continued one term.	2603	Guardian to be cited to return account, when	2607
Citation on annual account.	2604	Penalty for failing to return account.	2608

Annual account of guardian of person. (Act Aug. 18, 1876, p. 186, §120.)

ARTICLE 2601. The guardian of the person, where there is a separate guardian of the estate, shall annually return to the court an account, supported by his affidavit, showing the items of expenditure since the last account for the education and maintenance of the ward.

ART. 2602. The guardian of an estate shall annually return to the court an account showing— Annual account of guardian of estate. *Ib.* §119.

1. Any property that may have come to his knowledge belonging to his ward which has not been previously inventoried or listed.
2. Any changes in the property of the ward which have not been previously reported.
3. A complete account of receipts and disbursements since the last annual account.
4. All claims that have been allowed by him against the estate since the last annual account that are still unpaid.
5. All claims that have been rejected by him since the last annual account, and whether the same have been sued upon or not.
6. The money and property still on hand, and the condition of such property, and the use that is being made of the same.
7. Such other facts as may be necessary to show the true and exact condition of the estate.

Annexed to such account shall be the affidavit of the guardian that it contains a correct and complete statement of the matters to which it relates.

ART. 2603. When an annual account is presented it shall be filed, and the filing thereof noted in the case upon the judge's docket, and without being acted on shall be continued until the second regular term of the court thereafter. Annual account shall be continued one term. *Ib.* §121.

ART. 2604. Upon the filing of an annual account, the clerk shall issue a citation to all persons interested in the ward, stating that such account has been filed and the term of the court when it will be acted on, which citation shall be duly posted for twenty days and returned as in other cases of citation. Citation on annual account. *Ib.* §122.

ART. 2605. The guardian must produce and file proper vouchers for every item of credit claimed by him in his account, or support the same by other satisfactory evidence. Account must be proved by vouchers or other evidence. *Ib.* §124.

ART. 2606. If the account be found incorrect it shall be correctly stated; and when so corrected, or if found correct, it shall be approved by an order of the court entered upon the minutes. Action of the court on the account. *Ib.* §125.

ART. 2607. If the guardian fail to return an annual account as required by the provisions of this chapter, he shall be cited to return the same at the next term of the court, and show cause for failing to return such account at the proper time. Guardian shall be cited to return account, when. *Ib.* §128.

ART. 2608. If the guardian fail to return such account after being cited to do so, or fail to show good cause for failing to return such account at the proper time, he may be fined by the court not exceeding five hundred dollars, for the use of the county, and he and his sureties shall be liable for all fines imposed and damages sustained by reason of such failure. Penalty for failing to return account. *Ib.* §129.

## CHAPTER THIRTEEN.

### DEATH, RESIGNATION AND REMOVAL OF GUARDIANS.

Article	Article
When guardian dies..... 2609	Removal after citation..... 2615
Resignation of guardian..... 2610	Order removing guardian shall state, what 2616
Citation in such case..... 2611	Person removed shall not be re-appointed. 2617
Service of such citation..... 2612	When guardian dies, etc., estate shall be
Action of the court upon application and	accounted for and delivered, etc..... 2618
account..... 2613	Subsequent guardian shall account for what 2619
Removal of guardian without notice, when 2614	Subsequent guardian succeeds to what.... 2620

ARTICLE 2609. When a guardian dies the court, on application, shall appoint another. When guardian dies. (Act Aug. 18, 1876, p. 179, §54.)

ART. 2610. When a guardian wishes to resign, he shall present his application in writing to that effect to the court, and accompany such Resignation of guardian. *Ib.* §55.

application with a full and complete account of the condition of the estate and of his guardianship, verified by his affidavit.

Citation in  
such case.  
*Ib.* §56.

ART. 2611. Upon the filing of such application and account the clerk shall issue a citation to all persons interested in such guardianship, which citation shall state—

1. That such guardian has filed his application for leave to resign the guardianship, and has accompanied the same by an account for final settlement thereof.

2. It shall notify all persons interested in the guardianship to appear at a certain term of the court, commencing on such a day and month, and contest the account of the guardian, if they see proper to do so.

Service of  
such citation.  
*Ib.* §57.

ART. 2612. Such citation shall be published once a week for three successive weeks in some newspaper in the county, if there be one regularly printed therein; if not, then such citation shall be duly posted for at least twenty days before the return term thereof, and such citation shall be duly returned by the officer executing the same.

Action of court  
upon applica-  
tion and ac-  
count.  
*Ib.* §58.

ART. 2613. Upon the hearing of such application and account, if it appear that such guardian has accounted for all the estate according to law, the court shall enter an order upon the minutes that he deliver the estate remaining in his possession, if any there be, or the person of his ward, or both, as the case may be, to some person who shall have been or may be appointed and qualified as guardian in his place; upon compliance with such order and surrender of his letters of guardianship, such guardian shall be permitted to resign his trust and be discharged, and an order to that effect shall be made by the court and entered upon the minutes of the court.

Removal of  
guardian with-  
out notice,  
when.  
*Ib.* §59.

ART. 2614. Guardians shall be removed in the following cases, without notice, at a regular term of the court:

1. When they neglect to return within thirty days after qualification an inventory and list of claims of the property of the estate as far as such property has come to their knowledge.

2. When they have been required to give a new bond, and neglect to do so within the time prescribed.

3. When they have removed from the state.

Removal after  
citation.  
*Ib.* §60.

ART. 2615. A guardian may be removed by the court of its own motion, or on the motion of any person interested in the ward, or his estate, after being cited to answer—

1. When he fails to return any account which he is required to return by any of the provisions of this title.

2. When he fails to obey any order of the court or judge consistent with this title.

3. When there is good cause to believe that he has misapplied, embezzled or removed, or is about to misapply, embezzle or remove from the state the property committed to his charge, or any part thereof.

4. When he is proved to have been guilty of gross neglect or mismanagement in the performance of any of his duties as guardian.

5. When he becomes of unsound mind, or becomes an habitual drunkard, or is sentenced to imprisonment for a term of years.

6. When, if he be the guardian of the person, he cruelly treats the ward, or neglects to educate and maintain the ward as liberally as the means of such ward and the circumstances of the case demand.

Order remov-  
ing guardian  
shall state  
what, etc.  
*Ib.* §§61-2.

ART. 2616. The order of the court removing a guardian shall state the cause of such removal, and shall require such guardian to surrender his letters of guardianship, and shall also further require such guardian to deliver the person of the ward, or his estate, or both, as the case may be, to some person who has been appointed guardian and has qualified as such in his place.

Person re-  
moved shall  
not be re-ap-  
pointed.  
*Ib.* §63.

ART. 2617. When any person shall have been removed from the guardianship of the person or estate of a ward, he shall not afterward be re-appointed to such guardianship.

ART. 2618. If a guardian die, resign or be removed, he or his legal representatives shall account for, pay and deliver to the person legally entitled to receive the same, all the property of every kind belonging to the estate of the ward at such time and in such manner as the court shall order, and in case of a refusal to comply with an order of the court to that effect, the same may be enforced by attachment and punishment as for contempt.

When guardian dies, etc., estate shall be accounted for and delivered, etc.  
*Ib.* §64.

ART. 2619. When a guardian succeeds a former guardian, he shall be required to account for all the estate which came into the hands of his predecessor, and shall be entitled to any order or remedy which the court has power to give, in order to enforce the delivery of the estate, and the liability of the sureties of his predecessor for so much as is not delivered. But such subsequent guardian shall be excused from accounting for such of the estate as he has failed to recover after the use of due diligence.

Subsequent guardian shall account for, what.  
*Ib.* §65.

ART. 2620. A subsequent guardian shall succeed to all the rights, powers and duties of his predecessor, and shall proceed with the guardianship in all respects as if it were a continuation of the same by the same guardian.

Subsequent guardian succeeds to, what.

## CHAPTER FOURTEEN.

### CLAIMS AGAINST THE ESTATE.

	Article	Article
Guardian may pay claim without authentication, when	2621	Order of approval or disapproval is a judgment
Claim shall not be allowed unless supported by affidavit, etc.	2622	Suit on disapproved claim
When claim is not founded on written instrument affidavit shall state facts, etc.	2623	Action of court shall be indorsed on claim
When claim belongs to corporation, who shall make affidavit.	2624	Lost claim may be proved, how
Affidavit by officer of corporation, executor, etc., shall state what.	2625	Claim held by guardian established, how
Affidavit may be made before what officers	2626	When a claim is said to be exhibited
Memorandum of allowance or rejection on claim	2627	When a claim is said to be established
Effect of failure to make memorandum	2628	When claims may be exhibited
Rejected claim, if not sued on in ninety days, barred	2629	Limitation is interrupted, how
Memorandum evidence	2630	Guardian shall not purchase claim
When claim is allowed, shall be presented, etc.	2631	Claim established by judgment shall be filed, etc.
Claims shall be examined, etc., by the court	2632	Costs incurred in exhibiting, etc., a claim, taxed, how
Appeal may be taken from action of court on claim	2633	Claim docket
Court shall hear evidence on claim	2634	Payment of claims
		Creditor may obtain order for payment of
		Execution shall issue against guardian, when
		Sureties on guardian's bond shall be cited, when
		Citation and judgment in such case
		Guardian may pay claim without authentication, when

ARTICLE 2621. A guardian may pay any claim against the estate of his ward which he knows to be just, without the authentication thereof.

ART. 2622. The guardian shall not allow, and the court shall not approve, any claim except as provided for in the preceding article, unless it be accompanied by an affidavit of the claimant "that the claim is just, that nothing has been paid or delivered toward the satisfaction of such claim, except what is mentioned or credited (if any), that there are no counter claims known to the affiant which have not been allowed, and that the sum claimed is justly due."

ART. 2623. Where the claim is not founded on an instrument in writing or an account, in addition to the statement required by the preceding article, the affidavit must state the facts upon which the claim is founded.

ART. 2624. When a claim belongs to a corporation, the cashier, treasurer or managing agent of such corporation shall make the affidavit required to authenticate it.

ART. 2625. When an affidavit authenticating a claim is made by an officer of a corporation, an executor, administrator, trustee, assignee, agent or attorney, it shall be sufficient to state in such affidavit "that he has made diligent inquiry and examination, and that he does verily

Guardian may pay claim without authentication, when.  
*Ib.* §95.  
Claim shall not be allowed unless supported by affidavit, etc.  
*Ib.* §154.

Where claim is not founded on written instrument, affidavit shall state facts.  
*Ib.* §155.  
When a claim belongs to a corporation, who shall make affidavit.  
*Ib.* §156.  
Affidavit by officer of corporation, executor, etc., shall state, what, etc.  
*Ib.* §157.

believe that nothing has been paid and delivered toward the satisfaction of such claim, except the amount credited (if any), that there are no counter claims which have not been allowed, and that the sum claimed is justly due.”

ART. 2626. The affidavit authenticating a claim may be made before any officer authorized to administer oaths.

Affidavit may be made, before what officers.  
(Act to adopt and establish R.C.S., passed Feb. 21, 1879.)

Memorandum of allowance or rejection on claim.  
*Ib.* §159.

ART. 2627. When a claim is presented to the guardian, properly authenticated, he shall indorse thereon or annex thereto a memorandum in writing signed by him, stating the time of its presentment and that he allows or rejects it, or what portion thereof he allows, if any.

Effect of failure to make memorandum.  
*Ib.* §160.

ART. 2628. The failure of a guardian to indorse on or annex to any claim presented to him, his allowance or rejection thereof, shall be deemed a rejection of such claim; and in such case the costs, if the claim be established, shall be adjudged against the guardian, to be paid out of his own estate.

Rejected claim, if not sued on in 90 days, barred.  
*Ib.* §162.

ART. 2629. When a claim or part thereof has been rejected by the guardian, the claimant, if he does not submit thereto, shall institute suit thereon within ninety days after such rejection, or the same shall be barred.

Memorandum evidence.  
*Ib.* §165.

ART. 2630. When a rejected claim is sued upon, the indorsement thereon or annexed thereto of its rejection, shall be taken to be true without proof, unless it be denied under oath.

When claim is allowed, shall be presented, etc.  
*Ib.* §161.

ART. 2631. After a claim has been presented to the guardian and allowed, the claimant shall present it to the clerk of the court in which the guardianship is pending, who shall enter it upon the claim docket.

Claims shall be examined, etc., by the court.  
*Ib.* §164.

ART. 2632. At each regular term of the court all claims which have been allowed and entered on the claim docket shall be examined by the court, and approved or disapproved in the same manner as is provided for claims against the estates of decedents.

Any person may contest claim.  
*Ib.* §166.

ART. 2633. Any person may appear and contest the approval of any claim or any part thereof, and shall be entitled to process to compel the attendance of witnesses and the production of testimony as in ordinary suits.

Court shall hear evidence on claim.  
*Ib.* §167.

ART. 2634. Although a claim be properly authenticated and allowed, if the court be not well satisfied it is just it shall send for persons and papers, and may examine the claimant and the guardian under oath and hear other evidence. If the court be not entirely convinced in such case by evidence other than the testimony of the claimant that the claim is just, it shall be disapproved.

Order of approval or disapproval is a judgment.  
*Ib.* §168.

ART. 2635. The order of approval or disapproval of a claim has the force and effect of a judgment.

Appeal may be taken from action of court on claim.

ART. 2636. When a claimant or any person interested in a ward shall be dissatisfied with the action of the court in approving or disapproving a claim in whole or in part, he may appeal therefrom to the district court as in the case of any other judgment rendered by said court.

Action of court shall be indorsed on claim, etc.

ART. 2637. When a claim is acted on by the court, the court shall indorse thereon or annex thereto a memorandum in writing, signed officially, stating the action of the court upon such claim, and shall also enter such action upon the claim docket.

Lost claim may be proved, how.  
*Ib.* §174.

ART. 2638. When a claim has been lost and can not be produced, the claimant may make an affidavit of the facts and present it to the guardian, with the same effect as the claim itself, but in such case the claim must be proved by competent testimony, other than such claimant's affi-

davit or oath, produced in court or taken by deposition, before it shall be approved by the court.

ART. 2639. A claim which the guardian held against the ward at the time of his appointment, or which has since accrued, is exhibited by being filed, verified by the affidavit of the guardian; after which it takes the same course as other claims. Claim held by guardian, established, how. *Ib.* §158.

ART. 2640. A claim is said to be legally exhibited—

1. When it is properly presented to the guardian, and after being allowed by him is filed. When a claim is said to be exhibited. *Ib.* §169.

2. When after being rejected suit is commenced thereon.

ART. 2641. A claim is said to be established—

1. When it has been allowed by the guardian and approved by the court. When a claim is said to be established. *Ib.* §170.

2. When in a suit thereon it has been sustained by the judgment of the proper court.

ART. 2642. Claims which have not been legally exhibited within the year may be exhibited at any time afterward before the estate is closed, or suit on such claims would be barred by the general law of limitation. When claims may be exhibited. *Ib.* §172.

ART. 2643. The general law of limitation is interrupted—

1. By filing a claim which has been allowed. Limitation is interrupted, how. *Ib.* §173.

2. By commencing a suit upon a rejected or disapproved claim within ninety days after such rejection or disapproval.

ART. 2644. It shall not be lawful for a guardian, either directly or indirectly, to purchase for his own use any claim against the estate of his ward, and upon proof to the satisfaction of the court of the violation of this provision, the court shall disapprove the claim. Guardian shall not purchase claim.

ART. 2645. When a claim has been established by judgment, a certified copy of such judgment shall be filed with the clerk of the court in which the guardianship is pending, and entered upon the claim docket as other claims are entered. Claim established by judgment shall be filed, etc. *Ib.* §164.

ART. 2646. The costs incurred in the exhibition and establishment of claims shall be taxed as follows: Costs incurred in exhibiting, etc., a claim, taxed, how. *Ib.* §190.

1. If a claim be allowed and approved, the estate shall pay the costs.

2. If a claim be allowed, but disapproved, the claimant shall pay the costs.

3. If a claim which has been rejected be established, the estate shall pay the costs.

ART. 2647. The claim docket required to be kept in estates of decedents shall be used also for the estates of wards, and under the same rules as far as applicable. Claim docket.

ART. 2648. It shall be the duty of the guardian to pay all claims against the estate of his ward that have been allowed and approved, or established by suit, as soon as practicable, and the court may at any time, either in term time or in vacation, by an order entered upon the minutes, direct the order in which the claims against the estate shall be paid, and the amount to be paid on each claim when the funds are not sufficient to pay them all in full. Payment of claims.

ART. 2649. Any creditor of the estate of the ward whose claim has been approved by the court, or established by judgment, may, upon application in writing to the court in which such guardianship is pending, at a regular term thereof, obtain an order for the payment of such claim, upon proof being made that there are funds in the hands of the guardian subject thereto, or if there be no funds or not sufficient for the payment of such claim, and if to await the receipt of funds from other sources would involve an unreasonable delay, an order shall be made for the sale of property of the estate sufficient to pay the debt. Creditor may obtain order for payment of claim. *Ib.* §96.

ART. 2650. If any guardian shall fail to pay any claim ordered by the court to be paid when demanded, upon affidavit of the demand and failure to pay being filed with the clerk of the court making such order, an Execution shall issue against guardian, when. *Ib.* §97.

execution shall be issued for the amount ordered to be paid such claimant, and for the costs of such proceeding against the property of such guardian.

Sureties on guardian's bond shall be cited, when, etc. *Ib.* §98.

ART. 2651. If the execution provided for in the preceding article be returned not satisfied, the sureties upon such guardian's bond may be cited to appear at a regular term of the court from which such execution issued, and show cause why judgment should not be rendered against them for such debt, interest and costs.

Citation and judgment in such case. *Ib.* §99.

ART. 2652. Citation in such case may be issued to any county in the state, and upon the return thereof duly served, if good cause to the contrary be not shown, the court shall render judgment against the sureties so served in favor of the claimant for the amount of the claim ordered to be paid as aforesaid, and remaining unpaid, and ten per cent. damages thereon together with interest and costs, and execution may issue thereon accordingly.

CHAPTER FIFTEEN.

GUARDIANSHIP OF PERSONS OF UNSOUND MIND AND HABITUAL DRUNKARDS.

Article	Article
County judge shall issue warrant on information.....	2653
Duty of county officer to file information, when.....	2654
Requisites of information.....	2655
Jury shall be impaneled.....	2656
Proceedings and trial.....	2657
If verdict is against defendant, guardian shall be appointed.....	2658
New trial may be granted.....	2659
Provisions as to minors apply to persons of unsound mind, etc.....	2660
Order for support of ward's family.....	2661
Husband or wife first entitled to guardianship.....	2662
When ward is furiously mad.....	2663
When insane person is not confined, or in charge of any one.....	2664
Who are liable to maintain persons of unsound mind.....	2665
Expenses of confinement to be paid, how.....	2666
County may recover back expenses paid.....	2667
Proceedings to discharge ward from guardianship.....	2668
Same subject.....	2669
Court may discharge from guardianship without jury, when.....	2670

County judge shall issue warrant on information. (Act Aug. 18, 1876, p. 187, §141.)

ARTICLE 2653. If information be given to the judge of the county court that any person in the county is of unsound mind, or is an habitual drunkard, and is without a guardian, such judge, if satisfied that there is good cause for the exercise of his jurisdiction, shall, either in term time or in vacation, issue a warrant to the proper officer commanding that such person be brought before him at a time and place to be named in such warrant.

Duty of county officer to file information, when.

ART. 2654. It shall be the duty of any county officer who may discover any person who resides in the county to be of unsound mind, and without a guardian, to file information thereof with the county judge of such county, who shall issue his warrant as provided in the preceding article.

Requisites of information.

ART. 2655. The information provided for in the two preceding articles shall be in writing, and shall state the name of the person charged with being of unsound mind or an habitual drunkard, if his name be known, and if unknown, such person shall be described, and that such person is of unsound mind, or is an habitual drunkard, as the case may be, to the best of the knowledge and belief of the informant, and such information shall be subscribed and sworn to by the informant before some officer of the county authorized to administer oaths.

Jury shall be impaneled.

ART. 2656. When the person charged is brought before the judge, he shall, either in term time or in vacation, cause to be impaneled a qualified jury to try the case and decide whether such person is of unsound mind, or is an habitual drunkard, as charged in the information.

Proceedings and trial.

ART. 2657. The case shall be docketed in the name of the county as plaintiff, and the person against whom the information is filed as defendant, and the proceedings and trial therein shall be governed by the same

rules and regulations that govern in ordinary suits in the county court, unless otherwise provided.

ART. 2658. If it be found by the jury that the defendant is of unsound mind, or is an habitual drunkard as charged, the court shall proceed immediately and without further notice to appoint a guardian of the person and estate of such defendant in the same manner as in the case of a minor.

If verdict is against defendant, guardian shall be appointed.  
*Ib.* §143.

ART. 2659. The court may, for good cause shown, at any time within ten days after the verdict has been returned, set aside such verdict and grant a new trial to either party; but when two juries have concurred in a case, the second verdict shall not be set aside.

New trial may be granted, when.  
*Ib.* §144.

ART. 2660. All the provisions of this title relating to the guardianship of the persons and estates of minors shall apply to the guardianship of the persons and estates of persons of unsound mind and habitual drunkards, in so far as the same are applicable and not inconsistent with any provision of this chapter.

Provisions as to minors apply to persons of unsound mind, etc.

ART. 2661. The court by which any person of unsound mind or habitual drunkard is committed to guardianship may make orders for the support of his family and the education of his children when necessary.

Order for support of ward's family.  
*Ib.* §177.

ART. 2662. If the person committed to guardianship is married, the husband or the wife of such person, as the case may be, shall be entitled first in order to the guardianship.

Husband or wife first entitled to guardianship.

ART. 2663. If any person shall be furiously mad, or so far disordered in his mind as to endanger his own person or the person or property of others, it shall be the duty of the guardian or other person under whose care he may be, and who is bound to provide for his support, to confine him in some suitable place until the first regular term of the county court of his county, when the court shall make such order for the restraint, support and safe-keeping of such ward as the circumstances may require.

When ward is furiously mad.  
*Ib.* §178.

ART. 2664. If any such person of unsound mind, as is specified in the preceding article, shall not be confined by those having charge of him, or if there be no person having such charge, any magistrate may cause such insane person to be apprehended and may employ any person to confine him in some suitable place until the county court shall make further order thereon, as provided in the preceding article.

When insane person is not confined or in charge of any one.  
*Ib.* §179.

ART. 2665. Where the person of unsound mind or habitual drunkard has no estate of his own, they shall be maintained—

Who are liable to maintain persons of unsound mind, etc.  
*Ib.* §180.

1. By the husband or wife of such person, if any, if able to do so.
2. By the father or mother of such person, if able to do so.
3. By the children and grandchildren of such person, if able to do so.
4. By the county in which said person has his residence.

ART. 2666. The expenses attending the confinement of an insane person shall be paid by the guardian out of the estate of the ward, if he has any estate, and if he has no estate such expense shall be paid by the person bound to provide for and support such insane person, and if not so paid the county shall pay the same.

Expenses of confinement to be paid, how.  
*Ib.* §181.

ART. 2667. In all cases of appropriations out of the county treasury for the support and confinement of any person of unsound mind or habitual drunkard, the amount thereof may be recovered by the county from the estate of such person, or from any person who, by law, is bound to provide for the support of such person, if there be any such person able to pay the same.

County may recover back expenses paid.  
*Ib.* §182.

ART. 2668. If any person shall allege in writing and under oath that a person who has been adjudged to be of unsound mind, or an habitual drunkard, has been restored to his right mind, or to correct, sober habits, as the case may be, the guardian of the person and of the estate of such ward shall be cited to appear before the county judge on a day and at a place named in such citation, either in term time or in vacation, and show cause why such ward should not be discharged from further guardianship, or the guardian may appear without such citation.

Proceedings to discharge ward from guardianship.  
*Ib.* §183.



Same subject.  
*Ib.*

ART. 2669. If the fact of such alleged restoration be doubtful, the court shall either in term time or in vacation, cause a qualified jury to be impaneled to try the issue as in the first instance, and if it be found by such jury that the ward has been restored to his right mind, or has reformed, he shall be discharged from guardianship by an order to that effect entered upon the minutes, and the guardian shall immediately settle his accounts and deliver up all the property remaining in his hands to such ward.

Court may discharge from guardianship without jury, when.  
*Ib.*

ART. 2670. If the fact of such alleged restoration be not doubtful, the court may, without the intervention of a jury, make the order discharging the ward from guardianship, as provided in the preceding article.

CHAPTER SIXTEEN.

NON-RESIDENT GUARDIANS AND WARDS.

	Article	Article
Non-resident guardian may obtain letters in this state, how.....	2671	Property shall not be removed until debts are paid, etc.....
Such guardian may remove property out of state, etc.....	2672	Benefits of this chapter shall not extend, etc.....
Resident executor, etc., may be ordered to deliver property.....	2673	2674 2675

Non-resident guardian may obtain letters in this state, how.  
(Act Aug. 18, 1876, p. 180, §70.)

ARTICLE 2671. Where a guardian and his ward are non-residents, such guardian may file in the county court of any county a full and complete transcript from the records of a court of competent jurisdiction where he and his ward reside, showing that he has been appointed and has qualified as guardian of the estate of such ward; which said transcript shall be certified by the clerk of the court in which the proceedings were had, under the seal of such court, if there be one, together with a certificate from the judge, chief justice or presiding magistrate of such court, as the case may be, that the attestation to such transcript is in due form; and upon the filing of such transcript the same may be recorded, and the guardian shall be entitled to receive letters of guardianship of the estate of such minor situated in this state, upon filing a bond with sureties, as in other cases, in double the amount of the estimated value of such estate.

Such guardian may remove property out of state, etc.  
*Ib.* §71.

ART. 2672. Upon the recovery of the property of the ward, if it be personal property, such guardian may remove the same out of the state, unless such removal would conflict with the tenure of such property, or the terms and limitations under which it is held; and if it be real property he may obtain an order for the sale of it and remove the proceeds; such sale shall be made, returned and acted upon by the court as other sales of real estate by a guardian.

Resident executor, etc., may be ordered to deliver property.  
*Ib.* §72.

ART. 2673. Any resident executor, administrator or guardian having any of the estate of such ward, may be ordered by the court to deliver the same to such non-resident guardian.

Property shall not be removed until debts are paid, etc.  
*Ib.* §73.

ART. 2674. There shall be no removal from the state of any of such property until all the debts known to exist against the estate have been paid, or the payment thereof secured by bond payable to the judge of the county court and approved by the clerk.

Benefits of this chapter shall not extend, etc.  
*Ib.* §74.

ART. 2675. The benefit of the provisions of this chapter shall not extend to the residents of any state, territory, district or country in which a similar law does not exist in favor of the residents of this state.

CHAPTER SEVENTEEN.

REMOVAL OF GUARDIANSHIP.

	Article		Article
Application to remove guardianship to another county.....	2676	Transcript to be made and transmitted by clerk, etc.....	2679
Citation to sureties in such case.....	2677	When order of removal shall take effect....	2680
Action of the court on application.....	2678	Guardianship when removed shall be proceeded with.....	2681

ARTICLE 2676. When a guardian desires to remove the transaction of the business of the guardianship from one county to another, he shall file in the court where such guardianship is pending a written application asking for authority to do so, and state in such application his reasons for desiring such removal.

Application to remove guardianship to another county. (Act Aug. 18, 1876, p. 185, §§117-18.)

ART. 2677. Upon the filing of such application the clerk shall issue citation to the sureties upon the bond of such guardian, citing them to appear at a regular term of the court, to be named in such citation, and show cause why such application should not be granted.

Citation to sureties in such case. *Id.* §118.

ART. 2678. Upon the hearing of the application, if no good cause be shown to the contrary, and if it appear that the removal of the guardianship would be to the interest of the ward, the court shall enter an order upon the minutes authorizing such removal upon the payment of all costs that have accrued.

Action of the court on application.

ART. 2679. When such order of removal has been made the clerk shall record all papers of the guardianship required to be recorded, and that have not already been recorded, and shall make out a full and complete certified transcript of all the orders, decrees, judgments and proceedings in such guardianship, and upon the payment of his fees therefor shall transmit such transcript, together with all the original papers in the case, to the clerk of the county court of the county to which such guardianship has been removed.

Transcript to be made and transmitted by clerk, etc.

ART. 2680. The order removing a guardianship shall not take effect until the transcript provided for in the preceding article has been filed in the office of the clerk of the county court of the county to which such guardianship has been ordered removed, and until a certificate of that fact from the clerk filing the same, under his official seal, has been filed in the court making such order of removal.

When order of removal shall take effect.

ART. 2681. When a guardianship has been removed from one county to another, in accordance with the provisions of this chapter, it shall be proceeded with in the court to which it has been removed as if it had been originally commenced in said court; but it shall not be necessary to record any of the papers in the case that have already been recorded in the court from which the same has been removed.

Guardianship when removed shall be proceeded with, how, etc.

CHAPTER EIGHTEEN.

FINAL SETTLEMENT.

	Article		Article
When guardianship shall be settled.....	2682	Guardian must produce vouchers, etc.....	2690
Guardian shall file account for final settlement, which shall show what.....	2683	Court shall appoint attorney to represent ward, when.....	2691
Guardian may be cited to make final settlement, etc.....	2684	Debts that could not be collected to be excluded.....	2692
Citation, when account is filed.....	2685	Labor or service of ward to be accounted for, etc.....	2693
Same subject.....	2686	Guardian may be attached, etc., when.....	2694
Same subject.....	2687	Proceedings when guardian fails to deliver judgment in such case.....	2695
Action of court upon account.....	2688		
Account shall be re-stated, when.....	2689		

ARTICLE 2682. When the ward dies, or if a minor arrives at the age of twenty-one years, or if a female marries, or if a person of unsound mind or habitual drunkard is restored and discharged from guardianship,

When guardianship shall be settled.

the guardianship shall be immediately settled and closed and the guardian discharged, as provided in the following articles of this chapter.

Guardian shall file account for final settlement, which shall show, what.

ART. 2683. The guardian shall file with the clerk of the court in which the guardianship is pending his account for final settlement of such guardianship, which account shall show fully and completely—

1. The property, rents, revenues and profits received by the guardian and belonging to his ward during his guardianship.

2. The disposition made of such property, rents, revenues and profits.

3. The expenses and debts, if any, against the estate remaining unpaid.

4. The property of the estate remaining in the hands of such guardian, if any.

5. Such other facts as may be necessary to a full and definite understanding of the exact condition of the guardianship.

6. Such account shall be subscribed and sworn to by the guardian before some officer authorized to administer oaths.

Guardian may be cited to make final settlement, etc.

ART. 2684. Should the guardian fail to file his account for final settlement at the proper time, the court shall, upon its own motion, or upon the complaint in writing of any one interested in the estate, cause such guardian to be cited to appear at a regular term of the court and file such account.

Citation when account is filed

ART. 2685. Upon the filing of an account for final settlement, the clerk shall, if the ward be living and resident in the state, and his residence be known, issue a citation notifying such ward of the filing of such account, and of the term of the court at which the same will be acted upon, and that he may appear and contest such account, if he see proper to do so.

Same subject.

ART. 2686. If the ward be not living, but there is an executor or administrator of his estate legally qualified, such executor or administrator shall be cited, as provided in the preceding article.

Same subject.

ART. 2687. If the ward be not living, and there be no executor or administrator of his estate, or if the ward be a non-resident of the state, or if his residence be unknown, citation shall be published once a week for three successive weeks, in some newspaper published in the county, if there be one regularly published therein; if not, then such citation shall be duly posted for at least twenty days before the return term thereof.

Action of court upon account.

ART. 2688. After citation has been duly served, the court shall proceed to examine the account for final settlement, and to hear all exceptions and objections thereto, if any, and the evidence in support of or against such account, and if the same is found to be fair, just and correct, an order shall be entered upon the minutes approving it, and directing the guardian to deliver the estate remaining in his hands to the ward or other person legally authorized to receive the same, and upon compliance with such order the guardian shall be discharged, and such guardianship closed by an order to that effect entered upon the minutes.

Account shall be re-stated, when.

ART. 2689. Should the account be found to be incorrect in any particular, the court shall cause the same to be corrected and re-stated, and make such order in relation thereto as may be necessary to a full and fair settlement of the guardianship.

Guardian must produce vouchers, etc.

ART. 2690. The guardian must produce and file proper vouchers for every item of credit claimed by him in his account, or support the same by other satisfactory evidence.

Court shall appoint attorney to represent ward, when.

ART. 2691. When the ward is dead and there is no executor or administrator of his estate, or when the ward is a non-resident, or his residence is unknown, the court shall appoint an attorney to represent the interest of such ward in the final settlement with the guardian, and shall allow such attorney reasonable compensation for his services out of the ward's estate.

Debts that could not be collected to be excluded.  
Ib. §130.

ART. 2692. In the settlement of the account of the guardian all debts due the estate which the court is satisfied could not have been collected by due diligence, and which have not been collected, shall be excluded from the computation.

ART. 2693. In the settlement of any of the accounts of the guardian he shall account for the reasonable value of the labor or services of his ward, or the proceeds thereof, if any such labor or services have been rendered by such ward, and the guardian shall be entitled to reasonable credits for the board, clothing and maintenance of his ward.

Labor or services of ward to be accounted for, etc.

ART. 2694. When a guardian who has been ordered by the court, upon final settlement, to deliver the estate to the ward or other person legally authorized to receive the same, fails to obey such order, he may be attached and punished as for a contempt of court.

Guardian may be attached, etc., when.

ART. 2695. When a guardian who has been ordered by the court, upon final settlement, to deliver the estate to the ward, or other person legally authorized to receive the same, or to pay any amount adjudged by the court to be due by him to the estate of his ward, and fails to obey such order, upon complaint in writing by the ward or other person legally entitled to receive such estate or money, the sureties upon the bond of such guardian shall be cited to appear at a regular term of the court and show cause why judgment should not be rendered against them for the value of such estate, or for such money, together with ten per cent. damages on the same, and interest and costs.

Proceedings when guardian fails to deliver estate.

ART. 2696. Upon the hearing of the complaint provided for in the preceding article, if no good cause to the contrary be shown, the court shall render and enter a judgment in favor of such complainant against the guardian and the sureties upon his bond that have been cited, for the full value of the estate which said guardian has failed to deliver, and for the full amount of money which the guardian has been adjudged to be indebted to the estate, and for ten per cent. damages on the same, together with interest and all costs of the proceeding, and execution shall issue to enforce such judgment. It shall not be necessary before rendering judgment against the guardian under this article that he shall have been cited.

Judgment in such case.

## CHAPTER NINETEEN.

### COMPENSATION OF GUARDIANS, EXPENSES AND COSTS OF GUARDIANSHIP.

	Article		Article
Guardian of person receives no pay.....	2697	Costs shall be adjudged against applicant, when.....	2703
Commissions of guardian.....	2698	In proceedings against persons of unsound mind, etc.....	2704
Extra compensation, when allowed.....	2699	Same subject.....	2705
Expenses incurred to be allowed.....	2700	Cost laws apply to guardianships.....	2706
Pay of appraisers.....	2701		
Costs shall be adjudged against guardian, when.....	2702		

Guardian of person receives no pay. (Act Aug. 18, 1876, p. 187, §189.)

Commissions of guardians. *Id.* §40.

ARTICLE 2697. The guardian of the person alone is entitled to no compensation.

ART. 2698. The guardian of the estate is entitled to five per cent. on all sums that he actually receives or pays away in cash, but this shall not be construed to include money on hand at the time of the commencement of the guardianship, or money received or paid over on the settlement of a guardianship.

ART. 2699. If the guardian manages a farm, plantation, manufactory or other business of his ward, the court may allow him a reasonable compensation for such services.

Extra compensation, when allowed. *Id.*

ART. 2700. All necessary and reasonable expenses incurred by the guardian in the preservation and management of the ward's estate, and in the collecting or attempting to collect claims or debts due the ward, and in recovering or attempting to recover property to which the ward has a title or claim, and all reasonable attorneys' fees necessarily incurred in the management of such guardianship, shall be allowed the guardian,

Expenses incurred to be allowed. *Id.* §131

to be paid out of the estate on satisfactory proof thereof being made to the court.

Pay of appraisers.

ART. 2701. Appraisers appointed by the court to appraise the property of the ward shall be allowed two dollars each for every day that they are necessarily engaged in the performance of such duty, to be paid out of the estate.

Costs shall be adjudged against the guardian, when.

*Ib.* §191.

ART. 2702. In all cases where the guardian shall neglect the performance of any duty required of him, and shall be cited to appear before the court on account thereof, he shall pay all costs of such proceeding out of his own estate, and the court shall adjudge the same against him.

Costs shall be adjudged against applicant, when.

*Ib.* §192.

ART. 2703. In all cases where a party shall make any application or opposition, and on the trial thereof he shall be defeated, all costs occasioned by such application or opposition shall be adjudged against such party by the court.

In proceedings against persons of unsound mind, etc.

*Ib.* §195.

ART. 2704. When any person is found to be of unsound mind, or to be an habitual drunkard, the cost of the proceeding shall be paid out of his estate, or if his estate be insufficient to pay the same, such costs shall be paid out of the county treasury, and the judgment of the court shall be accordingly.

Same subject.

*Ib.*

ART. 2705. If the defendant, in the case mentioned in the preceding article, be discharged, the person at whose instance the proceeding was had shall pay the costs of such proceeding, unless the informant be an officer, acting in his official capacity in filing the information, in which case the costs shall be paid out of the county treasury.

Cost laws apply to guardianships.

*Ib.* §189.

ART. 2706. The provisions of law regulating costs and security therefor, shall apply to matters of guardianship, where the same are not expressly provided for in this title.

## CHAPTER TWENTY.

### APPEAL, BILL OF REVIEW AND CERTIORARI.

	Article	Article
Right of appeal.....	2707	Appeal suspends decision, etc., without bond, when.....
Notice of appeal.....	2708	2713
Transcript on appeal.....	2709	Judgment of district court shall be entered of record, etc.....
Several appeals may be embraced in same transcript, when.....	2710	2714
Transcript shall be made out, etc., within what time.....	2711	Judgment dismissing appeal, etc.....
Appeal shall not suspend decision, etc., unless, etc.....	2712	2715
		Appeal shall be tried <i>de novo</i> .....
		2716
		Bill of review may be brought.....
		2717
		Certiorari.....
		2718

Right of appeal. (Act Aug. 18, 1876, p. 192, §197.)

ARTICLE 2707. Any person who may consider himself aggrieved by any decision, order or judgment of the court, or by any order of the judge thereof, may appeal to the district court as a matter of right, without bond.

Notice of appeal. *Ib.* §198.

ART. 2708. An appeal is taken by causing an entry of notice thereof to be made on the record during the term at which such decision, order or judgment is entered; or if such decision, order or judgment be made in vacation, by causing the entry of such notice to be made before the close of the next regular term of the court thereafter.

Transcript on appeal. *Ib.* §199.

ART. 2709. When notice of appeal has been given, a certified transcript of the proceedings shall be made out by the clerk and transmitted to the district court of the county; such transcript shall not contain any thing that does not relate to the decision, order or judgment appealed from.

Several appeals may be embraced in same transcript, when. *Ib.*

ART. 2710. When notice of appeal has been given by the same person from more than one decision, order or judgment of the court in the same guardianship, at the same term, all of the appeals may be embraced in the same transcript.

ART. 2711. If there be not time to make out such transcript before the first day of the next term of the district court, after such appeal is taken, it shall be transmitted to such court within sixty days after such appeal is taken.

Transcript shall be made out, etc., within what time.  
*Ib.* §200.

ART. 2712. The appeal shall not suspend the decision, order or judgment, except in the cases mentioned in the succeeding article, unless the appellant, within twenty days after the entry of notice of appeal, shall file a bond in an amount fixed by the court at the time of entry of appeal, signed by two or more good and sufficient sureties, payable to and approved by the clerk, conditioned that the appellant shall perform the orders and judgment which the district court may make therein, in case the decision be against him.

Appeal shall not suspend decisions, etc., unless, etc.  
*Ib.* §201.

ART. 2713. An appeal suspends the decision, order or judgment, without bond—

Appeal suspends decision, etc., without bond, when.  
*Ib.* §202.

1. When taken by a claimant from the disapproval of his claim.

2. When taken by the guardian or trustee, except where the controversy is respecting the rights of guardianship or the settlement of an account.

ART. 2714. When a certified copy of the judgment of the district court in the case is received, it shall be entered of record upon the minutes of the county court as the judgment of such county court.

Judgment of district court shall be entered of record, etc.  
*Ib.* §203.

ART. 2715. Where a certified copy of the judgment of the district court dismissing an appeal or quashing a supersedeas is received, it shall be entered of record on the minutes of the county court, and the decision, order or judgment of the county court which was appealed from shall stand as if no appeal or supersedeas had been taken or obtained.

Judgment dismissing appeal, etc.  
*Ib.* §204.

ART. 2716. Appeals from the decision, order or judgment of the county court or county judge to the district court in cases of guardianship, shall be tried in the district court *de novo*, and the judgment of the district court therein shall be certified to the county court to be carried into effect.

Appeal shall be tried *de novo*.  
(Act May 13, 1846.)  
F.D. 1460.

ART. 2717. Any person interested may, by a bill of review filed in the court in which the proceedings were had, have any decision, order or judgment rendered by such court, or by the judge thereof, revised and corrected on showing error therein. But no process or action under such decision, order or judgment shall be stayed except by writ of injunction.

Bill of review may be brought.  
*Ib.* §205.

ART. 2718. Any person interested may also have any decision, order or judgment of the county court or county judge revised and corrected by writ of certiorari from the district court, under the same rules and regulations as are provided in estates of decedents.

Certiorari.

TITLE XLVIII.

Heads of Department.

NOTE.—Chapter 137, acts 1879, requires the employés in the several departments of the state government to labor nine hours each secular day, under such regulations as shall be prescribed by the heads of departments; and it is made the duty of the chief officers of the several departments to establish rules and regulations in conformity to the requirements of the act.—L.

CHAPTER ONE.

SECRETARY OF STATE.

	Article		Article
His appointment and term of office.....	2719	Reports, how distributed.....	2725
Shall register acts of the governor.....	2720	Laws of the state, to whom distributed....	2726
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Shall receive and bind enrolled bills, etc. . . .	2722	Shall distribute U. S. laws, how.....	2732
Shall forward laws, etc., to foreign officials 2723		May appoint chief and other clerks.....	2733
Disposition of books received by him.....	2724	Chief clerk may act, when.....	2734

His appointment and term (Const., art. 4, §21.) (Act May 9, 1846.)

O. & W. 1818. Shall register governor's acts.

Ib. §2. O. & W. 1819.

His general duties.

Ib. §3. O. & W. 1820.

ARTICLE 2719. A secretary of state shall be appointed by the governor by and with the advice and consent of the senate, and shall be continued in office during the term of service of the governor by whom he was appointed.

ART. 2720. He shall keep a fair register of all the official acts of the governor, and when required shall lay the same and all minutes and other papers in relation thereto before the legislature, or either branch thereof.

ART. 2721. He shall keep his office at the seat of government or other place where the sessions of the legislature may be held; he shall, in a separate book suitable for the purpose, keep a complete register of all the officers appointed and elected in the state, and commission the same when not otherwise provided for by law; he shall, in books to be kept in his office, exclusively for the purpose, record depositions and affirmations required by law to be made by resident aliens desirous of holding real estate in this state; he shall arrange and preserve all the books, maps, parchments, records, documents, deeds, conveyances and other papers belonging to the state that have been or may be properly deposited there, and sealed with the seal of the state, and also similar copies of any act, law or resolution of the United States, or either of them, from the originals in his office; which copies shall be as legal and conclusive in evidence and to all intents and purposes in the courts of this state as the originals would have been; and he shall, when required, furnish the governor, the legislature, or either branch thereof, with such copies, and shall affix the seal of the state to all certificates of official character that may emanate from his office.

NOTE.—Chapter 15, acts 1879, requires the department of state to charge and collect the following fees:

For every railroad, street railway, or telegraph line, charter or amendment or supplement thereto, filed in said department, one hundred dollars.

For every charter or amendment thereto, of a private corporation to further religious, benevolent, educational, literary, scientific or charitable objects, five dollars.

For charter, or amendment thereto, of private corporation, for other purposes, twenty-five dollars.

For each commission to any notary public, or any officer, state, county or precinct, commissioned by the governor, to be paid before delivery of the commission, two dollars.

For every official certificate, one dollar.—L.

For commissions to certain officers.

For official certificates.

ART. 2722. He shall attend at every session of the legislature for the purpose of receiving bills which have become laws, and immediately after the close thereof shall cause all such bills and all the enrolled joint resolutions of the legislature to be bound together in a volume to be kept in his office, and the date of the session to be written or stamped thereon, a certified copy of which he shall deliver to the public printer, together with an index of the same, and he shall carefully examine and compare the printed copy with the certified copy and correct all the errors contained in the former.

Shall receive and bind enrolled bills, etc  
*Id.* §4.  
 O. & W. 1821.

ART. 2723. The secretary of state shall forward to the librarian of congress, to the secretary of state of the United States, to the secretary of the treasury of the United States, to the executive departments of all the states of the Union, to each foreign librarian or government with whom a system of literary exchange may be established, and to such associations and societies for the promotion of the arts and sciences as he may deem advisable, copies of all laws, judicial reports, maps, charts and other productions of a literary, scientific or political character printed or published by order of the legislature or at the expense of the state.

Shall forward laws, etc., to certain foreign officials.  
 (Act March 20, 1848.)  
 O. & W. 1825.

ART. 2724. The secretary of state shall turn over to the person in charge of the state library, immediately upon their receipt, all books, maps, charts or other publications of a political or miscellaneous character received at his office; and he shall in like manner turn over to the librarian of the supreme court, at the capitol, all volumes of reports of the courts of any other state or territory received by him. All printed volumes of the statutes or laws of any other nation, state or territory, the secretary of state shall deposit in his office, subject to the inspection and use of all officers of the state government and both branches of the legislature.

Disposition of books received.

ART. 2725. The secretary of state shall deliver, by mail or otherwise, to each justice of the supreme court, each judge of the court of appeals, the circuit and district judges of the United States for the districts of Texas, the attorney-general, and to each district judge in the state, a copy of each volume of the reports of the supreme court or court of appeals hereafter issued; and shall also forward to the county judge of each county two volumes of each of said reports hereafter issued, one copy of which shall be deposited in the office of the clerk of the district court, and the other in the office of the clerk of the county court, for the use of said courts respectively.

Reports, how distributed.  
 (Acts Feb. 2, 1850, p. 99, §2.)  
 P. D. 4583-4.

ART. 2726. The following officers shall be entitled to receive one copy each of all general and special laws hereafter passed by the legislature, to wit: The governor and heads of departments, the judges of the several courts throughout the state, and the clerks of said courts, each district or county attorney, justice of the peace, notary public, county commissioner, sheriff, constable, assessor of taxes, collector of taxes, county treasurer, county surveyor, inspector of hides and animals, and each member of the legislature.

Laws of the state, to whom distributed.  
 (Acts May 9, 1846, p. 189, §5; Feb. 2, 1850, p. 99, §3.)  
 P. D. 4581, 4586.

ART. 2727. The secretary of state shall distribute the printed laws of each session of the legislature to the officers named in the preceding article, as follows: He shall mail or deliver in person to the governor and heads of department, and to all state or district officers, a copy each, as therein provided; and he shall forward to the county judge of each county a sufficient number of said laws to supply each county officer named in the preceding article with a copy.

How distributed.  
 (Act Feb. 2, 1850, p. 99, §3.)  
 P. D. 4585.



Legislative journals, how distributed.

*Ib.* §4.  
P.D. 4586.

ART. 2728. He shall distribute to the governor and heads of department, and to each member of the legislature, a copy of the printed journals of both houses; and he shall also forward to the county judge of each county two copies of said journals, one to be deposited in the office of the clerk of the district court and the other in the office of the clerk of the county court, for the use of said courts respectively.

Digest of laws, how distributed.

*Ib.* §5.  
P.D. 4587.

ART. 2729. Whenever a digest or revision of the laws of the state has been, or shall be subscribed for, or published by the state, a sufficient number of copies of each volume thereof shall be forwarded to the county judge of each county, to furnish one of said copies to each judge of the supreme and district courts, or court of appeals, to each clerk of the supreme, district and county courts, and court of appeals, and to each justice of the peace that may be a resident in said county; and it shall be the duty of said county judge to deliver one copy of each of said volumes to each of said officers that may reside in said county.

Executive officers entitled to copies.

*Ib.* §7.  
P.D. 4589.

ART. 2730. The secretary of state shall also deliver to each of the executive officers at the seat of government one copy of each volume of any edition of a digest or revision of the laws of the state, whether such books shall be subscribed for or published by the state, which shall belong to said office; and the officer receiving any such volume shall be bound to deliver it to his successor, and shall be liable to pay his successor the costs and charges that may be necessary to supply the office with any book he may neglect so to deliver.

Officers shall receipt for books.

*Ib.* §6.  
P.D. 4588.

ART. 2731. Whenever any officer shall receive a copy of any report, statute, digest or journal, he shall receipt for the same to the officer distributing it, who shall file such receipt in his office; and said books shall be deemed to belong to the office of said officer to whom they are delivered, and shall, at all reasonable hours, be subject to the inspection and examination of any citizen of this state; and should any of said officers fail or refuse to deliver any of said books to his successor in office when demanded by him, the officer so failing or refusing shall be liable to pay such successor the costs and charges that may be necessary to supply the office of such successor with any of said books that he shall so fail or refuse to deliver.

Shall distribute U. S. laws. (Act May 9, 1846, p. 189, §6.)  
P.D. 4582.

ART. 2732. The secretary of state shall forward to the clerk of the county court of each county, for the use of the county, one copy of all the acts of the congress of the United States which may be received in his office.

May appoint chief and other clerks.

ART. 2733. The secretary of state shall appoint a chief clerk, and such number of assistant clerks as may be authorized by law, each of whom shall receive such compensation as may from time to time be fixed by appropriation.

Chief clerk may act, when.

*Ib.* §7.  
P.D. 5094.

ART. 2734. In the absence of the secretary of state, or his inability to act from any cause, the chief clerk may perform all the duties required by law of that officer.

CHAPTER TWO.

COMPTROLLER OF PUBLIC ACCOUNTS.

Article		Article
2735	His election and term of office.....	2750
2736	Vacancies, how filled.....	2751
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	Monthly reports to treasurer.....	
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	Shall furnish forms and prescribe tax regulation.....	
	To furnish collectors lists of land bid off to the state and unredeemed.....	
	And publish the same.....	
	Illegal assessments may be remitted.....	
	His accounts, how approved.....	
	State obligations to be deposited in his office.....	
	Annual accounts, when closed.....	
	Annual report to the governor.....	
	Chief clerk, and his duties.....	
	Shall turn over to successor.....	

ARTICLE 2735. There shall be elected by the qualified voters of this state, at the time and places of election for members of the legislature, a comptroller of public accounts, who shall hold his office for the term of two years and until the election and qualification of his successor.

His election and term of office. (Const., art. 4, §2.)

ART. 2736. In case of a vacancy in the office of comptroller of public accounts, the governor shall fill the same by appointment for the unexpired term, which appointment shall be submitted to the senate for confirmation, if in session.

Vacancies, how filled.

ART. 2737. The comptroller shall within twenty days after he shall have received notice of his election, and before he enters upon the duties of his office, give a bond, payable to the governor and his successors in office, for the use of the state, in the sum of seventy-five thousand dollars, with not less than six good sureties, to be approved of by the governor, conditioned that he will faithfully execute the duties of his office; and shall take and subscribe to the oath prescribed by the constitution, which, together with the bond, shall be deposited in the office of the secretary of state, which said bond shall not be void on the first recovery of part or of the whole of the penalty; and shall thereafter continue in force for the whole amount of the penalty thereof, and may be sued on from time to time, and shall be deemed to extend to the faithful performance of the duties of his trust until his successor shall be duly qualified, and shall have entered upon the duties of his office.

His bond and oath. (Act April 11, 1846, p. 68, §1.) P.D. 5413.

ART. 2738. He shall procure, at the expense of the state, a seal with the words "Comptroller's Office, State of Texas," engraved around the margin, and a star with five points, in the center thereof, which shall be used as the seal of the comptroller's office in the authentication of all his official acts, except warrants drawn on the treasurer of the state.

Seal of office. *Ib.* §18. P.D. 5430.

ART. 2739. It shall be the duty of the comptroller of public accounts to superintend the fiscal concerns of the state, and manage the same in the manner required by law; he shall also perform such official acts as were required of the secretary of the treasury under the Republic of Texas, when not otherwise provided for by law.

His general duties. *Ib.* §2. P.D. 5414.

ART. 2740. He shall keep and state all accounts between this state and the United States, and all other accounts in which the state is interested, and suggest plans for the improvement and management of the public revenue.

To keep all accounts of state. *Ib.* §4. P.D. 5416.

ART. 2741. He shall examine and settle the accounts of all persons indebted to the state, and certify the amount or balance to the treasurer, and direct and superintend the collection of all moneys due the state.

Shall settle accounts and superintend collections. *Ib.* §5. P.D. 5417.

ART. 2742. He shall require all accounts presented to him for settlement, not otherwise provided for by law, to be certified to by affidavit, taken before some officer authorized to administer oaths, touching the

Certain accounts to be verified. *Ib.* §13. P.D. 5425.

- correctness of the same, or by oath or affirmation, which may be administered by himself in any case in which he may deem it necessary.
- ART. 2743.** He shall require all persons who shall have received any moneys belonging to the state, and shall not have accounted therefor, to settle their accounts; and shall, from time to time, require all persons receiving moneys, or having the disposition or management of any property of the state, of which an account is kept in his office, to render statements thereof to him.
- ART. 2744.** He shall audit the claims of all persons against the state in cases where provisions for the payment thereof have been made by law, unless the auditing of any such claims shall be otherwise specially provided for.
- NOTE.**—By section 1, chapter 35, acts 1879, extra session, all sheriffs, attorneys, and all other persons holding claims against the state for which no warrants have been issued and the appropriation for which has been exhausted, shall present the same to the comptroller for his consideration at least thirty days before each regular session of the legislature.
- And by sections 2 and 3 the comptroller is authorized and directed to audit no claim not presented in the above time until all claims presented prior thereto have been passed upon by him, and to keep a book and register therein all audited claims against the state, and make a minute report of the same to the two houses on the meeting of the regular session of the legislature.—L.
- ART. 2745.** He shall draw warrants on the treasurer for the payment of all moneys directed by law to be paid out of the treasury; and no warrant shall be drawn unless authorized by law; and every warrant shall refer to the law under which it is drawn, and no warrant shall be issued in favor of any person, or the agent or assignee of any person indebted to the state, until such debt be paid.
- ART. 2746.** He shall number each and every warrant he shall draw upon the treasurer of the state; the numbers shall begin with one, at the commencement of each fiscal year, and proceed progressively to the end thereof; they shall specify on what particular account they are drawn; and he shall take a receipt for every such warrant from the person receiving the same, to be deposited in the files of his office.
- ART. 2747.** The comptroller of public accounts, when satisfied that any original warrant drawn upon the state treasurer has been lost, or when any certificate or other evidence of indebtedness approved by the auditorial board of the state has been lost, is authorized to issue a duplicate warrant in lieu of the original warrant, or a duplicate or a copy of such certificate or other evidence of indebtedness in lieu of such original.
- ART. 2748.** No such duplicate warrant or other evidence of indebtedness shall issue until the applicant has filed with the comptroller his affidavit stating that he is the true owner of such instrument, and that the same is in fact lost or destroyed, and shall also file with the comptroller his bond in double the amount of the claim, with two or more good and sufficient sureties, payable to the governor, to be approved by the comptroller, and conditioned that the applicant will hold the state harmless and return to the comptroller upon demand being made therefor, such duplicates or copies, or the amount of money named therein, together with all costs that may accrue against the state, on collecting the same.
- ART. 2749.** If, after the issuance of said duplicate or copy, the comptroller should ascertain that the same was improperly issued, or that the applicant or party to whom the same was issued was not the owner thereof, he shall at once demand the return of said duplicate or copy, if unpaid, or the amount paid out by the state, if so paid; and upon the failure of the party to return the same, or the amount of money called for, suit shall be instituted upon said bond in the court having jurisdiction of the amount in controversy, in the city of Austin, Travis county, Texas.
- Shall require settlements.  
*Ib.* §7.  
P.D. 5419.
- Shall audit claims against state.  
*Ib.* §6.  
P.D. 5418.
- To audit claims when appropriation is exhausted.
- To register and report them to legislature.
- Shall draw warrants on treasurer.  
*Ib.* §8.  
P.D. 5420.
- Warrants to be numbered.  
*Ib.* §10.  
P.D. 5422.
- If warrant is lost duplicate may issue.  
(Act Aug. 21, 1876, p. 281, §1.)
- Pre-requisites to such issuance.  
*Ib.*
- If duplicate be improperly issued.  
*Ib.* §2.

ART. 2750. He shall furnish the treasurer of the state, at the close of every month, with a report specifying the warrants that have been drawn during each month, their numbers, their several amounts and the names of the persons to whom payable.

Monthly reports to treasurer.  
P.D. 5423.

ART. 2751. The comptroller shall examine the disbursements of the treasurer at the end of each quarter, and shall, together with the treasurer, cancel the warrants which have been paid, in such manner as to prevent their future circulation, and shall examine if the receipts acknowledged by the treasurer during the quarter correspond with the deposits, and if the balance of money reported to be in his possession is actually in his hands.

Quarterly examination of treasury.  
(Act April 11, 1846, p. 63, §20.)  
P.D. 5432.

ART. 2752. He shall prescribe and furnish the forms to be used by all persons in the collection of the public revenue, and the mode and manner of keeping and stating their accounts, and shall adopt such regulations not inconsistent with the constitution and laws as he may deem essential to the speedy and proper assessment and collection of the revenues of the state.

Shall furnish forms and prescribe tax regulations.  
Ib. §12.  
P.D. 5424.

NOTE.—Section 1, chapter 70, Acts 1879, provides that "It shall be the duty of the comptroller of public accounts, on or before the first day of each year, to make out and forward to the collector of taxes in each county of the state a full and complete list of all real estate situated in said county that has been previously, at tax sales, bid off to the state for taxes assessed in the county where the land is situated, since the thirty-first day of December, 1876, the owners of which have failed to redeem the same within two years from the date of said sale, by payment or tender of payment to the proper officer of double the amount of taxes and costs for which said real estate was bid off to the state, together with all subsequent taxes that have become due on the same, from the date of sale to the last date on which the same could have been redeemed." See appendix.—L.

To furnish collectors lists of land bid off to the state and not redeemed within two years.

ART. 2753. The comptroller shall, from time to time, cause to be published at the expense of the state, in one or more of the newspapers printed therein, such instruction relating to the payment of moneys due this state, or the duties to be performed by the assessors and collectors thereof, as he may deem necessary.

And publish the same.  
Ib. §16.  
P.D. 5428.

ART. 2754. He shall remit or make an allowance to every tax collector in the auditing of his accounts for all sums of money which in his judgment have been illegally assessed.

Illegal assessments may be remitted.  
Ib. §14.  
P.D. 5426.

ART. 2755. The account of the comptroller against the state shall not be passed to the treasurer until approved by the secretary of state.

His accounts, how approved.  
Ib. §15.  
P.D. 5427.

ART. 2756. All liens, mortgages, bonds and other sureties for money given to this state, or any officer, and being for the use of the state, unless otherwise specially directed, shall be deposited in the office of the comptroller.

State obligations to be deposited in his office.  
Ib. §17.  
P.D. 5429.

ART. 2757. The accounts of the comptroller shall be annually closed on the last day of August, and he shall exhibit all books, papers, vouchers, and all other matters pertaining to his office, for the examination of either branch of the legislature, or any committee which may be by them appointed, whenever required by them so to do.

Annual accounts, when closed.  
Ib. §19.  
P.D. 5431.

ART. 2758. In addition to the reports required by the constitution the comptroller shall exhibit to the governor on the first Monday of November of each year, and at such other times as he shall require, an exact and complete statement of the funds of the state, of its revenues, and of the public expenditures during the preceding year (or for such other time as may be required), with a detailed estimate of the expenditures to be defrayed from the treasury for the ensuing year, specifying therein each object of expenditure, and distinguishing between such as are provided for by special or general appropriations and such as are required to be provided for by law, and showing the means from which such expenditures are to be defrayed.

Annual report to the governor.  
Ib. §3.  
P.D. 5415.

Chief clerk and his duties. (Act Feb. 10, 1852, p. 83.) P.D. 5432.

ART. 2759. The comptroller shall appoint a chief clerk who, before entering upon the duties of his office, shall be required to take the oath prescribed by the constitution, and give bond in the sum of ten thousand dollars, payable in like manner as the bond of the comptroller, conditioned for the faithful performance of his duties, whose duty it shall be to keep the books of said office, and discharge the duties of the comptroller whenever said office may become vacant by death, resignation or otherwise, or when the comptroller may be unavoidably absent, or incapable from sickness to discharge said duties.

Shall turn over to successor. (Act April 11, 1846, p. 68.) P.D. 5421.

ART. 2760. The comptroller of public accounts shall preserve the books, records, papers and other things belonging to his office, and deliver the same without injury or damage to his successor.

### CHAPTER THREE.

#### STATE TREASURER.

	Article		Article
His election and term of office .....	2761	How accounts shall be kept .....	2769
Vacancies, how filled .....	2762	An account for each appropriation .....	2770
His oath and bond .....	2763	Shall make an annual exhibit to the governor .....	2771
New bond may be required .....	2764	Public moneys, and that only, to be kept in the treasury .....	2772
Failure to give new bond .....	2765	May appoint chief clerk, book-keeper, etc. ....	2773
Shall receive moneys on warrant of comptroller .....	2766	Chief clerk may act, when and how .....	2774
How money is to be paid out .....	2767	Shall turn over to his successor .....	2775
Shall keep strict accounts .....	2768		

His election and term of office. (Const., art. 4, §2.)

ARTICLE 2761. There shall be elected by the qualified voters of the state, at the time and place of election for members of the legislature, a state treasurer, who shall hold his office for the term of two years, and until the election and qualification of his successor.

Vacancies, how filled.

ART. 2762. Should a vacancy occur in the office of state treasurer, the governor shall fill the same by appointment for the unexpired term, which appointment shall be submitted to the senate, if in session, for confirmation.

His oath and bond. (Act March 19, 1846, p. 10, §1.) P.D. 5382.

ART. 2763. The state treasurer shall, within twenty days after he shall have received notice of his election, and before he enters upon the duties of his office, give a bond payable to the governor and his successors in office, for the use of the state, in the sum of seventy-five thousand dollars, with no less than six good sureties, to be approved of by the governor, conditioned that he will faithfully execute the duties of his office; and shall take and subscribe the oath prescribed by the constitution, which, together with the bond, shall be deposited in the office of the secretary of state; which said bond shall not be void on the first recovery of part, or of the whole of the penalty; but shall thereafter continue in force for the whole amount of the penalty thereof, and may be sued on from time to time, and shall be deemed to extend to the faithful performance of the duties of his trust, and until his successor shall be duly qualified and shall have entered upon the duties of his office.

New bond may be required. (Act May 3, 1873, p. 62, §3.)

ART. 2764. It shall be the duty of the attorney-general, with the comptroller, on the first days of June and December of every year, to examine the bond of the treasurer and make diligent inquiry into the condition of the sureties on said bond; and if, in the opinion of the attorney-general said bond is not sufficient, from death, removal, insolvency of said sureties, or from any cause, to secure the state in her rights, then it shall be the duty of the attorney-general to notify said treasurer in writing of the insufficiency of said bond; and should said treasurer fail, for the space of twenty days from the date of such notice, to furnish a sufficient new bond, it shall be the duty of the governor forthwith to suspend said treasurer from office.

ART. 2765. Should the treasurer be suspended from office under the provisions of the preceding article, it shall be the duty of the governor to appoint some suitable person treasurer, who shall give bond as in other cases, said bond to be approved by the governor; and the appointee shall perform the duties of treasurer until the suspended officer shall give a new bond to be approved by the governor, as in other cases.

Failing to give new bond.  
*Ib.* §4.

ART. 2766. The treasurer shall receive on the warrants of the comptroller of public accounts all moneys which shall, from time to time, be paid into the treasury of the state, receipting for the same upon duplicate and triplicate warrants, which duplicate shall be deposited with the comptroller, and the triplicate given to the person depositing such moneys.

Shall receive moneys on warrant of comptroller. (Act March 19, 1846, §2.)  
P.D. 5283.

ART. 2767. The treasurer shall countersign and pay all warrants drawn by the comptroller of public accounts on the treasury, which are authorized by law, and no moneys shall be paid out of the treasury except on the warrants of the comptroller.

How money to be paid out.  
*Ib.* §3.  
P.D. 5284.

ART. 2768. He shall keep true, regular and methodical accounts of the receipts and expenditures of the public moneys of the treasury, and close his accounts annually on the thirty-first day of August, with the proper and legal vouchers for the same, distinguishing between the receipts and disbursements of each fiscal year.

Shall keep strict accounts  
*Ib.* §4.  
P.D. 5285.

ART. 2769. He shall provide, at the expense of the state, all necessary books for the proper keeping of the accounts of the treasury; and he shall open therein an account in the name of "The State of Texas," in which he shall enter the amounts of all moneys, securities and other property in the treasury, and which may at any time be received by him; and shall state distinctly the several sources from which the revenue is derived, and the amount received from each.

How accounts shall be kept.  
*Ib.* §5.  
P.D. 5286.

ART. 2770. He shall also open an account in the treasury for all appropriations of money made by law, so that the appropriations and the application in pursuance thereof may clearly and distinctly appear.

An account for each appropriation  
*Ib.* §6.  
P.D. 5287.

ART. 2771. In addition to the reports required by the constitution, the treasurer shall submit to the governor on the first Monday of November of each year, and at such other times as he shall require, an exact statement of the condition and situation of the treasury, and of the balance of money remaining therein to the credit of the state, with a summary of the receipts and payments of the treasury during the preceding year, or for such other period of time as may be specially required; and shall exhibit all books, papers, vouchers and all other matters pertaining to his office for the examination of the legislature, or either branch thereof, or any committee which may be by them appointed, whenever required by them to so do.

Shall make an annual exhibit to the governor.  
*Ib.* §7.  
P.D. 5288.

ART. 2772. All moneys received by the treasurer shall be kept in the safes and vaults of the treasury, and it shall not be lawful for the treasurer to 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; nor shall it be lawful for said treasurer to appropriate to his own use, or loan, sell or exchange any money or the representative of money in his custody or control as such treasurer.

Public moneys and that only to be kept in the treasury. (Act May 3, 1873, p. 62, §1.)  
P.D. 5290.

ART. 2773. The treasurer shall appoint a chief clerk and such other employés as may be authorized by law, who shall receive such compensation as may, from time to time, be appropriated by law for that purpose.

May appoint chief clerk, book-keeper, etc.

ART. 2774. The chief clerk of the treasury office is authorized to sign the name of the treasurer, by himself as clerk, whenever by reason of sickness, unavoidable absence or other cause the treasurer's name can not be affixed by himself; and the signature of the treasurer affixed by the chief clerk, as herein provided, shall be as valid as when affixed by himself.

Chief clerk may act, when and how. (Act Jan. 11, 1862, p. 44.)  
P.D. 5291.

Shall turn over to his successor. (Act March 19, 1846, p. 10, §§.) P.D. 5289.

ART. 2775. The treasurer shall, at the close of his term of office, deliver into the possession of his successor the moneys, securities and all other property of the state, together with the books, vouchers, papers and evidences of property in his possession, and all other matters and things which pertain to the office of state treasurer.

CHAPTER FOUR.

COMMISSIONER OF THE GENERAL LAND OFFICE.

	Article		Article
His election, term, and salary.....	2776	His duties.....	2785
Vacancies, how filled.....	2777	Receiving clerk.....	2786
His bond and oath.....	2778	Shall receive and receipt for money.....	2787
Seal of office.....	2779	Shall register receipts and payments.....	2788
His general duties.....	2780	Shall report annually to the governor, etc.....	2789
Shall give information to governor, etc.....	2781	If defaulter, to be removed.....	2790
Shall furnish to assessors abstracts of surveys.....	2781—Note	Chief and other draftsmen.....	2791
Chief clerk.....	2782	Appointment of clerks.....	2792
May act as commissioner, when.....	2783	Salaries of chief clerk, translator, etc.....	2793
Spanish translator.....	2784	All employes may be removed by commissioner.....	2794

His election, term and salary. (Const., art. 4, §§2, 23.)

ARTICLE 2776. There shall be elected by the qualified voters at the time and places of election for members of the legislature, a commissioner of the general land office, who shall hold his office for the term of two years, and until the election and qualification of his successor in office, and shall reside at the capital during his continuance in office.

Vacancies, how filled.

ART. 2777. In case of a vacancy in the office of commissioner of the general land office, the governor shall fill the same by appointment, which shall be submitted to the senate, if in session, for confirmation, and the person so appointed shall hold said office for the unexpired term.

His bond and oath. (Act May 12, 1846, p. 232, §5.) P.D. 4096.

ART. 2778. The commissioner of the general land office shall, before he enters upon the discharge of the duties of his office, enter into bond with three or more sureties, in the sum of fifty thousand dollars, payable to the governor and his successors in office, for the use of the state, conditioned for the faithful discharge of his official duties, and take and subscribe the oath prescribed by the constitution, which bond, after being approved by the governor, shall, together with the oath, be filed in the office of the secretary of state.

Seal of office. *Ib.* §6. P.D. 4089.

ART. 2779. The commissioner of the general land office shall procure a seal of office with the words, "General Land Office, the State of Texas," engraved around the margin, and such other device as the governor shall approve, which approval shall be certified and recorded in the office of the secretary of state.

His general duties. *Ib.* §1. P.D. 4091.

ART. 2780. It shall be the duty of the commissioner to superintend, control and direct the official conduct of all subordinate officers of the general land office, and to execute and perform all acts and things touching or respecting the public land of the State of Texas, or rights of individuals in relation thereto, as may be required of him by law.

Give information to the governor, etc. *Ib.* §12. O. & W. 1155.

ART. 2781. The commissioner of the general land office shall give information to the governor, or either branch of the legislature, concerning the public lands, or the general land office, from time to time, as may be required.

Shall furnish to assessors abstracts of surveys.

NOTE.—Chapter 27, acts 1879, requires the commissioner to "furnish each assessor of taxes a correct abstract of all the surveys of land, with number of acres therein, in their respective counties, and on the first of January, each year, a list of all new valid surveys in their counties." See appendix.—L.

CHIEF CLERK.

Chief Clerk. *Ib.* §3. P.D. 4094.

ART. 2782. The commissioner of the general land office shall appoint a chief clerk, who shall hold his office at the pleasure of the commissioner, and shall enter into bond, with three or more sureties, in the penal sum of twenty thousand dollars, payable to the governor and his successors in

office, for the use of the state, and conditioned for the faithful discharge of the duties of his office; which bond shall be approved by the governor and filed in the office of the secretary of state.

ART. 2783. In case of sickness, absence, death or resignation of the commissioner of the general land office, it shall be lawful for the chief clerk to perform all the duties required of the commissioner.

May act as commissioner, when.  
*Ib.* §4.  
P.D. 4095.

## SPANISH TRANSLATOR.

ART. 2784. The commissioner of the general land office shall appoint a translator who shall thoroughly understand the Spanish and English languages, and who shall, before he enters upon the duties of his office, take and subscribe the oath of office prescribed by the constitution, and give bond, with three or more good sureties, in the penal sum of twenty thousand dollars, payable to and to be approved by the governor, and conditioned for the faithful discharge of the duties of his office.

Spanish translator.  
*Ib.* §3.  
(Act Dec. 14, 1837, p. 62, §33.)  
P.D. arts. 4094, 4097.

ART. 2785. It shall be the duty of said translator to translate into the English language, and record into a book to be kept by him for that purpose, all the laws and public contracts relating to titles of lands which are written in the Spanish or Castilian language, and also to translate and record in like manner all original titles of papers relating thereto which are written in said language, and which may be on file in the general land office.

His duties.  
*Ib.* §34.  
P.D. 4098.

## RECEIVING CLERK.

ART. 2786. The commissioner of the general land office shall, with the consent and approval of the governor, appoint a suitable person to act as receiving clerk for the land office; and the person thus appointed shall, before entering upon the duties of his office, qualify and execute a bond in the sum of twenty-five thousand dollars, payable to the governor and approved by him, conditioned, as other official bonds, for a faithful discharge of the duties of his office, which bond shall be filed in the office of the secretary of state.

Receiving clerk.  
(Act Nov. 10, 1866, p. 161, §1.)

ART. 2787. It shall be the duty of the receiving clerk to receive all funds that are required to be paid to the commissioner by existing laws, and to give to the person depositing money a certificate of deposit stating the amount, name of party, and character of claim upon which deposited, and if any funds are received of a general character in advance of fees and dues, it shall be so stated, and the receiving clerk shall be responsible therefor to the state or individual.

Shall receive and receipt for money.  
*Ib.* p. 162, §2.

ART. 2788. The receiving clerk shall keep a book or books, in which he shall enter each deposit separately, giving name of party, number of claim and situation of land sought to be perfected, and shall keep all letters and other vouchers filed in neat and regular order and number corresponding with his books, and shall make a report to the treasurer on the last day of each month of all funds in his hands due the state, paying the same in and taking the receipt in his own name in the same manner as heretofore required by law of the commissioner.

Shall register receipts and payments.  
*Ib.*

ART. 2789. It shall be the duty of the receiving clerk to furnish the governor, through the commissioner of the general land office, on or before the meeting of the legislature, a correct report of the condition of his office, the money received, giving character of claim, the money paid out and character of payment; and it shall be his duty to keep separate columns in his books showing the amount of specie or the amount of currency or other funds paid in, and in his reports to the treasury he shall pay in kind all funds in his hands that belong to the State of Texas, and upon his removal or resignation shall turn over his books, accounts and money in hand to his successor, when properly qualified, or to the commissioner, taking a receipt for the same.

Shall report annually to the governor, etc.  
*Ib.* §3.

ART. 2790. The commissioner shall from time to time examine the books and accounts of the receiving clerk and note that they are properly

If defaulter, to be removed.  
*Ib.*



kept, and if any defalcation is found, shall report the same to the governor at once, who shall suspend him from office until an examination is made, and if found guilty he shall be removed and proceedings instituted upon his bond to recover whatever deficit may occur.

DRAFTSMEN.

Chief and other draftsmen. (Act Feb. 5, 1841, p. 150.) P.D. 4100.

ART. 2791. The commissioner of the general land office shall appoint one chief draftsman, and such number of compiling or assistant draftsmen as may from time to time be authorized by law, whose duties it shall be to make out and complete maps of all surveys made in the several counties and districts from the maps furnished by county or district surveyors; and they shall from time to time, as surveys are made in the several counties and land districts, and forwarded to the general land office as required by law, plat such surveys upon the proper county or district maps. Such chief draftsman and other draftsmen shall also perform all drafting and other duties that may be required of them by the commissioner of the general land office, for the benefit of the state or individuals.

Appointment of clerks.

ART. 2792. The commissioner of the general land office shall appoint such number of clerks as may from time to time be authorized by legislative appropriation or other law of the state; and such clerks, and the compiling and assistant draftsmen provided for in the preceding article, shall receive such compensation for their services as may be appropriated for that purpose.

Salary of chief clerk, etc.

ART. 2793. The chief clerk, translator, receiving clerk and chief draftsman shall receive such compensation for their services as may from time to time be appropriated by law for that purpose.

All employes may be removed by the commissioner.

ART. 2794. All clerks, draftsmen, or other employes of the general land office, including the chief clerk, translator, receiving clerk and chief draftsman, shall hold their offices and positions at the pleasure of the commissioner, and may be removed by him at any time for satisfactory cause.

CHAPTER FIVE.

ATTORNEY-GENERAL.

	Article		Article
His election, term and salary.....	2795	His duty in <i>quo warranto</i> .....	2802a—Note
Vacancies, how filled.....	2796	Shall keep register of official acts.....	2803
Shall represent state in higher courts.....	2797	Pay over collections immediately.....	2804
And advise district and county attorneys.....	2798	Enforce forfeiture of charters, etc.....	2805
Shall transmit state demands for suits.....	2799	And inquire into all charter rights.....	2806
Shall require and make reports of suits.....	2800	No admission to prejudice state.....	2807
Prepare forms for contracts, etc.....	2801	Office, where kept.....	2808
Shall advise the governor, etc.....	2802	Assistant attorney-general.....	2809
Shall inspect accounts in offices of treasurer and comptroller.....	2802a	His duties.....	2810
To purchase property, etc., for the state.....	2802a—Note	Further duties.....	2811

His election, term and salary. (Const., art. 4, §§1, 2, 22.)

ARTICLE 2795. There shall be elected by the qualified voters, at the time and places of election for members of the legislature, an attorney-general, who shall hold his office for the term of two years, and until the election and qualification of his successor in office.

Vacancies, how filled.

ART. 2796. In case of a vacancy in the office of attorney-general, the governor shall fill such vacancy by appointment, which shall be submitted to the senate, if in session, and the person so appointed shall hold his office until the next succeeding general election for members of the legislature and the qualification of his successor.

Shall represent state in higher courts. (Act May 11, 1846, p. 206, §1.) P.D. 198.

ART. 2797. It shall be the duty of the attorney-general to prosecute and defend all actions in the supreme court or court of appeals in which the state may be interested, and also to perform such other duties as may be prescribed by the constitution and laws.

And advise district attorneys. *Id.* §3. P.D. 200.

ART. 2798. He shall counsel and advise the several district and county attorneys in the prosecution and defense of all actions in the district or

inferior courts wherein the state is interested, whenever requested by them.

ART. 2799. He shall transmit to the proper district or county attorneys, with such instructions as he may deem necessary, all certified accounts, bonds or other demands which may have been delivered to him by the comptroller of public accounts for prosecution and suit.

Shall transmit state demands for suit.  
*Ib.* §6.  
P.D. 203.

ART. 2800. He shall require the several district and county attorneys to report to him semi-annually, at the close of the courts of their respective districts or counties, in such form as he may prescribe, precise information of the situation of all suits instituted by them for the collection of public money; and he shall report to the comptroller of public accounts annually, on the last day of October and at such other times as the comptroller may request, a full and correct statement of the situation of all suits instituted for the collection of public money.

Shall require and make reports of suits.  
*Ib.* §§7, 8.  
P.D. 204-5.

ART. 2801. He shall, whenever requested by the comptroller of public accounts, prepare proper forms for contracts, obligations and other instruments which may be wanted for the use of the state.

Prepare forms for contracts, etc.

*Ib.* §10.  
P.D. 207.

ART. 2802. At the request of the governor or the heads of department at the capital, he shall give them legal advice in writing upon any question touching the public interest or concerning their official duties.

Shall advise the governor, etc.

*Ib.* §9.  
P.D. 206.  
(Acts 1879,  
ch. 117, p. 127.)

ART. 2802*a*. He shall, at least once a month, inspect the accounts in the offices of the state treasurer and the comptroller of public accounts, of all officers, and of individuals charged with the collection or custody of funds belonging to the state, and shall proceed immediately to institute or cause to be instituted against any such officer or individual who is in default or arrears [suit] for the recovery of funds in his hands; and he shall also institute immediately criminal proceedings against all officers or persons who have violated the laws by misapplying, or retaining in his [their] hands, funds belonging to the state.

Shall inspect accounts in offices of treasurer and comptroller.

NOTE.—For his duties in purchasing property at sales upon executions in favor of the state, and disposing of the same, and selling judgments belonging to the state, see chapter 13, acts 1879, extra session; see also appendix. And for his duty to file information in the nature of a *quo warranto*, under certain circumstances, see acts 1879, extra session, chapter 48; see also appendix for the act in full.—L.

To purchase property, etc., for the state.

Duty in *quo warranto*.

ART. 2803. The attorney-general shall keep in proper books, to be provided for that purpose at the expense of the state, a register of all his official acts and opinions, of all actions and demands prosecuted or defended by him, or any district or county attorney, in which any portion of the revenue of the state is involved, and of all proceedings had in relation thereto, and shall deliver the same to his successor in office.

Register of official acts.  
*Ib.* §12.  
P.D. 209.

ART. 2804. All money received by the attorney-general for debts due or penalties forfeited to the state, shall be paid by him into the treasury immediately after the receipt thereof.

Shall pay over collections immediately.

*Ib.* §11.  
P.D. 208.

ART. 2805. It shall be the duty of the attorney-general, unless otherwise expressly directed by law, whenever sufficient cause exists therefor, to seek a judicial forfeiture of the charters of private corporations; and he shall at once take steps to seek such forfeiture in all cases where satisfactory evidence is laid before him that any corporation receiving state aid has by the non-performance of its charter conditions or the violations of its charter, or by any act or omission, mis-user or non-user, forfeited its charter or any rights thereunder.

Enforce forfeiture of charters, etc.  
(Act Aug. 21,  
1876, p. 312, §1.)

ART. 2806. He shall also especially inquire into the charter rights of all private corporations, and from time to time, in the name of the state, take such legal action as may be proper and necessary to prevent any private corporation from exercising any power or demanding or collecting any species of taxes, tolls, freight or wharfage not authorized by law.

And inquire into all charter rights.  
(Const., art. 4,  
§22.)

No admission to prejudice. (Act May 11, 1846, p. 206, §14.)

ART. 2807. No admission, agreement or waiver, made by the attorney-general, in any action or suit in which the state is a party, shall prejudice the rights of the state.

P.D. 211.  
Office, where kept.

ART. 2808. The attorney-general shall reside and keep his office at the seat of government.

*Ib.* §15.  
P.D. 212.

Assistant attorney-general. (Act March 15, 1875, p. 179.)

ART. 2809. The governor shall appoint, by and with the advice and consent of the senate, if in session, an officer to be styled the "assistant attorney-general," who shall hold his office for the term of two years, and until the election and qualification of his successor.

His duties. *Ib.*

ART. 2810. In case of the absence or inability to act of the attorney-general, the assistant attorney-general shall discharge the duties devolved by law upon said officer, and he shall also assist the attorney-general in representing the interests of the state in all suits, pleas and prosecutions in the supreme court and court of appeals.

Further duties. *Ib.*

ART. 2811. The assistant attorney-general shall represent the state in all cases in the district or inferior courts of any county when required so to do by the governor or attorney-general; and he shall, in addition thereto, perform such other duties as may be required of him by law or by the governor or attorney-general.

## CHAPTER SIX.

### COMMISSIONER OF INSURANCE, STATISTICS AND HISTORY.

[See "Insurance" and "Statistics and History."]

	Article	Article
Appointment by the governor.....	2812	Ineligibility of certain persons..... 2818
His term of office.....	2813	His general duties..... 2819
Vacancies in office, how filled.....	2814	Shall have charge of state library..... 2820
Oath and bond.....	2815	Bound volumes only to be taken out..... 2821
May appoint a clerk.....	2816	Shall procure full sets of laws, etc..... 2822
Seal of office.....	2817	Reports to the governor..... 2823

Appointment by the governor. (Act Aug. 21, 1876, p. 219, §2; Const., art. 16, §38.)

ARTICLE 2812. The governor shall appoint, by and with the advice and consent of the senate, a commissioner of insurance, statistics and history, who shall be a citizen of the state and experienced in matters of insurance.

His term of office. *Ib.* §§2, 5.

ART. 2813. The commissioner of insurance, statistics and history shall hold his office for the term of two years, and until the appointment and qualification of his successor.

Vacancies in office, how filled. *Ib.* §27.

ART. 2814. The governor may fill any vacancy occurring in the office of commissioner of insurance, statistics and history, and report the name of the person so appointed to the senate, if in session, or at the next succeeding session of the legislature. Should the senate fail to confirm the appointment made by the governor within ten days after being advised thereof, then the said office shall be deemed vacant and a new appointment shall be made until the office is filled.

Oath and bond. *Ib.* p. 219, §3.

ART. 2815. Within fifteen days after notice of his appointment, and before entering upon the duties of his office, he shall take the oath of office prescribed by the constitution, and shall give a bond to the State of Texas in the sum of five thousand dollars, with two or more good and sufficient sureties, to be approved by the governor, and conditioned for the faithful discharge of the duties of his office, which oath and bond shall be filed in the office of the secretary of state.

May appoint a clerk. *Ib.* §4.

ART. 2816. Said commissioner may appoint a competent clerk, who shall be subject to removal at the pleasure of the commissioner, and who shall possess all the power and perform all the duties attached by law to the office of commissioner during the necessary or unavoidable absence of the commissioner, or his inability to act from any cause. The commissioner shall be responsible for the acts of his clerk, who shall, before entering upon the duties of his position, take the oath required of the

commissioner; he may also be required by the commissioner to enter into bond with security, payable to said commissioner, for the faithful performance of the duties of his said position.

ART. 2817. Said commissioner shall have a seal of office, the design of which shall consist of a star with five points, with the letters composing the word "Texas," arranged between the respective points thereof, said seal not to be less than one and one-half and not more than two inches in diameter, and on the margin thereof, around the points of the star, shall be inscribed the words, "Department of Insurance, Statistics and History," or an intelligible abbreviation thereof. A description of said seal, with a certificate of approval by the governor, shall be filed in the office of the secretary of state, with an impression thereof, which seal shall thereupon be and become the seal of office of the department of insurance, statistics and history.

Seal of office.  
*Ib.* p. 220, §6.

ART. 2818. No person who is a director, officer or agent of, or directly or indirectly interested in any insurance company, except as insured, shall be commissioner or clerk.

Ineligibility of certain persons.  
*Ib.* §7.

ART. 2819. The commissioner of insurance, statistics and history shall be charged with the execution of the laws relating to insurance and insurance companies doing business in the state, and also with the execution of the laws relating to statistics and history; and he shall do and perform such other duties as may be required of him by law.

His general duties.  
*Ib.* p. 219, §1.

ART. 2820. In addition to his other duties, the said commissioner shall have charge and control of the state library, and of all the books, manuscripts and other articles therein contained. He shall preserve and cause to be bound the current files of not less than six nor more than ten leading newspapers in the state, for the future use of the historian. He shall make such regulations as he may deem proper, subject to the advice and approval of the governor, concerning the management and use of the public library and the books therein contained, and take special care that none are lost or damaged.

Shall have charge of state library.  
*Ib.* §21.

ART. 2821. It shall not be lawful for the commissioner to permit any manuscripts, papers, documents, relics, works of art or other property under his charge, except bound volumes of books, to be taken from his custody, nor from the public buildings which are assigned for their display or preservation.

Bound volumes only to be taken out.  
*Ib.* p. 226, §22.

ART. 2822. The commissioner shall procure and keep in the state library a complete set of the general laws of the United States and of every state in the American Union; and from time to time make such purchases of books and other articles as may be directed by law.

Shall procure full sets of laws, etc.  
*Ib.* §23.

ART. 2823. It shall be the duty of the commissioner to make such reports of the business of his office, and the information therein collected and preserved as the governor may require; and all such reports shall be by the governor laid before the legislature at its next session after they shall have been made and printed.

Reports to the governor.  
*Ib.* §25.

## CHAPTER SEVEN.

### OF THE MODE OF SUPPLYING FUEL TO THE EXECUTIVE AND OTHER DEPARTMENTS.

Article	Article
Board of contractors .....	2830
Duration of the contract .....	2831
Advertisement for proposals .....	2832
Proposals, how made .....	2833
Contract awarded to lowest bidder .....	2834
Bids to be guaranteed .....	2839
Contractor's bond .....	2830
Rescission of contract .....	2831
No officer to be interested in contract .....	2832
Rate for fuel .....	2833
Record of proceedings .....	2834

ARTICLE 2824. The attorney-general, treasurer and secretary of state are constituted a board of contractors, and required to contract with any suitable person or persons, firm or firms, who are residents of and doing

Board of contractors.  
(Act Aug. 21, 1876, p. 273, §1; Const., art. 16, §21.)

business in this state, to furnish such fuel as may be required by law or needed by any department of the state government, except the judicial department.

Duration of  
the contract.  
*Ib.*

ART. 2825. Said contract shall be for the term of one year, and until a new contract shall be made and approved.

Advertisement  
for proposals.  
*Ib.* §2.

ART. 2826. The secretary of state shall every year, and at such other times as are necessary, advertise for thirty days in one or more newspapers published in the city of Austin, and having the largest circulation, for sealed proposals for furnishing such fuel, and shall, in said advertisement, state a time and place when and where said proposals shall be received and opened and contract awarded, not exceeding forty days from the date of the first publication of said advertisement; and he shall in said advertisement give such specifications and estimates of the probable amount and quality of fuel that will be required as may be practicable.

Proposals,  
how made.  
*Ib.* §2.

ART. 2827. All proposals shall be sealed and addressed to the secretary of state and shall be indorsed with the statement that they are proposals for fuel, and when received shall be filed carefully away by the secretary of state in his office, and the seals thereof shall not be broken until the day named in the advertisement for awarding the contract, and shall be opened in the presence of the contracting board, and such bidders as may desire to be present.

Contract  
awarded to  
lowest bidder.  
*Ib.*

ART. 2828. The bids shall be examined by the contracting board, a careful comparison made, and the contract awarded to the lowest and most responsible bidder, whose bid shall be below such maximum rates as are hereinafter prescribed.

Bids to be  
guaranteed.  
*Ib.*

ART. 2829. Each bid shall be accompanied by a guarantee, signed by at least two responsible citizens, guaranteeing that if the contract be awarded to the said bidder that he or they will enter into contract, and give a good and sufficient bond to carry out the same.

Contractor's  
bond.

ART. 2830. The party to whom any contract is awarded shall immediately after such award enter into bond in such sum as may be prescribed by the board of contractors, payable to the state, and with good and sufficient sureties to be approved by the board, conditioned for the faithful performance of such contract, which bond shall be deposited in the office of the secretary of state.

Rescission of  
contract.  
*Ib.* §3.

ART. 2831. At any time after a contract has been made and entered into with any person or firm as herein provided, the legislature may annul said contract, if not executed, and may alter or amend by enactment the maximum rates for such fuel. The board of contractors shall have power, and is hereby required when the legislature is not in session to cancel the contract whenever the party or parties fail to comply with the contract as promptly as the exigencies of the public service demand; and it shall be their duty to let out a new contract in the manner herein provided.

No officer to be  
interested in  
contracts.  
*Ib.* p. 274, §5.

ART. 2832. No member or officer of any department of the government shall be in any way interested in said contracts, and all such contracts shall be in writing and signed by the board of contractors, and approved in writing by the governor, secretary of state and comptroller.

Rate for fuel.  
*Ib.* §6.

ART. 2833. The rate paid for fuel in said contracts shall not exceed six dollars and ten cents per cord for dry cedar, and five dollars and ten cents per cord for dry oak and other kinds of wood, except cedar.

Record of  
proceedings.  
*Ib.* §4.

ART. 2834. The secretary of state shall keep a record of his proceedings and the proceedings of the board of contractors; and a majority of said board shall be competent to do business.

TITLE XLIX.

Holidays—Legal.

What are legal holidays.....	Article 2835	If holiday shall occur on Sunday.....	Article 2837
Exemption and requirements to be observed.....	2836		

ARTICLE 2835. The first day of January, the twenty-second day of February, the second day of March, the twenty-first day of April, the fourth day of July, the twenty-fifth day of December of each year, and all days appointed by the president of the United States or by the governor as days of fasting or thanksgiving, and every day on which an election is held throughout the state, are declared holidays, on which all the public offices of the state may be closed, and shall be treated and considered as Sunday or the Christian Sabbath for all purposes regarding the presenting for payment or the acceptance and of protesting for and giving notice of the dishonor of bills of exchange, bank checks and promissory notes placed by the law upon the footing of bills of exchange.

What days are legal holidays. (Act March 2, 1874, p. 238.)

ART. 2836. All the exemptions and requirements usual on legal holidays may be observed on the days above named.

Exemptions and requirements.

ART. 2837. If any of the days named shall occur on Sunday, the next day thereafter shall be observed as a holiday; but bills of exchange or other paper may be presented for payment or acceptance on the Saturday preceding such holiday and proceeded on accordingly.

If holiday shall occur on Sunday.

TITLE L.

Husband and Wife.

CHAPTER ONE.

CELEBRATION OF MARRIAGE.

	Article		Article
Who are authorized to celebrate rites . . . . .	2838	Certain intermarriages prohibited . . . . .	2843
Who are not permitted to marry . . . . .	2839	Marriage by bond, etc., validated . . . . .	2844
License . . . . .	2840	Issue legitimated . . . . .	2845
Consent of parent or guardian . . . . .	2841	Cohabitation of certain persons considered as marriage . . . . .	2846
Record and return of license . . . . .	2842		

Who author-  
ized to cele-  
brate rites.  
(Act Nov. 1,  
1866, p. 73.)  
P.D. 7119.

ARTICLE 2838. All regularly licensed or ordained ministers of the gospel, judges of the district and county courts and all justices of the peace of the several counties, are authorized to celebrate the rites of matrimony between all persons legally authorized to marry.

Who not per-  
mitted to  
marry.  
*Ib.*

ART. 2839. Males under sixteen and females under fourteen years of age shall not marry.

License.  
(Act June 5,  
1837.)  
P.D. 4666.

ART. 2840. Any person desirous of marrying shall apply to the clerk of the county court, and shall receive from him a license directed to all persons authorized by law to celebrate the rites of matrimony, which shall be sufficient authority for any one of such persons to celebrate such marriage.

Consent of  
parent or  
guardian.  
P.D. 4667.

ART. 2841. No clerk shall issue a license without the consent of the parents or guardians of the parties applying, unless the parties so applying shall be in the case of the male twenty-one years of age, and in the female eighteen years of age.

Record and re-  
turn of licenses  
P.D. 4668.

ART. 2842. The said clerk shall record all licenses so issued by him, in a well-bound book kept for that purpose; and it shall also be the duty of the persons solemnizing the rites of matrimony to indorse the same on the license and make return of the same to the office of the clerk of the county court within sixty days after the celebration as aforesaid; which return shall also be recorded as aforesaid.

Certain inter-  
marriages  
prohibited.  
P.D. 4670.  
P.C. 326.

ART. 2843. It shall not be lawful for any person of European blood or their descendants to intermarry with Africans or the descendants of Africans; and should any person as aforesaid violate the provisions of this article such marriage shall be null and void.

Marriages by  
bond, etc.,  
validated.  
(Act Feb. 5,  
1840.)  
P.D. 4671.

ART. 2844. Whereas, many persons heretofore, previous to the passage of an act approved June 5, 1837, regulating marriages, and for other purposes, had, for the want of some person legally qualified to celebrate the rites of matrimony, resorted to the practice of marrying by bond; and others have been married by various officers of justice not authorized to celebrate such marriages; and whereas, public policy and the interest of families require a further legislative action on the subject; therefore, all such marriages are declared legal and valid to all intents and purposes, and the issue of such persons are declared legitimate children and capable of inheritance.

Issue legiti-  
mated.  
(Act Jan. 20,  
1840.)  
P.D. 4672.

ART. 2845. In cases where persons have so intermarried agreeably to the custom of the times, and where husband or wife has since died, then and in that case the issue of such marriages are hereby legitimated.

ART. 2846. All persons who at any time heretofore have lived together as man and wife, and both of whom, by the laws of bondage, were precluded from the rites of matrimony, and continued to live together until the death of one of the parties, shall be considered as having been legally married, and the issue of such cohabitation is declared legitimate; and all such persons as were so living together in such relation on the fifteenth day of August, 1870, shall be considered as having been legally married, and the children heretofore or hereafter born of such cohabitations are declared legitimate.

Cohabitation of certain persons considered as marriage. (Act Aug. 15, 1870, p. 127.) P.D. 7120.

## CHAPTER TWO.

### MARRIAGE CONTRACTS.

	Article		Article
What stipulations may be made.....	2847	Can not be altered after marriage.....	2849
How authenticated.....	2848	Reservation by wife must be recorded.....	2850

ARTICLE 2847. Parties intending to enter into the marriage state may enter into what stipulations they please, provided they be not contrary to good morals or to some rule of law; and in no case shall they enter into any agreement, or make any renunciation, the object of which would be to alter the legal orders of descent, either with respect to themselves, in what concerns the inheritance of their children or posterity, which either may have by any other person, or in respect to their common children; nor shall they make any valid agreement to impair the legal rights of the husband over the person of the wife, or the persons of their common children.

What stipulations may be made. (Act Jan. 20, 1840.) P.D. 4632.

ART. 2848. Every matrimonial agreement must be acknowledged before some officer authorized by law to take acknowledgments to deeds, and attested by at least two witnesses; the minor capable of contracting matrimony may give his consent to any agreement which this contract is susceptible of, but such agreement must be made by the written consent of both parents, if both be living; if not, by that of the survivor; if both be dead, then by the written consent of the guardian of such minor.

How authenticated. P.D. 4633.

ART. 2849. No matrimonial agreement shall be altered after the celebration of the marriage.

Can not be altered after marriage. P.D. 2749.

ART. 2850. When the wife, by a marriage contract, may reserve to herself any property, or rights to property, whether such rights be *in esse* or expectancy, such reservation, to be valid as to the subsequent purchasers or creditors of her husband, must be acknowledged and recorded as provided by law.

Reservation by wife must be recorded. P.D. 4635.

## CHAPTER THREE.

### RIGHTS OF MARRIED PERSONS.

	Article		Article
Separate property.....	2851	Husband failing to support wife, etc.....	2856
Community property.....	2852	Community property liable for debts.....	2857
Presumption as to community property.....	2853	Female under twenty-one emancipated by marriage.....	2858
Wife may contract debts, when.....	2854	Rights of persons married elsewhere.....	2859
Judgment and execution in such cases.....	2855		

ARTICLE 2851. All property, both real and personal, of the husband, owned or claimed by him before marriage, and that acquired afterward by gift, devise or descent, as also the increase of all lands thus acquired, shall be his separate property. All property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterward by gift, devise or descent, as also the increase of all lands thus

Separate property. (Act March 13, 1848.) P.D. 4641. (Const., art. 16, §15.)



Community property. P.D. 4642.

Presumption as to community property. (Act Jan. 20, 1840.) P.D. 4638.

Wife may contract debts, when. (Act March 13, 1848.) P.D. 4643.

Judgment and execution in such cases. P.D. 4644.

Husband failing to support wife, etc. (Act Jan. 20, 1840.) P.D. 4637.

Community property liable for debts. (Act Aug. 26, 1856.) P.D. 4646.

Female under 21 emancipated by marriage. (Act March 13, 1848.) P.D. 4642.

Rights of persons married elsewhere. P.D. 4639.

acquired, shall be the separate property of the wife; but during the marriage the husband shall have the sole management of all such property.

ART. 2852. All property acquired by either husband or wife during the marriage, except that which is acquired by gift, devise or descent, shall be deemed the common property of the husband and wife, and during the coverture may be disposed of by the husband only.

ART. 2853. All the effects which the husband and wife possess at the time the marriage may be dissolved, shall be regarded as common effects or gains, unless the contrary be satisfactorily proved.

ART. 2854. The wife may contract debts for necessaries furnished herself or children, and for all expenses which may have been incurred by the wife for the benefit of her separate property, and for such debts suit may be brought in the manner prescribed in article 1205.

ART. 2855. Upon the trial of any suit as provided for in the preceding article, if it shall appear to the satisfaction of the court and jury that the debts so contracted or expenses so incurred were for the purposes enumerated in said article, and also that the debts so contracted or expenses so incurred were reasonable and proper, the court shall decree that execution may be levied upon either the common property or the separate property of the wife, at the discretion of the plaintiff.

ART. 2856. Should the husband fail or refuse to support his wife from the proceeds of the lands she may have, or fail to educate her children as the fortune of the wife would justify, she may, in either case, complain to the county court, which, upon satisfactory proof, shall decree that so much of such proceeds shall be paid to the wife for the support of herself and for the nurture and education of her children, as the court may deem necessary.

ART. 2857. The community property of the husband and wife shall be liable for their debts contracted during marriage, except in such cases as are specially excepted by law.

ART. 2858. Every female under the age of twenty-one years, who shall marry in accordance with the laws of this state, shall, from and after the time of such marriage, be deemed to be of full age, and shall have all the rights and privileges to which she would have been entitled had she been at the time of her marriage of full age.

ART. 2859. The marital rights of persons married in other countries who may remove to this state, shall, in regard to property acquired in this state during the marriage, be regulated by the laws of this state.

## CHAPTER FOUR.

### DIVORCE.

	Article		Article
Marriage may be annulled, when.....	2860	Parties may marry again.....	2866
Divorce may be granted, in what cases....	2861	Debts and alienations after suit filed.....	2867
Plaintiff must reside in the state and county	2862	Inventory and appraisement—injunction..	2868
Full proof required.....	2863	Temporary orders.....	2869
Division of property.....	2864	Alimony.....	2870
Condonation, connivance or collusion.....	2865	Custody of children.....	2871
Legitimacy of children.....	2866	Costs.....	2872

Marriage may be annulled, when. (Act Jan. 6, 1841.) P.D. 3449.

ARTICLE 2860. The district court shall have power to hear and determine suits for the dissolution of marriage, where the causes alleged therefor shall be natural or incurable impotency of body at the time of entering into the marriage contract, or any other impediment that renders such contract void, and shall have power and authority to decree the marriage to be null and void.

ART. 2861. A divorce by separation from the bonds of matrimony may be decreed in the following cases:

1. Where either the husband or wife is guilty of excesses, cruel treatment, or outrages toward the other, if such ill-treatment is of such a nature as to render their living together insupportable.

2. In favor of the husband, where his wife shall have been taken in adultery, or where she shall have voluntarily left his bed and board for the space of three years with the intention of abandonment.

3. In favor of the wife, where the husband shall have left her for three years with intention of abandonment, or where he shall have abandoned her and lived in adultery with another woman.

4. In favor of either the husband or wife, when the other shall have been convicted, after marriage, of a felony and imprisoned in the state prison; *provided*, that no suit for divorce shall be sustained because of the conviction of either party for felony until twelve months after final judgment of conviction, nor then if the governor shall have pardoned the convict; *provided*, that the husband has not been convicted on the testimony of the wife, nor the wife on the testimony of the husband.

ART. 2862. No suit for divorce from the bonds of matrimony shall be maintained in the courts, unless the petitioner for such divorce shall, at the time of exhibiting his or her petition, be an actual *bona fide* inhabitant of the state, and shall have resided in the county where the suit is filed six months next preceding the filing of the suit.

ART. 2863. In all suits and proceedings for divorce from the bonds of matrimony the defendant shall not be compelled to answer upon oath, nor shall the petition be taken for confessed for want of an answer, but the decree of the court shall be rendered upon full and satisfactory evidence, independent of the confession or admission of either party, and upon the verdict of a jury, if a jury shall have been demanded by either party, and if not, upon the judgment of the court affirming the material facts alleged in the petition.

ART. 2864. The court pronouncing a decree of divorce from the bonds of matrimony shall also decree and order a division of the estate of the parties in such a way as to the court shall seem just and right, having due regard to the rights of each party and their children, if any; *provided*, *however*, that nothing herein contained shall be construed to compel either party to divest him or herself of the title to real estate.

ART. 2865. In any suit for divorce for the cause of adultery, if it shall be proved that the complainant has been guilty of the like crime, or has admitted the defendant into conjugal society or embraces after he or she knew the criminal fact, or that the complainant (if the husband) connived at his wife's prostitution, or exposed her to lewd company, whereby she became ensnared to the crime aforesaid, it shall be a good defense and a perpetual bar against said suit; or if it appears that the adultery complained of is occasioned by collusion of the parties, and done with intention to procure a divorce, or where both parties shall be guilty of adultery, then no divorce shall be decreed.

ART. 2866. A divorce from the bonds of matrimony shall not in any-wise affect the legitimacy of the children thereof; and either party may, after the dissolution of the marriage, marry again.

ART. 2867. On and after the day on which the action for divorce shall be brought, it shall not be lawful for the husband to contract any debts on account of the community, nor to dispose of the lands belonging to the same; and any alienation made by him after that time shall be null and void, if it be proved to the satisfaction of the court that such alienation was made with a fraudulent view of injuring the rights of the wife.

Divorce may be granted in what cases. (Act May 27, 1876, p. 16.) P.D. 3451.

Plaintiff must be resident in the state and county. (Act May 27, 1873, p. 117.) P.D. 3459.

Full proof required. P.D. 3452.

Division of property. P.D. 3452.

Condonation, connivance and collusion. P.D. 3480.

Legitimacy of children; parties may marry again. P.D. 3453.

Debts and alienations after suit filed. P.D. 3457.

Inventory and  
appraisement;  
injunction.  
P.D. 3458.

ART. 2868. At any time during a suit for divorce the wife may, for the preservation of her rights, require an inventory and an appraisement to be made of both the real and personal estate which are in the possession of the husband, and an injunction restraining him from disposing of any part thereof in any manner.

Temporary  
orders.  
P.D. 3454.

ART. 2869. Pending any suit for a divorce the court or the judge thereof may make such temporary orders respecting the property and parties as shall be deemed necessary and equitable.

Alimony.  
P.D. 3456.

ART. 2870. If the wife, whether complainant or defendant, has not a sufficient income for her maintenance during the pendency of the suit for a divorce, the judge may, either in term time or in vacation, after due notice, allow her a sum for her support in proportion to the means of the husband, until a final decree shall be made in the case.

Custody of  
children.  
P.D. 3461.

ART. 2871. The courts aforesaid shall have power in all cases of separation between man and wife, to give the custody and education of the children to either father or mother, as to the said court shall seem right and proper, having regard to the prudence and ability of the parents, and the age and sex of the child or children, to be determined and decided on the petition of either party; and in the meantime to issue an injunction or make any order that the safety and well-being of any such children may require.

Costs.

ART. 2872. The court may award costs to the party in whose behalf the sentence or decree shall pass, or that each party shall pay his or her own costs, as to the court shall appear reasonable.

TITLE LI.  
Injunction.

Article	Article
Writs of injunction granted, when..... 2873	Service and return of writ..... 2886
No injunction against a judgment, except, etc..... 2874	Duty of defendant upon service of the writ..... 2887
Injunction to stay execution within twelve months, unless, etc..... 2875	Injunctions restrain attorneys, etc., as well as the party..... 2888
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Notice to the opposite party, when..... 2878	Dissolution in term time or vacation..... 2891
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Writs may issue to different counties..... 2884	Persons guilty to be imprisoned..... 2897
Writs, to whom delivered..... 2885	General principles of equity applicable, when..... 2898

ARTICLE 2873. Judges of the district and county courts may, either in term time or vacation, grant writs of injunction, returnable to said courts, in the following cases:

1. Where it shall appear that the party applying for such writ is entitled to the relief demanded, and such relief or any part thereof requires the restraint of some act prejudicial to the applicant.
2. Where, pending litigation, it shall be made to appear that a party is doing some act respecting the subject of litigation, or threatens, or is about to do some act, or is procuring or suffering the same to be done in violation of the rights of the applicant, which act would tend to render judgment ineffectual.
3. In all other cases where the applicant for such writ may show himself entitled thereto under the principles of equity.

ART. 2874. No injunction shall be granted to stay any judgment or proceedings at law, except so much of the recovery or cause of action as the complainant shall in his petition show himself equitably entitled to be relieved against, and so much as will cover the costs.

Writs of injunction granted, when. (Const., art. 5, §§8, 16.)

No injunction against a judgment, except, etc. (Act May 13, 1846, p. 363.) P.D. 3930.

ART. 2875. No injunction to stay an execution upon any valid and subsisting judgment shall be granted after the expiration of one year from the rendition of such judgment, unless it be made to appear that an application for such injunction has been delayed in consequence of the fraud or false promises of the plaintiff in the judgment, practiced or made at the time of or after rendition of such judgment, or unless for some equitable matter or defense arising after the rendition of such judgment. If it be made to appear that the applicant was absent from the state at the time such judgment was rendered, and was unable to apply for such writ within the time aforesaid, such injunction may be granted at any time within two years from the date of the rendition of the judgment.

Injunction to stay execution within twelve months, unless, etc. *Id.* P.D. 3931.

ART. 2876. No writ of injunction shall be granted unless the applicant therefor shall present his petition to the judge, verified by his affidavit taken before some officer authorized to administer oaths, and containing a plain and intelligible statement of the grounds for such relief.

Injunctions granted on sworn petition. P.D. 3929.

ART. 2877. If, upon the inspection of such petition, it shall appear to the judge from the facts stated therein, that the applicant is entitled to the writ, he shall indorse on such petition or annex thereto his written order directing the clerk of the proper court to issue the writ of injunc-

Judge's fiat to be endorsed on petition. P.D. 3932.

tion prayed for, upon such terms and under such modifications, limitations and restrictions as may be specified in said order; and the judge shall also specify in such order the amount of the bond to be given by the applicant as a prerequisite to the issuance of the writ. If the injunction be applied for to restrain the execution of a money judgment or the collection of a debt, the bond shall be fixed in double the amount of such judgment or debt.

Notice to opposite party, when.

ART. 2878. Upon application for any writ of injunction, if it appear to the judge that delay will not prove injurious to either party and that justice may be subserved thereby, he may cause notice of such application to be served upon the opposite party, his agent or attorney, in such manner as he may direct, and fix a time and place for the hearing of such application.

Petition to be filed and cause docketed.

ART. 2879. Upon the grant of any writ of injunction, the party to whom the same is granted shall file his petition therefor, together with the order of the judge granting the same, with the clerk of the proper court; and if such writ of injunction does not pertain to a pending suit in said court, the cause shall be entered on the civil docket of the court in its regular order in the name of the party to whom the writ is granted as plaintiff and of the opposite party as defendant.

Writs, where returnable.  
*Ib.*  
P.D. 3992.

ART. 2880. Writs of injunction granted to stay proceedings in a suit, or execution on a judgment, shall be returnable to and tried in the court where such suit is pending, or such judgment was rendered; writs of injunction for other causes, if the party against whom it is granted be an inhabitant of the state, shall be returnable to and tried in the district or county court of the county in which such party has his domicile, according as the amount or matter in controversy comes within the jurisdiction of either of said courts. If there be more than one party against whom any writ is granted it may be returned and tried in the proper court of the county where either may have his domicile.

The bond for injunction.  
P.D. 3993.

ART. 2881. Upon the filing of the petition and order of the judge hereinbefore provided for, in the proper court, and before the issuance of the writ of injunction, the complainant shall execute and file with the clerk a bond to the adverse party, with two or more good and sufficient sureties, to be approved by such clerk, in such sum as may be fixed in the order of the judge granting the writ, conditioned that the complainant will abide the decision which may be made therein, and that he will pay all sums of money and costs that may be adjudged against him, if the injunction be dissolved in whole or in part. If the state be complainant in any petition for injunction, no bond shall be required.

Clerk to issue the writ.

ART. 2882. When the petition, order of the judge, and bond aforesaid are filed, it shall be the duty of the clerk to issue the writ of injunction directed in such order, in conformity with the terms thereof, and to deliver the same to the sheriff, or any constable of the proper county, for service and return.

The writ and its requisites.

ART. 2883. The writ of injunction shall be sufficient if it contains substantially the following requisites:

1. Its style shall be "The State of Texas."
2. It shall be directed to the person or persons enjoined.
3. It must state the names of the parties to the proceeding, plaintiff and defendant, and the nature of the plaintiff's application, with the action of the judge thereon.
4. It must command the person or persons to whom it is directed to desist and refrain from the commission or continuance of the act enjoined, or to obey and execute such order as the judge has seen proper to make.
5. It shall state the term of the court to which such writ is returnable.
6. It shall be dated and signed by the clerk officially, and attested with the seal of his office; and the date of its issuance must be indorsed thereon.

ART. 2884. If there be several persons enjoined, residing in different counties, a writ shall issue to each of such counties. Writs may issue in different counties.

ART. 2885. The clerk issuing any such writ of injunction shall deliver the same to the sheriff or any constable of his county, if the person enjoined be a resident of such county; if the person enjoined be a resident of some other county, the clerk shall forward such writ by mail to the sheriff or any constable of such county. Writs, to whom delivered.

ART. 2886. The officer receiving any writ of injunction shall indorse thereon the date of its receipt by him, and shall forthwith execute the same by delivering to the party enjoined a true copy of such writ, and the original shall be returned to the court from which it issued on or before the return day named therein, with the action of the officer indorsed thereon or annexed thereto, showing how and when he executed the same. Service and return of the writ.

ART. 2887. The party upon whom any writ of injunction is served shall obey the command thereof and refrain from the commission of the act enjoined so long as such injunction continues in force; or if the continuance of an act or acts be enjoined, the person enjoined shall immediately cease such act or acts and thereafter refrain from their continuance so long as such injunction remains in force. Any person violating the provisions of this article shall be dealt with as hereinafter directed. Duty of defendant upon service of writ.

ART. 2888. An injunction restrains the counselors, solicitors, attorneys, agents, servants and employés of the party, as well as the party himself. Injunctions restrain attorneys, etc., as well as the party.

ART. 2889. When any writ of injunction is issued, and such writ does not pertain to a suit pending in the court, the clerk of such court shall issue a citation to the defendant as in other civil cases, which shall be served and returned in like manner as ordinary citations issued from said court. But if any injunction is issued after notice to the defendant, as hereinbefore provided, no citation to such defendant shall be necessary. Citation to issue to defendants.

ART. 2890. The defendant to an injunction proceeding may answer as in other civil actions; but no injunction shall be dissolved before final hearing because of a denial of the material allegations of the plaintiff's petition, unless the answer denying the same is verified by the oath or affirmation of the defendant. The answer. P.D. 3929.

ART. 2891. In all cases of injunction, motions to dissolve the same without determining the merits, may be heard after answer filed, in vacation as well as in term time, at least ten days' notice of such motion being first given to the opposite party or his attorney. In such cases the proceedings upon such hearing, including the action of the judge upon the motion, shall be entered upon the minutes of the proper court by the clerk thereof, on or before the first day of the succeeding term of such court, and thereafter shall constitute a part of the record of the same. Dissolution in term time or vacation. P.D. 3934.

ART. 2892. Upon the dissolution of any injunction restraining the collection of money, by an interlocutory order of the court or judge, made in term time or in vacation, if the petition be continued over for trial, it shall be the duty of the court or judge to require of the defendant in such injunction proceeding a bond, with two or more good and sufficient sureties, to be approved by the clerk of the court, which bond shall be payable to the complainant in double the amount of the sum enjoined, and conditioned to refund to the complainant the amount of money, interest and costs which may be collected of him in the suit or proceeding enjoined, in the event such injunction is made perpetual on final hearing. Refunding bond on dissolution. P.D. 3937.

ART. 2893. In the event such injunction is perpetuated on final hearing, the court may, on motion of the complainant, enter judgment against the principal and sureties in any bond taken in accordance with the pro- Judgment on such bond. P.D. 3938.

visions of the preceding article for such amount as may be shown to have been collected from such complainant.

Damages for delay.  
P.D. 3935.

ART. 2894. Upon the dissolution of an injunction, either in whole or part, on final hearing, where the collection of money has been enjoined, if the court be satisfied that the injunction was obtained only for delay, damages thereon may be assessed by the court, at ten per cent. on the amount released by the dissolution of the injunction, exclusive of costs.

Disobedience, a contempt.  
P.D. 3934.

ART. 2895. Disobedience of an injunction may be punished by the court or judge, in term time or in vacation, as a contempt.

Procedure, in case of disobedience.

ART. 2896. In case of such disobedience the complainant, his agent or attorney may file in the court in which such injunction is pending, or with the district or county judge, as the case may be, in vacation, his affidavit, stating the person guilty of such disobedience, and describing the act or acts constituting the same; and thereupon the court or judge shall issue or cause to be issued an attachment for such person, directed to the sheriff or any constable of the proper county, and requiring such officer to arrest the person therein named and have him before the court or judge at a time and place to be named in such writ.

Persons guilty to be imprisoned.

ART. 2897. On return of such attachment the court or judge shall proceed to hear proof, and if satisfied that such person has disobeyed the injunction either directly or indirectly he shall be committed to jail without bail until he purges himself of such contempt, in such manner and form as may be directed by the court or judge.

General principles of equity applicable, when.

ART. 2898. The principles, practice and procedure governing courts of equity shall govern proceedings in injunctions when the same are not in conflict with the provisions of this title or other law.

**TITLE LII.**

**Injuries Resulting in Death—Actions for.**

	Article		Article
Action for injuries resulting in death, brought when.....	2899	Executor, etc., may bring the action, when	2905
Character of wrongful act.....	2900	Suit does not abate by death of either party.....	2907
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For whose benefit action to be brought.....	2903	Damages to be apportioned by jury.....	2909
Who may bring the action.....	2904		

**ARTICLE 2899.** An action for actual damages on account of injuries causing the death of any person, may be brought in the following cases:

1. When the death of any person is caused by the negligence or carelessness of the proprietor, owner, charterer or hirer of any railroad, steamboat, stage-coach or other vehicle for the conveyance of goods or passengers, or by the unfitness, gross negligence or carelessness of their servants or agents.

2. When the death of any person is caused by the wrongful act, negligence, unskillfulness or default of another.

**ART. 2900.** The wrongful act, negligence, carelessness, unskillfulness or default mentioned in the preceding article must be of such a character as would, if death had not ensued, have entitled the party injured to maintain an action for such injury.

**ART. 2901.** When the death is caused by the willful act or omission, or gross negligence of the defendant, exemplary as well as actual damages may be recovered.

**ART. 2902.** The action may be commenced and prosecuted, although the death shall have been caused under such circumstances as amounts in law to a felony, and without regard to any criminal proceeding that may or may not be had in relation to the homicide.

**ART. 2903.** The action shall be for the sole and exclusive benefit of the surviving husband, wife, children and parents of the person whose death shall have been so caused, and the amount recovered therein shall not be liable for the debts of the deceased.

**ART. 2904.** The action may be brought by all of the parties entitled thereto, or by any one or more of them for the benefit of all.

**ART. 2905.** If the parties entitled to the benefit of the action shall fail to commence the same within three calendar months after the death of the deceased, it shall be the duty of the executor or administrator of the deceased to commence and prosecute the action, unless requested by all of the parties entitled thereto not to prosecute the same.

**ART. 2906.** The action shall not abate by the death of either party to the record if any person entitled to the benefit of the action survives. If the plaintiff die pending the suit, when there is only one plaintiff, some one or more of the parties entitled to the money recovered may, by order of the court, be made plaintiff and the suit be prosecuted to judgment in the name of such plaintiff for the benefit of the persons entitled.

**ART. 2907.** If the sole plaintiff die pending the suit, and he is the only party entitled to the money recovered, the suit shall abate.

Action for injuries resulting in death, brought when.  
(Act Feb. 2, 1860, p. 32, §1.)  
P.D. 15.

Character of wrongful act.  
*Ib.*

Exemplary damages.  
(Const., art. 16, §26.)

Action commenced without regard to criminal proceedings.  
*Ib.*

For whose benefit action to be brought.  
*Ib.* §2.  
P.D. 16.

Who may bring the action.  
*Ib.*

Executor, etc., may bring the action, when.  
*Ib.*

Suit does not abate by death of either party.  
*Ib.* §4.  
P.D. 18.

Abates, when.



Executor, etc.,  
of defendant  
made party,  
when.

*Ib.*

ART. 2908. If the defendant die pending the suit his executor or administrator may be made a party and the suit be prosecuted to judgment, as though such defendant had continued alive. The judgment in such case, if rendered in favor of the plaintiff, shall be, to be paid in due course of administration.

Damages to be  
apportioned by  
the jury.

*Ib.* §2.

P.D. 16.

ART. 2909. The jury may give such damages as they may think proportioned to the injury resulting from such death; and the amount so recovered shall be divided among the persons entitled to the benefit of the action, or such of them as shall then be alive, in such shares as the jury shall find by their verdict.

TITLE LIII.

Insurance.

CHAPTER ONE.

INCORPORATION OF INSURANCE COMPANIES.

	Article		Article
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Capital stock shall consist of what.....	2916	Directors may ordain by-laws, etc.....	2925
Capital stock may be invested, how.....	2917	Shall keep a record of their transactions.....	2926
Company may change and re-invest stock.....	2918	Shall fill vacancies, and what shall constitute quorum of the board.....	2927
		General incorporation law shall apply to insurance companies, unless, etc.....	2928

ARTICLE 2910. Any number of persons desiring to form a company for the purpose of transacting insurance business shall adopt and sign articles of incorporation, and submit the same to the attorney-general, and if said articles shall be found by him to be in accordance with the law of this state, and of the United States, he shall attach thereto his certificate to that effect, whereupon such articles shall be deposited with the commissioner of insurance.

Formation of company.

ART. 2911. Such articles shall contain—

1. The name of the company, and the name selected shall not be so similar to that of any other insurance company as to be likely to mislead the public.
2. The locality of the principal business office of such company.
3. The kind of insurance business which the company proposes to engage in.
4. The amount of its capital stock, which shall in no case be less than one hundred thousand dollars.

What the articles of incorporation shall contain.

ART. 2912. When the said articles of incorporation have been deposited with the commissioner of insurance, and the law in all other respects has been complied with by the company, the commissioner shall make an examination, or cause one to be made by some competent and disinterested person appointed by him for that purpose; and if it shall be found that the capital stock of the company, to the amount required by law, has been paid in, and is possessed by it, in money, or in such stocks, notes, bonds or mortgages, as are required by law, and that the same is the *bona fide* property of such company, and that such company has in all respects complied with the law relating to insurance, then the commissioner of insurance shall issue to such company a certificate of authority to commence business as proposed in their articles of incorporation.

Duty of commissioner of insurance when articles are deposited with him. (Act Feb. 17, 1875, p. 33, §7.)

ART. 2913. The incorporators or officers of any such company shall be required to certify under oath to the commissioner of insurance that the capital exhibited to the person making the examination is the *bona fide* property of the company so examined, which certificate shall be filed and recorded in the office of the commissioner of insurance.

Company shall certify, under oath, that the capital is *bona fide* its property. (Act Feb. 17, 1875, §7.)

ART. 2914. If the examination be made by any other person than the commissioner of insurance the finding shall be certified under the oath of the person making such examination and such finding, and certificate shall be filed and recorded in the office of the commissioner of insurance.

Where examination is made by other than commissioner. *Id.*

Stock shall be divided into shares.

*Ib.* §3.

Capital stock of company shall consist of, what.

*Ib.* §6.

Capital stock may be invested, how.

*Ib.*

Company may change and re-invest its stock

*Ib.*

Number and qualification of directors.

*Ib.* §5.

Election of directors.

*Ib.*

Annual meetings for election of directors.

*Ib.* §9.

Special meetings for election of directors.

*Ib.*

Quorum of stockholders.

Directors shall choose president and other officers.

*Ib.* §10.

Directors may ordain by-laws, etc.

*Ib.* §11.

Shall keep a record of their transactions.

*Ib.* §11.

Shall fill vacancies, and what shall constitute a quorum of board.

*Ib.* §10.

ART. 2915. The stock of any company organized under the laws of this state shall be divided into shares of one hundred dollars each.

ART. 2916. The capital stock of a company shall consist—

1. In lawful money of the United States; or
2. In the bonds of this state or of the United States; or
3. In first mortgages upon unincumbered real estate in this state, the title to which is valid, and the market value of which is double the amount loaned thereon, exclusive of buildings, unless such buildings are insured in some responsible company or companies and the policy or policies transferred to the company taking such mortgage.

ART. 2917. The surplus money of a company over and above its paid up capital stock, may be invested in or loaned upon the pledge of public stocks or bonds of the United States, or any of the states, or stocks, bonds or other evidences of indebtedness of any solvent dividend-paying corporations, or in bills of exchange or other commercial notes or bills, except its own stock; *provided, always,* that the current market value of such stocks, bonds, notes, bills, or other evidences of indebtedness, shall be at all times during the continuance of such loans at least twenty per cent. more than the sum loaned thereon.

ART. 2918. A company may change and re-invest its capital stock in like securities, as occasion may from time to time require.

ART. 2919. The affairs of any company organized under the laws of this state shall be managed by not more than thirteen, nor fewer than seven directors, all of whom shall be stockholders in the company.

ART. 2920. Within thirty days after the subscription books of the company have been filled, a majority of the stockholders shall hold a meeting for the election of directors, each share entitling the holder thereof to one vote; and the directors then in office shall continue in office until their successors have been duly chosen and have accepted the trust.

ART. 2921. The annual meeting for the election of directors of a company shall be held during the month of January, as the by-laws of the company may direct.

ART. 2922. If from any cause the stockholders should fail to elect directors at an annual meeting, they may hold a special meeting for that purpose, by giving thirty days' notice thereof in some newspaper in general circulation in the county in which the principal office of the company is located, and the directors chosen at such special meeting shall continue in office until their successors are duly elected and have accepted.

ART. 2923. No meeting of stockholders shall elect directors or transact any other business of the company unless there shall be present at such meeting, in person or by proxy, a majority in value of the stockholders equal to two-thirds of the stock of such company.

ART. 2924. The directors shall choose by ballot from their own number a president and such other officers as the by-laws of the company may designate, who shall perform such duties, receive such compensation and give such security as the by-laws of such company may require.

ART. 2925. The directors may ordain and establish such by-laws and regulations, not inconsistent with law, as shall appear to them necessary for regulating and conducting the business of the company.

ART. 2926. It shall be the duty of the directors to keep a full and correct record of their transactions, which shall at all times, during business hours, be open to the inspection of the stockholders and other persons interested therein.

ART. 2927. The directors shall fill all vacancies which shall occur in the board or in any of the offices of the company, and a majority of the board shall constitute a quorum for the transaction of business.

ART. 2928. The laws relating to and governing corporations in general shall apply to and govern insurance companies incorporated in this state in so far as the same may not be inconsistent with the provisions of this title. General incorporation law shall apply to insurance companies.

## CHAPTER TWO.

### COMMISSIONER OF INSURANCE.

	Article		Article
Charged with execution of insurance laws.	2929	Free access to books, records, etc., given to commissioner and treasurer.	2938
Duty of, when application is made for certificate of authority.	2930	Instruments executed by commissioner and copies of papers in his office made evidence.	2939
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Other duties of commissioner.	2932	Papers, etc., in comptroller's office relating to insurance shall be transferred to commissioner, etc.	2942
Powers of, to make examinations, etc.	2933	Insurance company's certificate of authority to transact business to be revoked, when.	2942a
Person refusing to testify may be attached, etc.	2934		
Process issued by court shall be executed by sheriff, etc.	2935		
Transfer of securities by commissioner not valid, unless countersigned by treasurer.	2936		
Duty of treasurer in regard to such transfers.	2937		

ARTICLE 2929. The commissioner of insurance, statistics and history is charged with the execution of all laws now in force or which may hereafter be enacted in relation to insurance and insurance companies doing business in this state. Charged with the execution of insurance laws. (Act Aug. 21, 1876, p. 219, §1.)

ART. 2930. When application is made to the commissioner by any company desiring to pursue the business of insurance for a certificate of authority, he shall, before granting such certificate, be satisfied that such company has fully and in good faith complied with all the requirements of the law and is possessed of the amount of capital stock required by law, and such commissioner may make or cause to be made such examination and investigation into the affairs of such company as he may deem prudent. Duty of, when application is made for certificate of authority.

ART. 2931. Should said commissioner be satisfied that the company applying for authority has in all respects fully complied with the law, and that it has the required amount of capital stock, it shall be his duty to issue to such company a certificate of authority under the seal of his office, authorizing such company to transact insurance business, naming therein the particular kind of insurance, for the period of not less than three months nor extending beyond the thirty-first day of December next following the date of such certificate; but no subsequent certificate of authority shall be issued to any company, organized under the laws of any other state or country, where it shall be made to appear that such company has moved from any court of this state to a court of the United States for trial, any suit brought against it, by a citizen of this state to recover for a loss under a policy of insurance, issued by such company, and that, by such removal, the suit has been transferred to a place for trial, without and beyond the limits of the county in which such citizen resides. Shall issue certificate of authority, when.  
  
Subsequent certificate not to be issued, when. (Acts 1879, ch. 73, p. 83.)

ART. 2932. The following are the duties of the commissioner of insurance: Other duties of commissioner.

1. To see that all laws respecting insurance and insurance companies are faithfully executed.

2. To file and preserve in his office all acts or articles of incorporation of insurance companies, and all other papers required by law to be deposited with him, and on application of any party interested therein to furnish certified copies thereof upon the payment of the fees prescribed by law.

3. He shall, as soon as practicable in each year, calculate or cause to

be calculated in his office, by an officer or employé of his department, the net value on the thirty-first of December of the previous year, of all the policies in force on that day in each life or health company doing business in the state.

4. Calculations of the net value of each policy shall be based upon the American experience table of mortality and four and one-half per cent. interest per annum. And the net value of a policy at any time shall be taken to be the net single premium which will at that time effect the insurance, less the value at that time of the future net premiums called for by the table of mortality and rate of interest designated above.

5. In case it is found that any life insurance company doing business in this state has not on hand the net value of all its policies in force, after all other debts of the company and claims against it, exclusive of capital stock, have been provided for, it shall be the duty of the insurance commissioner to publish the fact that the then existing condition of the affairs of the company is below the standard of legal safety established by this state, and he shall require the company at once to cease doing new business, and he shall immediately institute proceedings, as provided by law, to determine what further shall be done in the case.

6. It is hereby made the duty of the commissioner of insurance, after having determined as above the net value of all the policies in force, to see that the company has that amount in safe, legal securities of the description and character required by law, after all its debts and claims against it, exclusive of capital stock, have been provided for.

7. He shall accept the valuation made by the insurance commissioner of the state under whose authority a life insurance company was organized, when such valuation has been properly made, on sound and recognized principles and legal basis as above; *provided*, the company shall furnish to him a certificate of the insurance commissioner of such state, setting forth the value calculated on the data designated above, of all the policies in force in the company on the previous thirty-first day of December, and stating that after all other debts of the company and claims against it at that time were provided for, the company had, in safe securities of the character required by the law of this state, an amount equal to the net value of all its policies in force, and that said company is entitled to do business in its own state.

8. Every life insurance company doing business in this state during the year for which the statement is made, that fails promptly to furnish the certificates aforesaid, shall be required to make full detailed lists of policies and securities to the insurance commissioner, and shall be liable for all charges and expenses consequent upon not having furnished said certificate.

9. For every company doing fire insurance business in this state, he shall calculate the re-insurance reserve for unexpired fire risks, by taking fifty per cent. of the premiums received on all unexpired risks that have less than one year to run, and a *pro rata* of all premiums received on risks that have more than one year to run; *provided*, that when the re-insurance reserve, calculated as above, is less than forty per cent. of all the premiums received during the year, the re-insurance reserve in this case shall be the whole of the premiums received on all of its unexpired risks.

10. In marine and inland insurance he shall charge all the premiums received on unexpired risks as a re-insurance reserve.

11. Having charged against a company the re-insurance reserve, as above determined, for fire, marine and inland insurance, and adding thereto all other debts and claims against the company, he shall, in case he find the capital stock of the company impaired to the extent of twenty per cent., give notice to the company to make good its whole capital stock within sixty days; and if this is not done, he shall require the com-

pany to cease to do business within this state, and shall thereupon, in case the company is organized under authority of the state, immediately institute legal proceedings to determine what further shall be done in the case.

12. It shall be the duty of the commissioner of insurance, after he has notified a life insurance company organized under authority of this act, to cease doing new business until the net value of its policies in force is equal to that called for by the standard of safety established by the state, at once to cause a rigid examination in regard to the affairs of such company; and in case it shall appear that there is no fraud or gross incompetency or recklessness shown to exist in the management, he may, upon publishing the facts in the case, permit such company to continue in charge of its business for one year; *provided*, there is, in his opinion, reason to believe that the company may eventually be able to re-establish the legal net value of its policies in force. At the end of the year named above he may renew the permission in case, on examination, if he is satisfied that the company is likely to retrieve its affairs.

13. In case the commissioner does not permit the company to continue in the control of its business, it is made his duty to institute the necessary proceedings for the protection of its policy-holders in accordance with the laws.

14. The commissioner shall publish the result of his examination of the affairs of any company whenever he deems it for the interest of the public.

15. He shall suspend the entire business of any company of this state, and the business within this state of any other company, during its non-compliance with any provision of the law relative to insurance, or whenever its assets appear to him insufficient to justify its continuance in business, by suspending or revoking the certificate granted by him, and he shall give notice thereof to the insurance commissioner or other similar officer of every state, and shall also publish notice thereof.

16. He shall institute, or cause to be instituted, the necessary proceedings under the laws to close the affairs of any insurance company of this state which shall appear to him upon examination to be insolvent or fraudulently conducted.

17. He shall report promptly and in detail to the attorney-general any violation of law relative to insurance companies or the business of insurance.

18. He shall furnish to the companies required to report to him the necessary blank forms for the statements required.

19. He shall preserve in a permanent form a full record of his proceedings and a concise statement of the condition of each company or agency visited or examined.

20. At the request of any person, and on the payment of the legal fee, he shall give certified copies of any record or papers in his office when he deems it not prejudicial to public interest, and shall give such other certificates as are provided for by law.

21. He shall report annually to the governor the names and compensations of his clerks, the receipts and expenses of his department for the year, his official acts, the condition of companies doing business in this state, and such other information as will exhibit the affairs of said department.

22. He shall send a copy of such annual report to the insurance commissioner or any similar officer of every other state, and to each company doing business in this state.

23. On request he shall communicate to the insurance commissioner or other similar officer of any other state, in which the substantial provisions of the law of this state relative to insurance has been or shall be enacted, any facts which by law it is his duty to ascertain respecting companies of this state doing business within such other state.

24. It shall be his duty to see that no company is permitted to insure lives or health in this state whose charter authorizes it to do a fire, marine or inland business, and that no company authorized to do a life or health insurance business be permitted to take fire, marine or inland risks.

Powers of, to make examination, etc.  
*Ib.* p. 228, §9.

ART. 2933. The commissioner of insurance, for the purpose of examinations authorized by law, has power either in person or by one or more examiners by him commissioned in writing—

1. To require free access to all books and papers within this state of any insurance companies or the agents thereof doing business within this state.

2. To summon and examine any person within this state, under oath, which he or any examiner may administer, relative to the affairs and condition of any insurance company.

3. For probable cause to visit at its principal office, wherever it may be, any insurance company, not of a state in which the substantial provisions of the laws of this state shall be enacted and doing business in this state, for the purpose of investigating its affairs and condition, and he shall revoke the certificate of any such company in this state refusing to permit such examination.

4. He may revoke or modify any certificate of authority issued by him when any conditions prescribed by law for granting it no longer exists.

5. He also has power to institute suits and prosecutions, either by the attorney-general or such other attorney as he may designate, for any violation of the law of this state relating to insurance, and he shall be made a party to any proceedings for the closing up of the affairs of any company, when the same shall not be in the name of the state.

Person refusing to testify may be attached, etc.  
*Ib.* §10.

ART. 2934. Whenever, without justifiable cause, any person being within this state refuses to appear and testify before the commissioner of insurance when duly summoned, he may be attached by order of such commissioner and imprisoned in the county jail until he testifies.

Process issued by commissioner shall be executed by sheriff, etc.

ART. 2635. Sheriffs and other peace officers of this state shall execute process directed to them by the commissioner of insurance, and make return thereof to him as in the case of process issued from any of the courts.

Transfer of securities by commissioner not valid unless countersigned by treasurer.  
*Ib.* p. 224, §13.

ART. 2936. No transfer by the commissioner of insurance of securities of any kind, in any way held by him in his official capacity, shall be valid unless countersigned by the treasurer of the state.

Duty of treasurer in regard to such transfers.  
*Ib.*

ART. 2937. It is the duty of the state treasurer—

1. To countersign any such transfer presented to him by the commissioner.

2. To keep a record of all transfers, stating the name of the transferee, unless transferred in blank, and a description of the security.

3. Upon countersigning, to advise by mail the company concerned the particulars of the transaction.

4. In his annual report to the legislature to state the transfers and the amount thereof, countersigned by him.

Free access to records, books, etc., given to commissioner and treasurer.  
*Ib.* §14.

ART. 2938. For the purpose of verifying the correctness of records the commissioner of insurance shall be entitled to free access to the treasurer's records, required by the preceding article, and the treasurer shall be entitled to free access to the books and other documents of the insurance department relating to securities held by the commissioner.

Instruments executed by commissioner, and copies of papers in his office made evidence.  
*Ib.* p. 223, §11.

ART. 2939. Every instrument executed by the commissioner of insurance of this state, or of any other state, in which the substantial provisions of the laws of this state relating to insurance have been or shall be enacted, pursuant to authority conferred by law, and authenticated by his seal of office, shall be received as evidence, and copies of papers and records in his office certified by him, and so authenticated, shall be received as evidence, with the same effect as the originals.

ART. 2940. The commissioner of insurance is authorized to address any inquiries to any insurance company in relation to its business and condition, or any matter connected with its transactions which he may deem necessary for the public good or for a proper discharge of his duties; and it shall be the duty of the company so addressed to promptly answer such inquiries in writing.

Commissioner authorized to make inquiries of company etc. (Act Feb. 17, 1875, p. 39, §18.)

ART. 2941. It shall be the duty of the commissioner to cause the information contained in the annual statements of companies to be arranged in tabular form, and prepare the same in a single document for printing, and submit the same to the legislature as a portion of his regular report to that body.

Annual statement to be tabulated and submitted to legislature by commissioner. *Id.* p. 43, §28.

ART. 2942. All papers and records now on file in the office of the comptroller of public accounts pertaining to insurance and connected with the current duties of the commissioner of insurance, statistics and history shall be transferred and delivered to that officer as early as practicable.

Papers, etc., in comptroller's office, relating to insurance, shall be transferred to officer, etc. (Act Aug. 21, 1876, p. 226, §24.)

ART. 2942a. Should any insurance company fail or neglect to pay off and discharge any execution, issued upon a valid final judgment against said company, within thirty days after notice of the issuance thereof, then, in that event, the certificate of authority of said company to transact business of insurance shall be revoked, cancelled and annulled, and said company shall be prohibited from transacting business of insurance in this state until said execution be satisfied.

Insurance company's certificate of authority to transact business to be revoked, when. (Acts 1879, ch. 144, p. 159.)

## CHAPTER THREE.

### GENERAL PROVISIONS.

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Company shall publish certificate of commissioner.....	2968
Unlawful dividends.....	2969
Penalty for making unlawful dividends.....	2970
Policy shall be considered a liquidated demand.....	2971

ARTICLE 2943. It shall not be lawful for any person to act within this state, as agent or otherwise, in soliciting or receiving applications for insurance of any kind whatever, or in any manner to aid in the transaction of the business of any insurance company incorporated in this state or out of it, without first procuring a certificate of authority from the commissioner of insurance, statistics and history.

Insurance unlawful unless authorized by commissioner of insurance. (Act May 2, 1874.) P.D. 7116g.

NOTE.—Section 1, chapter 36, acts 1879, extra session, declares that persons, other than attorneys at law, marine adjusters, and citizens of the state arbitrating in the adjustment of losses between insurers and the insured, doing certain acts or things for an insurance company, shall be held to be the agents of such company.

And the fourth section provides that, where any such acts are done for a com-



pany that has not complied with the laws of the state, the person doing them shall be personally liable to the holder of any policy, in respect to which such act was done, for any loss covered by the same. See appendix for the act in full.—L.

Statement under oath shall be furnished commissioner, and what it shall show.

*Ib.*

ART. 2944. Any life or health insurance company desiring to transact the business of insurance in this state shall furnish said commissioner with a written or printed statement, under oath of the president or secretary of such company, which statement shall show—

1. The name and locality of the company.
2. The amount of its capital stock.
3. The amount of its capital stock paid up.
4. The assets of the company, including, first, the amount of cash on hand and in the hands of other persons, naming such persons and their residence; second, real estate unincumbered, where situated and its value; and if the said company be one organized under the laws of this state, an abstract of the title thereto shall accompany such statement; third, the bonds owned by the company and how they are secured, with the rate of interest thereon; fourth, debts due the company secured by mortgage, describing the property mortgaged and its market value; fifth, debts otherwise secured, stating how secured; sixth, debts for premiums; seventh, all other moneys and securities.
5. The amount of liabilities due or not due by the company, stating the person or corporation to whom due.
6. Losses adjusted and due.
7. Losses adjusted and not due.
8. Losses unadjusted.
9. Losses in suspense and for what cause.
10. All other claims against the company, describing the same.

Statement shall be accompanied with act or articles of incorporation and copy of by-laws of company.

*Ib.*

ART. 2945. Such life or health insurance company shall accompany such statement with its acts or articles of incorporation and all amendments thereto, and a copy of its by-laws, together with the name and residence of each of its officers, directors and members, all of which shall be certified under the hand of the president or secretary of such company.

Power of attorney shall accompany statement, etc.

*Ib.*

ART. 2946. Such company shall also file with the commissioner a power of attorney under its corporate seal for all of its agents and officers or representatives in this state, authorizing such agents, officers and representatives, and each of them, to accept service of any civil process for and in behalf of such company, and consenting that the service of any civil process upon any such agent, officer or representative in the state in any suit or proceeding in which such company is a party, shall be taken and held to be valid, and waiving all claims of error by reason of such service. Said power of attorney shall be embodied in a resolution duly adopted by such company and shall be signed by the president, manager or secretary thereof; and all of the persons named in said power of attorney shall be residents of this state, and the full name and residence of each shall be stated.

Capital stock shall not be less than \$100,000.

P. D. 7116h.

ART. 2947. No life or health insurance company incorporated in this state, or any other state, shall transact any business of insurance in this state unless such company is possessed of at least one hundred thousand dollars of actual capital invested in stocks, bonds, mortgages or other satisfactory evidence of security, the market value of which shall not be less than one hundred thousand dollars.

Comity with other states.

P. D. 7116m.

ART. 2948. Whenever the existing or future laws of any other state of the United States shall require of life or health insurance companies incorporated by this state, any deposit of securities in such other state before transacting insurance business therein, then, and in every such case all insurance companies of such state shall, before doing any insurance business in this state, be required to make the same deposit of securities with the treasurer of this state.

ART. 2949. No life or health insurance company incorporated by or organized under the laws of any foreign government shall transact business in this state unless it shall first deposit and keep deposited with the treasurer of this state for the benefit of the policy-holders of such company, citizens or residents of the United States, bonds or securities of the United States or of the State of Texas, to the amount of one hundred thousand dollars.

Foreign companies required to deposit \$100,000 with state treasurer.  
P.D. 7116n.

ART. 2950. The deposit required by the preceding article shall be held liable to pay the judgments of policy-holders in such company, and may be so decreed by the court adjudicating the same.

Deposits liable for judgments of policy-holders.

ART. 2951. If the deposit required by article 2949 has been made in any other state of the United States under the laws of such state in such manner as to secure equally all the policy-holders of such company who are citizens and residents of the United States, then no deposit shall be required in this state, but a certificate of such deposit under the hand and seal of the officer of such other state with whom the same has been made, shall be filed with the commissioner of insurance, statistics and history.

When the deposit has been made in another state.

ART. 2952. Suits may be instituted and prosecuted against any life or health insurance company in any county where loss has occurred, or where the policy-holder instituting such suit resides, and the process in any such suit may be served upon any person in this state holding a power of attorney from such company, and if no such person can be found in this state, upon affidavit of that fact being filed, process may be served by publication, as provided in the case of defendants who are non-residents of this state.

Where suits against companies may be instituted, and how processes may be served.  
P.D. 7116g.

ART. 2953. In all cases where a loss occurs and the life or health insurance company liable therefor shall fail to pay the same within the time specified in the policy, after demand made therefor, such company shall be liable to pay the holder of such policy, in addition to the amount of the loss, twelve per cent. damages on the amount of such loss, together with all reasonable attorney's fees for the prosecution and collection of such loss.

Penalty for failure to pay loss.  
P.D. 7116o.

ART. 2954. Should any life or health insurance company fail to pay off and satisfy any execution that may lawfully issue on any final judgment against said company within thirty days after the officer holding such execution has demanded payment thereof from any officer, agent or attorney of such company in this state or out of it, such officer shall immediately certify such demand and failure to the commissioner of insurance, and thereupon the commissioner shall forthwith declare null and void the certificate of authority issued by him to such company, and such company shall be prohibited from transacting any business in this state until said execution shall be fully satisfied and discharged, and until such commissioner shall renew his certificate of authority to such company.

Penalty for failure to pay execution.  
P.D. 7116o.

ART. 2955. It shall be unlawful for any life or health insurance company to take any kind of risks or issue any policies of insurance, except those of life or health, nor shall the business of life or health insurance in this state be in anywise conducted or transacted by any company which, in this or any other state or country, is engaged or concerned in the business of marine, fire, inland or other insurance.

Life or health insurance company shall not take any other risks than those of life or health.  
P.D. 1716f.

ART. 2956. It shall be lawful for any insurance company doing business in this state under the proper certificate of authority, except a life or health insurance company, to insure houses, buildings, and all other kinds of property, against loss or damage by fire, and to take all kinds of insurance on goods, merchandise or other property in the course of transportation, whether on land or water, or any vessel afloat, wherever the same may be; to lend money on bottomry or *respondentia*, and to cause itself to be insured against any loss or risk it may have incurred in the course of its business, and upon the interest which it may have in

Marine, fire and other than life or health insurance companies may do what.  
(Act Feb. 17, 1875, p. 34, §8.)

any property, by means of any loan or loans which it may have made on bottomry or *respondentia*, and generally to do and perform all other matters and things proper to promote these objects.

Limit to extent of insurance.  
*Ib.*

ART. 2957. No fire, marine or inland insurance company doing business in this state shall expose itself to loss on any one risk, except when insuring cotton in bales, to an amount exceeding ten per cent. of its paid up capital, unless the excess shall be insured by such company in some other solvent insurance company legally authorized to do business in this state.

Insurance companies shall not purchase or hold real estate, except, etc.  
*Ib.* §16.

ART. 2958. No fire, marine or inland insurance company organized under the laws of the state shall purchase or hold any real estate, except—

1. Such as shall be requisite for its convenient accommodation in the transaction of its business.
2. Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted or for money due.
3. Such as shall have been conveyed to it in satisfaction of debts previously contracted in the legitimate business of the company or for money due.

4. Such as shall have been purchased at sales under judgments, decrees or mortgages obtained or made for such debts. All lands purchased or held in violation of this article shall be forfeited to the state.

Commissioner may permit capital stock of company to be reduced, when.  
(Act Aug. 21, 1876, p. 222, §8, subdivision 11.)

ART. 2959. Whenever the joint stock of any fire, fire and marine, or marine insurance company of this state becomes impaired, the commissioner of insurance may, in his discretion, permit the said company to reduce its capital stock and par value of its shares in proportion to the extent of impairment, but in fixing such reduced capital no sum exceeding twenty-five thousand dollars shall be deducted from the assets and property on hand, which shall be retained as surplus assets, and no part of such assets and property shall be distributed to the stockholders, nor shall the capital stock of a company in any case be reduced to an amount less than one hundred thousand dollars.

When company is called upon to make good its capital stock, shall do what.  
*Ib.* §221.

ART. 2960. Any fire, marine or inland insurance company having received notice from the commissioner of insurance to make good its whole capital stock within sixty days, shall forthwith call upon its stockholders for such amounts as shall make its capital equal to the amount fixed by the charter of such company.

Stockholder failing to pay when called upon, what course shall be taken.  
*Ib.* §8.

ART. 2961. In case any stockholder of such fire, marine or inland insurance company shall neglect or refuse to pay the amount so called for, after notice personally given, or by advertisement for such time and in such manner as said commissioner shall approve, it shall be lawful for said company to require the return of the original certificate of stock held by such stockholder, and in lieu thereof to issue new certificate for such number of shares as such defaulting stockholders may be entitled to, in the proportion that the ascertained value of the funds of said company may be found to bear to the original capital of said company; the value of such shares, for which new certificates are issued, to be ascertained under the direction of said commissioner, and the company shall pay for the fractional parts of shares.

Company may create and dispose of new stock, when.  
*Ib.*

ART. 2962. It shall be lawful for such fire, marine or inland insurance company to create new stock and dispose of the same, and to issue new certificates therefor, to any amount sufficient to make up the original capital of the company.

Association of companies not permitted to do business, until, etc.  
*Ib.* p. 224, §15.

ART. 2963. In the event that any number of insurance companies, whether life, health, fire, marine or inland, should associate themselves together for the purpose of issuing or vending policies or joint policies of insurance, such association shall not be permitted to do business in this state until the taxes and fees due from each of said companies shall have been paid and all the conditions of the law fully complied with by each company; and any company failing or refusing to pay such taxes and

fees, and to fully comply with the requirements of law, shall be refused permission by the commissioner of insurance to do business in this state.

ART. 2964. Whenever by any provision of this title any notice or other matter is required to be published, it shall, unless otherwise provided, be published for three successive weeks in two newspapers printed in the state and which have a general circulation in the state.

Notices shall be published, how.

ART. 2965. It shall be the duty of the president or of the vice-president and secretary of each fire, marine or inland insurance company doing business in this state, annually, on the first day of January of each year, or within sixty days thereafter, to prepare under oath and deposit with the commissioner of insurance of this state a full, true and complete statement of the condition of such company on the last day of the month of December preceding.

Annual statement of company. (Act Feb. 17, 1875, p. 37, §17.)

ART. 2966. The annual statement required by the preceding article shall exhibit the following items and facts:

What the annual statement shall exhibit. *Ib.*

1. The name of the company and where located.
2. The names and residences of the officers.
3. The amount of capital stock of the company.
4. The amount of capital stock paid up.
5. The property or assets held by the company, viz: The real estate owned by such company, its location, description and value as near as may be, and if said company be one organized under the laws of this state shall accompany such statement, with an abstract of the title to the same; the amount of cash on hand and deposited in banks to the credit of the company, and in what bank or banks the same is deposited; the amount of cash in the hands of agents, naming such agents; the amount of cash in course of transmission; the amount of loans secured by first mortgages on real estate, with the rate of interest thereon, specifying the location of such real estate, its value and the name of the mortgagor; the amount of all bonds and other loans, with the rate of interest thereon and how secured; the amount due the company in which judgments have been obtained, describing such judgments; the amount of stocks of this state, of the United States, of any incorporated city of this state, and of any other stock owned by the company, describing the same and specifying the amount and number of shares, and the par and market value of each kind of stock; the amount of stock held by such company as collateral security for loans, with amount loaned on each kind of stock, its par and market value; the amount of interest actually due to the company and unpaid; all other securities, their description and value.
6. The liabilities of such company, specifying the losses adjusted and due; losses adjusted and not due; losses unadjusted; losses in suspense, and the causes thereof; losses resisted and in litigation; dividends, either in scrip or cash, specifying the amount of each declared, but not due; dividends declared and due; the amount required to re-insure all outstanding risks on the basis of forty per cent. of the premium on all unexpired fire risks, and one hundred per cent. of the premiums on all unexpired marine and inland transportation risks; the amount due banks or other creditors, naming such banks or other creditors and the amount due to each; the amount of money borrowed by the company, of whom borrowed, the rate of interest thereon, and how secured; all other claims against the company, describing the same.
7. The income of the company during the preceding year, stating the amount received for premiums, specifying separately fire, marine and inland transportation premiums, deducting re-insurance; the amount received for interest, and from all other sources.
8. The expenditures during the preceding year, specifying the amount of losses paid during said term, stating how much of the same accrued prior, and how much subsequent to the date of the preceding statement, and the amount at which losses were estimated in such preceding state-

ment; the amount paid for dividends; the amount paid for return premiums, commissions, salaries, expenses and other charges of officers, agents, clerks and other employés; the amount paid for local, state, national, internal revenue and other taxes and duties; the amount paid for all other expenses, such as fees, printing, stationery, rents, furniture, etc.

9. The largest amount insured in any one risk, naming the risk.

10. The amount of risks written during the year then ending.

11. The amount of risks in force having less than one year to run.

12. The amount of risks in force having more than one, and not over three years to run.

13. The amount of risks having more than three years to run.

14. It shall be stated whether or not dividends are declared on premiums received for risks not terminated.

Commissioner may change form of annual statements. (Act Feb. 17, 1875, p. 43, §27.)

ART. 2967. The commissioner of insurance may, from time to time, make such changes in the forms of the annual statements of companies, whether life, health, fire, marine or inland, as shall seem to him best adapted to elicit from the companies a true exhibit of their condition in respect to the several points enumerated in the preceding articles, or in respect to other points that he may deem essential to be added.

Company shall publish certificate of commissioner. *Id.* §26.

ART. 2968. It shall be the duty of every insurance company doing business in this state, whether life, health, fire, marine or inland, to publish annually within thirty days after the issuance thereof, a certificate from the commissioner of insurance that such company has in all respects complied with the laws in relation to insurance.

Unlawful dividends. *Id.* §15.

ART. 2969. It shall not be lawful for any life, health, fire, marine or inland insurance company organized under the law of this state to make any dividend except from the surplus profits arising from its business, and in estimating such profits there shall be reserved therefrom a sum equal to forty per cent. of the amount received as premiums on unexpired fire risks and policies, and one hundred per cent. of the premiums received on unexpired life, health, marine or inland transportation risks and policies; which amount so reserved is hereby declared to be unearned premiums; and there shall also be reserved the amount of all unpaid losses, whether adjusted or unadjusted; all sums due the company on bonds, mortgages, stocks and book accounts, of which no part of the principal or the interest thereon has been paid during the year preceding such estimate of profits, and upon which suit for foreclosures or collections has not been commenced, or which, after judgment has been obtained thereon, shall have remained more than two years unsatisfied, and upon which interest shall not have been paid; and in case of any such judgment the interest due or accrued thereon and remaining unpaid shall also be reserved.

Penalty for making unlawful dividends. *Id.*

ART. 2970. Any dividends made contrary to the provisions of the preceding article shall subject the company making it to a forfeiture of its charter, and the commissioner of insurance shall forthwith revoke its certificate of authority.

Policy shall be considered a liquidated demand. (Acts 1879, ch. 73, p. 83.)

ART. 2971. A fire insurance policy, in case of a total loss by fire of property insured, shall be held and considered to be a liquidated demand against the company for the full amount of such policy; *provided*, that the provisions of this article shall not apply to personal property.

TITLE LIV.

Interest.

	Article		Article
Definition of "interest".....	2972	Eight per cent. allowed on open accounts..	2977
"Legal interest".....	2973	Conventional interest not to exceed twelve	
"Conventional interest".....	2974	per cent.....	2978
Distinction between legal and conventional		Usurious contracts void for the interest....	2979
interest recognized by law.....	2975	Interest on judgments.....	2980
Eight per cent. allowed where no rate is		Usury must be specially pleaded under	
fixed by the parties.....	2976	oath.....	2981

ARTICLE 2972. "Interest" is the compensation allowed by law or fixed by the parties to a contract for the use or forbearance or detention of money. Definition of "interest."

ART. 2973. "Legal interest" is that interest which is allowed by law when the parties to a contract have not agreed upon any particular rate of interest. "Legal interest."

ART. 2974. "Conventional interest" is that interest which is agreed upon and fixed by the parties to a written contract, not to exceed twelve per cent. per annum. "Conventional interest."

ART. 2975. The distinction between legal and conventional interest shall be known and recognized by the laws of this state. Distinction between legal and conventional recognized by law. (Act Jan. 18, 1840.) P. D. 3939.

ART. 2976. On all written contracts ascertaining the sum payable, when no specified rate of interest is agreed upon by the parties to the contract, interest shall be allowed at the rate of eight per cent. per annum from and after the time when the sum is due and payable. Eight per cent. allowed where no rate is fixed by the parties. *Ib.* (Act Aug. 21, 1876, p. 227, §1.) (Const., art. 16, §11.) P. D. 3940.

ART. 2977. On all open accounts, when no specific rate of interest is agreed upon by the parties, interest shall be allowed at the rate of eight per cent. per annum from the first day of January after the same are made. Eight per cent. allowed on open account. (Acts Dec. 17, 1861; Aug. 21, 1876, p. 227, §1.) P. D. 3940.

ART. 2978. The parties to any written contract may agree to and stipulate for any rate of interest not exceeding twelve per cent. per annum on the amount or value of the contract. Conventional interest is not to exceed 12 per cent. (Acts Jan 18, 1840; Aug. 21, 1876, p. 228, §2.) (Const., art. 16, §11.) P. D. 3941.

ART. 2979. All written contracts whatsoever which may in any way, directly or indirectly, violate the preceding article by stipulating for a greater rate of interest than twelve per cent. per annum shall be void and of no effect for the whole rate of interest only; but the principal sum of money or the value of the contract may be received and recovered. Usurious contract void for the interest. (Act Aug. 21, 1876, p. 228, §3.) P. D. 3942.

ART. 2980. All judgments of the several courts of this state shall bear interest at the rate of eight per cent. per annum from and after the date of the judgment, except where the contract upon which the judgment is founded bears a specified interest greater than eight per cent. per annum and not exceeding the highest rate of conventional interest permitted by law, in which case the judgment shall bear the same rate of interest specified in such contract and after the date of such judgment. Interest on judgments. *Ib.* P. D. 3943.

ART. 2981. No evidence of usurious interest shall be received on the trial of any case unless the same shall be specially pleaded and verified by the affidavit of the party wishing to avail himself of such defense. Usury must be specially pleaded under oath. (Act Aug. 21, 1876, p. 228, §3.)

TITLE LV.

Irrigation.

CHAPTER ONE.

REGULATING THE MODE OF IRRIGATION.

	Article		Article
Commissioners' court to regulate.....	2982	May exercise right of eminent domain.....	2986
General powers over the subject.....	2983	And discontinue ditches, etc.....	2987
May lease <i>suerte</i> of delinquent.....	2984	And establish fence laws.....	2988
May license irrigation.....	2985		

Commissioners' court to regulate irrigation. (Act Feb. 10, 1862, p. 80, §1.) P.D. 3945.

ARTICLE 2982. The commissioners' courts are authorized to order, regulate and control the time, mode and manner of erecting, repairing, cleaning, guarding and protecting the dams, ditches, roads and bridges, belonging to any irrigation farms and property, and the fences or other like protection in and around such farms; *provided*, that such farms, dams, ditches and fences be owned conjointly by two or more different persons; *and further provided*, that the same be situated outside of a corporation having jurisdiction thereof.

General powers over the subject. *Ib.* §2. P.D. 3946.

ART. 2983. Said courts shall have power to establish all needful police regulations for the government and control of irrigation farms and property, and said courts may assess and collect fines for breaches of any regulations established by them or by the joint owners of such farms and property, or recognized by said court as consistent with ancient usage and the law of the state; said courts may order meetings of joint owners for the election of commissioners and other officers, and for the consideration of any of their other interests, or the said court may proceed and elect said officers, and may regulate the right of way, the stoppage and passage of the water, and the right distribution of the shares of said water; they may forbid the running of stock at large on the common farm; they may fine for taking water out of turn and for carelessness and wantonness in overflowing roads and neighboring lands, and generally they may do or cause to be done what they may consider just and needful or beneficial to the joint owners.

May lease *suerte* for delinquent. *Ib.* §3. P.D. 3947.

ART. 2984. If any owner of a *suerte* or subdivision lot in said farm shall fail or refuse to do or pay his proportion of labor and expense in and on any dam, ditches, fences, bridges or other needful appurtenances to such irrigation farms, the commissioners' court may lease said *suerte*; *provided*, that such leasing shall be at public outcry, after ten or more days of due public notice, and to the persons bidding the shortest term, not to exceed four years, who shall give good security to discharge faithfully all such charge and work.

May license irrigation. *Ib.* §4. P.D. 3948.

ART. 2985. Upon the application of the owners of any suitable lands and water, and the assurance and the proper security given to the county, if required by said court, that no injury will result to the public health, the commissioners' courts are authorized by decree to license and permit any such owners to proceed and dam the water, and to ditch, fence and irrigate their lands; *provided*, that joint owners of all irrigation farms shall be liable for damages done to the public, or to any person, by reason of the overflow of such irrigation water; suit to be brought against the person occasioning the injury, or in such other way as may be sanctioned by said court.

**ART. 2986.** If, in the establishment of any new project of irrigation, or the extension thereof, the commissioners' court deem it of sufficient importance to order a dam or ditch to be made on the lands of any person refusing to consent thereto, the said court, after giving such person actual notice in writing, and full hearing and consideration of his objections, may decree the making of the same and shall depute two or more discreet and disinterested freeholders of the vicinage to arbitrate and fix the amount of damage permanently sustained by such person, which shall, by that or another such commission, be levied upon and paid forthwith by the applicants for such irrigation project in the ratio of the interest and several shares of the said applicants and joint owners; and the said courts may, after like personal notice to parties interested, order the multiplication or extension of any ditches for irrigation, and of irrigation farms at and below, or at the sides of other such property; when it shall be the duty of such court to proceed and assess all just fines and equitable damages, and to fix and direct the rate and amount and kind of work, labor and tax to be paid by any of such applicants and others, according to their interest.

May exercise right of eminent domain.  
Ib. §5.  
P.D. 3949.

**ART. 2987.** Where the health of the public may be injured by irrigation or the damming up of water for any purpose, it shall be the duty of the commissioners' courts, after due and mature hearing and consideration, to decree the discontinuance, and they shall proceed and break up and discontinue all such dams, ditches and irrigation, whether the same have been heretofore ever so long in existence or may be hereafter started.

And discontinue ditches, etc.  
Ib. §6.  
P.D. 3950.

**ART. 2988.** In counties where the commissioners' courts may decree and adjudge that fences around irrigation farms may be dispensed with, they may make all fair, equal and proper regulations for the keeping up or herding of hogs, cattle and other stock, and for the security and protection of the crops and farms; *provided*, that if ten or more voters shall make written protest against such decree, then the said court shall proceed by notice and a public election and ascertain if two-thirds of the voters be in favor of dispensing with the use of fences, otherwise it shall not be so decreed.

And establish fence laws.  
Ib. §7.  
P.D. 3951.

## CHAPTER TWO.

### LAND GRANTS TO IRRIGATION CANALS AND DITCHES.

Article	Article		
Land grants to canals, etc. ....	2989	Right of way over lands.....	2996
Amounts granted.....	2990	Legislative control over.....	2997
Classification of canals.....	2991	Free use of streams.....	2998
Inspector of canals and ditches.....	2992	May cross highways, etc.....	2999
Inspections and reports.....	2993	Rights of riparian owners.....	3000
Bond to be required.....	2994	No subsidy for unnecessary ditches.....	3001
Certificates, how located.....	2995		

**ARTICLE 2989.** Any person, firm, corporation or company who shall construct a canal or ditch for navigation or irrigation, in accordance with the provisions of this chapter, shall receive from the state a grant of land as provided in the succeeding articles.

Land grants to canals, etc.  
(Act Aug. 21, 1876, p. 253, §1.)

**ART. 2990.** For canals or ditches of the first class, eight sections of land to the mile; for canals or ditches of the second class, six sections to the mile; for canals or ditches of the third class, four sections to the mile; for canals or ditches of the fourth class, two sections to the mile; canals for navigation, having a width of forty feet and a permanent depth of water of four feet, shall receive sixteen sections of land to the mile.

Amounts granted.  
Ib. §2.

**ART. 2991.** Canals and ditches shall be classified as follows: A canal or ditch carrying a stream of water of a uniform width of thirty feet and uniform depth of five feet shall be deemed of the first class. A canal or ditch carrying a stream of water of a uniform width of fifteen feet and of a uniform depth of four feet shall be deemed of the second class. A

Classification of canals.  
Ib. §3.



canal or ditch carrying a stream of water of a uniform width of nine feet and of a uniform depth of three feet shall be deemed of the third class. A canal or ditch not complying with the requirements of a third class canal or ditch, but carrying a stream of water of a uniform width of not less than six feet and of a uniform depth of not less than two and a half feet, shall be deemed of the fourth class. All canals or ditches of whatever class must be at least two miles long, and have a permanent and continuous stream of water flowing therein at a rate sufficiently fast for all practical purposes.

Inspector of  
canals and  
ditches.  
*Ib.* §4.

ART. 2992. It shall be the duty of the governor to appoint an inspector of canals and ditches who shall perform the duties herein assigned to him, and shall receive therefor a compensation at the rate of twenty-five dollars per mile for every canal or ditch inspected by him, to be paid in advance by the person, firm, corporation or company requiring his services; and the inspector shall not be permitted to receive a contingent remuneration, or one in any way dependent on the issuance or sale of the certificates granted under this chapter.

Inspections  
and reports.  
*Ib.* §5.

ART. 2993. Whenever any person, firm, corporation or company shall have constructed in the manner required by law a section of two miles or more of any canal or ditch, and the water is actually flowing in the same and ready for use, report shall be made to the governor, setting out the facts verified by affidavit and applying for examination of the work, whereupon the governor shall direct the inspector of canals and ditches to examine and classify the same, and make a report, under oath, showing the class to which the canal or ditch belongs, the dimensions of the same, the amount of water flowing therein, the length of the work completed and in good order, and the location thereof; and if the governor shall be satisfied that the work has been done in compliance with law, and that the said person, firm or corporation have the ability and do intend to keep said canal or ditch in good repair and efficiency for navigation or irrigation for the period of ten years after it is fully completed, he shall certify the same to the commissioner of the general land office.

Bond to be  
required.  
*Ib.* §6.

ART. 2994. Upon the presentation of the certificate of the governor, as provided for in the preceding article, it shall be the duty of the commissioner of the general land office to issue to the person, firm or corporation or company entitled to the same, the number of land certificates for sections of six hundred and forty acres each to which the said person, firm or corporation or company may be entitled under the provisions of this chapter; but in no case shall any certificates be issued by the commissioner of the general land office until the person, firm, company or corporation whose canal or ditch shall have been certified, as provided in the preceding article, shall execute and file with the commissioner of the general land office a bond with two or more solvent sureties, whose solvency shall appear from the assessor's rolls in the office of the comptroller, in a sum equal to one hundred and twenty-five dollars for each certificate for the canal or ditch, payable to the governor, and his successors in office, conditioned that the said person, firm, company or corporation shall keep and maintain said canal or ditch in good and efficient repair for navigation or irrigation, as the case may be, for the full period of ten years from the time of filing the bond, and the commissioner of the general land office shall furnish the form of the bond required in this article.

Certificates,  
how located.  
*Ib.* §§7, 12.

ART. 2995. The certificates issued under this chapter shall be issued and located subject to and under the same conditions as those issued to railroads under the laws of this state, but the state shall not be liable for any deficiency in the public domain.

Right of way  
over lands.  
*Ib.* §8.

ART. 2996. All corporations for irrigation or navigation are hereby granted the right of way, not to exceed one hundred feet in width, over all public, university, school and asylum lands, with use of necessary rock, gravel and timber for construction purposes, and may obtain the right of

way over private lands by contract, or the damages for any private property appropriated by such corporations shall be assessed and paid for as provided for in cases of railroads.

ART. 2997. The legislature shall at such times as it may deem proper establish the rates of freight and passage over any canal for navigation, and fix the rates of water supply for towns and cities; but until such rates are established by law said companies may charge such tolls for freight and vessels through canals, and such rates for water supply as may be reasonable and proper.

Legislative control over.  
*Ib.* §9.

ART. 2998. Any such canal company may have the free use of the waters of the rivers and streams of this state; but in no case shall any company flow lands to the detriment of owners without their consent or on due payment of the party aggrieved of all damages occasioned by reason thereof.

Free use of streams.  
*Ib.* §10.

ART. 2999. Said companies, corporations, firms or persons shall have the right to cross all roads and highways necessary in the construction of their work, and shall at such crossings construct and maintain necessary bridges for the accommodation of the public.

May cross highways, etc.  
*Ib.* §11.

ART. 3000. Whenever any canal or ditch for irrigation shall be constructed under the provisions of this chapter, all persons owning lands adjacent to and irrigable from said canal or ditch shall have the right to use the water of said canal or ditch, under such regulations as may be prescribed by law or by the commissioners' court of the county where such lands are situate.

Rights of riparian owners.  
*Ib.* §13.

ART. 3001. Any canal or ditch which shall be constructed where there are already sufficient canals and ditches for the purpose of irrigation or navigation shall not be entitled to the land grant herein provided for; and no certificate shall be issued for any canal or ditch until the same has been carried to a point at which the water can be used for irrigation or navigation.

No subsidy for unnecessary ditches.  
*Ib.* §14.

TITLE LVI.

Jails.

	Article		Article
Commissioners' court shall provide jails, etc.....	3002	Duty of commissioners' court to see that jails are properly kept.....	3005
Sheriffs the keepers of jails, etc.....	3003	United States marshal may use jails.....	3006
Jails shall be so constructed that the penalty of death may be executed within the walls thereof.....	3004	Marshal liable for jail fees.....	3007
		Sheriff, etc., refusing to take prisoner guilty of a misdemeanor.....	3008

Commissioners' court shall provide jails, etc.  
 (Act July 22, 1876, p. 57, §4.)  
 Sheriffs the keepers of jails, etc.  
 (Act Aug. 26, 1856; May 12, 1846.)  
 P.D. 2504, 5718.  
 C.C.P. 50.

Jails shall be so constructed that the penalty of death may be executed within the walls thereof.

Duty of commissioners' courts to see that jails are properly kept.

United States marshal may use jail.  
 (Act Aug. 30, 1856, p. 88, §1.)  
 P.D. 4796.

Marshal liable for jail fees.  
*Ib.* §2.  
 P.D. 4797.

Sheriff, etc., refusing to take prisoner guilty of a misdemeanor.  
*Ib.*  
 P.D. 4798.

ARTICLE 3002. The commissioners' courts of the several counties shall provide safe and suitable jails for their respective counties, and shall cause the same to be kept in good repair.

ART. 3003. Each sheriff is the keeper of the jail of his county, and he shall safely keep therein all prisoners committed thereto by lawful authority, subject to the order of the proper court, and shall be responsible for the safe-keeping of such prisoners.

ART. 3004. All jails hereafter erected shall be so constructed that the penalty of death may be conveniently executed within the walls thereof, and it shall be the duty of the commissioners' court of any county having a jail already erected, if the same is not so constructed as that the penalty of death can be conveniently executed therein, to have the construction of the same so altered as that the penalty of death may be conveniently executed within its walls, if practicable to do so without too great an expense to the county.

ART. 3005. It shall be the duty of the commissioners' courts of the counties to see that the jails of their respective counties are kept in a clean and healthy condition, properly ventilated, and not over-crowded with prisoners, and that they are furnished with clean and comfortable mattresses and blankets sufficient for the comfort of the prisoners therein confined.

ART. 3006. Sheriffs and jailers shall receive into the jails of their respective counties such prisoners as may be delivered or tendered to them by any United States marshal or his deputy for any district of Texas, and shall safely keep such prisoners until they are demanded by such marshal or his deputy, or are discharged by due course of law.

ART. 3007. In the cases provided for in the preceding article the marshal, by whose authority such prisoners are received and kept, shall be directly and personally liable to the sheriff or jailer for the jail fees and all other expenses of the keeping of such prisoners, such fees and expenses to be estimated according to the laws regulating the same in other cases.

ART. 3008. Any sheriff or jailer in whose county there is a jail, who shall refuse to receive into the jail of his county any prisoner tendered to him by the marshal or his deputy, as provided in article 3006, not having the excuse for such refusal that there is not room in such jail for the confinement of such prisoner or prisoners, shall be considered guilty of a misdemeanor, and on conviction thereof shall be punished as provided in the Penal Code.

**TITLE LVII.**  
**Juries in Civil Cases.**

**CHAPTER ONE.**

**JURORS—THEIR QUALIFICATIONS AND EXEMPTIONS.**

	Article		Article
Who are competent jurors.....	3009	Who are exempt from jury service.....	3014
Who are disqualified in general.....	3010	Where several fire companies in one town, etc.....	3015
Exceptions in certain cases.....	3011	List of members selected to be delivered to the clerk.....	3016
Jurors disqualified to try a particular case	3012		
Who are liable to jury service.....	3013		

ARTICLE 3009. All male persons over twenty-one years of age are competent jurors, unless disqualified under some provision of this chapter. Who are com-  
petent jurors.

ART. 3010. No person shall be qualified to serve as a juror who does not possess the following qualifications: Who are dis-  
qualified, in  
general.  
(Act Aug. 1,  
1876, p. 78, §§1,  
2, 26.)  
(Const., art. 16,  
§19.)

1. He must be a citizen of the state and of the county in which he is to serve, and qualified under the constitution and laws to vote in said county.

2. He must be a freeholder within the state or a householder within the county.

3. He must be of sound mind and good moral character.

4. He must be able to read and write, except in the cases provided for in the succeeding article.

5. He must not have served as a juror for six days during the preceding six months in the district court, or during the preceding three months in the county court.

6. He must not have been convicted of felony.

7. He must not be under indictment or other legal accusation of theft, or of any felony.

ART. 3011. Whenever it shall be made to appear to the court that the requisite number of jurors able to read and write can not be found within the county, the court may dispense with the exception provided for in the fourth subdivision of the preceding article; and the court may in like manner dispense with the exception provided for in the fifth subdivision, when the county is so sparsely populated as to make its enforcement seriously inconvenient. Exceptions in  
certain cases.  
Ib. §§16, 26.

ART. 3012. The following persons shall be disqualified to serve as jurors in any particular case: Jurors disqual-  
ified to try a  
particular  
case.  
(Act Aug. 1,  
1876, p. 83, §26.)

1. Any witness in the case.

2. Any person interested directly or indirectly in the subject matter of the suit.

3. Any person related by consanguinity or affinity within the third degree to either of the parties to the suit.

4. Any person who has a bias or prejudice in favor of or against either of the parties.

5. Any person who has sat as a petit juror in a former trial of the same case, or of another case involving the same questions of fact.

ART. 3013. All competent jurors are liable to jury service, unless exempted under some provisions of this chapter. Who are liable  
to jury service.

ART. 3014. The following persons shall be exempt from jury service when they may claim such exemption: Who are ex-  
empt from  
jury service.  
Ib. p. 78, §25.

1. All persons over sixty years of age.

2. All civil officers of this state and of the United States.
3. All overseers of roads.
4. All ministers of the gospel engaged in the active discharge of their ministerial duties.
5. All physicians and attorneys engaged in actual practice.
6. All publishers of newspapers, school-masters, druggists, undertakers, telegraph operators, railroad station agents, ferrymen, and all millers engaged in grist, flouring and saw mills.
7. All presidents, vice-presidents, conductors and engineers of railroad companies when engaged in the regular and actual discharge of the duties of their respective positions.
8. Any person who has acted as jury commissioner within the preceding twelve months.
9. All members of the volunteer guards of this state under the provisions of the title "Militia."
10. In cities and towns having a population of fifteen hundred or more inhabitants, according to the preceding United States census, the active members of organized fire companies, not to exceed twenty to each one thousand of such inhabitants.

Where several fire companies in one town, etc.  
*Ib.* §2.

List of members selected to be delivered to the clerk.  
*Ib.* §2.

ART. 3015. If there be more than one organized fire company in such town or city, the whole number of exemptions provided for under subdivision ten of the preceding article shall be equally divided between such companies.

ART. 3016. Before such exemption of any member of such fire company shall be made available, the members so to be exempted shall be selected by their respective companies, and their names shall be handed in to the clerks of the district and county courts, respectively, by the chief of the fire department of such city or town, or in case there be no such officer, then by the foreman of the company.

## CHAPTER TWO.

### JURY COMMISSIONERS FOR THE DISTRICT COURT, APPOINTMENT, QUALIFICATION, ETC.

	Article	Article
Jury commissioners, appointment and qualifications.....	3017	Failure of commissioners, etc..... 3022
Shall serve but one in each year.....	3018	To be instructed in their duties..... 3023
Commissioners to be notified of the appointment.....	3019	To be kept free from intrusion and not to separate..... 3024
Failing to attend shall be fined.....	3020	Clerk to furnish stationery and list of exempt persons..... 3025
Oath of jury commissioners.....	3021	To have use of assessment roll..... 3026

Jury commissioners, appointment and qualifications.  
(Act Aug. 1, 1876, p. 73, §4.)

ARTICLE 3017. The district court of each county shall, at each term thereof, appoint three persons to perform the duties of jury commissioners for said court, who shall possess the following qualifications:

1. They shall be intelligent citizens of the county and able to read and write.
2. They shall be qualified jurors and freeholders of the county.
3. They shall be residents of different portions of the county.
4. They shall have no suit in such court which requires the intervention of a jury.

Shall serve but once in a year.  
*Ib.* §5.

Commissioners to be notified of their appointment, etc.  
*Ib.* §4.

ART. 3018. The same person shall not act as jury commissioner more than once in the same year.

ART. 3019. The court shall cause the persons appointed as jury commissioners to be notified by the sheriff or any constable of such appointment, and of the time and place when and where they are to appear before the court.

ART. 3020. If any person appointed a jury commissioner shall fail or refuse to attend and perform the duties required without a reasonable excuse, he shall be fined by the court in any sum not less than twenty-five nor more than one hundred dollars.

Failing to attend, shall be fined, *Ib.* §5.

ART. 3021. When the persons appointed appear before the court, the judge shall administer to them the following oath: "You do swear faithfully to discharge the duties required of you as jury commissioners; that you will not knowingly elect any man as a jurymen whom you believe to be unfit and not qualified; that you will not make known to any one the name of any jurymen selected by you and reported to the court; that you will not, directly or indirectly, converse with any one selected by you as a jurymen concerning the merits of any case to be tried at the next term of this court until after said cause may be tried or continued, or the jury discharged."

Oath of jury commissioners *Ib.* §4.

ART. 3022. If from any cause the jury commissioners should not be appointed at the time prescribed, or should fail to select jurors as required, or should the panels selected be set aside, or the jury lists returned into court be lost or destroyed, the court shall forthwith proceed to supply a sufficient number of jurors for the term under the provisions of this title, and may, when it may be deemed necessary, appoint commissioners for that purpose.

Failure of commissioners, etc. *Ib.* §13.

ART. 3023. When the jury commissioners shall have been sworn and organized, the judge shall proceed to instruct them as to their duties, and shall designate to them for what weeks they shall select petit jurors, and the number of jurors to be selected for each week.

To be instructed as to their duties. *Ib.* §9.

ART. 3024. The jury commissioners shall retire in charge of the sheriff or constable to some suitable apartment, and shall be kept free from the intrusion of any person during their session, and shall not separate, without leave of the court, until they shall have completed the duties required of them.

To be kept free from intrusion and not to separate. *Ib.*

ART. 3025. It shall be the duty of the clerk to furnish the jury commissioners with all necessary stationery, and also with a list of the names of all persons appearing from the records of the court to be exempt or disqualified from serving on the petit jury at each term. He shall also deliver to them the envelope mentioned in article 3043, and shall take their receipt therefor, showing whether or not such seal remained unbroken.

Clerk to furnish stationery and list of exempt persons, etc. *Ib.* §§4, 6. (Act Aug. 18, 1876, p. 170, §6.) (Act to adopt and establish R.C.S., passed Feb. 21, 1879.)

ART. 3026. It shall be the duty of the county clerk, or other legal custodian of the same, to furnish the jury commissioners with the last assessment roll of the county.

To have use of assessment roll. (Act Aug. 1, 1876, p. 79, §6.)

## CHAPTER THREE.

### JURY COMMISSIONERS FOR THE COUNTY COURT, APPOINTMENT, ETC.

	Article	Article
Jury commissioners, appointment and qualification, powers and duties.....	3027	3028
Oath.....		3029
To select jurors for six months.....		3029

ARTICLE 3027. The county court shall, at the January and July terms of said court in each year, appoint three persons to perform the duties of jury commissioners for said court, who shall possess the same qualifications as jury commissioners for the district court, and the same proceedings shall be had in the county court by the officers thereof and by the commissioners for procuring jurors as are required by this title for similar proceedings in the district court, except as modified by the provisions of this chapter.

Jury commissioners for the county court, appointment and qualification, powers and duties. *Ib.* p. 81, §15.

Oath.  
Ib. p. 79, §4.

ART. 3028. The oath to be administered to the jury commissioners for the county courts shall be as follows: "You do solemnly swear faithfully to discharge the duties required of you as jury commissioners; that you will not knowingly elect any man as a jurymen whom you believe to be unfit and not qualified; that you will not make known to any one the name of any jurymen selected by you and reported to the court; that you will not directly or indirectly communicate with any one selected by you as a jurymen concerning the merits of any case to be tried by this court within the next six months, until said case shall have been tried or otherwise disposed of."

To select jurors for six months.  
Ib.

ART. 3029. Such commissioners shall select jurors for all the terms of the county court, both civil and criminal, to be holden within six months next after the adjournment of said January and July terms of said court, and the county judge shall designate the number of jurors to be so selected for each term and week.

CHAPTER FOUR.

PROCEEDINGS OF THE JURY COMMISSIONERS IN THE SELECTION OF JURORS.

	Article		Article
Selection of jurors, how made.....	3030	And by him to the commissioners for his court.....	3039
Drawing of jurors, how conducted.....	3031	Persons included in such lists not to be selected as jurors in county court.....	3040
List of to be certified, sealed up and indorsed.....	3032	County court commissioners to make out lists for district court.....	3041
To be delivered to the judge.....	3033	To be delivered to district clerk.....	3042
And by him to the clerk.....	3034	And by him to commissioners for his court.....	3043
Clerk and deputies to be sworn.....	3035	Persons included in such lists not to be selected as jurors in district court.....	3044
Same.....	3036	Lists of jurors to be destroyed.....	3045
District court commissioners to make out jury list for county court.....	3037		
Which shall be delivered to the county clerk.....	3038		

Selection of jurors, how made.  
Ib. §79, §7.

ARTICLE 3030. The jury commissioners shall select from the citizens of the different portions of the county, liable to serve as jurors, one hundred persons, or a greater or less number if so directed by the court, free from all legal exceptions, of good moral character, of sound judgment, well-informed, and, so far as practicable, able to read and write, to serve as petit jurors at the next term, if in the district court, and for the next six months, if in the county court, and shall write the names of such persons on separate pieces of paper, as near the same size and appearance as may be, and fold the same so that the names can not be seen.

Drawing of jurors, how conducted.  
Ib.

ART. 3031. The names of the persons so written and folded shall be deposited in a box, and after being well shaken and mixed, the commissioners shall draw therefrom the names, one by one, of thirty-six persons, or a greater or less number where the judge has so directed, for each week of the term of the district court or terms of the county court for which a jury may be required, and shall record such names as they are drawn upon as many separate sheets of paper as there are weeks of such term or terms for which juries will be required.

Lists to be certified, sealed up and indorsed.  
Ib.

ART. 3032. The several lists of names drawn, as provided in the preceding article, shall be certified under the hands of the commissioners, to be the lists drawn by them for said several weeks, and shall be sealed up in separate envelopes, indorsed, "List of petit jurors for the.....week of the.....term of the.....court of.....county" [*filling the blanks*].

To be delivered to the judge.  
Ib.

ART. 3033. The commissioners shall write their names across the seals of the envelopes and deliver them to the judge.

And by him to the clerk.  
Ib. §8.

ART. 3034. The judge shall deliver such envelopes to the clerk or to one of his deputies, in open court, and the court may instruct the clerk to indorse on any of such envelopes that the jury for that week shall be summoned for some other day than Monday of said week.

ART. 3035. The judge shall at the same time administer to the clerk and each of his deputies an oath, in substance as follows: "You do solemnly swear that you will not open the jury lists now delivered to you, nor permit them to be opened until the time prescribed by law; that you will not directly nor indirectly converse or communicate with any one selected as a juror concerning any case pending for trial in this court at its next term," if in the district court; or if in the county court, "within the next six months."

Clerk and deputies to be sworn.  
*Ib.* §§8, 28.

ART. 3036. If for any reason such oath should not be administered to any of the deputies, or should the clerk subsequently appoint a deputy, the clerk shall administer to such deputy a like oath.

Same.  
*Ib.* §8.

ART. 3037. The jury commissioners for the district court shall, in addition to the other duties required of them, make out for the use of the jury commissioners of the county court, a complete list of the names of all the persons selected by them as grand and petit jurors, and shall place said list in an envelope and seal the same and write their names across the seal; and shall address said envelope to the jury commissioners of the county court of the proper county, and shall deliver the same to the district judge in open court.

District court commissioners to make out jury lists for county court.  
(Act Aug. 18, 1876, p. 170, §1.)

ART. 3038. The district judge shall, without delay, deliver said envelope to the county clerk, or one of his deputies, and at the time of delivery administer to said clerk or deputy, as the case may be, the following oath: "You do solemnly swear that you will, to the best of your ability, safely keep this envelope; and that you will neither open the same nor allow it to be opened, except as provided by law; and that you will cause it to be delivered to the jury commissioners of the county court next hereafter appointed in and for this county."

Which shall be delivered to the county clerk.  
*Ib.* §2.

ART. 3039. At the first term of the county court thereafter held, at which jury commissioners are appointed, it shall be the duty of the county clerk to deliver said envelope to the jury commissioners, or one of them appointed at said term, and take a receipt therefor; and said receipt shall state whether the seal of said envelope be broken or not.

And by him to the commissioners for his court.  
*Ib.* §3.

ART. 3040. After the jury commissioners, appointed by said county court, shall have assembled for business, they shall open said envelope and read said list of names, and no person named on said list shall be selected as a juror by said commissioners.

Persons included in such lists not to be selected as jurors in county court.  
*Ib.* §4.

ART. 3041. The jury commissioners for the county court shall, in addition to the other duties required of them, make out for the use of the jury commissioners of the district court, a complete list of the names of all persons selected by them as jurors, and shall place said list in an envelope and seal the same, and write their names across the seal, and address said envelope to the jury commissioners of the district court of the proper county, and shall deliver the same to the county judge in open court.

County court commissioners to make out lists for district court.  
(Act Aug. 18, 1876, p. 170, §5.)

ART. 3042. The county judge shall, without delay, deliver said envelope to the district clerk, or one of his deputies, and at the time of delivery administer to said clerk, or his deputy, as the case may be, the following oath: "You do solemnly swear that you will, to the best of your ability, safely keep this envelope, and that you will neither open the same nor allow it to be opened, except as provided by law, and that you will cause it to be delivered to the jury commissioners of the district court next hereafter appointed in and for this county."

To be delivered to the district court.  
*Ib.* §6.

ART. 3043. At the first term of the district court thereafter held, it shall be the duty of the clerk to deliver said envelope to the jury commissioners, or one of them appointed at said term, and to take a receipt therefor, and said receipt shall state whether the seal of said envelope be broken or not.

And by him to the commissioners for his court.  
*Ib.* §7.



Persons included in such lists not to be selected as jurors in district court. *Ib.* §8.  
 Lists of jurors to be destroyed *Ib.* §9.

ART. 3044. After the jury commissioners appointed at said term of the district court shall have assembled for business, they shall open said envelope and read said list of names, and no person named on said list shall be selected as juror by said commissioners.

ART. 3045. It shall be the duty of the jury commissioners, in both the district and county courts, before leaving the apartment in which they shall have selected jurors, to destroy said list of names, and it shall be unlawful for them, or any of them, to make known to any person the name of any juror on said lists.

CHAPTER FIVE.

SELECTED JURORS—HOW SUMMONED, Etc.

	Article		Article
Clerk to make out jury lists and deliver to sheriff.....	3046	Notice to jurors, how served.....	3048
Sheriff to notify jurors.....	3047	Time of service.....	3049
		Sheriff's return.....	3050

Clerk to make out jury lists and deliver to sheriff. (Act Aug. 18, 1876, p. 171, §10.)

ARTICLE 3046. Within not more than thirty days and not less than ten days prior to each term of the court, it shall be the duty of the clerk of the district and county courts, respectively, to open the lists of jurors selected for such term, and to make out a copy of the same, duly certified under his hand and the seal of his office, and deliver the same to the sheriff. Where the judge has directed that the jurors for any week shall be summoned for some other day than Monday, the clerk shall note such order for the information of the sheriff.

Sheriff to notify jurors. *Ib.*

ART. 3047. On the receipt of such lists it shall be the duty of the sheriff immediately to notify the several persons named in such lists to be in attendance on the court on the day and week for which they were respectively drawn to serve as jurors for said week.

Notice to jurors, how served. *Ib.*

ART. 3048. Such notice may be orally delivered by the sheriff to the juror in person, or in case such juror can not be found, then a written memorandum thereof, signed by the sheriff officially, may be left at the juror's place of residence, with some member of his family over sixteen years of age.

Time of service

ART. 3049. Such notice shall be served at least three days prior to the first day of the term of the court, exclusive of the day of service.

Sheriff's return. *Ib.*

ART. 3050. The sheriff executing such summons shall return the lists on the first day of the term of the court at which such jurors are to serve, with a certificate thereon of the date and manner of service upon each juror; and if any of said jurors have not been summoned he shall also state the diligence used to summon them, and the reason why they have not been summoned.

CHAPTER SIX.

JURIES FOR THE WEEK—HOW MADE UP.

	Article		Article
Jurors for the week, how selected.....	3051	May be adjourned.....	3055
If not selected on day appointed may be subsequently done.....	3052	Oath to be administered to the sheriff when jurors not selected are to be summoned by him.....	3056
If practicable, to be of jurors selected by jury commissioners.....	3053	Court may hear excuses of jurors.....	3057
May be filled up, how.....	3054	Defaulting jurors to be fined.....	3058

Jurors for the week, how selected. *Ib.*

ARTICLE 3051. On Monday of each week of the court for which a jury shall be summoned, and for which there may be jury trials, or where the jury trials for the week have been set for some other day, then on such day the court shall select thirty qualified jurors, or a greater or less number, in its discretion, to serve as jurors for the week.

ART. 3052. Should such selection from any cause not be made on the day appointed, it may be made on any subsequent day.

If not selected on day appointed, may be subsequently done.

ART. 3053. Such jurors shall be selected from the names included in the jury list for the week, if there be the requisite number of such in attendance who are not excused by the court.

If practicable, to be of jurors selected by jury commissioners.

ART. 3054. If the requisite number of such jurors be not in attendance at any time, the court shall direct the sheriff to summon a sufficient number of qualified persons to make up the requisite number of jurors.

May be filled up, how. (Act Aug. 1, 1876, p. 80, §11.)

ART. 3055. The court may adjourn the whole number of jurors for the week, or any part thereof, to any subsequent day of the term, but jurors shall not be paid for the time they may so stand adjourned.

May be adjourned. *Ib.* p. 83, §24.

ART. 3056. Whenever it may be necessary to summon jurors who have not been selected by jury commissioners under the provisions of this title, the court shall administer to the sheriff and each of his deputies the following oath: "You do solemnly swear that you will, to the best of your skill and ability, and without bias or favor toward any party, summon such jurors as may be ordered by the court; that you will select none but impartial, sensible and sober men, having the qualifications of jurors under the law; that you will not, directly or indirectly, converse or communicate with any jurymen touching any case pending for trial; and that you will not by any means attempt to influence, advise or control any jurymen in his opinion in any case which may be tried by him, so help you God."

Oath to be administered to the sheriff when jurors not selected are to be summoned by him. *Ib.* §12.

ART. 3057. The court may hear any reasonable excuse of a juror, supported by oath or affirmation, and may either release him entirely or until some other day of the term.

Court may hear excuses of jurors.

ART. 3058. Should any juror who has been lawfully notified, fail to be in attendance on the court in obedience to such notice, without some reasonable excuse, to be judged of by the court, he shall be fined in any sum not less than ten nor more than one hundred dollars.

Defaulting juror to be fined. *Ib.* §10.

## CHAPTER SEVEN.

### JURY TRIALS—AUTHORIZED WHEN AND HOW.

Article	Article
Right of trial by jury to remain inviolate, subject, etc. . . . . 3059	Oath of inability to make jury fee deposit. . . 3067
Must be demanded and jury fee paid, etc. . . 3060	Cases heretofore entered on jury docket excepted. . . . . 3068
Time of demand. . . . . 3061	Order of court. . . . . 3069
Same. . . . . 3062	Clerk to keep jury docket. . . . . 3070
Rules for justice's court elsewhere prescribed. . . . . 3063	Jury trial day to be fixed. . . . . 3071
Call of docket for demands for jury trials. 3064	Application for jury not to be withdrawn, unless, etc. . . . . 3072
Same as to appearance docket. . . . . 3065	When application withdrawn, court may permit jury fee to be withdrawn, also. . . 3073
Jury fee. . . . . 3066	Right of trial by jury to remain inviolate, subject, etc. (Const., art. 1, §15.)

ARTICLE 3059. The right of trial by jury shall remain inviolate, subject to the following rules and regulations:

ART. 3060. No jury trial shall be had in any civil suit unless an application therefor be made in open court and a jury fee be deposited, or an affidavit be made of inability to make such deposit, as hereinafter prescribed.

Must be demanded and jury fee be paid. (Const., art. 5, §§10, 17.)

ART. 3061. Any party to a civil suit in the district or county court desiring to have the same tried by jury, shall make application therefor in open court on the first day of the term of the court at which the suit is to be tried, unless the same be an appearance case, in which event the application shall be made on default day.

Time of demand. (Act Aug. 18 1876, p. 171 §11.)

ART. 3062. Should any court be in session when the preceding article shall go into effect, the application for a jury trial in any cause pending

Same.

therein, and which is to be tried at such term, may be made at any time before the case is called for trial.

Rules for justices' courts, elsewhere prescribed.

ART. 3063. The manner of applying for a jury trial in the justices' courts, and the proceedings thereon, are prescribed in the title relating to justices' courts.

Call of docket for demands for jury trial.

ART. 3064. On the first day of each term of the court, the court shall call over the docket, except appearance cases, and shall note thereon in each case whether or not a jury trial is applied for therein, and by which party.

Same as to appearance docket.

ART. 3065. On the call of the appearance docket at each term of the court, the court shall in like manner note in each appearance case whether or not a jury trial is applied for, and by whom.

Jury fee. (Act Aug. 18, 1876, p. 171, §11.)

ART. 3066. The party applying for a jury trial in the district or county court, shall on the same day deposit with the clerk, to the use of the county, a jury fee of five dollars if in the district court, and of three dollars if in the county court.

Oath of inability to make jury fee deposit. (Act Aug. 1, 1876, p. 81, §18.)

ART. 3067. The desposit mentioned in the preceding article shall not be required when the party shall, within the time limited for making such deposit, file with the clerk an affidavit in writing signed by him, to the effect that he is unable to make such deposit, and that he can not, by the pledge of property, or otherwise, obtain the money necessary for that purpose.

Cases heretofore entered on jury trial docket excepted.

ART. 3068. The preceding articles shall not apply to cases which have been heretofore properly entered on the jury trial docket in accordance with former laws.

Order of court. (Act Aug. 18, 1876, p. 171, §11.)

ART. 3069. Upon a compliance with the foregoing provisions, the court shall order the clerk to enter the suit on the jury docket.

Clerk to keep jury docket. *Ib.*

ART. 3070. It shall be the duty of the clerks of the district and county courts each to keep a docket, to be styled "The Jury Docket," in which shall be entered in their order the cases in which jury trials have been ordered by the court.

Jury trial day to be fixed. (Act Aug. 1, 1876, p. 81, §14.)

ART. 3071. The court shall, by an order entered on the minutes, designate any day during the term for the taking up of the jury docket and the trial of causes thereon; and such order may be revoked or changed at discretion.

NOTE.—See article 1289 as to the day that shall be set for taking up and trial of causes on the jury civil docket, where the term continues three weeks or longer.—L.

Application for jury not to be withdrawn, unless, etc.

ART. 3072. When one party has applied for a jury trial, as herein provided, he shall not be permitted to withdraw such application without the consent of the parties adversely interested.

When application withdrawn court may permit jury fee to be withdrawn also.

ART. 3073. When a party who has applied for a jury trial has been permitted under the preceding article to withdraw such application, the court may, in its discretion, by an order permit him to withdraw also his jury fee deposit.

## CHAPTER EIGHT.

### CHALLENGES.

	Article		Article
Challenge to the array of jurors.....	3074	On trial of challenge for cause, evidence to be heard.....	3081
Not allowed, when.....	3075	Juror not to be asked certain questions.....	3082
Challenge to array must be in writing.....	3076	Peremptory challenge.....	3083
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Challenge for cause.....	3080	Court to decide challenges promptly.....	3087

Challenge to the array of jurors. *Ib.* p. 83, §25.

ARTICLE 3074. Any party to a suit which is to be tried by a jury may, before the jury is drawn, challenge the array of jurors upon making it to appear that the officer summoning the jury has acted corruptly, and has

willfully summoned jurors known to be prejudiced against the party challenging or biased in favor of the adverse party.

ART. 3075. No challenge to the array shall be entertained where the jurors have been selected by jury commissioners under the provisions of this title. Not allowed, when.

ART. 3076. All challenges to the array must be in writing, setting forth distinctly the grounds of such challenge, and must be supported by the affidavit of the party or some other credible person. Challenge to array must be in writing, etc.

ART. 3077. When a challenge to the array is made, the court shall hear evidence, and shall decide without delay whether the challenge shall be sustained or not. Court shall decide at once.

ART. 3078. If the challenge be sustained, the array of jurors summoned shall be discharged, and the court shall order other jurors to be summoned in their stead, and shall direct that the officer who summoned the persons so discharged, and on account of whose misconduct the challenge has been sustained, shall not summon any other jurors in the case. Proceedings when challenge to the array is sustained. *Id.*

ART. 3079. A challenge to an individual juror is either—

1. A challenge for cause; or,
2. A peremptory challenge.

Challenge to a particular juror.

ART. 3080. A challenge for cause is an objection made to a particular juror, alleging some fact which, under the provisions of the first chapter of this title, disqualifies him to serve as a juror in any case, or in the particular case, or which, in the opinion of the court, renders him an unfit person to sit on the jury. Challenge for cause.

ART. 3081. Upon a challenge for cause the examination shall not be confined to the answers of the juror, but other evidence may be heard in support of or against the challenge. On trial of challenge for cause, evidence to be heard.

ART. 3082. In examining a juror, he shall not be asked a question the answer to which may show that he has been convicted of an offense which disqualifies him, or that he stands charged by indictment or other legal accusation with theft or any felony. Juror not to be asked certain questions.

ART. 3083. A peremptory challenge is made to a juror without assigning any reason therefor. Peremptory challenge.

ART. 3084. Each party to a civil suit in the district court shall be entitled to six peremptory challenges. Number of peremptory challenges in district court. (Act Dec. 1, 1871, p. 61, §6.)

ART. 3085. Each party to a civil suit in the county court shall be entitled to three peremptory challenges. In the county court. (Act Aug. 1, 1878, p. 83, §27.)

ART. 3086. Challenges for cause and peremptory challenges to a particular juror may be made orally on the formation of a jury to try the case, as provided in articles 3092 and 3094. Challenge to a particular juror made orally, etc.

ART. 3087. The court shall decide without delay any challenge to a particular juror; and when the challenge is sustained the juror shall be discharged from further attendance or from the particular case, as the case may be. Court to decide challenges promptly.

## CHAPTER NINE.

### FORMATION OF THE JURY FOR THE TRIAL OF A CAUSE.

	Article		Article
Clerks to provide a box for use in drawing jurors.....	3088	When number of jurors reduced, etc., by challenge for cause.....	3093
Shall place names of jurors in the box....	3089	Peremptory challenge to be made, when...	3094
Shall draw and record names of jurors....	3090	Lists to be returned to clerk, and jury to be called .....	3095
Where names of full jury not found in the box.....	3091	Where jury is left incomplete.....	3096
Challenge for cause to be made, when.....	3092	Jurors to be sworn.....	3097

ARTICLE 3088. The clerks of the district and county courts shall each provide and keep a box with a sliding lid, suitable for the purposes indicated in this chapter.

Clerks to provide a box for use in drawing jurors. (Act Aug. 1, 1870, p. 82, §21.)

Shall place names of jurors in the box.  
*Ib.*

ART. 3089. When the parties to a civil cause, which is to be tried by a jury, have announced themselves ready for trial and no challenge to the array is made, the clerk shall write the names of all the regular panel for the week on separate slips of paper, as near the same size and appearance as may be, and shall place such slips in the box provided for in the preceding article, and shall mix them well.

Shall draw and record names.  
*Ib.* §22.

ART. 3090. The clerk shall draw from the box, in the presence of the court, the names, one by one, of twenty-four jurors, if in the district court, or so many as there may be, if there be a less number in the box; and the names of twelve jurors, if in the county court, or so many as there may be, if there be a less number in the box; and shall write the names as they are drawn upon several slips of paper and deliver one slip to each of the parties to the suit or their attorneys.

Where names of full jury not found in the box.

ART. 3091. When there are not so many names drawn from the box as twelve, if in the district court, or six, if in the county court, the court shall direct the sheriff to summon such number of qualified persons as it may deem necessary to complete the panel, and the names of the persons so summoned shall be placed in the box and drawn and entered upon slips as provided in the preceding article.

Challenge for cause to be made, when.

ART. 3092. When as many as twelve or more jurors, if in the district court, or six or more, if in the county court, are drawn, and the slips containing their names are delivered to the parties, if either party desire to challenge any juror for cause, such challenge shall now be made.

When number reduced, etc., by challenge for cause.

ART. 3093. If the number of jurors be reduced by challenge for cause to less than twelve in the district court, or six in the county court, the court shall order other jurors to be drawn or summoned, as the case may be, and entered upon the slips in place of those who have been set aside for cause.

Peremptory challenge to be made, when.  
*Ib.*

ART. 3094. When a juror has been challenged and set aside for cause his name shall be erased from the slips furnished the parties, and if there be remaining on such slips not subject to challenge for cause, twelve names if in the district court, or six names if in the county court, the parties shall proceed to make their peremptory challenges if they desire to make any.

Lists to be returned to the clerk and jury to be called.

ART. 3095. When the parties have made their peremptory challenges, or when they decline to make any, they shall deliver their slips to the clerk, and the clerk shall, if the case be in the district court, call off the first twelve names on the slips that have not been erased, and if the case be in the county court, the clerk shall call off the first six names on the slips that have not been erased, who shall constitute the jury to try the case.

When jury is left incomplete

ART. 3096. When by peremptory challenges the jury is left incomplete, the court shall direct such number of other jurors to be drawn or summoned, as the case may be, as the court may consider sufficient to complete the jury, and the same proceedings shall be had in selecting and impaneling such jurors as are had in the first instance.

Jurors to be sworn.

ART. 3097. When the jury has been selected, such of them as have not been previously sworn for the trial of civil causes, shall be sworn by the court, or under its direction.

## CHAPTER TEN.

### OATH OF JURORS IN CIVIL CASES.

Jury shall be sworn.  
(Act Feb. 13, 1853, §10.)  
P. D. 3984.  
Form of oath.  
*Ib.*  
P. D. 3984.

Jury shall be sworn.....	Article 3098	Form of oath.....	Article 3099
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ARTICLE 3098. Before the trial of any civil cause the jurors shall be sworn by the court, or under its direction.

ART. 3099. The form of the oath to be administered to jurors in civil cases shall be in substance as follows: "You, and each of you, do solemnly

swear that in all cases between parties which shall be to you submitted you will a true verdict render, according to the law, as it may be given you in charge by the court, and to the evidence submitted to you under the rulings of the court, so help you God.”

CHAPTER ELEVEN.

JURIES—HOW CONSTITUTED, AND THEIR VERDICTS.

Jury in district court.....	Article 3100	Jury in the county and justices' courts....	Article 3102
Death or inability of jurors in district court pending trial.....	3101	The entire jury must concur in the verdict.....	3103

ARTICLE 3100. The jury in the district courts shall be composed of twelve men; but the parties may by consent agree, in a particular case, to try with a less number.

Jury in district court. (Const., art. 5, §13.)

ART. 3101. Where, pending the trial of any case in the district court, one or more of the jurors, not exceeding three, may die or be disabled from sitting, the remainder of the jury shall have power to render the verdict; but in such case the verdict shall be signed by every remaining member of the jury.

Death or inability of jurors in district court pending trial. *Ib.* (Act Aug. 1, 1876, p. 82, §19.)

ART. 3102. The jury in the county courts and in courts of justices of the peace, shall be composed of six men.

Jury in county and justices' courts. *Ib.* §27.

ART. 3103. No verdict shall be rendered in any cause except upon the concurrence of all the members of the jury trying the same.

Entire jury must concur in verdict. *Ib.* §19. (Const., art. 5, §13.)

CHAPTER TWELVE.

COMPENSATION OF JURORS OF THE DISTRICT AND COUNTY COURTS IN CIVIL CASES.

Pay of jurors.....	Article 3104	Jury scrip receivable at par for all county taxes.....	Article 3106
Certificate of jury service.....	3105		

ARTICLE 3104. Each juror in civil cases shall receive two dollars for each day and for each fraction of a day he may serve or attend as such juror.

Pay of jurors. (Act Nov. 12, 1866, p. 201, §1.)

ART. 3105. The amount due to jurors shall be paid by the county treasurer upon the certificate of the clerk of the district or county court in which such service was rendered; which certificate shall state the service, when rendered, by whom rendered and the amount due therefor.

Certificate of jury service. *Ib.*

ART. 3106. All certificates issued under the provisions of the foregoing article shall, without further action by any authority, be receivable at par for all county taxes. The same may be transferred by delivery, and no rule or regulation made by the commissioners' court or other officer or officers of a county shall defeat the right of the holder of any such certificate to pay county taxes therewith.

Jury scrip receivable at par for all county taxes. *Ib.*

TITLE LVIII.

Landlord and Tenant.

	Article		Article
Landlord shall have preference lien.....	3107	Judgment against sureties.....	3117
Tenant not to remove property subject.....	3108	Perishable property sold.....	3118
When lien expires.....	3109	Citation for defendant.....	3119
Lien does not apply to, etc.....	3110	Petition.....	3120
Removal not a waiver, etc.....	3111	Rights of tenant.....	3121
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Oath and bond.....	3113	Owners of residences, store houses, etc., have preference lien, etc.....	3122a
Distress warrant, issued by whom.....	3114	Distress warrant, how obtained.....	3122b
Duty of officer.....	3115		
Defendant may replevy.....	3116		

Landlords shall have preference lien (Act April 4, 1874, p. 55.) P.D. 7418c.

ARTICLE 3107. All persons leasing or renting lands or tenements, at will or for a term, shall have a preference lien upon the property of the tenant hereinafter indicated, upon such premises, for any rent that may become due and for all money and the value of all animals, tools, provisions and supplies furnished by the landlord to the tenant to enable the tenant to make a crop on such premises, and to gather, secure, house and put the same in condition for market, the money, animals, tools, provisions and supplies so furnished being necessary for that purpose, whether the same is to be paid in money, agricultural products, or other property; and this lien shall apply only to animals, tools and other property furnished by the landlord to the tenant, and to the crop raised on such rented premises.

Tenant not to remove property subject. *Ib.*

ART. 3108. It shall not be lawful for the tenant, while the rent and such advances remain unpaid, to remove or permit to be removed from the premises so leased or rented any of the agricultural products produced thereon, or any of the animals, tools or property furnished as aforesaid, without the consent of the landlord.

When lien expires. *Ib.*

ART. 3109. Such preference lien shall continue as to such agricultural products and as to the animals, tools and other property furnished to the tenant as aforesaid, so long as they remain on such rented or leased premises and for one month thereafter; and such lien, as to agricultural products and as to animals and tools furnished as aforesaid, shall be superior to all laws exempting such property from forced sales.

Does not apply to, etc. *Ib.*

ART. 3110. Such lien shall not attach to the goods, wares and merchandise of a merchant, trader or mechanic, sold and delivered in good faith in the regular course of business to the tenant.

Removal not a waiver, etc. *Ib.*

ART. 3111. The removal of the agricultural products with the consent of the landlord for the purpose of being prepared for market, shall not be considered a waiver of such lien, but such lien shall continue and attach to the products so removed the same as if they had remained on such rented or leased premises.

Distress warrant. P.D. 7418d. (Act to adopt and establish R.C.S., passed Feb. 21, 1879.)

ART. 3112. When any rent or advances shall become due, or the tenant shall be about to remove from such leased or rented premises, or to remove his property from such premises, it shall be lawful for the person to whom the rents or advances are payable, his agent, attorney, assigns, heirs or legal representatives, to apply to a justice of the peace of the precinct where the premises are situated for a warrant to seize the property of such tenant.

Oath and bond. *Ib.*

ART. 3113. The plaintiff, his agent or attorney, shall make oath that the amount sued for is for rent or advances, such as are mentioned in the first article of this title, or shall produce a writing signed by such

tenant to that effect, and shall further swear that such warrant is not sued out for the purpose of vexing and harrassing the defendant; and the person applying for such warrant shall execute a bond with two or more good and sufficient sureties, to be approved by the justice of the peace, payable to the defendant, conditioned that the plaintiff will pay the defendant such damages as he may sustain in case such warrant has been illegally and unjustly sued out, which bond shall be filed among the papers of the cause, and in case the suit shall be finally decided in favor of the defendant he may bring suit against the plaintiff and his sureties on such bond, and shall recover such damages as may be awarded to him by the proper tribunal.

ART. 3114. Upon the filing of such oath and bond it shall be the duty of such justice of the peace to issue his warrant to the sheriff or any constable of the county, commanding him to seize the property of the defendant, or so much thereof as will satisfy the demand, which warrant shall be, if the same is within the jurisdiction of a justice of the peace, returnable to said justice; but if the amount in controversy exceeds two hundred dollars, exclusive of interest, and does not exceed five hundred dollars, exclusive of interest, the writ shall be made returnable to the county court. If the amount in controversy exceeds five hundred dollars, exclusive of interest, and does not exceed one thousand dollars, exclusive of interest, the writ shall be made returnable to either the county or district court of the county, as the plaintiff in such writ may direct. If the amount in controversy shall exceed one thousand dollars, exclusive of interest, the writ shall be made returnable to the district court of the county. When the writ is made returnable to the district or county court, the justice of the peace shall transmit all the papers in said cause to the court to which such writ is made returnable, on or before the first day of the next term thereof.

Distress warrant, issued by whom.

ART. 3115. It shall be the duty of the officer to whom such warrant is directed to seize the property of such tenant, or so much thereof as shall be of value sufficient to satisfy such debt and costs, and the same in his possession safely keep, unless the same is replevied as herein provided, and make due return thereof to the court to which said warrant is returnable, at the next term thereof.

Duty of officer.

ART. 3116. The defendant shall have the right at any time within ten days from the date of said levy to replevy the property so seized, by giving bond payable to the plaintiff, with two or more good and sufficient sureties in double the amount of the debt, or, at his election, for the value of the property so seized; conditioned that if the defendant be cast in the action he shall satisfy the judgment that may be rendered against him or pay the estimated value of the property, with lawful interest thereon from the date of the bond.

Defendant may replevy.

ART. 3117. When the property levied on has been replevied as provided in the preceding article, and final judgment shall be rendered against the defendant, such judgment shall be also against him and his sureties on his replevy bond for the amount of the judgment, interest and costs, or for the value of the property replevied and interest, according to the terms of such bond.

Judgment against sureties.

ART. 3118. If the property is of a perishable or wasting kind, and the defendant fails to replevy as herein provided, the officer making the levy, or the plaintiff or the defendant, may apply to the court or judge thereof to which the warrant is returnable, either in term time or vacation, for an order to sell such property; and if any person other than the defendant apply for such order of sale, the court shall not grant such order unless the person applying shall file with such court an obligation, payable to the defendant, with two or more good and sufficient sureties, to be approved by said court, that they will be responsible to the defendant for such damages as he may sustain in case such sale be illegally

Perishable property sold. (Act to adopt and establish R.C.S., passed Feb. 21, 1879.)



and unjustly applied for, or be illegally and unjustly made, which sale shall be conducted as sales under execution.

Citation for  
defendant.  
P.D. 7418f.

ART. 3119. It shall be the duty of the justice of the peace at the time he issues the warrant to issue a citation to the defendant, requiring him to answer before such justice, if he has jurisdiction to finally try the cause, and upon its being returned served to proceed to judgment as in ordinary cases; and if he has not such jurisdiction the citation shall require the defendant to answer before the court to which the warrant was made returnable, and shall be returned with the other papers to such court; *provided*, that if the defendant has removed from the county without service, the proper officer shall state this fact in his return on the citation; and the court shall proceed to try the case *ex parte*, and may enter the proper judgment.

Petition.  
Ib.

ART. 3120. When the warrant is made returnable to the district or county court, the plaintiff shall not be obliged to file his petition before suing out said warrant, but may file the same on or before the appearance day of the term of the court to which said papers are returnable.

Rights of  
tenant.  
(Act Aug. 14,  
1876, p. 137.)

ART. 3121. Nothing in this title shall be so construed as to prevent landlords and tenants from entering into such stipulations or contracts in regard to rents and advances as they may think proper; and should the landlord, without any default on the part of the tenant or lessee, fail to comply in any respect with his part of the contract, he shall be responsible to said tenant or lessee for whatever damages may be sustained thereby; and to secure such damages to such tenant or lessee, he shall have a lien on all the property in his possession not exempt from forced sale, as well as upon all rents due to said landlord under said contract.

Tenants shall  
not sub-let  
without con-  
sent, etc.  
Ib.

ART. 3122. If lands or tenements are rented by the landlord to any person or persons, such person or persons renting said lands or tenements shall not rent or lease said lands or tenements during the term of said lease to any other person without first obtaining the consent of the landlord, his agent or attorney.

Owners of  
residences,  
store-houses,  
etc., have  
preference lien  
(Acts 1879,  
ch. 119, p. 128.)

ART. 3122a. All persons leasing or renting any residence or storehouse or other building, shall have a preference lien upon all the property of the tenant in said residence or storehouse or other building for the payment of the rents due and that may become due, and such lien shall continue and be in force so long as the tenant shall occupy the rented premises, and for one month thereafter; but this article shall not be construed as in any manner repealing or affecting any act exempting property from forced sale.

Distress war-  
rant, how  
obtained.  
(Acts 1879,  
ch. 119, p. 128.)

ART. 3122b. When any rent shall become due, or the tenant about to remove from such leased or rented buildings, or remove his property therefrom, it shall be lawful for the person to whom the rent is payable, his agent, attorney or assignee to apply to a justice of the peace of the precinct where the building is situated for a distress warrant which shall be issued on an affidavit and bond, and the same proceedings shall be had on the issuance, trial and return of such warrant as is now provided by law in this chapter; the object of this and the preceding article being to extend the operation of such law so as to include and protect liens on residences and storehouses and other buildings occupied or used by tenants, and conferring on the owners thereof the same rights and privileges as are now conferred by law on other landlords.

TITLE LIX.

Laws.

CHAPTER ONE.

GENERAL PROVISIONS.

Enacting clause.....	Article 3123	When shall take effect.....	Article 3123
Shall contain but one subject, etc.....	3124	Revival of repealed law.....	3127
No revival, etc., by reference to title.....	3125		

ARTICLE 3123. The enacting clause of all laws shall be "Be it enacted by the legislature of the State of Texas."

Enacting clause. (Const., art. 3, §29.)

ART. 3124. No bill (except general appropriation bills which may embrace the various subjects and accounts for and on account of which moneys are appropriated) shall contain more than one subject, which shall be expressed in its title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

Shall contain but one subject, etc. *Ib.* §35.

ART. 3125. No law shall be revived or amended by reference to its title; but in such case the act revived or the section or sections amended shall be re-enacted and published at length.

No revival, etc., by reference to title. *Ib.* §36.

ART. 3126. No law passed by the legislature, except the general appropriation act, shall take effect or go into force until ninety days after the adjournment of the session at which it was enacted, unless in case of an emergency, which emergency must be expressed in a preamble or in the body of the act, the legislature shall, by a vote of two-thirds of all the members elected to each house, otherwise direct, said vote to be taken by yeas and nays, and entered upon the journals.

When shall take effect. *Ib.* §39.

ART. 3127. Whenever one law which shall have repealed another shall itself be repealed, the former law shall not be thereby revived without express words to that effect.

Revival of repealed law. (Act Jan. 16, 1840.) P.D. 4577.

CHAPTER TWO.

COMMON LAW.

Common law of England adopted.....	Article 3128	Executors, etc., governed by, when, etc....	Article 3129
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ARTICLE 3128. The common law of England (so far as it is not inconsistent with the constitution and laws of this state) shall, together with such constitution and laws, be the rule of decision, and shall continue in force until altered or repealed by the legislature.

Common law of England adopted. (Act Jan. 20, 1840, p. 3.) P.D. 978.

ART. 3129. The rights, powers and duties of executors and administrators shall be governed by the common law, when not otherwise provided by statute.

Executors, etc., governed by, when. (Act Aug. 9, 1876, p. 130, §141.)

CHAPTER THREE.

SPECIAL LAWS.

	Article		Article
Notice of intention to apply for special law, etc.....	3130	Affecting person, shall be published where	3133
Where no newspaper is published, notice, how.....	3131	Where applicant is a non-resident.....	3134
Notice in more than one county, when.....	3132	Details need not be embraced in notice.....	3135
		Proof of publication in newspaper.....	3136
		Proof of posting.....	3137

Notice of intention to apply for special law, etc. (Const., art. 3, §57.) (Act May 23, 1876, p. 7, §1.)

Where no newspaper is published, notice, how. *Ib.*

Notice in more than one county, when.

Affecting persons, shall be published, where. *Ib.* §2.

Where applicant is a non-resident. *Ib.*

Details need not be embraced in notice. *Ib.* §3.

Proof of publication in newspaper. *Ib.* §4.

Proof of posting. *Ib.* §4.

ARTICLE 3130. Any person intending to apply for the passage of any local or special law, shall give notice of such intention by having a statement of the substance of such law published in some newspaper published in the county embracing the locality to be affected by said law, at least once a week for the period of thirty days prior to the introduction into the legislature of such contemplated law.

ART. 3131. Where there is no newspaper published in said county, a written copy of such statement shall be posted on the court-house door and in five other public places in the immediate locality to be affected thereby in said county, for said thirty days, and such notice shall accurately define the locality to be affected by said law.

ART. 3132. Where the locality to be affected by said law shall extend beyond the limits of any one county, such notice shall be given for each county to be affected.

ART. 3133. Whenever any person intends applying for the passage of a special law which shall affect persons chiefly, and not directly affect any particular locality more than others, such persons, if residing within this state, shall make publication of notice of such intention in the county of the residence of such person in the same manner as if the said law was to affect such locality.

ART. 3134. If residing without the limits of this state, said publication need only be made in a newspaper published at the capital, in like manner as if such person resided at the seat of government.

ART. 3135. It shall not be necessary to embrace in said notice the particular form and terms of such contemplated law, but a statement only of the general purposes and nature of the same shall be sufficient.

ART. 3136. The publication in a newspaper at the county of the locality, or at the residence, or at the state capital as the case may be, may be shown by the affidavit of the publisher or one of the several publishers of such newspaper, accompanied with the printed copy of the notice as published.

ART. 3137. The posting on the court-house door, and at five other public places of the county provided for in this chapter, may be shown by the return of the sheriff or constable, or by the affidavit of any credible person made on a written copy of the notice so posted, showing the fact of such posting, and such proof or other competent proof of the giving of said notice shall accompany the introduction of every local or special law.

CHAPTER FOUR.

CONSTRUCTION OF LAWS.

	Article		Article
General rules of construction.....	3138	Meaning of certain words.....	3140
Grammatical errors, etc., shall not vitiate.....	3139		

General rules of construction.

ARTICLE 3138. The following rules shall govern in the construction of all civil statutory enactments:

1. The ordinary signification shall be applied to words, except words of art or words connected with a particular trade or subject matter, when

they shall have the signification attached to them by experts in such art or trade, or with reference to such subject matter.

2. The present or past tense shall include the future.

3. The masculine gender shall include the feminine and neuter.

4. The singular and plural number shall each include the other, unless otherwise expressly provided.

5. A joint authority given to any number of persons or officers may be executed by a majority of them, unless it is otherwise declared.

6. In all interpretations the court shall look diligently for the intention of the legislature, keeping in view at all times the old law, the evil, and the remedy.

ART. 3139. Grammatical errors shall not vitiate a law, and a transposition of words and clauses may be resorted to when the sentence or clause is without meaning as it stands, and in no case shall the punctuation of a law control or affect the intention of the legislature in the enactment thereof.

Grammatical errors, etc., shall not vitiate.

ART. 3140. The following meaning shall be given to each of the following words, unless a different meaning is apparent from the context:

Meaning of certain words.

1. "Property" includes real and personal property.

2. "Person" includes a corporation.

3. "Written" or "in writing" includes any representation of words, letters or figures, whether by writing, printing or otherwise.

4. "Oath" includes affirmation.

5. "Swear" or "sworn" includes affirm.

6. "Signature" or "subscribe" includes the mark of a person unable to write.

7. "Justice," when applied to a magistrate, means justice of the peace.

8. "Preceding," when used by way of reference to a title, chapter or article, means the next preceding.

9. "Succeeding" in like manner means the next succeeding.

10. "Month" means a calendar month.

11. "Year" means a calendar year.

12. "Effects" includes all personal property and all interest therein.

TITLE LX.

Legislature.

CHAPTER ONE

TIME OF MEETING.

	Article
Time of meeting.....	3141
<p>ARTICLE 3141. The seventeenth legislature shall assemble to hold its biennial session on the second Tuesday in January, A. D. one thousand eight hundred and eighty-one (1881), at twelve o'clock m., and the legislature shall meet biennially thereafter on the same day and hour until otherwise prescribed by law.</p>	

Time of meeting. (Const., art. 3, §1, *et seq.*) (Act July 31, 1876, p. 76, §1.)

CHAPTER TWO.

ORGANIZATION.

	Article		Article
Who may organize the legislature.....	3142	All counties to be called whether election returns are made or not.....	3147
Secretary of state to preside for purpose of organization.....	3143	Parties sworn in on any proper evidence...	3148
Secretary of state to attend meeting and appoint clerk.....	3144	When quorum not present day for meeting...	3149
The clerk to call counties in alphabetical order.....	3145	Election of speaker.....	3150
Clerk to administer oath.....	3146	Election of other necessary officers.....	3151
		In absence of secretary of state attorney-general to preside.....	3152

Who may organize the legislature. (Act Aug. 23, 1876, p. 311, §29.)	ARTICLE 3142. Those persons receiving certificates of election to the senate and house of representatives of the legislature, and those senators whose terms of office shall not have terminated, and none others, shall be competent to organize the senate and house of representatives.
Secretary of state to preside for purposes of organization. P.D. 5437.	ART. 3143. For the purpose of organization, as provided for in the preceding article, it shall be the duty of the secretary of state to preside at each recurring session of the legislature.
Secretary of state to attend meeting and appoint clerk. <i>Ib.</i>	ART. 3144. He shall attend at the time and place designated for the meeting of the legislature, and shall appoint a clerk, who shall have been chief clerk of the house the preceding session if he be present, to take a minute of the proceedings.
The clerk to call counties in alphabetical order. <i>Ib.</i>	ART. 3145. The clerk, under direction of the secretary of state, shall call all the counties in alphabetical order.
Clerk to administer oath. <i>Ib.</i>	ART. 3146. When the counties are called and the members elect appear and present their credentials, it shall be the duty of the clerk, under the order and direction of the secretary of state, to administer to each the oath prescribed by the constitution.
All counties to be called whether election returns are made or not. <i>Ib.</i> P.D. 5438.	ART. 3147. Should returns of election in any county for members of the legislature not be made to the office of secretary of state, the clerk shall nevertheless call such county.

ART. 3148. Any person appearing at said call and presenting the proper evidence of his election, shall be admitted or qualified in the same manner as though the return of his election had been made to the office of secretary of state.

Parties sworn in on any proper evidence.  
P.D. 5438.

ART. 3149. Should there not be a quorum in attendance on the day appointed for the meeting of the legislature, it shall be the duty of the secretary of state and clerk to attend from day to day until a quorum shall appear and be qualified as above.

When quorum not present on day for meeting.  
P.D. 5439.

ART. 3150. When a quorum shall have appeared and been qualified, the house shall proceed to the election of a speaker, unless a majority of the members present shall think proper to defer said election.

Election of speaker.  
P.D. 5440

ART. 3151. When an election for speaker shall have been had, the speaker elect shall immediately take the chair, and the house proceed to its further organization by electing the necessary officers, to whom the speaker shall administer the oath of office.

Election of necessary officers.  
P.D. 5441.

ART. 3152. Should there be no secretary of state, or in case he be absent or unable to attend, from any cause, the attorney-general shall attend and perform the duties prescribed in this title.

In absence of secretary of state attorney-general to preside.  
P.D. 5442.

TITLE LXI.

Liens.

CHAPTER ONE.

JUDGMENT LIENS.

	Article		Article
Clerk of county court shall keep judgment record.....	3153	Index shall show, what.....	3158
Clerks of courts shall make and deliver abstracts of judgments.....	3154	Lien of judgments, when.....	3159
Abstract shall show what.....	3155	Lien exists, how long.....	3160
Justice of the peace shall deliver abstracts.....	3156	Satisfaction of judgment shown, how.....	3161
Clerks of county courts shall record and index abstracts.....	3157	Satisfaction of judgment to be entered on judgment record.....	3162
		Abstracts from United States courts may be recorded, etc.....	3163

Clerk of county court shall keep a judgment record.

ARTICLE 3153. Each clerk of the county court shall keep in his office a well-bound book, to be called the "Judgment record," in which he shall record all abstracts of judgments filed in his office for record, which are authenticated in the manner hereinafter required.

Clerks of courts shall make and deliver abstracts of judgments.

ART. 3154. It shall be the duty of each clerk of a court, when the person in whose favor the judgment was rendered, his agent, attorney or assignee, applies therefor, to make out and deliver to such applicant, upon the payment of the fee allowed therefor by law, an abstract of such judgment and certify thereto under his hand and official seal.

Abstract shall show, what.

ART. 3155. The abstract provided for in the preceding article shall show—

1. The names of the plaintiff and of the defendant in such judgment.
2. The number of the suit in which the judgment was rendered.
3. The date when such judgment was rendered.
4. The amount for which the same was rendered and the amount still due upon the same.
5. The rate of interest, if any is specified in the judgment.

Justice of the peace shall deliver abstracts.

ART. 3156. It shall also be the duty of each justice of the peace to make out and deliver an abstract of any judgment rendered in his court in the manner provided in the two preceding articles, certified to under his hand.

Clerk of county court shall record and index abstracts.

ART. 3157. When any such abstract, as is provided for in the three preceding articles, is presented to the clerk of the county court for record, he shall file and immediately record the same in the judgment record, noting in such record the day and hour of such record, and shall also at the same time enter it upon the index.

Index shall show, what.

ART. 3158. The index to such judgment record shall be alphabetical, and shall show the name of each plaintiff and of each defendant in the judgment, and the number of the page of the book upon which the abstract is recorded.

Lien of judgment, when.

ART. 3159. When any judgment has been recorded and indexed, as provided in the preceding articles, it shall, from the date of such record and index, operate as a lien upon all of the real estate of the defendant situated in the county where such record and index are made, and upon all real estate which the defendant may thereafter acquire situated in said county.

Lien exists, how long.

ART. 3160. When a lien has been acquired, as provided in this chapter, it shall continue for ten years from the date of such record and index, unless the plaintiff shall fail to have execution issued upon his judgment

within twelve months after the rendition thereof, in which case said lien shall cease to exist.

ART. 3161. Satisfaction of any judgment in whole or in part may be shown—

Satisfaction of judgment shown, how.

1. By the return upon an execution issued upon said judgment, or by a certified copy of such return, certified by the officer to whom the return is made, such certificate showing the names of the parties to the judgment, the number and style of the suit, the date and amount of the judgment, the court in which rendered, and the dates of the issuance and return of the execution.

2. By a receipt, acknowledgment or release signed by the party entitled to receive payment of the judgment, or his agent, or attorney of record, and acknowledged or proven for record in the same manner as deeds are required to be.

ART. 3162. Sufficient space shall be left at the foot of each abstract of a judgment recorded in the judgment record for the entry of credits upon and satisfaction of such judgment, and it shall be the duty of the clerk to enter such credits and satisfaction whenever the same are made to appear, as provided in the preceding article.

Satisfaction of judgment to be entered on judgment record.

ART. 3163. An abstract of a judgment rendered in this state by any United States court may be recorded and indexed in the same manner provided for the judgments of the courts of this state, upon the certificate of the clerks of such United States courts, and the record and index of such judgments shall have the same force and effect as that of a judgment of a court of this state.

Abstract from U. S. courts may be recorded, etc.

## CHAPTER TWO.

### MECHANICS, CONTRACTORS, BUILDERS AND MATERIAL MEN.

	Article		Article
Lien attaches in favor of whom.....	3164	Sale to be upon judgment.....	3173
Time when lien is filed.....	3165	Lien upon the homestead.....	3174
When contract is verbal.....	3166	In favor of whom.....	3175
Property to be described.....	3167	Mechanics and material men to deliver to owners their accounts, when.....	3176
Diligence.....	3168	Diligence.....	3177
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Lien in the city or town.....	3170	Owner to withhold the amount, when.....	3179
Improvements sold, how.....	3171		
Purchaser to be placed in possession.....	3172		

NOTE.—As to liens given mechanics, laborers and operatives for labor performed for railroad companies, and the mode of enforcing the same, see General Laws, 1879, chapter 12, page 8. See also appendix for the act in full.—L.

ARTICLE 3164. Any person or firm, lumber dealer, artisan or mechanic, who may labor or furnish material, machinery, fixtures and tools to erect any house or improvement, or to repair any building or improvement whatever, shall have a lien on such house, building, fixture or improvements, and shall also have a lien on the lot or lots or land necessarily connected therewith, to secure payment for labor done, lumber, material, machinery or fixtures and tools furnished for construction or repairs.

Lien attaches, in favor of whom. (Const., art. 16, §37.) (Act Aug. 7, 1876, p. 51, §1.)

ART. 3165. In order to fix and secure the lien herein provided for, the person or firm, contractor, mechanic, laborer, artisan or lumber dealer furnishing material shall have the right at any time, within six months after such debt becomes, due to file his contract in the office of the county clerk of the county in which such property is situated, and cause the same to be recorded in a book to be kept by the county clerk for that purpose.

Time when lien is to be filed. *Ib.*

ART. 3166. If the contract, order or agreement be verbal, a duplicate copy of the bill of particulars shall be made under oath, one to be delivered to the clerk, to be filed and recorded as provided for written contracts, and the other to be furnished to the party owing the debt.

Where contract is verbal. *Ib.*



- Property to be described. *Ib.* ART. 3167. Both the contracts and accounts, when filed and recorded as above provided, shall be accompanied by a description of the lands, lots, houses and improvements made against which the lien is claimed.
- Diligence. *Ib.* ART. 3168. When such contract or account is filed and recorded, it shall be deemed sufficient diligence to secure the lien herein provided.
- Lien in country. *Ib.* §2. ART. 3169. The lien herein provided, if against land in the country, shall extend to and include fifty acres, upon which such labor has been performed, or upon which the houses or improvements are situated.
- Lien in city or town. *Ib.* ART. 3170. If in a city, town or village, it shall extend to or include such lot or lots upon which such houses, fixtures or improvements are situated, or upon which such labor was performed.
- Improvements, sold how. *Ib.* §3. ART. 3171. The lien herein provided for labor performed or material furnished shall extend to the land designated, and the person enforcing the same may have the lot or lots and improvements sold together, or he may have the improvements sold only.
- Purchaser to be placed in possession. *Ib.* ART. 3172. When the improvements are sold separately, the purchaser shall be by the officer making the sale placed in possession thereof, and he shall have the right to remove the same within a reasonable time from date of purchase.
- Sale to be upon judgment. *Ib.* ART. 3173. Every sale must be upon judgment rendered by some court of competent jurisdiction foreclosing such lien and ordering sale of such property.
- Liens upon the homestead. (Const., art. 16, §50.) *Ib.* §4. ART. 3174. But when lumber or material is furnished, labor performed, erection or repairs made upon a homestead, to fix a lien upon the same, it shall be the duty of persons, mechanics, artisans, lumber dealers and laborers, who shall perform any labor or furnish any material upon or about the construction of any improvement or repairs upon a homestead, to make and enter into a contract in writing, setting forth the terms of said contract, which said contract in writing shall be signed by the husband and wife and acknowledged by her, as required in making a sale of the homestead at the time when such improvements or repairs are to be made, or material furnished, or labor performed, and all such contracts shall be recorded in the county clerk's office, in the county where such improvements are being made or land situated.
- In favor of whom. *Ib.* §5. ART. 3175. The lien and contract mentioned in the preceding article shall inure to the benefit of mechanics, artisans, laborers and lumber dealers and other material men who shall have built, erected, repaired, improved or furnished material for a homestead.
- Mechanics and material men to deliver to owner, when. (Act Aug. 1, 1876, p. 91, §6.) P.D. 4598. ART. 3176. Every mechanic, workman or other person doing and performing any work or furnishing any materials toward the erection, construction or completion of any building erected or improvement made under a contract between the owner of said buildings or other improvement and the original contractor, whose demand for work and labor performed, or material furnished toward the completion of said building or improvement has not been paid, may deliver to the owner of said building or improvement an attested account of the amount and value of said labor or materials thus furnished and remaining unpaid, and thereupon the owner shall retain out of the amount due such original contractor, if any, the amount of said labor or material furnished for the benefit of the party performing the work or furnishing the material.
- Diligence. *Ib.* §46. ART. 3177. A compliance with the provisions of the preceding article shall be considered sufficient diligence to fix the liability of the owner of such building or improvement for the payment of such demand.
- Contractor to be furnished by owner with account. *Ib.* §7. ART. 3178. Whenever any such account shall be placed in the hands of such owner or his authorized agent, it shall be the duty of such owner or his agent to furnish his contractor with a true copy of said attested account; and if said contractor shall not, within ten days after the receipt of said copy of attested account, give the owner written notice that he

intends to dispute said claim, he shall be considered as assenting to the demand, which shall be paid by the owner when it becomes due.

ART. 3179. If said contractor shall dispute the claim of his journeyman or other person, for work and labor performed or material furnished, as provided for in the preceding article, then such owner shall withhold the amount of said demand until the matter is adjusted between the parties by agreement, arbitration, suit or otherwise, when he shall pay over the amount to the party entitled to receive the same.

Owner to withhold the amount, when. *Id.*

### CHAPTER THREE.

#### LIENS ON DOMESTIC VESSELS.

	Article		Article
Lien on vessels, when.....	3180	Not to affect law of lien for seamen's wages	3181

ARTICLE 3180. Every person who may furnish supplies or materials, or do repairs or labor, for or on account of any domestic vessel, owned in whole or in part in this state, shall have a lien on such vessel, her tackle, apparel, furniture and freight money, for the security and payment of the same.

Lien on vessels, when. (Act Feb. 3, 1848.) P.D. 4600.

ART. 3181. The provisions of the preceding article shall not be construed to alter or affect in any way the general law regulating the liens of seamen on foreign vessels.

Not to affect laws of liens for seamen's wages. P.D. 4601.

### CHAPTER FOUR.

#### OTHER LIENS.

	Article		Article
Lien in favor of hotels and boarding houses.....	3182	When property may be sold for charges	3186
Lien of livery stable keepers.....	3183	Where owner lives out of the state or residence is unknown.....	3187
Mechanic may retain possession of article repaired, when.....	3184	Balance, how disposed of.....	3188
Where no price is agreed upon.....	3185	What is to be done finally with the balance	2189
		Other liens and contracts not affected.....	3190

ARTICLE 3182. Proprietors of hotels and boarding houses shall have a special lien upon all property or baggage deposited with them for the amount of the charges against them or their owners if guests at such hotel and boarding house.

Lien in favor of hotels and boarding houses. (Act May 2, 1874, p. 200, §1.) P.D. 7116f.

ART. 3183. Proprietors of livery or public stables shall have a special lien upon all animals placed with them for feed, care and attention, as also upon such carriages, buggies, or other vehicles as may have been placed in their care, for the amount of the charges against the same.

Lien of livery stable keepers. *Id.*

ART. 3184. Whenever any article, implement, utensil or vehicle shall be repaired with labor and material, or with labor and without furnishing material, by any carpenter, mechanic, artisan or other workman in this state, such carpenter, mechanic, artisan or other workman is authorized to retain possession of said article, implement, utensil or vehicle until the amount due on same for repairing by contract shall be fully paid off and discharged.

Mechanics may retain possession of article repaired, when (Acts April 7, 1874, p. 68, §1.) P.D. 7116a.

ART. 3185. In case no amount is agreed upon by contract, then said carpenter, mechanic, artisan or other workman shall retain possession of such article implement, utensil or vehicle, until all reasonable, customary and usual compensation shall be paid in full.

Where no price is agreed upon. *Id.* §1.

ART. 3186. When possession of any of the property embraced in the four preceding articles has continued for sixty days after the charges accrue, and the charges so due have not been paid, it shall be the duty of the persons so holding said property to notify the owner, if in the state and his residence be known, to come forward and pay the charges due,

When property may be sold for charges.

and on his failure within ten days after such notice has been given him to pay said charges the persons so holding said property, after twenty days' notice, are authorized to sell said property at public sale and apply the proceeds to the payment of said charges, and shall pay over the balance to the person entitled to the same.

When owner lives out of the state or residence is unknown.

Balance, how disposed of.  
*Ib.* §3.

ART. 3187. If the owner's residence is beyond the state or is unknown, the person holding said property shall not be required to give the ten days' notice mentioned in the preceding article before proceeding to sell.

ART. 3188. If the person who is legally entitled to receive the balance mentioned in this chapter is not known, or has removed from the state or from the county in which such repairing was done or such property was so held, it shall be the duty of the person so holding said property to pay the balance to the county treasurer of the county in which said property is held, and take his receipt therefor.

What is to be done finally with the balance.

*Ib.* §4.

ART. 3189. Whenever any balance mentioned in this chapter shall remain in the possession of the county treasurer for the period of two years unclaimed by the party legally entitled to the same, such balance shall become a part of the county fund of the county in which the property was so sold, and shall be applied as any other county fund or money of such county is applied or used.

Other liens and contracts not affected.

ART. 3190. Nothing in this title shall be construed or considered as in any manner impairing or affecting the right of parties to create liens by special contract or agreement, nor shall it in any manner affect or impair other liens arising at common law or in equity, or by any statute of this state, or any other lien not treated of under this title.

TITLE LXII.

Limitations.

CHAPTER ONE.

LIMITATION OF ACTIONS FOR LAND.

	Article		Article
Three years' possession, when a bar.....	3191	"Peaceable possession" defined.....	3197
"Title" and "color of title" defined.....	3192	"Adverse possession" defined.....	3198
Five years' possession, when a bar.....	3193	Possession may be held by different persons.....	3199
Ten years' possession, when a bar.....	3194	Right of the state not barred, etc.....	3200
Ten years' possession construed to embrace, what.....	3195	Does not run against infants, married women, etc.....	3201
Possession gives full title, when.....	3196		

ARTICLE 3191. Every suit to be instituted to recover real estate, as against any person in peaceable and adverse possession thereof under title or color of title, shall be instituted within three years next after the cause of action shall have accrued, and not afterward.

Three years' possession, when a bar. (Act Feb. 5, 1841, p. 119, §15.)  
P.D. 4622.

ART. 3192. By the term "title," as used in the preceding article, is meant a regular chain of transfer from or under the sovereignty of the soil, and by "color of title" is meant a consecutive chain of such transfer down to such person in possession, without being regular, as if one or more of the memorials or muniments be not registered, or not duly registered, or be only in writing, or such like defect as may not extend to or include the want of intrinsic fairness and honesty; or when the party in possession shall hold the same by a certificate of headright, land warrant or land scrip, with a chain of transfer down to him in possession.

"Title" and "color of title" defined.  
Ib. §15.  
P.D. 4622.

ART. 3193. Every suit to be instituted to recover real estate as against any person having peaceable and adverse possession thereof, cultivating, using or enjoying the same and paying taxes thereon, if any, and claiming under a deed or deeds duly registered, shall be instituted within five years next after the cause of action shall have accrued, and not afterwards; *provided*, that this article shall not apply to any one in possession of land, who in the absence of this statute [article] would deraign title through a forged deed; *provided further*, that no one claiming under a forged deed, or deed executed under a forged power of attorney, shall be allowed the benefits of this article.

Five years' possession, when a bar.  
Ib. §16.  
P.D. 4623.  
(Acts 1879, ch. 125, p. 132.)

ART. 3194. Any person who has the right of action for the recovery of any lands, tenements or hereditaments against another having peaceable and adverse possession thereof, cultivating, using or enjoying the same, shall institute his suit therefor within ten years next after his cause of action shall have accrued and not afterward.

Ten years' possession, when a bar.  
Ib. §17.  
P.D. 4621, 4624.

ART. 3195. The peaceable and adverse possession contemplated in the preceding article, as against the person having right of action, shall be construed to embrace not more than one hundred and sixty acres, including the improvements or the number of acres actually inclosed, should the same exceed one hundred and sixty acres; but when such possession is taken and held under some written memorandum of title, other than a deed, which fixes the boundaries of the possessor's claim and is duly registered, such peaceable possession shall be construed to be co-extensive with the boundaries specified in such instrument.

Ten years' possession construed to embrace, what.  
Ib.  
P.D. 4624.

ART. 3196. Whenever in any case the action of a person for the recovery of real estate is barred by any of the provisions of this chapter,

Possession gives full title, when.  
P.D. 4623-4.

the person having such peaceable and adverse possession shall be held to have full title, precluding all claims.

“Peaceable possession” defined. *Ib.* §14. F.D. 4621.

ART. 3197. “Peaceable possession,” within the meaning of this chapter, is such as is continuous, and not interrupted by adverse suit to recover the estate.

“Adverse possession” defined.

ART. 3198. “Adverse possession” is an actual and visible appropriation of the land, commenced and continued under a claim of right inconsistent with and hostile to the claim of another.

Possession may be held by different persons.

ART. 3199. Peaceable and adverse possession need not be continued in the same person, but when held by different persons successively there must be a privity of estate between them.

Right of the state not barred, etc. *Ib.* §§15, 16, 17. F.D. 4622-3-4.

ART. 3200. The right of the State of Texas shall not be barred by any of the provisions of this chapter.

Does not run against infants, married women, etc. *Ib.* §§14, 15, 16, 17. F.D. 4621-2-3-4.

ART. 3201. If a person entitled to commence suit for the recovery of real property, or to make any defense founded on the title thereto, be, at the time such title shall first descend or the adverse possession commence—

1. Under the age of twenty-one years; or,
2. A married woman; or,
3. Of unsound mind; or,
4. A person imprisoned; the time during which such disability shall continue shall not be deemed any portion of the time limited for the commencement of such suit or the making of such defense; and such person shall have the same time, after the removal of his disability, that is allowed to others by the provisions of this chapter.

## CHAPTER TWO.

### LIMITATION OF PERSONAL ACTIONS.

Article	Article
Actions to be commenced in one year..... 3203	Action on foreign judgment barred, when. 3208
Actions to be commenced in two years..... 3203	Actions for specific performance..... 3209
Shall run against each item, when..... 3204	Judgment shall be revived, when..... 3210
What actions barred in four years..... 3205	On motion for not returning execution.... 3211
On bond of executor, administrator, or guardian..... 3206	On the action of forcible entry, etc..... 3212
All other actions barred, when..... 3207	On action to contest a will..... 3213
	In case of forgery, etc., action accrues, when 3214

Actions to be commenced in one year. (Acts Feb. 5, 1841, §1; Feb. 2, 1860, §1.) F.D. 4604. P.D. 15.

ARTICLE 3202. There shall be commenced and prosecuted within one year after the cause of action shall have accrued, and not afterward, all actions or suits in court, of the following description:

1. Actions for injuries done to the person of another.
2. Actions for malicious prosecution or for injuries done to the character or reputation of another by libel or slander.
3. Actions for damages for seduction, or breach of promise of marriage.
4. Actions for injuries done to the person of another where death ensued from such injuries; and the cause of action shall be considered as having accrued at the death of the party injured.

Actions to be commenced in two years. (Acts Feb. 5, 1841, p. 163, §1; Feb. 16, 1852, p. 128, §1.) F.D. 4604.

ART. 3203. There shall be commenced and prosecuted within two years after the cause of action shall have accrued, and not afterward, all actions or suits in court of the following description:

1. Actions of trespass for injury done to the estate or the property of another.
2. Actions for detaining the personal property of another, and for converting such personal property to one's own use.
3. Actions for taking or carrying away the goods and chattels of another.
4. Actions for debt where the indebtedness is not evidenced by a contract in writing.

5. Actions upon stated or open accounts, other than such mutual and current accounts as concern the trade of merchandise between merchant and merchant, their factors or agents.

ART. 3204. In all accounts, except those between merchant and merchant as aforesaid, their factors and agents, the respective times or dates of the delivery of the several articles charged, shall be particularly specified, and limitation shall run against each item from the date of such delivery, unless otherwise specially contracted.

Shall run against each item, when.  
*Ib.* §§4, 5.  
P.D. 4611-12.

ART. 3205. There shall be commenced and prosecuted within four years after the cause of action shall have accrued, and not afterward, all actions or suits in court of the following description:

What actions barred in four years.  
(Act Feb. 5, 1841, p. 163, §1.)  
P.D. 4604.

1. Actions for debt where the indebtedness is evidenced by or founded upon any contract in writing.

2. Actions for the penalty or for damages on the penal clause of a bond to convey real estate.

3. Actions by one partner against his co-partner for a settlement of the partnership accounts, or upon mutual and current accounts concerning the trade of merchandise between merchant and merchant, their factors or agents; and the cause of action shall be considered as having accrued on a cessation of the dealings in which they were interested together.

ART. 3206. All suits on the bond of any executor, administrator or guardian shall be commenced and prosecuted within four years next after the death, resignation, removal or discharge of such executor, administrator or guardian, and not thereafter.

On bond of executor, administrator or guardian.  
(Acts March 20, 1848; Aug. 9, 1876, p. 102, §42.)  
P.D. 1375, 3923.

ART. 3207. Every action other than for the recovery of real estate, for which no limitation is otherwise prescribed, shall be brought within four years next after the right to bring the same shall have accrued, and not afterward.

All other actions barred, when.

ART. 3208. Every action upon a judgment or decree rendered in any other state or territory of the United States, in the District of Columbia or in any foreign country, shall be barred, if by the laws of such state or country such action would there be barred, and the judgment or decree be incapable of being otherwise enforced there; and whether so barred or not, no action against a person who shall have resided in this state during the ten years next preceding such action, shall be brought upon any such judgment or decree rendered more than ten years before the commencement of such action.

Actions on foreign judgments barred, when.

ART. 3209. Any action for the specific performance of a contract for the conveyance of real estate shall be commenced within ten years next after the cause of action shall have accrued, and not afterward.

Actions for specific performance.

ART. 3210. A judgment in any court of record within this state, where execution has not issued within twelve months after the rendition of the judgment, may be revived by *scire facias* or an action of debt brought thereon within ten years after the date of such judgment, and not after.

Judgment shall be revived, when.  
(Act Feb. 5, 1841, §2.)  
P.D. 4608.

ART. 3211. Where execution has issued and no return is made thereon, the party in whose favor the same was issued may move against any sheriff or other officer and his sureties for not returning the same within five years from the day on which it was returnable, and not after.

On motion for returning execution.  
*Ib.*  
P.D. 4608.

ART. 3212. No action of forcible entry or forcible detainer, as provided for by law, shall be prosecuted at any time after two years from the commencement of the forcible entry or detainer.

On the action of forcible entry, etc.

ART. 3213. Any person interested in any will which shall have been probated under the laws of this state, may institute suit in the proper court to contest the validity thereof, within four years after such will shall have been admitted to probate, and not afterward.

On actions to contest a will.  
(Act Aug. 9, 1876, p. 94, §3.)

In case of forgery, etc., action accrues, when, *Ib.* §3.

ART. 3214. Any heir at law of the testator, or any other person interested in his estate, may institute suit in the proper court to cancel a will for forgery or other fraud within four years after the discovery of such forgery or fraud, and not afterward.

## CHAPTER THREE.

### GENERAL PROVISIONS.

	Article		Article
Suspension of, during late war.....	3215	Limitation shall not run against infants, etc.....	3222
Time of temporary absence not counted.....	3216	Action against immigrant barred, when, etc.....	3223
Death of owner, etc., stops limitation, until.....	3217	Debts incurred prior to removal of person to this state.....	3224
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Acknowledgment must be in writing,.....	3219	Claims barred under pre-existing laws, etc.....	3226
Limitation must be pleaded, etc.....	3220		
Presumption of death, etc., when, etc.....	3221		

Suspension during late war. (Const., art. 16, §18.)

ARTICLE 3215. The laws of limitation of civil suits in this state shall be considered as suspended during the late civil war, commencing on the twenty-eighth day of January, 1861, and ending on the thirtieth day of March, 1870; but nothing herein shall be held to revive any cause of action heretofore barred.

Time of temporary absence not counted. (Act Feb. 5, 1841, §22.) P.D. 24.

ART. 3216. If any person against whom there shall be cause of action, shall be without the limits of this state at the time of the accruing of such action, or at any time during which the same might have been maintained, the person entitled to such action shall be at liberty to bring the same against such person after his return to the state, and the time of such person's absence shall not be accounted or taken as a part of the time limited by any of the provisions of this title.

Death of owner, etc., shall stop limitation until, etc. (Act Feb. 16, 1852, §3.) P.D. 4607.

ART. 3217. In case of the death of any person in whose favor there may be cause of action, the law of limitation shall cease to run against such cause of action until twelve months after such death, unless an administrator or executor shall have sooner qualified according to law upon such deceased person's estate; then and in that case the said law of limitation shall only cease to run until such qualification.

Death of person, etc., against whom, etc. *Ib.* §2. P.D. 4606.

ART. 3218. In case of the death of any person against whom there may be cause of action, the law of limitation shall cease to run against such cause of action until twelve months after such death, unless an administrator or executor shall have sooner qualified according to law upon such deceased person's estate; then and in that case the said law of limitation shall only cease to run until such qualification.

Acknowledgment must be in writing. (Act Feb. 5, 1841, §12.) P.D. 4617a.

ART. 3219. When an action may appear to be barred by a law of limitation, no acknowledgment of the justness of the claim made subsequent to the time it became due shall be admitted in evidence to take the case out of the operation of the law, unless such acknowledgment be in writing and signed by the party to be charged thereby.

Limitation must be pleaded, etc. (Act Feb. 16, 1852, §5.) P.D. 4629.

ART. 3220. The laws of limitation of this state shall not be made available to any person in any suit in any of the courts of this state, unless it be specially set forth as a defense in this answer.

Presumption of death, when, etc. (Act Feb. 5, 1841, §10.) P.D. 23.

ART. 3221. Any person absenting himself beyond sea, or elsewhere, for seven years successively shall be presumed to be dead, in any cause wherein his death may come in question, unless proof be made that he was alive within that time; but an estate recovered on such presumption, if in a subsequent action or suit the person presumed to be dead shall be proved to be living, shall be restored to him who shall have been evicted, and he may moreover demand and recover the rents and profits of the estate during such time as he shall be deprived thereof, with lawful interest.

ART. 3222. If a person entitled to bring any action other than those mentioned in chapter one of this title be at the time the cause of action accrues, either—

Limitation shall not run against infants, etc.

1. Under the age of twenty-one years;
2. A married woman;
3. Of unsound mind; or

4. A person imprisoned; the time of such disability shall not be deemed a portion of the time limited for the commencement of the action, and such person shall have the same time after the removal of his disability that is allowed to others by the provisions of this title.

ART. 3223. No action shall be brought against any immigrant of the state to recover a claim which was barred by the law of limitations of that state or country from which he emigrated; nor shall any action be brought to recover money from an immigrant who was released from its payment by the bankrupt or insolvent laws of the state or country from which he emigrated.

Action against immigrant barred, when.  
*Ib.* §13  
P.D. 4618.

ART. 3224. No demand against any person who shall hereafter remove to this state, incurred prior to his removal, shall be barred by the statute of limitation until he shall have resided in this state for the space of twelve months; *provided*, that nothing in this article shall be construed to affect the provisions of the preceding article.

Debts incurred prior to removal of person to this state.  
*Ib.* §4.  
P.D. 4620.

ART. 3225. The period of limitation shall not be extended by the connection of one disability with another; and when the law of limitation shall begin to run, it shall continue to run, notwithstanding any supervening disability of the party entitled to sue or liable to be sued.

One disability not tacked to another.

ART. 3226. No one of the provisions of this title shall be so construed as to revive any claim which is barred by pre-existing laws; and all claims against which limitation under said laws had commenced to run shall be barred by the lapse of time which would have barred them had those laws continued in force; *provided*, the said time be shorter than that by which they would have been barred by the other articles of this title.

Claims barred under pre-existing laws, etc.



TITLE LXIII.

Local Option.

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Opening polls and counting the vote.....	3233	Penalty.....	3239

Petition for election.  
(Act April 24, 1876, p. 26, §1; Const., art. 10, §20.)

ARTICLE 3227. It shall be the duty of the commissioners' court of each county, upon the petition of at least fifty qualified voters of said county, or upon such petition by at least twenty qualified voters of any justice's precinct, town or city therein, to order an election to be held by the qualified voters of said county, justice's precinct, town or city, as the case may be, to determine whether or not the sale of intoxicating liquors and medicated bitters producing intoxication shall be prohibited in such county, justice's precinct, town or city.

Liquors excepted from prohibition.  
*Ib.* §1.

ART. 3228. The preceding article shall not be construed to prohibit the sale of wines for sacramental purposes, nor alcoholic stimulants as medicines in cases of actual sickness, when sold upon the written prescription of a regular practising physician, certifying upon honor that the same is actually necessary as a medicine.

NOTE.—Chapter 90, acts 1879, without in terms amending and re-enacting the two preceding articles, amends and re-enacts the first section of the act of 1876 from which they are taken, adding thereto, in addition to what is contained in articles 3227 and 3228, the following: "That he (the physician) has personally examined the applicant; that any physician who does not follow his profession exclusively, or who is, in any way, directly or indirectly, engaged in the sale of such stimulants, for himself or as an agent for others, or in any way interested in the sale thereof, shall not be authorized to give the prescription provided for in this act, and such prescription shall not protect the seller; that no person shall be permitted to sell more than once upon the same prescription."—L.

Time of ordering election.  
*Ib.* §2.

ART. 3229. It shall be the duty of such court, at its first regular session after the filing of such petition with the clerk thereof, to order an election to be held at the regular voting place or places within the proposed limits, upon a day not exceeding thirty nor less than fifteen days from the date of said order; and said order shall express the object of said election.

Notice of election, how posted.  
*Ib.*

ART. 3230. The clerk shall post or cause to be posted at least five copies of said order at different public places in each county, justice's precinct, town or city in which such election shall be held, for at least twenty days prior to the day of election, and the court shall appoint and qualify the proper officers in accordance with the election law.

Form of ballot.  
*Ib.*

ART. 3231. At said election those who favor the prohibition of the sale of intoxicating liquors within the proposed limits shall have written or printed on their tickets the words "For prohibition," and those who oppose it shall have printed or written on their tickets the words "Against prohibition."

How election to be held.  
*Ib.*

ART. 3232. The officers holding said election shall, in all respects not herein specified, conform to the existing laws regulating elections; and after the polls are closed shall proceed to count the vote; and within ten days thereafter make due report of said election to the aforesaid court.

ART. 3233. Said court shall hold a special session on the eleventh day after the holding of the aforesaid election, or as soon thereafter as practicable, for the purpose of opening the polls and counting the votes; and if a majority of the votes cast are "For prohibition," said court shall immediately make an order declaring the result of said vote, and absolutely prohibiting the sale of intoxicating liquors within the prescribed bounds, except for the purposes specified in this title, until such time as the qualified voters therein may, at a legal election held for the purpose, by a majority vote decide otherwise.

Opening polls  
and counting  
vote.  
*Ib.* §3.

ART. 3234. The order of court declaring the result of the election and prohibiting the sale of intoxicating liquors, shall be published for four successive weeks in the newspaper having the largest circulation in the county; and in such counties as shall have no newspaper, by posting said order at three public places within the prescribed limits.

Publication of  
order.  
*Ib.*

ART. 3235. If a majority voting at such election vote "Against prohibition," the court shall make an order declaring the result, and have the same entered of record in the office of the clerk of said court.

Order when  
against prob-  
hibition.  
*Ib.* §3.

ART. 3236. No election under the preceding articles shall be held within the same prescribed limits in less than twelve months after an election under this title has been held therein; but at the expiration of that time, upon a new petition for an election signed by not less than fifty qualified voters of said county, if for a county election, and not less than twenty if for any other, being presented to the commissioners' court, said court shall at the first regular session thereafter order another election for the same purpose; said election to be ordered and conducted and the result ascertained and declared in all respects in the manner prescribed under this title for the first election.

Times of hold-  
ing second  
election.  
*Ib.* §4.

ART. 3237. When such second election results against prohibition, the court shall enter an order setting aside the previous order enforcing prohibition, and shall officially announce and publish the same as provided in the case where the election resulted in prohibition.

Order, etc., on  
second elec-  
tion.

ART. 3238. The failure to carry prohibition in a county shall not prevent such election being immediately thereafter held in a justice's precinct, town or city of said county; nor shall the failure to carry prohibition in a town or city prevent an election being immediately thereafter held in the same justice's precinct; nor shall the holding of such election in any justice's precinct in any way prevent the holding of an election for the entire county immediately thereafter.

Failure in cer-  
tain limits not  
to interfere  
with carrying  
election in  
others.  
*Ib.* §4.

ART. 3239. When any such election has been held and has resulted in favor of prohibition, and the aforesaid court has made the order declaring the result, and the order of prohibition, and has caused the same to be published as aforesaid, any person who shall thereafter, within the prescribed bounds of prohibition, sell, exchange or give away, with the purpose of evading the provisions of this title, any intoxicating liquors whatsoever, or in any way violate any of the provisions of this title, shall be subject to prosecution, by information or indictment, and shall be punished as prescribed in the Penal Code.

Penalty.  
*Ib.* §5.  
P.C. 378.

TITLE LXIV.

Militia.

CHAPTER ONE.

GENERAL PROVISIONS.

	Article		Article
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Who are subject to military duty.  
(Const., art. 6, §46; U.S. Const. art. 1, §§8, 17.)  
Persons exempt.  
(U.S. Rev. Stat. §1629; Act July 22, 1876, p. 55.)

ARTICLE 3240. All able-bodied male citizens between the ages of eighteen and forty-five years, and not herein expressly exempted, shall be subject to military duty in accordance with the provisions of this title.

ART. 3241. The following officers and persons shall be exempt from military duty, except in cases of insurrection or invasion, to wit:

1. The vice-president of the United States.
2. The officers, judicial and executive, of the government of the United States.
3. The members and officers of both houses of congress.
4. All the custom-house officers and their clerks.
5. All postmasters and persons employed in the transportation of the United States mails.
6. All ferrymen employed at any ferry on public roads.
7. All inspectors of exports.
8. All artificers and workmen employed in the armories and arsenals of the United States.
9. All pilots.
10. All mariners actually employed in the sea service of any citizen or merchant within the United States.
11. The lieutenant-governor and the heads of the several executive departments of the state government.
12. The judges and clerks of all courts of record.
13. All public millers.
14. All ministers of the gospel exclusively engaged in their calling.
15. All active firemen belonging or attached to any regular fire organization.
16. All persons in the military service of the state under laws regulating the protection of the frontier, or the suppression of lawlessness and crime in certain parts of the state.

Division of the militia.

ART. 3242. The militia shall be divided into two classes, to be known and designated as—

1. The reserve militia.
2. The volunteer guards.

Reserve militia

ART. 3243. The reserve militia shall consist of all persons liable to military duty, who have not attached themselves by enlistment to the volunteer guards.

Volunteer guards.

ART. 3244. The volunteer guards shall consist of such persons as by voluntary enlistment have organized themselves into uniformed companies, and have been accepted as such by the commander-in-chief in accordance with the provisions of this title.

CHAPTER TWO.

THE COMMANDER-IN-CHIEF AND HIS STAFF.

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I. THE COMMANDER-IN-CHIEF—HIS POWERS, ETC.

ARTICLE 3245. The governor shall be the commander-in-chief of the military forces, except when they are called into actual service of the United States.

Governor, commander-in-chief. (Const., art. 4, §7.)

ART. 3246. He shall have power to call forth the militia to execute the laws, to suppress insurrections, repel invasions and protect the frontier from hostile incursions by Indians or other predatory bands.

May call forth militia for certain purposes. *Id.*

ART. 3247. The commander-in-chief is authorized to establish and prescribe such rules, regulations, forms and precedents, not inconsistent with the constitution and laws of the United States and of this state, as he may deem proper and necessary for the organization, government, discipline and instruction of the volunteer guards and reserve militia.

May establish regulations for militia.

ART. 3248. He may at any time, for good and sufficient cause, disband, re-organize or discharge any portion of the volunteer guards or reserve militia, and shall have full control and authority over all matters touching the militia, its organization and discipline.

General authority over militia.

II. HIS STAFF.

ART. 3249. The staff of the commander-in-chief shall consist of an adjutant-general, with the rank of brigadier-general, to be appointed by him by and with the advice and consent of the senate, if in session, and six aides-de-camp, each with the rank of colonel, to be appointed by him.

His staff and how constituted. (U.S. Rev. Stat. p. 287, §1634.)

III. THE ADJUTANT-GENERAL AND HIS DUTIES.

ART. 3250. The adjutant-general shall hold his office for the term of two years and until the appointment and qualification of his successor in office. In case of a vacancy in such office, the appointment shall be for the unexpired term only.

His term of office.

ART. 3251. Before entering upon the duties of his office, the person appointed adjutant-general shall enter into bond with two or more good and sufficient sureties, to be approved by the governor, which bond shall be in the sum of ten thousand dollars, payable to the governor of the state and his successors in office, and conditioned for the faithful performance of the duties of said office. He shall also take and subscribe the oath of office prescribed by the constitution for all officers; which oath and bond shall be deposited in the office of the secretary of state.

His oath and bond.

ART. 3252. The adjutant-general shall procure and keep in his office a seal for the authentication of all certificates or other instruments emanating from his office, the device upon which seal shall consist of a star of five points with the words "Office of Adjutant-General, State of Texas," around the margin.

His seal of office. (Act May 13, 1846, p. 346.) Hart.D. 3.

ART. 3253. The adjutant-general shall be *ex officio* chief of staff, quartermaster-general, commissary-general, inspector-general, paymaster-general and chief of ordnance.

His *ex officio* duties.

ART. 3254. It shall be his duty—

His general duties. (U.S. Rev. Stat. §1636.)

1. To keep and preserve the arms, accouterments, ammunition and other military property of the state.

2. To keep on file in his office all rolls, returns and reports made to him.

3. To authenticate with his official seal all papers issued from his office which by law may require authentication under such seal.

4. To keep an account of all moneys received or disbursed by him.

5. To issue all orders of the commander-in-chief relating to the militia and to keep a record thereof.

6. To prepare and cause to be furnished to the volunteer guards, reserve militia, and to all officers charged in any manner with the execution of the military laws, all necessary blank forms, notices and books; and to cause to be printed and distributed the laws governing the militia.

7. To make out and transmit the annual militia returns prescribed by the laws of the United States.

8. To perform such other duties as may be required of him by the provisions of this title or other law, or by the commander-in-chief.

Annual report  
to the gov-  
ernor.

ART. 3255. He shall report annually to the commander-in-chief—

1. A statement of all moneys received or disbursed by him since his last annual report.

2. An account of all arms, ammunition and other military property belonging to the state, from what source received, to whom issued, and its present condition, so far as he may be informed.

3. The number, condition and organization of the volunteer guards and militia.

4. Any suggestion which he may deem of importance to the military interests and condition of the state, and the perfection of its military organization.

Annual report  
to be printed.

ART. 3256. The annual report provided for in the preceding article shall be printed and laid before the legisla ure for its information.

Special reports

ART. 3257. The commander-in-chief may require special reports from the adjutant-general at any time, upon any matter connected with the duties of his office or with the military service.

*NOTE.—Chapter 75, Acts 1879, repeals chapter three, title lxiv (embracing articles from 3258 to 3291, inclusive), which was submitted by the Revisers and adopted in the “Act to adopt and establish the Revised Civil Statutes,” passed February 21, 1879.—L.*

CHAPTER FOUR.  
THE VOLUNTEER GUARDS.

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ARTICLE 3292. The volunteer guards shall constitute the active militia, and when necessary to resist invasion, quell insurrection or to aid the civil authorities in the suppression of riots and the execution of the laws, shall be first called into service.

Volunteer guards to be the active militia.

ART. 3293. Volunteer guards shall be constituted by voluntary enlistment on the part of persons liable to military duty under the laws, or of persons that may be exempt under such laws.

How constituted.

I. COMPANY ORGANIZATION.

ART. 3294. Any number of male persons, not less than thirty-six nor more than one hundred, desiring to form a company of volunteer guards, may meet together and declare such purpose by signing a written agreement to that effect, and may perfect their organization by electing their company officers in accordance with the provisions of this chapter.

Manner of forming such companies.

ART. 3295. Each company of volunteer guards shall elect the following officers, to wit: A captain, a first lieutenant, a second lieutenant, four sergeants, four corporals and a secretary. In all elections for officers a majority of the ballots cast shall be necessary to elect.

What officers to be elected.

ART. 3296. Captains of companies may appoint such number of musicians, markers or other subordinates as they may deem necessary, or as may be prescribed by the commander-in-chief, and the persons so appointed shall obey such orders as may be given them by their commanding officers.

Captains may appoint certain subordinates.

ART. 3297. So soon as the organization of any company of volunteer guards is perfected in accordance with the provisions of the two preceding articles, the officers and members of such company shall take and subscribe the following oath or affirmation, before some officer authorized to administer oaths: "I, A B, do solemnly swear [or affirm] that I will support the constitution of the United States, and that I will bear true faith and allegiance to the State of Texas and will support the constitu-

Oath of officers and privates.

tion thereof; and I do further swear [or affirm] that I will faithfully observe and obey all laws and regulations for the government of the volunteer guards of this state, and the orders of all officers elected or appointed over me, so help me God."

Such oath shall be administered to the company collectively, and shall be attested under the hand and official seal of the officer administering the same.

Muster rolls to be made out.

ART. 3298. The captain commanding the company, after its organization and muster-in as hereinbefore provided, shall make up, or cause to be made up, complete muster rolls in duplicate of such company, duly certified under his hand, to be a correct muster roll of the company [naming it], one of which rolls, with the oaths of the members provided for in the preceding article thereto attached, he shall forward by mail or other conveyance to the adjutant-general, and the other shall be deposited with the secretary of the company and be preserved in the company archives.

Each company a corporation. (Act Feb. 15, 1858.) O.&W. 1461.

ART. 3299. On receipt of the muster roll and certificate provided for in the preceding article by the adjutant-general, the same shall be filed by him in his office, as a part of the records thereof, and thereafter from the date of such filing such company shall be deemed and held in law a body corporate and politic, with power under its corporate name to take, hold, transfer and convey real or personal property necessary to the purposes of the organization to an amount not exceeding thirty thousand dollars, and with like power under its corporate name to sue and be sued, plead and be impleaded, and to prosecute and defend all suits in the courts or elsewhere; to have and use a common seal of such device as it may adopt; to ordain and establish by-laws for the government and regulation of the company affairs not inconsistent with the constitution and laws of the United States and of this state and the orders of the commander-in-chief; and such by-laws, to alter and amend at will, and generally to do and perform any and all things necessary and proper to be done in carrying out and perfecting the design of its organization.

Certificate of the adjutant-general.

ART. 3300. The adjutant-general shall issue to each company of volunteer guards organized under the provisions of this chapter, a certificate to that effect, under his hand and official seal, and substantially as follows:

"THE STATE OF TEXAS, }  
"Adjutant-General's Office. }

"I, C D, adjutant-general of the State of Texas, do hereby certify that.....[giving the name of the company] has duly organized as a military company in accordance with the laws of the State of Texas regulating the organization of companies of volunteer guards, and as such company is entitled to all the rights, powers, privileges and immunities conferred by such laws.

"In witness whereof, I hereto set my hand and affix the impress of my official seal, on this the.....day of....., 18..... "C D,  
[Official Seal.] "Adjutant-General."

Such certificate evidence.

ART. 3301. Such certificate shall be evidence in all the courts that the company therein named is duly incorporated; but in suits by or against any company of volunteer guards it shall not be necessary for either party, where the incorporation is alleged, to prove such incorporation unless that fact is denied under oath by the opposite party.

Companies heretofore organized.

ART. 3302. Any uniformed volunteer military company heretofore organized shall be entitled to all the benefits and provisions of this chapter and all other laws relating to the volunteer guards, by filing with the adjutant-general the company muster roll and certificate provided herein for companies of volunteer guards; and the adjutant-general shall issue to them a like certificate as to companies organized under this chapter. Com-

panies heretofore organized and availing themselves of this privilege shall thereafter constitute a part of the volunteer guards.

ART. 3303. The foregoing provisions of this chapter relate to the formation and organization of infantry companies; but companies of cavalry and light artillery may organize in the same manner as companies of infantry, with such additional officers and under such regulations as the commander-in-chief may prescribe; and when so organized shall be assigned to and constitute a part of the volunteer guards.

Cavalry and artillery companies may be organized.

## II. REGIMENTAL AND OTHER ORGANIZATIONS.

ART. 3304. The commander-in-chief shall cause the companies composing the volunteer guards to be organized into battalions, regiments, brigades and divisions of suitable size and number, and may change such organizations from time to time, as he may deem best for the interest of the service.

Shall be organized into brigades, etc.

ART. 3305. Each company composing a regiment shall be designated with its proper letter or number, and each regiment, brigade and division shall be numbered as the commander-in-chief may direct. Companies unattached may be designated in orders by its company name.

Each organization shall be numbered.

ART. 3306. Each regiment shall consist of not more than ten companies and a regimental band, and shall have a colonel, lieutenant-colonel, and a major, all of whom shall be appointed and commissioned by the governor upon the recommendation of the line officers of the regiment. Each colonel shall appoint for his regiment a surgeon with the rank of major, and an adjutant, a quartermaster, a commissary, an assistant surgeon and a chaplain, each with the rank of captain of infantry. He shall also appoint a surgeon-major, a quartermaster-sergeant, a commissary-sergeant, a hospital steward, a drum-major and a fife-major.

Regimental organization.

ART. 3307. Each brigade shall consist of not more than four regiments, and shall have a brigadier-general, to be appointed by the governor. The staff of the brigadier-general shall consist of one assistant adjutant-general and one medical director, each with the rank of lieutenant-colonel, and one assistant inspector-general, one brigade quartermaster, one brigade commissary and two aides-de-camp, each with the rank of major. All of said officers shall be appointed by the brigadier-general; and in addition thereto he shall appoint for his brigade one brigade quartermaster-sergeant, one brigade commissary-sergeant, one brigade hospital steward and one brigade clerk.

Brigade organization.

ART. 3308. Each division shall consist of not more than three brigades, to be commanded by a major-general, appointed by the governor. The staff of the major-general shall consist of an assistant adjutant-general and a medical director, each with the rank of colonel, and one assistant inspector-general, one division quartermaster, one division commissary and four aides-de-camp, each with the rank of lieutenant-colonel. All of said officers shall be appointed by the major-general; and in addition thereto he may appoint a division quartermaster-sergeant, a division commissary-sergeant, a division hospital steward and a division clerk.

Division organization.

## III. RANK AND COMMISSION OF OFFICERS.

ART. 3309. Commissioned officers shall take rank according to the dates of their respective commissions; and between officers of the same grade and date of commission the relative rank shall be determined by lot.

Rank, how determined.

ART. 3310. The commander-in-chief shall commission all officers, and each person so commissioned shall take and subscribe the oath prescribed in article 3297 for company officers and enlisted men, which oath may be taken before any officer of this state authorized to administer oaths, and shall be filed in the office of the adjutant-general.

All officers to be commissioned. (Const., art. 4, §20.)



## IV. UNIFORMS, DRILLS, PARADES AND ENCAMPMENTS.

Each soldier to procure a uniform.

ART. 3311. Each member of a company of volunteer guards shall, immediately upon the organization of his company, or so soon as he attaches himself thereto if previously organized, provide himself with a uniform in accordance with the regulations prescribed by the commander-in-chief.

Each company may have its own uniform.

ART. 3312. Nothing in the preceding article contained shall prevent any company from adopting its own uniform, nor from wearing the same except on occasions when the commander-in-chief, or the division, brigade, regimental or company commander may otherwise direct.

Company parades and drills.

ART. 3313. Each company of volunteer guards shall assemble for parade and drill at least once in each month, at such time and place as may be designated by its commanding officer or by the by-laws of the company.

Regimental and other drills.

ART. 3314. Commanders of regiments, brigades and divisions may assemble their respective commands for purposes of drill and discipline, at convenient points, not oftener than twice in any one year, and subject to such regulations as the commander-in-chief may prescribe.

Annual encampment.

ART. 3315. The volunteer guards shall assemble in encampment once in each year, at such time and place as the commander-in-chief may direct; and in the order for such encampment, its commander-in-chief shall designate the companies, regiments, brigades or divisions, or parts of either, required to assemble thereat, and none other than those so designated shall report.

Governor to review troops at encampment.

ART. 3316. The commander-in-chief shall also designate the officer to command the troops at such encampment; and he shall also appear at such encampment, unless prevented by sickness, other public business or other good cause, and review and inspect the troops there assembled.

Powers of encampment commander.

ART. 3317. The commanding officer of any encampment of volunteer guards may cause those under his command to perform any field or camp duty he may require, and may place under arrest or in confinement, during such encampment, any member of his command who shall be guilty of insubordination or disorderly or unmilitary conduct, and any other person who may trespass upon the grounds of such encampment, or in any way interrupt or molest the orderly discharge of duty by the members of his command; and he may prohibit the sale of all spirituous or malt liquors within one mile of such encampment.

## V. PENALTIES AND THEIR ENFORCEMENT.

Penalties for certain military offenses.

ART. 3318. Non-commissioned officers, musicians and privates of the volunteer guards shall be liable to the following fines for the military offenses herein named:

1. For absence without leave from any company parade, drill or inspection, regular, special or called, one dollar.
2. For absence without leave from any battalion, regimental or brigade drill, parade or encampment, two dollars per day for each day of such absence.
3. For absence without leave from any annual encampment of the volunteer guards, three dollars per day for each day of such absence.
4. For absence without leave when his company is ordered out to assist the civil authorities in executing the laws, ten dollars.
5. For unsoldierly conduct or disobedience of orders, not exceeding five dollars.

Offenses certified to justice of the peace.

ART. 3319. Whenever any member of a company of volunteer guards shall be guilty of any offense enumerated in the preceding article, the commanding officer of such company shall certify such fact under his hand, to the nearest justice of the peace of the county for trial.

Form of certificate.

ART. 3320. The following form may be used by the commanding officer for any certificate provided for in the preceding article:

“To A B, Esq., Justice of the Peace for Precinct No....., of  
.....county, Texas.

“I, C D, commanding officer of.....[here give name of company], a company of volunteer guards duly organized under the laws of the state, do hereby file information against E F, a.....[private, corporal or sergeant], of such company, and charge that the said E F is guilty of the following offense against the military laws of the State of Texas, to wit: [Here set out briefly the offense and the place and date of its commission.]

“I therefore request that said E F be cited to appear and show cause, if any he has, why judgment should not be entered against him for such offense.

“Witness my hand on this the.....day of....., A. D. 18.....

“C D,

“Captain (or lieutenant) commanding.....[insert company name].”

Certificate may be amended.

ART. 3321. Such certificate shall not be deemed invalid for want of form, and if objected to may be amended at any time with leave of the justice.

ART. 3322. When any such certificate is filed with a justice of the peace, he shall issue a citation to the sheriff, or any constable of the county, commanding him to summon the delinquent therein named to appear before him at a time and place to be named in the writ, then and there to show cause why a fine should not be entered against him, which citation shall be served as in civil cases, and returned by the officer serving the same on or before the day named for trial.

Justice to issue citation.

ART. 3323. The following form of citation may be used by the justice, to wit:

Form of citation.

“THE STATE OF TEXAS,

“To the sheriff or any constable of.....county, greeting :

“Whereas, C D, commanding officer of.....[insert name of company], a company of volunteer guards duly organized under the laws of the State of Texas, has certified to me that E F, a.....[private, corporal or sergeant] of such company, is guilty of the following offense against the military laws of this state, to wit: [Here briefly state the offense and the date of its occurrence]. You are therefore hereby commanded to summon the said E F to be and appear before me at....., on the.....day of....., 18....., at.....o'clock A. M. [or P. M.], then and there to show cause, if any he has, why the State of Texas should not recover judgment against him for such offense.

“Herein fail not, and of this writ make due return as the law directs.

“A B,

“Justice of the Peace,

“Precinct No....., .....county, Texas.”

ART. 3324. The cause shall be docketed for trial in the name of the State of Texas as plaintiff, and of the alleged offender as defendant, and the county attorney may appear and represent the state on the trial of the cause, for which, in case a fine be entered against the defendant, he shall receive the same fee as for a conviction in misdemeanors.

Proceeding, how docketed.

ART. 3325. On the day appointed for the trial, or on any other day to which such trial may be postponed, the cause shall be called, and if the defendant fails to appear or to furnish an excuse satisfactory to the justice for the offense charged, judgment shall be entered against him in favor of the state, for the penalty affixed by law to the particular offense, which judgment shall be enforced by execution as in civil cases, and when collected shall be paid into the treasury of the company to which the defendant belongs, to be used for company purposes.

Trial and its incidents.

ART. 3326. Justices of the peace, sheriffs and constables shall be entitled to collect of the defendant, in case judgment be entered against him,

Costs of suit.

the same fees as are allowed them by law for similar services in civil cases; but neither the state nor any officer of the company shall be liable for costs, and no bond for costs shall be exacted of any company officer in any such proceeding.

## VI. COURTS-MARTIAL.

Courts-martial  
for other  
offenses.

ART. 3327. For breaches of discipline, misconduct or other offenses not herein provided for, offenders may be tried by courts-martial, convened by the company, battalion or regimental commander, and be punished by dismissal from the service; the findings of such courts-martial shall be subject to the approval of the officer ordering the same, before being carried into execution, and the proceedings of such courts shall be governed by the United States army regulations relating to that subject.

Commissioned  
officers, how  
tried.

ART. 3328. Commissioned officers, for neglect of duty, disobedience of orders, or unsoldierly conduct, may be tried by courts-martial, according to the usage of such courts, ordered by the commander-in-chief, who, in such order, shall designate the time and place of holding such court, and the names of the officers composing it, to consist of not less than three nor more than six in number; the senior officer named shall preside and shall be of superior rank to the officer to be tried.

Extent of pun-  
ishment.

ART. 3329. The sentences of such courts shall not extend further than the imposition of a pecuniary fine upon the officer or his dismissal from the service, and shall not be carried into effect without the approval of the commander-in-chief.

## VII. REPELLING INVASIONS, SUPPRESSING INSURRECTION AND AIDING THE CIVIL AUTHORITIES.

Duty in case of  
invasion or  
insurrection.

ART. 3330. When an invasion of or insurrection in the state is made or threatened, the commander-in-chief shall call upon the volunteer guards to repel or suppress the same, and it is made their duty to respond immediately to such call.

In case of riot  
or resistance  
to the laws.

ART. 3331. When there is in any county, city or town a tumult, riot, mob or a body of men acting together by force with intent to commit a felony or breach of the peace, or to do violence to persons or property, or by force and violence to break or resist the laws, or when such tumult, riot, mob, or other unlawful act or violence is threatened, and that fact is made to appear to the commander-in-chief, or to the sheriff of such county, or the mayor of such city or town, the commander-in-chief may issue his order, or such sheriff or mayor may issue a writ directed to any commander of a brigade, regiment, battalion or company of volunteer guards, directing him to order his command, or part thereof, to appear at a time and place therein specified, to aid the civil authority in suppressing such violence and in executing the laws.

Form of the  
writ.

ART. 3332. The writ provided for in the preceding article shall be in substance as follows, to wit:

“THE STATE OF TEXAS,

“To [*insert official title*] A B, commanding [*insert his command*]:

“Whereas, it has been made to appear to me [*the sheriff of* ..... county, or the mayor of .....], as the case may be,] that [*here state one of the causes of such writ provided for in the preceding article*], and that military force is necessary to aid the civil authority in suppressing the same; you are, therefore, ordered and required to cause your command [*or such part thereof as may be desired*] to parade immediately at .....], armed and equipped, with ammunition, and with proper officers, then and there to obey such orders as may be given, according to law.

“Herein fail not at your peril, and have you then and there this writ as your authority for such parade.

“Witness my hand officially, on this the.....day of....., 18.....

“C D,

“Sheriff of.....county, Texas [*or mayor of*....., as the case may be].”

**ART. 3333.** The writ may be varied to suit the circumstances of the particular case, and shall be delivered to the officer therein named, and a copy thereof forwarded immediately by the sheriff or mayor to the commander-in-chief.

Copy of writ to be forwarded to commander-in-chief.

**ART. 3334.** The officer to whom the order of the commander-in-chief or such writ is directed shall, upon its receipt, forthwith order his command, or such portion thereof as may be called for, to parade at the time and place appointed; and shall immediately notify the commander-in-chief of such proceeding, by telegraph if practicable, and also by mail.

Officer's duty on receipt of writ.

**ART. 3335.** When such troops have appeared at the appointed place, they shall obey and execute such orders as they may then and there receive from the civil authorities charged by law with the suppression of the riot or tumult, or with the enforcement of the laws so threatened or resisted, or the preservation of the public peace.

Duty of the troops.

**ART. 3336.** The commander-in-chief may detail any organization of volunteer guards, or a part thereof, to assist the civil authorities in guarding prisoners, or in conveying prisoners to any point in this state, or discharging other duties in connection with the execution of the laws, as the public interest or safety at any time seem to require.

Troops may be used in guarding prisoners, etc.

#### VIII. PAY AND EXEMPTIONS.

**ART. 3337.** The military forces, when in the actual service of the state in time of war, insurrection, invasion or imminent danger thereof, shall, during their time of service, be entitled to the same pay, rations and allowances for clothing as are or may hereafter be established by law for the army of the United States.

Pay, when in active service.

**ART. 3338.** There shall be paid to such officers, non-commissioned officers, musicians and privates, for any service under articles 3331, 3335, 3336, the following sums per day for such service, to wit:

Pay, when aiding in the execution of the laws.

1. To all non-commissioned officers, musicians and privates, one dollar.
2. To all commissioned officers of the line, below the rank of captain, two dollars.
3. To all commanding officers of companies, three dollars.
4. To all field officers, below the rank of colonel, four dollars.
5. To all commanding officers of regiments, five dollars.
6. To all regimental staff officers, two dollars and fifty cents, and to all non-commissioned staff officers, one dollar and fifty cents.
7. To all brigade generals, six dollars.
8. To all brigade staff officers, four dollars.
9. To all major-generals, eight dollars.
10. To all division staff officers, five dollars.
11. All mounted officers and all members of any troop of cavalry or battery of artillery, mounted and equipped, shall be paid one dollar per day for each horse actually used by them.

**ART. 3339.** No officer or soldier of the volunteer guards shall receive any pay or allowance, except when in service, but the state shall make suitable provision for the subsistence and quarters of all troops who may attend at any annual encampment.

No pay, except when in service.

**ART. 3340.** All officers, musicians and privates of the volunteer guards who comply with all their military duties as prescribed in this chapter, shall be entitled to the following privileges and exemptions, to wit:

Privileges and exemptions. (Const., art. 7, §3.)

1. Exemption from the payment of all poll taxes save the poll tax prescribed by the constitution for the support of public schools.
2. Exemption from the payment of any road or street tax and from any road duty whatsoever under the laws.
3. Exemption from all jury service of every character and description.

**ART. 3341.** In order to entitle any company of volunteer guards to the exemption specified in the first subdivision of the preceding article, the commanding officer of such company shall annually, between the first

Exemption from poll tax regulated.

and twentieth days of January, file with the assessor of taxes of his county a list of all members of his company who have faithfully discharged all their military duties for the year preceding, and who have been present at the last three preceding regular meetings of the company for parade or drill, or have been excused for non-attendance thereon by reason of illness; such list shall be verified by the affidavit of such commanding officer, and the persons whose names appear on said list shall not be assessed for poll taxes other than the state poll tax of one dollar for the support of public schools, for the current year.

Exemption from road duty regulated.

ART. 3342. The commanding officer of any company of volunteer guards may likewise prepare and file a similar list, verified by his affidavit, between the first and twentieth days of January of each year, with the clerk of the county court of the county, and the names appearing on said list shall thereafter be exempt from all jury duty in the county court, and from the payment of any road or street tax, or from the performance of any road duty in the county, for the remainder of the current year. The clerks of the county court shall furnish information of the persons so exempt to the proper road-overseers of their respective counties.

Exemption from jury duty, how regulated.

ART. 3343. The commanding officer of any company of volunteer guards may likewise prepare [and file] a list similar to that prescribed in article 3342, verified by his affidavit, between the first and twentieth days of January of each year, with the clerk of the district court of the county, and the names appearing on said list shall thereafter be exempt from jury duty or service in such court for the remainder of the current year.

Provision for soldiers wounded, etc.

ART. 3344. Every officer or soldier disabled by wounds in the service shall have a reasonable provision for his maintenance provided him by the state; and the widow and children of every officer or soldier killed in the service shall be suitably provided for by the legislature.

IX. MISCELLANEOUS PROVISIONS.

No fees to officers for administering oaths.

ART. 3345. No officer shall be entitled to charge or receive any fee or compensation for administering and certifying any oath administered or certified under the provisions of this chapter.

U. S. army regulations to govern, when.

ART. 3346. The articles of war and army regulations of the United States, in so far as the same may be applicable and not inconsistent with the constitution and laws, shall constitute the rules for the government of the volunteer guards, with such modifications and changes as the commander-in-chief may direct.

Annual and special reports.

ART. 3347. On the first day of October of each year the commanding officer of each company of volunteer guards shall cause to be made up and forwarded to the adjutant-general a complete muster roll of his company; and the commanders of divisions, brigades, regiments and companies shall furnish such information pertaining to their respective commands as the commander-in-chief may from time to time require.

CHAPTER FIVE.

ARMS, AMMUNITION, EQUIPMENTS AND MILITARY STORES.

	Article	Article
Governor to draw arms from United States	3348	Adjutant-general to collect stray arms..... 3355
Arms to be stored at convenient points...	3349	Sheriffs to be keepers of arms..... 3356
Issued to companies of volunteer guards...	3350	Governor to order seizure of certain arms. 3357
Bond to be filed before issuance.....	3351	Such seizure, how made..... 3358
Additional arms may be issued, when.....	3352	Board of survey..... 3359
Arms may be issued to military schools, etc	3353	Property condemned shall be sold..... 3360
Certified copies of bonds to be evidence....	3354	Report of sales, etc..... 3361

Governor to draw arms from United States. (Acts Jan. 19, 1858, p. 52; J.R. Aug. 21, 1876, p. 318.) P.D. 90.

ARTICLE 3348. The commander-in-chief, in his capacity as governor, is authorized to draw from the United States government all arms, equipments, munitions or other military stores to which the state may from time to time be entitled for the use of the militia, and may execute such

bonds in the name of the state, as may be necessary or requisite to secure their issuance.

ART. 3349. He shall cause the arms, equipments, munitions or other military property belonging to, or under the control of the state, to be stored at such points as he may deem most conducive to the interests of the state and the convenience of the people.

Arms to be stored at convenient points.  
*Ib.*  
P.D. 91.

ART. 3350. Whenever a company of volunteer guards is organized under the provisions of this title, the commanding officer of such company may make a requisition upon the adjutant-general for such arms, ammunition, accouterments, and military stores as it may require and to which it may be entitled, and thereupon it shall be the duty of the adjutant-general, with the approval of the commander-in-chief, to issue to such company the necessary arms, ammunition, accouterments and military stores, upon the compliance of such company with the provisions of this chapter.

Issued to companies of volunteer guards.  
P.D. 92.

ART. 3351. Before the issuance of any arms or other military supplies to a company of volunteer guards, the commanding officer of such company must file in the office of the adjutant-general his bond, with at least two good and sufficient sureties, payable to the governor and his successors in office, in a sum equal to the value of the arms or other military supplies applied for, and conditioned that said company will safely keep such arms or other military supplies and the same promptly return to the state on demand of the governor. Such bond shall be approved by the county judge of the county in which such company is organized, who shall certify thereon, under his hand and the seal of the county court, that the sureties are solvent; and such bond shall not extend to the preservation of ammunition issued to said company, nor to the reasonable wear and tear of arms and equipments.

Bond to be filed before issuance.  
P.D. 94.

ART. 3352. No company shall receive a greater number of arms and equipments than the actual number of active members belonging to such company; but if by reason of increase of membership or other good cause, to be judged of by the adjutant-general, any company should make requisition for additional arms or equipments, the same may be issued in like manner and upon the same conditions as are prescribed for original requisitions.

Additional arms may be issued, when.

ART. 3353. The commander-in-chief may furnish suitable arms and equipments to any military educational institution, upon the written application of the trustees or faculty of such institution, and after they have filed in the office of the adjutant-general their bond, with two good and sufficient sureties, to be approved by the county judge of the county in which such institution is located, in a sum equal to double the value of such arms and equipments, payable to the governor and his successors in office, and conditioned that such arms shall be safely kept and promptly returned to the state upon the demand of the governor.

Arms may be issued to military schools, etc.  
P.D. 96.

ART. 3354. Copies of all bonds filed in the office of the adjutant-general, in accordance with provisions of this title or any other law, certified under the hand and seal of office of the adjutant-general, shall be admitted in evidence in all the courts, in the same manner and with like effect as the original would be if duly proven.

Certified copies of bonds to be evidence.

ART. 3355. The adjutant-general shall, under the direction of the commander-in-chief, from time to time collect such arms, equipments and other military property belonging to the state as may be in the hands of individuals without authority of law, and may store the same, under like direction, at such points as may be deemed most compatible with the public interest and convenience.

Adjutant-general to collect stray arms.  
(Act Nov. 12, 1866, p. 188.)

ART. 3356. The sheriffs of the several counties shall act as keepers of the public arms and other military property belonging to the state in their respective counties. They shall from time to time collect such arms or property as may be liable to loss or in the hands of unauthorized

Sheriffs to be keepers of arms.

persons, and such property, when collected or turned over to them, to safely keep subject to the order of the commander-in-chief, to whom a report of such collection shall be made; and the official bonds of such shall extend to and include the faithful performance of their duties under this article.

Governor to  
order seizure  
of certain  
arms.  
P.D. 2424.

ART. 3357. Whenever it may come to the knowledge of the governor, on the affidavit of a credible person, that any persons have state arms, equipments, or other military property of the state in their possession without authority of law, and that such persons fail or refuse to deliver up such property, it shall be his duty forthwith to issue his warrant to the sheriff of the county where such persons may be or reside, commanding such sheriff to seize and take into his possession such arms or other property, and the same to keep subject to the further order of the governor.

Such seizure,  
how made.

ART. 3358. Any sheriff receiving a warrant such as is specified in the preceding article, shall proceed without delay to execute the same in the manner therein directed; and in executing such warrant he may summon to his aid the power of the county and any command of volunteer guards or other military organization that may be convenient.

Board of sur-  
vey.  
(Act May 4,  
1874, p. 220.)  
P.D. 5827a.

ART. 3359. The adjutant-general, secretary of state and attorney-general shall constitute a board of survey for the condemnation of damaged and useless arms, ammunition and other military property of the state, to be called together by the adjutant-general whenever he may deem it advisable.

Property con-  
demned shall  
be sold.  
*Ib.*  
P.D. 5827b.

ART. 3360. Whenever any arms, ammunition or other military property belonging to the state may be condemned by the board of survey, provided for in the preceding article, the adjutant-general, under the direction of the commander-in-chief, shall sell the same as soon as practicable, at public auction for cash, at any point in the state deemed proper, after having given notice at the time and place of sale in such manner as the commander-in-chief may direct.

Report of  
sales, etc.  
*Ib.*  
P.D. 5827c.

ART. 3361. The adjutant-general shall embody in his annual-report to the governor all sales made by him under the provisions of the preceding article, specifying particularly the articles sold, the time and place of sale, the names of the purchasers, and the amounts received; and within thirty days after any such sale he shall pay the proceeds thereof into the state treasury, after deducting therefrom the necessary expenses of such sale, which proceeds shall constitute a part of the military fund of the state.

TITLE LXV.

Notaries Public.

NOTE.—Section 2, chapter 79, acts 1879, provides for the appointment of notaries public, and cattle and hide inspectors in unorganized counties, and is as follows:

“Section 2. The governor is hereby authorized to appoint, with the advice and consent of the senate, one notary public and one cattle and hide inspector in each of the unorganized counties of the state.”—L.

	Article		Article
How appointed.....	3362	Powers.....	3369
Commission shall specify predecessor.....	3363	To administer oaths.....	3370
Fee for commission.....	3363—Note	Shall keep a record.....	3371
Bond and oath.....	3364	Other powers.....	3372
May be removed.....	3365	Successors may certify, etc.....	3373
Office vacated.....	3366	Secretary of state to furnish county clerk	
Seal of office.....	3367	with list of notaries.....	3374
Acts evidenced by illegal seals valid-		When notary shall qualify.....	3375
ated.....	3367—Note	Appointment becomes void, if, etc.....	3376
Duty on vacating office.....	3368		

ARTICLE 3362. There shall be appointed by the governor, by and with the consent of two-thirds of the senate, a convenient number of notaries public for each county, not less than five nor more than twenty, who shall hold their offices for two years from the day of their qualification.

How appointed.  
(Act June 24,  
1876, p. 29, §1.)

ART. 3363. When a notary public is appointed to succeed another his commission shall specify what notary he succeeds.

Commission shall specify predecessor.  
*Id.* §2.  
Fee for commission.

NOTE.—By chapter 15, acts 1879, each notary is required to pay a fee of two dollars to the department of state for his commission.—L.

ART. 3364. Every person who may be appointed a notary public, before he enters on the duties of his office, shall execute a bond with two or more good and sufficient sureties, to be approved by the clerk of the county court of his county, payable to the governor and his successors in office, in the sum of one thousand dollars, conditioned for the faithful performance of the duties of his office; and shall also take and subscribe the oath of office prescribed by the constitution, which shall be indorsed on said bond, with the certificate of the officer administering the same; said bond shall be recorded in the office of the clerk of the county court and deposited in said office, and shall not be void on the first recovery, and may be sued on in the name of any party injured, from time to time, until the whole amount thereof has been recovered.

Bond and oath required.  
*Id.* §3.

ART. 3365. Every notary public who shall be guilty of any willful neglect of duty or malfeasance in office may be removed from office in the manner provided by law.

May be removed.  
*Id.* §4.

ART. 3366. Whenever any notary public shall remove permanently from the county for which he was appointed, or an *ex officio* notary public from his precinct, his office shall thereupon be deemed vacant.

Office vacated.  
*Id.* §4.

ART. 3367. Every notary public shall provide a seal of office, whereon shall be engraved in the center a star of five points, and the words: “Notary Public, County of....., Texas,” around the margin [*the blank to be filled with the name of the county for which the officer is appointed*], and he shall authenticate all his official acts therewith.

Seal of office.  
*Id.* §5.

NOTE.—Chapter 103, acts 1879, provides as follows:

“All acts of notaries public, appointed by authority of the laws of the State of Texas, evidenced by the impress of a notarial seal, having the word “Texas” engraved between the points of the star thereon, shall be and they are hereby made as valid and binding as though the word “Texas” had been engraved on the margin of the seal.”—L.

Acts evidenced by illegal seal validated.

ART. 3368. Whenever any notary public shall vacate his office in any manner, his record books and all public papers in his office shall be deposited with the clerk of the county court of his county.

Duty on vacating office.  
*Id.*



Powers.  
*Ib.* §6.

ART. 3369. Notaries public may take the acknowledgment of proof of all instruments of writing in the manner provided by law to entitle them to registration, and give certificates of all such acknowledgments and proofs under their hands and official seals; they may take the examination and acknowledgment of married women to all deeds and instruments of writing, conveying or charging their separate property or their interest in the homestead, in the manner provided by law.

To administer oaths.  
*Ib.* §7.

ART. 3370. Every notary public shall have power to administer oaths and give certificates thereof under his hand and official seal. He may take the proof or acknowledgments of all instruments of writing relating to commerce and navigation, and also letters of attorney and other instruments of writing, make declarations and protests, and certify under his hand and seal the truth of the matters or things done by virtue of his office.

Shall keep record.  
*Ib.* §8.

ART. 3371. Every notary public shall procure and keep a well-bound book, in which shall be entered the date of all instruments acknowledged before him, the date of such acknowledgment, the name of the grantor or maker, the place of his residence or alleged residence, whether personally known or introduced, and if introduced the name and residence or alleged residence of the party introducing him; if the instrument be proved by a witness, the residence or alleged residence of such witness, whether such witness is personally known to him or introduced, and if introduced, the name and residence of the party introducing him; the name and residence of the grantee. If land is conveyed or charged by such instrument, the name of the original grantee thereof shall be kept, and the county where the land is situated. The book herein required to be kept, and the statements herein required to be entered, shall be an original public record, and shall be transmitted by each notary to his successor, and the same shall be open to inspection by any citizen at all reasonable times; and such notary public shall give a certified copy of any record in his office to any person applying therefor, on payment of all fees thereon.

Other powers.  
*Ib.* §10.

ART. 3372. Notaries public shall have power to take the depositions of witnesses in the manner prescribed by law, to attest the oath of any person to a petition or answer in any suit, and the same when so attested shall be valid in all the courts.

Successors may certify, etc.  
*Ib.* §11.

ART. 3373. Copies of all records, declarations, protests and other official acts of notaries public, may be certified by their successors with whom they are deposited, and shall have the same authority as if certified by the notary by whom they were originally made.

Secretary of state to furnish county clerk list of notaries.  
*Ib.* §12.

ART. 3374. When the governor shall make appointments of notaries public, and said notaries public shall qualify, it shall be the duty of the secretary of state to furnish to the clerks of the county courts a printed list of all the notaries public so appointed and qualified; and upon any subsequent appointment of notaries public, it shall likewise be the duty of said secretary of state to furnish a like list to said clerk, and it shall be the duty of the clerk of the county court to preserve said list in his office for public inspection, and post a copy thereof on the court-house door.

When notary shall qualify.  
*Ib.* §13.

ART. 3375. When a notary is appointed the secretary of state shall forward the commission to the clerk of the county court of the county where the party resides, and the said clerk shall immediately notify said party to appear before him in twenty days from the day of such notice and qualify according to law; *provided*, that if said party shall be absent from such county at the time of the reception of such commission by said clerk, then he shall have twenty days from his return to said county in which to appear and qualify.

When appointment becomes void, if, etc.  
*Ib.*

ART. 3376. The clerk receiving the commission shall indorse thereon the day on which notice was given, and if the party does not qualify within the time limited, the appointment shall be void, and the clerk shall certify on the back of the commission, under the seal of court, that the party has failed to qualify, and return it to the secretary of state.

TITLE LXVI.

Officers—Removal of.

CHAPTER ONE.

REMOVAL OF STATE AND CERTAIN DISTRICT OFFICERS.

State and district officers removable by impeachment.....	Article 3377	District judges removed by supreme court.	Article 3382
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ARTICLE 3377. The governor, lieutenant-governor, attorney-general, treasurer, commissioner of the general land office, comptroller, commissioner of insurance, statistics and history, and the judges of the supreme court, court of appeals and district courts, and the judge of the criminal district court of Galveston and Harris counties, shall be removable from office by impeachment in the manner provided in the constitution.

State and district officers removable by impeachment, (Const., art. 15, §§1, 2.) (Act Aug. 21, 1876, p. 226, §26.)

ART. 3378. The judges of the supreme court, court of appeals, district courts, the judge of the criminal district court of Galveston and Harris counties, and the commissioner of insurance, statistics and history, shall be removed from office by the governor, on the address of two-thirds of each house of the legislature, for willful neglect of duty, incompetency, habitual drunkenness, oppression in office, breach of trust or other reasonable cause, which shall not be sufficient ground for impeachment.

Judges of supreme, appellate and district courts, and commissioner of statistics, etc., removed by address. (Const., art. 15, §§7, 8.)

ART. 3379. The cause for such removal shall be stated at length in such address and entered on the journals of each house.

*Ib.*  
Cause for removal to be set out.

ART. 3380. The officer so intended to be removed shall have notice of the cause assigned for his removal, and shall be admitted to a hearing in his own defense before any vote for such address shall be heard.

*Ib.*  
Notice to be given.

ART. 3381. In all such cases the vote shall be taken by yeas and nays and entered on the journals of each house respectively.

Vote, how taken. *Ib.*

ART. 3382. Any judge of the district court who is incompetent to discharge the duties of his office, or who shall be guilty of partiality or oppression or other official misconduct, or whose habits and conduct are such as to render him unfit to hold such office, or who shall negligently fail to perform his duties as judge, or who shall fail to execute in a reasonable measure the business of his court, may be removed by the supreme court.

District judges removed by supreme court. (Const., art. 15, §6.)

ART. 3383. The provisions of the preceding article shall also apply to the criminal district judge of the counties of Galveston and Harris.

Preceding article shall apply to the criminal district judge.

ART. 3384. The supreme court shall have original jurisdiction to hear and determine the causes aforesaid when presented in writing, upon the oaths taken before some judge of a court of record of not less than ten lawyers practicing in the courts held by such judge and licensed to practice in the supreme court.

Jurisdiction of supreme court in such cases. *Ib.*

ART. 3385. The presentment provided for in the preceding article shall be founded either upon the knowledge of the person making it, or upon the written oaths, as to facts, of credible witnesses.

Presentment shall be founded upon, what. *Ib.*

Supreme court may issue process, etc.

ART. 3386. The supreme court may issue all needful process and prescribe all needful rules to give effect to the four preceding articles, and such cases shall have precedence and be tried as soon as practicable.

State officers appointed by the governor, how removed.

ART. 3387. All state officers appointed by the governor or elected by the legislature, where the mode of their removal is not otherwise provided by law, may be removed by him for good and sufficient cause, to be spread on the records of his office and to be reported by him to the next session of the legislature thereafter.

## CHAPTER TWO.

### REMOVAL OF COUNTY AND CERTAIN DISTRICT OFFICERS.

	Article	Article
Certain convictions work a removal from office.....	3388	Requisites of petition..... 3402
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Certain convictions work a removal from office. (Const., art. 5, §8.)

ARTICLE 3388. All convictions by a petit jury of any county officers for any felony, or for any misdemeanor involving official misconduct, shall work an immediate removal from office of the officer so convicted, and such judgment of conviction shall, in every instance, embody within it an order removing such officer.

Appeal supercedes order of removal.

ART. 3389. When an appeal is taken from such judgment by the officer removed, such appeal shall have the effect of superseding such judgment, unless the court rendering such judgment should deem it to the public interest to suspend such officer from the office pending such appeal, and in that case the court shall proceed as in other cases of the suspension of officers from office as provided in this chapter.

Officer's removal by the district judge. (Const., art. 5, §24; art. 15, §7.)

ART. 3390. All district attorneys, county judges, commissioners and county attorneys, clerks of the district and county courts, and single clerks in counties where one clerk discharges the duties of district and county clerks, county treasurer, sheriff, county surveyor, assessor, collector, constable, cattle and hide inspector, justice of the peace, and all other county officers now or hereafter existing by authority either of the constitution or laws, may be removed from office by the judges of the district court for incompetency, official misconduct, habitual drunkenness, or drunkenness not amounting to habitual drunkenness, as hereafter defined in this chapter.

Causes to be set forth in writing. (Const., art. 5, §24.)

ART. 3391. In every case of removal from office for the causes named in the preceding article, the cause or causes thereof shall be set forth in writing and the truth of said cause or causes be found by a jury.

“Incompetency,” what is. (1 Bish. Cr. L., §§230, 237, 240.)

ART. 3392. By “incompetency,” as used in this title, is meant gross ignorance of official duties, or gross carelessness in the discharge of them; or an officer may be found to be incompetent when by reason of some serious physical or mental defect, not existing at the time of his election, he has become unfit or unable to discharge promptly and properly the duties of his office.

ART. 3393. By "official misconduct," as used in this title with reference to county officers, is meant any unlawful behavior in relation to the duties of his office, willful in its character, of any officer intrusted in any manner with the administration of justice or the execution of the laws; and under this head of official misconduct are included any willful or corrupt failure, refusal or neglect of an officer to perform any duty enjoined on him by law.

"Official misconduct," what is. (Trigg v. State, T. L. J., June 26, 1878; 2 Bouv. Dic. *in verb.* Bishop *supra.*)

ART. 3394. The two preceding articles shall apply also to mayors and aldermen, whose removal is hereafter provided for in this title.

Two preceding articles apply to mayor and aldermen.

ART. 3395. By "habitual drunkenness," as used in this title in relation to county officers, is meant the frequent and customary use to excess of intoxicating drinks, resulting in that condition of the body and the mind produced by the excessive use of intoxicating liquors, spirituous, vinous or malt, confirmed by habit.

"Habitual drunkenness," what is. (Trigg v. State, Bish. Cr. Law, ch. 15, §§298, 305.)

ART. 3396. In order to constitute habitual drunkenness under this title it shall not be necessary to show that the officer is incapable of discharging the duties of his office or of taking care of himself; but the proof of the fact of habitual drunkenness to the satisfaction of the judge and jury shall be sufficient cause of removal without reference to his capacity or incapacity to discharge the duties of his office.

Further defined. (Trigg v. State, T. L. J., June (Act Aug. 16, 1876, p. 135, §3.)

ART. 3397. By "drunkenness not amounting to habitual drunkenness," as named in this chapter in connection with county officers, is meant the immoderate use of any spirituous, vinous or malt liquors to such a degree as to incapacitate the officer for the time being or permanently from the discharge of the duties of his office.

"Drunkenness not habitual" defined. (Trigg vs. State.) (Act July 31, 1876, p. 76, §§1, 4.)

ART. 3398. No county officer shall be removed from office on the charge of drunkenness, as defined in the preceding article, until he shall have been three times convicted of such offense of drunkenness.

Must be three times convicted. (Act July 31, 1876, p. 76, §4.)

ART. 3399. The fact of a third conviction, as provided in the preceding article, shall be sufficient ground for his removal from office by the district judge, on the matter being brought before him in the manner provided in this chapter for bringing before him other causes of removal.

Three convictions sufficient ground for removal, etc.

ART. 3400. All county officers who are required to give official bonds, who shall fail to execute their bonds within the time prescribed by law, or who, when required in accordance with law to give a new bond or additional bond or security, and shall fail to do so, may also be removed from office for such failure by the district judge, on the matter being brought before him in the manner hereinafter provided for bringing such matters before the court.

Failure to give bond ground for removal.

ART. 3401. The proceedings for the removal of said officers may be commenced either in term time or vacation by first filing a petition in the district court of the county where the officer resides, by a citizen of the state who has resided for six months in the said county where he proposes to file such petition, and who is not himself at the time under indictment in said county.

Proceedings, how commenced, and by whom.

ART. 3402. The petition shall be addressed to the district judge of the court in which it is filed, and shall set forth in plain and intelligible words the cause or causes alleged as the grounds of removal, giving in each instance, with as much certainty as the nature of the case will admit of, the time and place of the occurrence of the alleged acts; the petition shall, in every instance, be sworn to at or before the filing of the same by at least one of the parties filing the same, and the proceedings shall be conducted in the name of "The State of Texas" upon the relation of the person filing the same.

Requisites of the petition.

ART. 3403. In these cases the judge shall not submit special issues to the jury, but shall, under a proper charge applicable to the facts of the case, instruct the jury to find from the evidence whether the cause or causes of removal set forth in the petition are true in point of fact or not;

General issue alone submitted—verdict. (Trigg v. State, T. L. J., June 26, 1876.)

and when there are more than one distinct cause of removal alleged, the jury shall by their verdict say which cause they find sustained by the evidence before them, and which are not sustained.

Citation, how and when to issue. (Smith v. Brennan, T. L. J., July 24, 1878, p. 373.)

ART. 3404. After the filing of such petition, the person or persons so filing the same shall make a written application to the district judge for an order for a citation and a certified copy of the said petition to be served on the officer against whom the petition is filed, requiring him at a certain day named, which day shall be fixed by the judge, to appear and answer to the said petition; and until such order is granted and entered upon the minutes of the court (if application is made during term time), no action whatever shall be had thereon, and if the judge shall refuse to issue the order so applied for, then the petition shall be dismissed at the costs of the relator, and no appeal or writ of error shall be allowed from such action of the judge.

Application made in vacation.

ART. 3405. If the application for said citation is made to the judge in vacation, he shall indorse his action, whatever it may be, on such petition, and shall order it spread on the minutes of the court at the next ensuing term.

Citation shall issue.

ART. 3406. Upon the order being granted, and if granted during term time also spread upon the minutes, the clerk shall issue the citation, accompanied with a certified copy of the petition.

Time to answer.

ART. 3407. In no case whatever shall the period fixed by the judge in his order in which the officer is to answer, be less than five days from the date of such service, to be computed as time is computed in other civil suits.

How trial shall be conducted.

ART. 3408. The trial and all the proceedings connected therewith shall be conducted as far as it is possible in accordance with the rules and practice of the court in other civil cases.

May be suspended from office, how.

ART. 3409. At any time after the issuance of the order for the citation as herein provided, the district judge may, if he sees fit, suspend temporarily from office the officer against whom the petition is filed, and appoint for the time being some other person to discharge the duties of the office; but in no case shall such suspension take place until after the person so appointed shall execute a bond in such sum as the judge may name, with at least two good and sufficient sureties, on such conditions as the judge may see fit to impose, to pay the person so suspended from office all damages and costs that he may sustain by reason of such suspension from office, in case it should appear that the cause or causes of removal are insufficient or untrue.

Appeal or writ of error will lie.

ART. 3410. An appeal or writ of error to the supreme court may be sued out by either party from the final judgment in these cases as in other civil cases.

Bond for costs, when.

ART. 3411. If the party has not been temporarily suspended from office, no other bond, when an appeal is taken or writ of error sued out by him, shall be necessary than a bond for all the costs that have or may accrue in the district and supreme courts.

Relator to give security for costs.

ART. 3412. On the order for citation being granted, the clerk of the district court will be authorized to demand of the relator security for costs as in other cases.

Against district attorneys, where commenced.

ART. 3413. Proceedings under this title may be commenced against any district attorney either in the county of his residence or the county where the alleged cause of removal occurred, if in a county of his judicial district.

Criminal district attorney included in district attorney.

ART. 3414. Under the name of "district attorney," as used in this chapter, is included the district attorney for the criminal district court of Galveston and Harris counties, and the judge of said criminal district court shall have the same power as to his removal and proceed in the same manner as the district judges of the state have in reference to all county officers.

ART. 3415. No officer shall be prosecuted or removed from office for any act he may have committed prior to his election to office. Not to be removed for acts done prior to his election.

ART. 3416. In these cases an appeal may be taken or writ of error be returnable to the next ensuing term of the supreme court after the judgment is rendered, wherever it may be in session, and such cause shall have precedence of the ordinary business of the court and be decided with all convenient dispatch. Appeal or writ of error.

ART. 3417. When so decided, unless the judgment be for some cause set aside or suspended, the mandate of the court shall issue within five days after the judgment of the court is rendered. Mandate, when to issue.

### CHAPTER THREE.

#### REMOVAL OF CERTAIN OTHER OFFICERS.

	Article		Article
Notary public, how removed.....	3418	Removal of clerk of court of appeals.....	3422
Order or removal to be embodied in judgment.....	3419	Removal of clerk of district court.....	3423
Public weigher, how removed.....	3420	Order of removal to be embodied in judgment.....	3424
Removal of clerk of supreme court.....	3421		

ARTICLE 3418. Any notary public who shall be guilty of any willful neglect of duty or official misconduct, may be indicted by the grand jury, and on conviction shall be removed from office. Notary public, how removed. (Act June 24, 1876, p. 29, §4.)

ART. 3419. The order for his removal shall in each instance be embodied in the judgment of the court. Order of removal to be embodied in judgment.

ART. 3420. Any public weigher who shall be guilty of official misconduct, or who is incompetent, shall be removed by the governor, who shall keep a record of such removal, and report the same with his reasons therefor to the next legislature. Public weigher, how removed. (Act March 17, 1875, p. 162, §1.) (See acts 1879, ch. 108, §1.)

ART. 3421. The clerk of the supreme court shall be subject to removal by said court for good cause entered of record on the minutes of said court. Clerk supreme court, how removed. (Const., art. 5, §4.)

ART. 3422. The clerk of the court of appeals shall be subject to removal by said court for good cause, entered of record on the minutes of said court. Clerk of court of appeals, how removed. (Const., art. 5, §6.)

ART. 3423. The clerk of the district court may also be removed by information or by indictment of a grand jury and conviction by a petit jury. Clerk of district court, how removed. (Const., art. 5, §9.)

ART. 3424. When so removed, the order for his removal shall be embodied in the judgment of conviction. Order of removal to be embodied in judgment.

### CHAPTER FOUR.

#### REMOVAL OF MAYORS AND ALDERMEN.

	Article		Article
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Complaint against an alderman and proceedings thereon.....	3426	Rules which govern proceedings and trial.....	3430
Who shall try an alderman.....	3427	Judgment.....	3431
Proceedings against a mayor.....	3428	Officer removed ineligible for two years.....	3432
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ARTICLE 3425. The mayor and aldermen of any incorporated town or city may be removed from office for official misconduct, willful violation of any of the ordinances of such town or city, habitual drunkenness, incompetency, or for such other cause as may be prescribed by the ordinances of such town or city. Causes of removal. (Act March 6, 1875 p. 68, §§1, 2.)

Complaint  
against an al-  
derman, and  
proceedings  
thereon.  
*Ib.* §2.

ART. 3426. When complaint in writing and under oath, charging any alderman with any act or omission which may be cause for his removal, shall be presented to the mayor, he shall file the same and cause the alderman so charged to be served with a copy of such complaint, and shall set a day for the trial of the case, and notify the alderman so charged and the other aldermen of such town or city to appear on such day.

Who shall try  
an alderman.  
*Ib.*

ART. 3427. The mayor and aldermen of such town or city, except the alderman against whom complaint is made, shall constitute a court to try and determine the case.

Proceedings  
against a  
mayor.  
*Ib.* §3.

ART. 3428. When any complaint, such as is prescribed in article 3426, is made against the mayor of any incorporated town or city, it shall be presented to an alderman of such town or city, who shall file the same, and cause such mayor to be served with a copy thereof, and shall set a day for the trial of the case, and notify the mayor and other aldermen to appear on such day.

Who shall try  
a mayor.  
*Ib.*

ART. 3429. A majority of the aldermen shall constitute a court to try and determine the complaint against the mayor, and they shall select one of their number to preside during such trial.

Rules which  
govern pro-  
ceedings and  
trial.

ART. 3430. The rules governing other proceedings and trials in the courts of justices of the peace, mayors and recorders, shall govern in the cases provided for in this chapter.

Judgment.  
*Ib.* §5.

ART. 3431. If two-thirds of the members of the court present upon the trial of the case find the defendant guilty of the charges contained in the complaint, and find that such charges are sufficient cause for removal from office, it shall be the duty of the presiding officer of the court to enter judgment removing such mayor or alderman, as the case may be, from office, and declaring such office vacant; but should the party charged be found not guilty, judgment shall be entered accordingly.

Officer re-  
moved ineligi-  
ble for two  
years.  
*Ib.*

ART. 3432. Any officer removed under the provisions of this chapter shall not be eligible to re-election to the same office for two years from the date of such removal.

This chapter  
does not apply  
when.  
*Ib.*

ART. 3433. The provisions of this chapter shall not apply to any town or city except such as are incorporated under the general laws of this state.

TITLE LXVII.  
Official Bonds.

CHAPTER ONE.

THE RECORD OF OFFICIAL BONDS, AND RELIEF OF SURETIES THEREON.

Official bonds to be recorded.....	Article 3434	Must give new bond.....	Article 3437
Sureties on, may be relieved.....	3435	Discharge of sureties.....	3438
Officer shall cease to act, etc.....	3436		

ARTICLE 3434. All official bonds of county officers that are required by law to be approved by the commissioners' court, and which have been so approved, shall be recorded by the clerk of the county court in a book kept for that purpose. Official bonds to be recorded.

ART. 3435. Any surety on any official bond of any county officer may apply to the commissioners' court of the county to be relieved from his bond, and the clerk of the county court shall thereupon issue a notice to said officer, and a copy of the application, which shall be served upon said officer by the sheriff or any constable of the county. Sureties on, to be relieved. (Act Aug. 12, 1876, p. 132, §1.)

ART. 3436. Upon the service of such notice said officer so notified shall cease to exercise the functions of his office, except to preserve any records or property committed to his charge, and in case of sheriffs and constables, to keep prisoners, preserve the peace and execute warrants for the arrest of persons charged with offenses. Officer shall cease to act, etc. *Ib.*

ART. 3437. Said officer so notified shall give a new bond within twenty days from the time of receiving such notice, or his office shall become vacant. Must give new bond. *Ib.*

ART. 3438. If a new bond be given and approved, the former sureties shall be discharged from any liability for the misconduct of the principal after the approval of such new bond. Discharge of sureties. *Ib.* §2.

CHAPTER TWO.

OF OBTAINING NEW SURETIES ON OFFICIAL BONDS.

Commissioners' court may require new bond, etc.....	Article 3439	Officer to be cited.....	Article 3440
		No appeal allowed.....	3441

ARTICLE 3439. In all cases where by law the commissioners' court is required to approve the bond of any of the officers of their several counties, it shall be their duty whenever they shall become satisfied that said bonds from any cause are insufficient, to require new bonds or additional sureties to be given, as the case may require. Commissioners' court may require new bond, etc. (Act July 22, 1876, p. 54, §17.)

ART. 3440. The said court shall cause the officer whose bond is complained of to be cited to appear at a term of their court not less than five days after service of said citation, and shall take such action thereon as they may deem best for the interest of the state and county. Officer to be cited. *Ib.*

ART. 3441. From the decision of the commissioners' court, in reference to said official bond no appeal shall be allowed, and their decision shall be final and conclusive. No appeal allowed.



TITLE LXVIII.

Partnerships—Limited.

	Article		Article
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Certain alterations, a dissolution.....	3453	Dissolution before time agreed on.....	3464
Firm name.....	3454		

Limited partnerships authorized.  
(Act May 12, 1846, p. 279, §1.)  
P.D. 4717 *et seq.*

ARTICLE 3442. Limited partnerships for the transaction of any mercantile, mechanical, manufacturing or other business, except banking or insurance, may be formed by two or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities herein prescribed.

General and special partners.  
*Ib.* §2.

ART. 3443. Such partnerships may consist of one or more persons, who shall be called the general partners, and who shall be jointly and severally responsible as general partners now are by law; and of one or more persons who shall contribute in actual cash payments a specific sum as capital to the common stock, who shall be called special partners, and who shall not be liable for the debts of the partnership, beyond the fund so contributed by him or them to the capital.

General partners only to act.  
*Ib.* §3.

ART. 3444. The general partners only shall be authorized to transact business and sign for the partnership and to bind the same.

Such partnerships, how formed.  
*Ib.* §4.

ART. 3445. The persons desirous of forming such partnership shall make and severally sign a certificate which shall contain—  
1. The name or firm under which the partnership is to be conducted.  
2. The general nature of the business intended to be transacted.  
3. The names of all the general and special partners interested therein, distinguishing which are general and which are special partners, and their respective places of residence.  
4. The amount of capital which each special partner shall have contributed to the common stock.  
5. The period at which the partnership is to commence, and the period at which it is to terminate.

Certificate to be acknowledged.  
*Ib.* §5.

ART. 3446. The certificate shall be acknowledged by the several persons signing the same, before any officer authorized to take acknowledgments for record, and such acknowledgment shall be made and certified in the same manner as the acknowledgment of the conveyances of land.

And filed and recorded.  
*Ib.* §6.

ART. 3447. The certificate so acknowledged and certified shall be filed in the office of the clerk of the county court of the county in which the principal place of business of the partnership shall be situated, and shall also be recorded by him at large in a book to be kept for that purpose, open to public inspection. If the partnership shall have places of business situated in different counties, the certificate and acknowledgment thereof shall be filed and recorded in like manner in the office of the clerk of the county court of every such county.

ART. 3448. At the time of filing the original certificate with the evidence of the acknowledgment thereof, as before directed, an affidavit of one or more of the general partners shall also be filed in the same office, stating that the sums specified in the certificate to have been contributed by each of the special partners, to the common stock, have been actually and in good faith paid in cash.

General partner to file affidavit.  
*Ib.* §7.

ART. 3449. No such partnership shall be deemed to have been formed until a certificate shall have been made, acknowledged, filed and recorded, nor until an affidavit shall have been filed as above directed; and if any false statement be made in such certificate or affidavit, all the persons interested in such partnership shall be liable for all the engagements thereof as general partners.

Pre-requisites indispensable.  
*Ib.* §8.

ART. 3450. The partners shall publish the terms of the partnership when registered, for at least six weeks immediately after such registry, in such newspapers as shall be designated by the clerk in whose office such registry shall be made; and if such publication be not made the partnership shall be deemed general.

Terms to be published.  
*Ib.* §9.

ART. 3451. An affidavit of the publication of such notice, by the publisher of the newspapers in which the same shall be published, may be filed with the clerk directing the same, and shall be evidence of the facts therein contained.

Publisher's affidavit.  
*Ib.* §10.

ART. 3452. Every renewal or continuance of such partnership beyond the time originally fixed for its duration shall be certified, acknowledged and recorded; and an affidavit of a general partner be made and filed, and notice given in the manner herein required for its original formation, and every such partnership which shall be otherwise renewed or continued shall be deemed a general partnership.

Renewals to be with like formalities.  
*Ib.* §11.

ART. 3453. Every alteration which shall be made in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership; and every such partnership which shall in any manner be carried on after any such alteration shall have been made shall be deemed a general partnership, unless renewed as a special partnership according to the provisions of the last article.

Certain alterations a dissolution.  
*Ib.* §12.

ART. 3454. The business of the partnership shall be conducted under a firm in which the names of the general partners only shall be inserted, without the addition of the word "company," or any other general term; and if the name of any special partner be used in such firm, with his privity, he shall be deemed a general partner.

Firm name.  
*Ib.* §13.

ART. 3455. Suits in relation to the business of the partnership may be brought and conducted by and against the general partners, in the same manner as if there were no special partners.

Suits by and against.  
*Ib.* §14.

ART. 3456. No part of the sum which any special partner shall have contributed to the capital stock shall be withdrawn by him, or paid or transferred to him in the character of dividends, profits or otherwise, at any time during the continuance of the partnership; but any partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest shall not reduce the original amount of such capital; and if, after the payment of such interest, any profit shall remain to be divided he may also receive his portion of such profits.

Capital of special partner not to be withdrawn.  
*Ib.* §15.

ART. 3457. If it shall appear that by the payment of interest or profits to any special partner the original capital has been reduced, the partner receiving the same shall be bound to restore the amount necessary to make good his share of the capital, with interest.

If reduced, to be made good.  
*Ib.* §16.

ART. 3458. A special partner may from time to time examine into the state and progress of the partnership concerns, and may advise as to their management.

Powers of special partner.  
*Ib.* §17.

Partners to account, and liability for fraud  
*Ib.* §§18, 19.

ART. 3459. The general partners shall be liable to account to each other, and to the special partners, for the management of the concern, both in law and equity, as other partners are by law; and every partner who shall be guilty of any fraud in the affairs of the partnership shall be liable, civilly, to the party injured to the extent of his damage.

Assignments by partnership void, when.  
*Ib.* §20.

ART. 3460. Every sale, assignment or transfer of any property or effects of the partnership made by such partnership when insolvent or in contemplation of insolvency, or after, or in contemplation of insolvency of any partner, with the intent of giving a preference to any creditor of such partnership or insolvent partner over other creditors of such partnership; and every judgment confessed, lien created or security given by any such partnership under the like circumstances and with like intent, shall be void as against the creditors of such partnership.

Assignments in contemplation of insolvency.  
*Ib.* §21.

ART. 3461. Every such sale, assignment or transfer of any of the property or effects of a general or special partner made by such general or special partner when insolvent or in contemplation of insolvency, or after, or in contemplation of the insolvency of the partnership, with the intent of giving to any creditor of his own or of the partnership a preference over the creditors of the partnership; and every judgment confessed, lien created or security given by any such partner under like circumstances and with like intent, shall be void as against the creditors of the partnership.

Effect of concurrence by special partner.  
*Ib.* §22.

ART. 3462. Every special partner who shall violate any provision of the last two preceding sections, and who shall concur in or assent to any such violation of the partnership by any individual partner, shall be liable as a general partner.

Partnership creditors preferred.  
*Ib.* §23.

ART. 3463. In case of the insolvency or bankruptcy of the partnership, no special partner shall, under any circumstances, be allowed to claim as creditor until the claims of all other creditors of the partnership shall be satisfied.

Dissolution before the time agreed on.  
*Ib.* §24.

ART. 3464. No dissolution of such partnerships by the acts of the parties shall take place previous to the time specified in the certificate of its formation or in the certificate of its renewal, until a notice of such dissolution shall have been filed and recorded and published once in each week for four weeks in a newspaper printed in each of the counties where the partnership may have a place of business, if there be such papers; and if there be no newspapers published in such county, then in a newspaper published in the nearest county where there is one.

TITLE LXIX.

Partition.

CHAPTER ONE.

PARTITION OF REAL ESTATE.

	Article		Article
Joint owner may compel partition .....	3465	May cause land to be surveyed .....	3475
Petition for, and what it shall contain .....	3466	Shall divide real estate, how .....	3476
Citation and service .....	3467	Shall allot shares .....	3477
Citation and service when defendant is un-		Report of commissioners and what it shall	
known .....	3468—Note	contain .....	3478
Court shall determine, what .....	3468	When property is incapable of division,	
Decree of the court, and appointment of		same shall be sold .....	3479
commissioners .....	3469	Objections may be filed to report, etc ..	3480
Writ of partition .....	3470	Partition not prejudicial to reversioner, etc	3481
Service of writ of partition .....	3471	Each party shall hold in severalty, subject,	
Court may also appoint surveyor .....	3472	etc .....	3482
Writ returnable when, and return thereof ..	3473	Decree of court shall vest title .....	3483
Commissioners shall proceed to partition,			
etc. ....	3474		

ARTICLE 3465. Any joint owner or claimant of any real estate or of any interest therein, may compel a partition thereof between the other joint owners or claimants thereof, in the manner provided in the succeeding articles of this chapter. Joint owner may compel partition.

ART. 3466. Such joint owner or claimant may file his petition in the district court of the county in which the real estate sought to be partitioned, or a portion thereof is situated, which petition shall state— Petition for, and what it shall state.

1. The names and residence, if known, of each of the other joint owners or joint claimants of such real estate.

2. The share or interest which the plaintiff and the other joint owners or claimants of said real estate own or claim so far as known to the plaintiff.

3. The real estate sought to be partitioned shall be described in such manner as that the same may be distinguished from any other real estate, and the estimated value thereof stated.

ART. 3467. Upon the filing of a petition for partition, the clerk shall issue citation for each of the joint owners or joint claimants named therein, as in other cases, and such citations shall be served in the same manner and for the same length of time provided for the service of citation in other cases. Citation and service.

NOTE.—Chapter 51, acts 1879, provides as follows:

“Section 1 If the plaintiff, his agent or attorney, at the commencement of any suit, or during the progress thereof, for the partition of land, shall make affidavit that an undivided portion of the land described in the plaintiff’s petition in said suit, is owned by some person or persons unknown to affiant, the clerk of the court shall issue a citation to the proper officer, which shall contain a brief statement of the nature of the suit, and a description of the interest of the unknown owner or owners, commanding said officer to summon such unknown owner or owners, by making publication of the citation in some newspaper in the county where the writ issued, if there be a newspaper published in said county, but if not, then in the nearest county, where a newspaper is published, for four successive weeks previous to the return day of such process; when such notice is given, and no appearance is entered within the time prescribed for pleading, the court shall appoint an attorney to defend in behalf of such owner or owners, and proceed as in other cases where service is made by publication; and it shall be the special duty of the court, in all such cases, to see that its decree protects the rights of the unknown parties thereto; and the judge of the court shall fix the fee of the attorney so appointed, which shall be entered and collected as costs against said unknown owner or owners.”—L. Citation and service, where defendant is unknown.

- Court shall determine, what.** ART. 3468. Upon the hearing of the cause the court shall determine—  
 1. The share or interest of each of the joint owners or claimants in the real estate sought to be divided.  
 2. All questions of law or equity affecting the title to such real estate, or any part thereof, which may arise.
- Decree of the court and appointment of commissioners** ART. 3469. The court shall enter a decree directing the partition of such real estate, describing the same, to be made in accordance with the respective shares or interests of the parties entitled thereto, specifying in such decree the share or interest of each party, and shall appoint three or more competent and disinterested persons as commissioners to make such partition in accordance with such decree and the law, a majority of which commissioners may act.
- Writ of partition.** ART. 3470. The clerk shall issue a writ of partition, directed to the sheriff, or any constable of the county, commanding such sheriff or constable to notify each of the commissioners of their appointment as such, and shall accompany such writ with a certified copy of the decree of the court directing the partition.
- Service of writ of partition.** ART. 3471. The writ of partition shall be served by reading the same to each of the persons named therein as commissioners, and by delivering to any one of them the accompanying certified copy of the decree of the court.
- Court may also appoint surveyor.** ART. 3472. The court may also, should it be deemed necessary, appoint a surveyor to assist the commissioners in making the partition, in which case the writ of partition shall name such surveyor, and shall be served upon him in the same manner as upon a commissioner.
- Writ returnable when, and return thereof.** ART. 3473. A writ of partition, unless otherwise directed by the court, shall be made returnable to the first day of the next term of the court from whence the same issues, and the officer serving the same shall indorse thereon the time and manner of such service.
- Commissioners shall proceed to partition, etc.** ART. 3474. The commissioners, or a majority of them, shall proceed to partition the real estate described in the decree of the court, in accordance with the directions contained in such decree and with the provisions of this chapter.
- May cause land to be surveyed.** ART. 3475. Should the commissioners deem it necessary, they may cause to be surveyed the real estate to be partitioned into several tracts or parcels.
- Shall divide real estate, how.** ART. 3476. The commissioners shall divide the real estate to be partitioned into as many shares as there are persons entitled thereto, as determined by the court, each share to contain one or more tracts or parcels, as the commissioners may think proper, having due regard in the division to the situation, quantity and advantages of each share, so that the shares may be equal in value, as nearly as may be, in proportion to the respective interests of the parties entitled.
- Shall allot shares.** ART. 3477. The commissioners shall then proceed by lot to allot and set apart to each of the parties entitled one of said shares, as determined by the decrees of the court.
- Report of commissioners and what it shall contain.** ART. 3478. When the commissioners have completed the partition, they shall report the same in writing and under oath to the court, which report shall show—  
 1. The real estate divided, describing the same.  
 2. The several tracts or parcels into which the same was divided by them, describing particularly each of such tracts or parcels.  
 3. The number of shares and the land which constitutes each share, and the estimated value of each share.  
 4. The allotment of each share.  
 5. The report shall be accompanied by such field-notes and maps as may be necessary to make the same intelligible.
- When property is incapable of division, same shall be sold, etc.** ART. 3479. Should the commissioners be of opinion that a fair and equitable division of the real estate, or of any part thereof, can not be made, they shall report the fact to the court in writing and under oath,

stating their reasons for such opinion, and if the court should be satisfied that the report of the commissioners is correct, it shall order a sale of so much of such real estate as is incapable of partition, which sale shall be for cash, or upon such other terms as the court may direct, and shall be made as under execution, and the proceeds thereof shall be returned into court and partitioned by the court between the persons entitled thereto, according to their respective interests therein.

ART. 3480. Either party to the suit may file objections to any report of the commissioners in partition, and in such case a trial of the issues thereon shall be had as in other cases, and if the report be found to be erroneous in any material respect, or unequal and unjust, the same shall be rejected and other commissioners shall be appointed by the court and the same proceedings had as in the first instance.

Objections may be filed to report, etc.

ART. 3481. When a partition is made between a joint owner who holds an estate for a term of years or for life, with others who hold equal or greater estates, such partition shall not be prejudicial to those entitled to the reversion or remainder of such estates.

Partition not prejudicial to reversion, etc.

ART. 3482. When any partition is made each party to whom a share has been allotted shall hold the same in severalty under the same conditions and covenants that it was held before such partition was made, and no warranty, lease or right whatsoever shall be impaired or affected by such partition.

Each party shall hold in severalty, subject, etc.

ART. 3483. The decree of the court confirming the report of the commissioners in partition, when a partition has been made, shall vest the title in each party to whom a share has been allotted, to such share as against the other parties to such partition suit, their heirs, executors, administrators or assigns, as fully and effectually as the deed of such parties could vest the same, and shall have the same force and effect as a full warranty deed of conveyance from such other parties and each of them.

Decree of court shall vest title. (Ross vs. Armstrong, 25 Tex., Sup., p. 355.)

## CHAPTER TWO.

### PARTITION OF PERSONAL PROPERTY.

	Article		Article
Part owner may compel partition .....	3484	Decree of court, executed how .....	3487
Suit shall be commenced in what court.....	3485	Property shall be sold, when .....	3488
Court shall ascertain, what .....	3486	How sold, and partition of proceeds.....	3489

ARTICLE 3484. Part owners of personal property may be compelled to make partition between them in the manner provided in the succeeding articles of this chapter.

Part owners may compel partition. (Act Dec. 24, 1851.)

ART. 3485. Suit for partition shall be commenced in the court having jurisdiction of the value of such property, in the same manner as other civil suits are commenced, and the several owners or claimants of such property shall be cited as in other cases.

P.D. 4711. Suit shall be commenced, in what court. *Ib.*

ART. 3486. The separate value of each article of such personal property, and the allotment in kind to which each owner is entitled, shall be ascertained by the court, with or without a jury.

Court shall ascertain, what. *Ib.* P.D. 4712.

ART. 3487. When partition in kind of personal property is ordered by the judgment of the court, a writ shall be issued in accordance with such judgment, commanding the sheriff or constable of the county where the property may be to put the parties forthwith in possession of the property allotted to each respectively.

Decree of court executed, how. *Ib.* P.D. 4713.

ART. 3488. When personal property will not admit of a fair and equitable partition, the court shall ascertain the proportion to which each owner thereof is entitled, and shall order the property to be sold.

Property shall be sold, when. *Ib.* P.D. 4714.

How sold and  
partition of  
proceeds.  
*Id.*  
P.D. 4715.

ART. 3489. In the case provided for in the preceding article, execution shall be issued to the sheriff or any constable of the county where the property may be, describing such property and commanding such officer to sell the same as in other cases of execution, and pay over the proceeds of sale to the parties entitled thereto, in the proportion ascertained by the judgment of the court.

CHAPTER THREE.

MISCELLANEOUS PROVISIONS.

	Article		Article
Provisions of this title shall not affect, what	3490	Pay of commissioners.....	3492
Rules of pleading, practice and evidence..	3491	Costs to be adjudged, how.....	3493

Provisions of  
this title shall  
not affect,  
what.

ARTICLE 3490. The provisions of this title shall not affect the mode of proceeding prescribed by law for the partition of estates of decedents among the heirs and legatees, nor shall such provisions preclude partition in any other manner authorized by the rules of equity, which rules shall govern in proceedings under this title in all things not provided for in this title.

Rules of plead-  
ing, practice  
and evidence.

ART. 3491. The same rules of pleading, practice and evidence which govern in other civil causes shall govern in suits for partition, when not in conflict with any provisions of this title.

Pay of com-  
missioners.

ART. 3492. The commissioners in partition and the surveyor, if any has been appointed, shall receive for their services three dollars each per day for each day they are engaged in making and returning such partition, and the same shall be taxed and collected as other costs in the case.

Costs to be ad-  
judged, how.

ART. 3493. The court shall adjudge the costs in a partition suit to be paid by each party to whom a share has been allotted in proportion to the value of such share.

TITLE LXX.

Pawnbrokers.

Article		Article
3494	Definition of "pawnbroker".....	3503
3495	Pawnbroker shall give bond and its requirements.....	3503
3496	Bond shall be recorded, and new bond shall be given every twelve months.....	3504
3497	Shall keep a register, and what the same shall show.....	3505
3498	Book shall be open for inspection, etc.....	3506
3499	Property pawned shall be sold after notice, when.....	3507
3500	How notice shall be given.....	3508
3501	Advertisement shall state what, and copy shall be filed in office of district clerk.....	3509
	Within what hours sales shall be made....	3510
	Report of sale to be made, and what the same shall show.....	3510
	What expenses shall be allowed and deducted.....	3510
	Owner or depositor entitled to surplus for thirty days after sale.....	3510
	Surplus shall be paid to county treasurer, when.....	3510
	Suit upon bond for surplus and damages..	3510
	Party injured may sue upon bond.....	3510
	Injured party may sue officer, when.....	3510
	Common law shall govern, except, etc.....	3510

ARTICLE 3494. A "pawnbroker" is one who pursues the business of lending money upon interest, and receiving upon deposit, as security for the payment of such loan and interest, any personal property.

Definition of "pawnbroker."

ART. 3495. No person shall pursue the business of a pawnbroker without first having given bond, with at least two good and sufficient sureties in the sum of one thousand dollars, payable to the State of Texas, and approved by and filed with the clerk of the county court of the county in which such person proposes to pursue said business, conditioned that such person will faithfully comply with each and every requirement of the law governing such business.

Pawnbroker shall give bond, and its requisites. (Act April 28, 1874, p. 153.) P.D. 7168p.

ART. 3496. 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 pawnbroker pursues such business, the recording fees thereof to be paid by such pawnbroker, 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.

Bond shall be recorded and new bond shall be given every 12 months. *Ib.* P.D. 7168q.

ART. 3497. Each pawnbroker shall keep a well-bound book, in which he shall register all his transactions as a broker at the time the same occurs. Such register shall show—

Shall keep a register, and what the same shall show. *Ib.*

1. The article of property received, giving an accurate description of the same.
2. From whom received.
3. The time and the amount for which the article is pawned.
4. The probable value of the article.
5. The rate of interest agreed upon.
6. The final disposition made of such property, and if sold to whom sold, and the amount for which each article was sold.

P.D. 7168p.

ART. 3498. Such book shall be kept open for inspection, and the broker shall give to the party pledging, a ticket corresponding to the entry on the book of registry.

Book shall be open for inspection, etc. *Ib.*

ART. 3499. If any article deposited with such broker as a pawn shall not be redeemed at or before the time agreed upon, the broker shall sell the same at public auction to the highest bidder for cash, at his usual place of business, after giving at least five days' notice of such sale.

Property pawned shall be sold after notice, when. *Ib.* P.D. 7168q.

ART. 3500. Such notice of sale shall be given by posting written or printed advertisements at not less than three public places in the county where such sale is to take place, one of which places shall be the courthouse of such county.

How notice shall be given. *Ib.* P.D. 7168q.

ART. 3501. The written advertisements of sale shall state the time and place of such sale, and shall contain a full description of the article or articles to be sold, and the name or names of the person or per-

Advertisement shall state what, and copy shall be filed in office of county clerk.



sons depositing the same, and a copy thereof shall be filed in the office of the clerk of the county court of the county where such sale takes place.

Within what hours sales shall be made.

ART. 3502. All sales made by a pawnbroker shall be made between the hours of ten o'clock A. M. and four o'clock P. M., and no sale shall be made upon Sunday, or upon a legal holiday.

Report of sales to be made, and what the same shall show.

ART. 3503. When a sale has been made the pawnbroker shall, within five days thereafter, file with the clerk of the county court of the county where such sale was made, a report in writing and under oath, showing—

1. The time and place of such sale.
2. The notice given thereof.
3. A full description of the property sold and by whom deposited.
4. By whom purchased and the amount which each article was sold for.
5. The amount due the broker, principal, interest and expenses upon each article sold.
6. The amount of surplus of the proceeds of sale of each article, if any, after deducting the amount due the broker of principal, interest and expenses.

What expenses shall be allowed and deducted.

ART. 3504. The expenses named in the preceding article shall be such expenses as have been agreed upon by the parties to the contract, or if there be no agreement in regard thereto, then the reasonable expenses of the sale only, such as reasonable auctioneers' commissions, shall be allowed and deducted.

Owner or depositor entitled to surplus for 30 days after sale.

ART. 3505. The owner or depositor of the property so sold shall be entitled upon demand to receive from such broker the surplus of the proceeds of such sale, at any time within thirty days after such sale, and if no demand therefor be made within thirty days after such sale, such surplus shall become the property of the county where such sale was made.

Surplus shall be paid to county treasurer, when.  
*Ib.*  
P.D. 7168q.

ART. 3506. Should there be any surplus of the proceeds of any sale made by a broker, he shall, at the expiration of thirty days from the day of such sale, pay such surplus to the county treasurer of the county where such sale was made, or he shall file with such county treasurer the receipt of the owner or depositor of the property sold, for such surplus, at the expiration of said thirty days.

Suit upon bond for surplus and damages.  
*Ib.*  
P.D. 7168r.

ART. 3507. Suit may be brought upon the bond of the pawnbroker by the county, or by any party entitled to the surplus of any sale made by him, and upon recovery, judgment shall be rendered against such pawnbroker and the sureties upon his bond, for the amount of such surplus, together with ten per cent. per month on such amount for each month or fraction of a month that such surplus has been illegally withheld by such pawnbroker.

Party injured may sue upon bond.

ART. 3508. Any person injured by the failure of a pawnbroker to comply faithfully with his contract, or with any requirement of law governing the business of pawnbrokerage, may sue upon the bond of such pawnbroker and recover such damages as he may prove himself entitled to, not to exceed the penalty of such bond.

Injured parties may sue officer, when.  
*Ib.*  
P.D. 7168s.

ART. 3509. Any person injured by the failure, refusal or neglect of any officer whose duty it is to comply with any of the provisions of the law governing pawnbrokerage, shall have a right of action against such officer so failing, refusing or neglecting, for the recovery of all damages resulting from such failure, refusal or neglect.

Common law shall govern, except, etc.

ART. 3510. The rules of the common law pertaining to and governing the business of pawnbrokerage shall govern the civil liability of pawnbrokers, except in so far as the same may be contrary to or inconsistent with any statute.

TITLE LXXI.

Penitentiaries and Convicts.

CHAPTER ONE.

COMMISSIONERS OF PENITENTIARIES.

NOTE.—Chapter 52, acts 1879, does away with the office of “Commissioners of Penitentiaries,” substituting therefor resident directors, styled “Directors of Penitentiaries,” and prescribes for them the same duties as are, in this chapter of the Revised Statutes, prescribed for the “Commissioners.”—L.

	Article		Article
Their appointment, term, and vacancies...	3511	Special reports, when required.....	3517
Their oath of office .....	3512	Visits and inspections.....	3518
May adopt rules and regulations.....	3513	Investigation of abuses.....	3519
Object of such authority.....	3514	Same subject.....	3520
Regulations to be published.....	3515	Biennial report.....	3521
Monthly meetings and reports.....	3516	Meaning of the term “commissioners”.....	3522

ARTICLE 3511. The governor shall appoint, by and with the advice and consent of the senate, three commissioners, to be styled “Commissioners of Penitentiaries,” who shall hold their offices for the term of two years. If a vacancy occur in either of said offices during a recess of the senate, such vacancy may be filled by executive appointment for the unexpired term.

Their appointment, term and vacancies. (Act Aug. 19, 1876, pp. 194-5, §6.)

ART. 3512. Each of said commissioners, before entering upon the duties of their offices, shall take and subscribe the oath prescribed by the constitution for all officers of the government, which oath shall be filed in the office of the secretary of state.

Their oath of office. *Ib.* p. 195, §6.

ART. 3513. The commissioners of penitentiaries shall, in conjunction with and by the approval of the governor, take such measures and adopt such rules and regulations, not inconsistent with the laws of the state, for the control and management of the several penitentiaries and the convicts thereto belonging, as they may deem proper and necessary; and such rules and regulations shall be binding upon all officers of penitentiaries, guards, employes, hirers of convict labor, and upon all others in any way connected with penitentiaries and their management, or with the convicts either within or without the walls thereof.

May adopt rules and regulations. *Ib.* P. C. 94.

ART. 3514. The authority given the commissioners in the preceding article to establish rules and by-laws is intended to supply any defects in this title with regard to prison discipline, and to provide for such details as are not embraced herein, and for such contingencies as may at any time arise concerning the management of the penitentiaries and their proper and successful operation. They shall be made with a view to carry out the general principles on which the penal laws are founded, and the designs for which the penitentiary system is established.

Object of each authority. P. C. 181, 184.

ART. 3515. All rules, regulations and by-laws established by the commissioners shall be printed and distributed among the convicts of each penitentiary, for their information and guidance.

Regulations to be published. P. C. 95.

ART. 3516. The commissioners of penitentiaries shall meet regularly on the first Monday of each month, at such place as they may agree upon for conference upon matters pertaining to the penitentiaries; and at the close of each regular monthly meeting they shall report in writing to the governor the general condition and management of the convicts, with such other information concerning penitentiary matters and operations as they may deem important.

Monthly meetings and reports. *Ib.*

Special reports when required. *Ib.*

ART. 3517. The commissioners shall also make such special reports to the governor as he may at any time require upon any matters connected with the penitentiaries.

Visits and inspections. *Ib.*  
P.C. 97.

ART. 3518. The commissioners shall at all times have access to the penitentiaries, and one of the commissioners shall visit and inspect each penitentiary, and all other places at which convicts are employed, at least twice in each month.

Investigation of abuses. P.C. 98, 100.

ART. 3519. It shall be the duty of the commissioners, or either of them, to examine into all complaints preferred by a convict, and, if found substantial, to take immediate measures for the correction of the abuse. For this purpose they are authorized to administer oaths, summon and examine witnesses, and to take such other steps as they may deem necessary to ascertain the truth with respect to any matter about which they have a right to inquire.

Same subject. P.C. 98-9.

ART. 3520. The commissioners shall also examine into any improper conduct alleged against the superintendent or other officer or employé of either of the penitentiaries, or of the lessee of either penitentiary, or any hirer of convicts, and report the same to the governor; and they may at discretion remove any officer or employé of either penitentiary who may have been appointed by them or under their authority.

Biennial report. P.C. 102.

ART. 3521. The commissioners shall report to the governor biennially on or before the first Monday in November, a comprehensive review of the government, discipline, condition and transactions of the several penitentiaries for the preceding two years, or since the date of their last similar report; and they shall transmit therewith the reports of the superintendents and physicians of each penitentiary; and all of said reports shall be printed and laid before the legislature.

Meaning of term "commissioners." P.C. 103.

ART. 3522. Whenever the term "commissioners" is used in this title without qualification, it means the three commissioners, or any two of them.

## CHAPTER TWO.

### OF THE SUPERINTENDENT AND HIS DUTIES.

NOTE.—Chapter 52, acts 1879, in its provisions with reference to the superintendent and his duties, is very similar to the articles of this chapter, but modifies and increases them in some respects, and provides for the appointment of an assistant superintendent, who is required once a month to visit convict camps and perform other duties prescribed in the act; and chapter 38, acts 1879, extra session, provides for the appointment of an additional assistant.—L.

	Article		Article
His appointment and term of office.....	3523	Shall keep a register, etc. ....	3528
General control over convicts.....	3524	Biennial report.....	3529
Responsible for discipline.....	3525	May offer rewards for escaped convicts.....	3530
Shall reside in penitentiary.....	3526	Temporary superintendent.....	3531
And make daily visits to cells, etc.....	3527		

His appointment and term of office. P.C. 92.

ARTICLE 3523. The governor shall appoint, by and with the advice and consent of the senate, a superintendent for each penitentiary, who shall hold his office for the term of two years, and until the appointment and qualification of his successor. In case of a vacancy in said offices, the same may be filled by executive appointment for the unexpired term.

General control over convicts. *Ib.* §7. P.C. 105-6, 114.

ART. 3524. The superintendent shall have general supervision and control over all convicts imprisoned in the penitentiary for which he is appointed, and over all overseers and guards connected therewith; but in case of a lease of the penitentiary such control shall not extend to the labor of convicts, except as may be hereinafter specially provided. He shall see that all officers under his supervision discharge their several duties, and shall report all failures of duty and misconduct on their part to the commissioners.

ART. 3525. As the executive officer of the penitentiary he shall have all powers necessary to a discharge of his duties, subject only to the instructions of the commissioners; and he shall be responsible for the manner in which the discipline of the penitentiary is enforced.

Responsible for discipline. P.C. 108.

ART. 3526. The superintendent shall reside within the penitentiary, and shall not absent himself therefrom unless upon business connected with the duties of his office, or with the permission of the commissioners.

Shall reside in penitentiary. P.C. 110.

ART. 3527. He shall visit daily the cells of the convicts and other places within the walls of the penitentiary where they may be engaged at labor; shall see that they are humanely and properly treated, and shall give attention to all complaints made by a convict against any officer, employé or lessee of the penitentiary. He shall, at all suitable times, converse in a kindly manner with the convicts and use his best endeavors to produce in them a spirit of reformation.

And make daily visits to cells, etc. P.C. 107.

ART. 3528. The superintendent shall receive and receipt for all convicts that may be transported to the penitentiary in accordance with law, and he shall keep a register of the names of all convicts, together with such information respecting the previous life and prison conduct of each, as he may deem important.

Shall keep a register, etc. P.C. 93, 109.

ART. 3529. The superintendent shall make a written report to the commissioners biennially, on or before the first day of November, in which he shall distinctly set forth the number of convicts who have been committed to the penitentiary since his last report, and the dates of their commitment, with the name, age, sex and place of nativity of each, their habits, education, marital relations, term of imprisonment, the offense for which they are confined, from what county sent, the number of deaths, escapes, pardons and discharges by expiration of sentence, the whole number of convicts then confined in the penitentiary, the various occupations in which they are employed, and the number employed in each.

Biennial report P.C. 116.

ART. 3530. In case of escapes, the superintendent may, with the approval of the governor, offer a reward not exceeding one hundred dollars for the apprehension and return of a convict, which shall be paid to the person entitled thereto on the certificate of the superintendent, approved by the governor, out of the appropriation for the arrest of fugitives from justice.

May offer rewards for escaped convicts. P.C. 117.

ART. 3531. During the absence of the superintendent, or his inability to act, the commissioners may designate some proper person to act in his stead.

Temporary superintendent.

## CHAPTER THREE.

### OF THE PHYSICIAN AND HIS DUTIES.

NOTE.—See acts 1879, chapter 52, sections 28-38.—L.

	Article		Article
His appointment, term, and salary.....	3532	May prescribe treatment in special cases..	3537
Shall visit the penitentiary semi-weekly, etc	3533	And control the hospital.....	3538
Examine convict at reception, and attend		Prescription shall be followed.....	3539
sick.....	3534	Sick convict not to be discharged.....	3540
Have sick convict removed when necessary	3535	Physician to keep a journal.....	3541
And his directions must be obeyed.....	3536	Biennial report.....	3542

ARTICLE 3532. The commissioners of penitentiaries shall appoint for each penitentiary a physician who shall hold his office for the term of two years, unless sooner removed by the commissioners.

His appointment, term and salary. P.C. 84, 86, 87.

ART. 3533. The physician shall visit the penitentiary at least twice in each week and inquire into the health of each convict, and he shall report quarterly to the commissioners, or oftener if required, the sanitary condition of the penitentiary.

Shall visit the penitentiary semi-weekly, etc. P.C. 130.

Examine convict at reception, and attend sick convict.

P.C. 131-2.

Have sick convict removed when necessary.

P.C. 133, 135.

And his directions must be obeyed.

P.C. 137.

May prescribe treatment in special cases, etc.

P.C. 134, 136.

And control the hospital, etc.

P.C. 138, 139, 85.

Prescription shall be followed.

P.C. 141.

Sick convict not to be discharged, etc.

P.C. 142.

Physician to keep a journal.

P.C. 140.

Biennial report

ART. 3534. He shall examine into the health and physical condition of each convict brought to the penitentiary, before he has been confined in his cell, and shall attend immediately upon any case of sickness among the convicts when notified thereof.

ART. 3535. He shall notify the superintendent of each case in which, on account of ill-health, it may be deemed advisable to remove a convict from the penitentiary to some other place, and he shall cause any convict suffering under a contagious or infectious disease to be removed, so that other convicts may not suffer by such contagion or infection.

ART. 3536. If directions be given by the physician for the removal from the penitentiary of any person suffering under a contagious or infectious disease, such person shall be immediately removed to some other place and be there detained until he recover or die.

ART. 3537. The physician shall inquire into the mental as well as bodily condition of each convict and give such advice to the superintendent as he may deem proper respecting the mode of treatment of any convict who may appear to be materially affected either in body or mind, and such advice shall be followed by the superintendent, unless the commissioners shall otherwise direct.

ART. 3438. Convicts when sick shall be kept in the hospital, except when the physician may otherwise direct; and the hospital and all persons employed therein shall be under the management and control of the physician. Nurses may be employed by the physician, with the approval of the commissioners, when required in cases of sickness.

ART. 3539. The treatment prescribed by the physician for convicts suffering with disease shall in all cases be strictly followed, and only such diet shall be given to a sick convict as the physician may direct.

ART. 3540. A convict afflicted with serious illness or a dangerous disease shall not, while in that condition, be discharged from the penitentiary, except upon his own request, although his term of imprisonment may have expired.

ART. 3541. The physician shall keep a journal in which he shall regularly enter, opposite the name of each convict, the state of his health, if sick, with what disease, and whether he remains within the penitentiary or has been removed, together with such remarks he may deem important, which book shall be open at all times to the inspection of the superintendent and commissioners.

ART. 3542. The physician shall make a written report to the commissioners biennially, on or before the first day of November, in which he shall state—

1. The number of cases of sickness among the convicts for the two years past.

2. With what disease they were afflicted.

3. The number of deaths among the convicts, and with what disease they died.

4. The number and character of all surgical operations performed.

5. The general sanitary condition of the penitentiary.

6. Such suggestions as he may deem important to the improvement of the sanitary condition of the institution or conducive to the physical welfare of the convicts.

7. Any facts or incidents coming under his observation that he may deem of general interest to the public or of benefit to science.

CHAPTER FOUR.

OF THE CHAPLAIN AND HIS DUTIES.

NOTE.—See acts of 1879, chapter 52, sections 39–44.—L.

	Article		Article
His appointment and term of office.....	3543	Shall ignore sectarianism.....	3546
Shall preach every Sunday.....	3544	May visit sick convicts.....	3547
Librarian <i>ex officio</i> .....	3545	All ministers to have access, etc.....	3548

ARTICLE 3543. The commissioner shall appoint a chaplain for each penitentiary, who shall hold his office for the term of two years, unless sooner removed by the commissioners. His appointment and term of office. P.C. 84, 86.

ART. 3544. He shall preach at least once every Sunday to the convicts, and shall visit them at convenient times during their hours of leisure each week, and use all the influence he may possess to inculcate in them sound principles of religion and morality. Shall preach every Sunday, etc. P.C. 143-4.

ART. 3545. The chaplain shall be *ex officio* librarian of the penitentiary, and under such regulations as the commissioners may prescribe, shall furnish the convicts with such books, periodicals and publications as it may contain. Librarian *ex officio*. (Act Feb. 13, 1875, p. 26.) P.C. 145.

ART. 3546. The chaplain shall not, in his discourses or conversations with the convicts, discuss doctrines merely sectarian, but he shall teach such principles of religion and morality as are common to all christian churches. Shall ignore sectarianism. P.C. 147.

ART. 3547. By permission of the physician, he may visit convicts in case of sickness, and he shall, in all cases, be admitted to the bedside of any convict who has been pronounced by the physician as beyond reasonable hope of recovery. May visit sick convicts. P.C. 146.

ART. 3548. Preachers, ministers and priests of all religious denominations shall, by the consent of the superintendent, have access to the penitentiary, and may, at any seasonable time, be allowed to preach to the convicts; and a convict shall, at all proper times, be permitted to receive visits from and hold converse with any preacher, minister or priest whom he may desire to see. All ministers may have access, etc. P.C. 148-9.

CHAPTER FIVE.

OF UNDER-OFFICERS, OVERSEERS AND GUARDS.

NOTE.—See acts of 1879, chapter 52, sections 45–48.—L.

	Article		Article
Commissioners to appoint necessary number.....	3549	Compensation of employés to be fixed by the commissioners.....	3551
May also employ skilled workmen, when.....	3550	To obey the orders of the superintendent..	3552

ARTICLE 3549. The commissioners shall appoint, upon the nomination of the superintendent, such number of under-officers, overseers and guards for each penitentiary as may be necessary to preserve discipline and prevent escapes. The superintendent may nominate several persons for the same appointment, from whom the commissioners may select; but in case the commissioners do not approve of nominations made by the superintendent, they may appoint independently of such nominations. Commissioners to appoint overseers, guards, etc. P.C. 113, 150, 152, 96.

ART. 3550. When the penitentiaries are being operated directly by the state, the commissioners may also employ such number of skilled workmen or other employés as they may deem essential to the successful operation of the institution and to the pecuniary interest of the state. May also employ skilled workmen, when.

ART. 3551. All under-officers, overseers, guards and other employés shall receive such compensation for their services as the commissioners may prescribe, to be paid by the state on the certificate of the superintendent; and they shall be subject to removal or discharge at any time by the commissioners. Compensation of employés to be fixed by the commissioners. P.C. 86, 87.

To obey the orders of superintendent. P.C. 151-2.

ART. 3552. All under-officers, overseers, guards and employés shall be subject to the orders of the superintendent, and shall in all things comply with his directions. Any complaint of ill-treatment toward them on his part may be made to the commissioners, who shall inquire into the same and take such action as the facts may seem to demand.

CHAPTER SIX.

OF THE TREATMENT OF CONVICTS AND PRISON DISCIPLINE.

NOTE.—See acts 1879, chapter 52, sections 49-60.—L.

	Article		Article
General objects of this title.....	3553	Hours for labor, etc.....	3560
Convict to be searched on admission.....	3554	Excessive labor forbidden.....	3561
Infant to be received with its mother.....	3555	Sick convict to be removed, when.....	3562
Description to be registered.....	3556	Illiterate convicts to be instructed.....	3563
General treatment, etc.....	3557	Rewards.....	3564
Convicts not to converse, etc., except when.....	3558	Punishments.....	3565
Sexes to be separated.....	3559	Clothing to be preserved, etc.....	3566

General objects of this title.

ARTICLE 3553. The various provisions of this title are designed to secure to the convicts moral instruction, to provide for their health and extend to them such comforts as are consistent with their situation, and at the same time to require of them a due attention to their various occupations, and a strict observance of the discipline, rules and regulations of the prison.

Convict to be searched on admission, etc. P.C. 154.

ART. 3554. Every convict, when received into the penitentiary, shall be carefully searched and deprived of every article by which an escape might be effected. If money be found upon the person of a convict, it shall be delivered or safely forwarded by the superintendent to the wife or children of the convict. If he have no wife or children, it shall be safely kept and delivered to the convict upon his final discharge.

Infant to be received with its mother. (Act Nov. 7, 1866, p. 98.) P.D. 154a.

ART. 3555. If the convict be a female, with an infant child, the latter shall be received into the penitentiary with its mother, and there kept until it arrives at the age of two years, when the superintendent shall deliver it, or cause it to be delivered to its relatives, if there be any; if not, to the county judge of the county from which the convict was sent, to be dealt with according to law.

Description to be registered. P.C. 157.

ART. 3556. The description of each convict when received into the penitentiary, the name if known, the sex, age, height, color of the eyes and hair, place of nativity, previous occupation, time of conviction, for what crime, and period of confinement, shall be entered in a book to be kept by the superintendent.

General treatment, etc. P.C. 101, 158, 162-3.

ART. 3557. All convicts shall be treated with humanity, and a distinction may be made in their treatment, so as to extend to such as are orderly, industrious and obedient, comforts and privileges according to their deserts. Suitable clothing of substantial material and uniform make, and sufficient food of wholesome quality shall be furnished to all, but they are to be allowed no spirituous, vinous or malt liquors, except upon the prescription of the physician.

Not to converse. P.C. 161.

ART. 3558. No conversation shall be allowed between convicts except as a reward for good conduct, and while at labor they may speak to each other when necessary to carry on the work in which they are engaged.

Sexes to be separated. P.C. 161.

ART. 3559. Convicts of different sexes shall at all times be kept separate and apart, and no communication shall be allowed between them.

Hours for labor, etc. P.C. 175-6-7.

ART. 3560. Convicts sentenced to hard labor shall be kept at work from daylight until twenty minutes before sunset, except an interval of one hour's rest at breakfast, and one hour and a half at dinner. No labor shall be required of any convict on Sunday.

ART. 3561. No greater amount of labor shall be required of a convict than a due regard for his physical health and strength may render proper. Excessive labor forbidden. P.C. 180.

ART. 3562. Convicts who have been reported by the physician as in a condition of health which requires their removal to some other place, shall be accordingly removed, but in such manner and under such restrictions as will prevent escape. Sick convict to be removed, when. P.C. 160.

ART. 3563. Convicts who are unable to read or write, when admitted to the penitentiary, may receive instruction during leisure hours, under such regulations as the commissioners may prescribe; and the commissioners are authorized to employ a competent teacher for that purpose, at such compensation as they may designate, to be paid by the state upon the certificate of the superintendent. Illiterate convicts to be instructed. P.C. 164.

ART. 3564. The rewards to be bestowed upon convicts who evince a purpose of reformation and a disposition to obey the rules of discipline, shall consist of an extension of social privileges, permission to read and write, and such other mitigations of punishment as may not be inconsistent with proper discipline. No written communication from a convict shall in any case be sent out without the permission of the superintendent, nor until it has been read by him. Rewards. P.C. 185.

ART. 3565. The punishments that may be prescribed by the commissioners shall consist of closer imprisonments, confinement in irons, deprivation of privileges and other punishments of like character. Whipping shall not be resorted to except upon the special order of the commissioners in particular cases, nor shall a convict's head be shaved in any instance. Punishments. P.C. 186.

ART. 3566. The clothing of each convict shall be carefully preserved by the superintendent during the time of his confinement, and upon his discharge shall be re-delivered to him; and the superintendent shall see that each convict, on his discharge, is given twenty dollars, if said convict is without money and otherwise unprovided for. Clothing to be preserved, etc. P.C. 156.

## CHAPTER SEVEN.

### OF VISITS TO THE PENITENTIARIES.

NOTE.—See acts 1879, chapter 52, sections 65-7.—L.

	Article		Article
What officers may visit.....	3567	Governor, etc., may hold private converse	3569
Other persons by permission, but not to converse .....	3568		

ARTICLE 3567. The governor and all other officers of the executive and judicial departments of the government, and members of the legislature, shall be admitted into the penitentiary at all proper hours for the purpose of observing the conduct and operations of the institution. What officers may visit. P.C. 165.

ART. 3568. Any other person may visit the penitentiary with the permission of the superintendent or some one of the commissioners, but no conversation shall be held with a convict by any visitor, other than the governor, except by permission of the superintendent. Other persons by permission, but not to converse. P.C. 166-7.

ART. 3569. The governor may hold conversation with convicts apart from the superintendent or any other officer, and so may the commissioners, or either one of them. Governor, etc., may hold private converse. P.C. 112, 168.



CHAPTER EIGHT.

OF LEASES OF THE PENITENTIARIES.

NOTE.—See acts 1879, chapter 52, sections 68-85.—L.

	Article		Article
Penitentiaries to be leased.....	3570	Convicts may be operated outside, how.....	3577
Lease not to exceed fifteen years, etc.....	3571	Lessee to give bond.....	3578
State to retain control of convicts.....	3572	Preliminary appraisal.....	3579
And designate their labor.....	3573	Appraisal at termination of lease.....	3580
And may change its rules at pleasure.....	3574	Lessee may make improvements.....	3581
All leases subject to legislative action.....	3575	May introduce skilled labor.....	3582
Preceding reservations not to be waived, etc.....	3576	Shall pay all expenses and salaries.....	3583
		Governor may add stipulations.....	3584

Penitentiaries to be leased. (Act Aug. 19, 1876, p. 195, §7.)

ARTICLE 3570. Whenever practicable each penitentiary may be operated under a lease, in accordance with the regulations prescribed in this chapter and title.

Lease not to exceed 15 years, and other limitation. *Ib.*

ART. 3571. Each lease of a penitentiary shall be for some definite term, not to exceed fifteen years, after public notice by advertisement in at least three newspapers of the state, and shall be executed by the governor upon such terms and conditions as he may deem best for the public interest, special regard being had, as far as practicable, to the exaction of the penalty imposed by law on each convict, and to the protection, well-being and humane treatment to which each convict is entitled at the hands of the state.

State to retain control of convicts. *Ib.*

ART. 3572. No lease shall be made by which the control of the convicts, except as to a reasonable amount of labor, shall pass from the state or its officers, and the persons and management of convicts shall, in all cases and under all circumstances, remain under the control of the state and its officers.

And designate their labor. *Ib.*

ART. 3573. Pending the continuance of any lease the state, through the commissioners of penitentiaries, may at all times designate the particular labor at which any convict or class of convicts may be employed, and may change the convicts or their labor at will; and may station them at or remove them from any point inside or outside any penitentiary at pleasure.

And may change its rules at pleasure. *Ib.*

ART. 3574. The commissioners may also make and change at pleasure, with the approval of the governor, all rules for the discipline and punishment of convicts, and how they shall be fed, clothed, nursed, instructed or guarded.

All leases subject to legislative action. *Ib.*

ART. 3575. Every lease shall be subject to the approval or revocation of any legislature thereafter convened, and to any and all existing laws touching the penitentiaries or convicts or any others thereafter passed; and any failure on the part of a lessee to carry out in good faith any of the terms of his lease, or to comply with any of the conditions of any bond he may have executed, shall operate *ipso facto* as a forfeiture of such lease, and the governor may so declare and at once resume control of the penitentiary.

Preceding reservations not to be waived. *Ib.*

ART. 3576. Any lease made by the governor shall be subject to the reservations to the state in the four preceding articles contained, whether specified in the lease or not, and the state shall not, under the guise of contract or in any other manner, part with the right to direct how, at any time and under all circumstances, its convicts shall be lodged, fed, clothed, worked and treated.

Convicts may be operated outside, how. *Ib.* pp. 195-6, §§7, 8.

ART. 3577. The right to hire out convicts and to operate them outside the penitentiary walls is expressly given, but no convict shall be hired or put to labor outside the walls when his labor can be utilized within the walls; and the governor and commissioners may prescribe what class or classes of convicts may be hired out or put to labor outside the prison walls, and such other regulations pertaining to the same as they may deem proper.

ART. 3578. In case of a lease of any penitentiary, the lessee shall execute and deliver to the governor a bond in an amount to be designated by him, with two or more good and sufficient sureties, to be approved by him, payable to the State of Texas, and conditioned that said lessee shall faithfully comply with the terms of his lease, which bond shall be deposited in the office of the secretary of state.

Lessee to give bond.  
(Act March 22, 1871, p. 15, §1.)  
P.D. 7193.

ART. 3579. Whenever a penitentiary is leased, an inventory and valuation of all the materials, machinery and property of every description belonging to the penitentiary, except the land, shall be made by appraisers, one of whom shall be appointed by the governor and the other by the lessee, and in case of disagreement between the appraisers they may select an umpire; upon completion of the appraisal and its return to the governor, under oath, the property shall be receipted for to the governor at its appraised value.

Preliminary appraisal.  
*Ib.*  
P.D. 7191.

ART. 3580. At the expiration or termination of any lease, a like inventory and valuation of all the property belonging to the state in the possession of the lessee shall be made in the same manner; and the lessee and the sureties on his bond shall be liable to the state for any deficiency in the property or its value, reasonable wear and tear excepted.

Appraisal at termination of the lease.  
*Ib.*

ART. 3581. The lessee shall have the use of all land, buildings, machinery, tools and other property connected with the penitentiary, and may make improvements and additions to the penitentiary, with the approval of the governor and commissioners, and under such limitations as may be fixed by them; and such lessee shall be allowed a reasonable compensation for such improvements as are of a permanent nature at the expiration of the lease, the amount of such compensation to be determined by the governor and commissioners.

Lessee may make improvements.  
*Ib.*  
P.D. 7189-90.

ART. 3582. The lessee shall have the right to introduce into the penitentiary such skilled labor as he may deem proper and necessary for the efficient operation of convict labor and to superintend and instruct the same.

May introduce skilled labor.  
*Ib.* pp. 14, 15, §1.)  
P.D. 7190.  
Shall pay all expenses and salaries.  
*Ib.* pp. 14, 16, §§1, 4.  
P.D. 7189, 7196.

ART. 3583. The lessee shall furnish everything necessary for the support and maintenance of the penitentiary leased, including the salaries of all officers and the compensation of all employes; but such salaries and compensation shall be paid by the lessee into the state treasury, and not to the officer or employe in person.

ART. 3584. The governor, in the execution of any lease, may make such other stipulations and agreements not inconsistent with the provisions of this title, as he may deem to the interest of the state or essential to its protection; and such stipulations and agreements shall be binding in all respects upon the lessee, and the bond given shall be construed to extend to and include the performance of such stipulations and agreements in the same manner as if the duties were imposed by positive law.

Governor may add stipulations.  
(Act Aug. 19, 1876, p. 195, §7.)

## CHAPTER NINE.

### OF WORK-HOUSES AND COUNTY CONVICTS.

Article		Article	
Commissioners' courts to establish work-houses.....	3585	Refractory convicts to be punished.....	3593
"County convict" defined.....	3586	Female convicts.....	3594
Certain convicts only to do manual labor..	3587	Aged or disabled convicts not to work.....	3595
Commissioners' court to control work-house	3588	Their inability, how determined.....	3596
All officers to obey their orders.....	3589	Convicts to receive credit for labor.....	3597
Overseers and guards.....	3590	Mechanic, etc., to have extra credit.....	3598
To labor upon public works, etc.....	3591	Convicts to be guarded.....	3599
Where confined when off duty.....	3592	Costs to be paid officers.....	3600
		Convict may commute his labor.....	3601

Commissioners' courts to establish work-houses, etc.  
(Const., art. 16, §3.)  
(Act Aug. 21, 1876, p. 229, §9.)  
(Act to adopt and establish R.C.S., passed Feb. 21, 1879.)

ARTICLE 3585. The commissioners' courts of the several counties may provide for the erection of a work-house and the establishment of a county farm in connection therewith, for the purpose of utilizing the labor of county convicts, in accordance with the provisions of the constitution.

"County convict" defined.  
*Ib.* p. 230, §16.

ART. 3586. A "county convict," within the meaning of the preceding article, is any person who may have been convicted of a misdemeanor or petty offense, and whose punishment has been assessed at imprisonment in the county jail for any term; or who, under a like conviction, has been adjudged to pay a pecuniary fine and is unable so to do.

Certain convicts only to do manual labor.  
 (Act to adopt and establish R.C.S., passed Feb. 21, 1879.)

ART. 3587. When the punishment assessed in a conviction for misdemeanor is confinement in the county jail for a period less than one day, the convict shall not be required to labor, either in the work-house or elsewhere; but when such punishment is confinement in the county jail for a longer time than one day, the convict shall be required to do manual labor in accordance with the provisions of this chapter.

Commissioners' court to control work-houses.  
*Ib.* §10.

ART. 3588. County work-houses and farms shall be under the control and management of the commissioners' court, and such courts are authorized to adopt such rules and regulations not inconsistent with the laws, as they may deem necessary for the successful management and operation of said institutions and for effectively utilizing the labor of county convicts.

Officers to obey their orders, etc.  
*Ib.* §13.

ART. 3589. The sheriff and all other peace officers shall obey the orders and regulations of the commissioners' court, made in pursuance of the preceding article, shall execute such process as may be directed by said court, and shall render all the aid possible in carrying out the provisions of this chapter and the regulations made in pursuance thereof.

Overseers and guards, etc.

ART. 3590. Such overseers and guards may be employed under the authority of the commissioners' court as may be necessary to prevent escapes, and to enforce labor on the part of convicts, and they shall be paid out of the county treasury such compensation as said court may prescribe.

To labor on public works, etc.  
*Ib.* pp. 228, §1.

ART. 3591. County convicts shall be put to labor upon the public roads, bridges or other public works of the county, when their labor can not be utilized in the county work-house or farm, and they shall be required to labor not less than eight nor more than ten hours each day, Sundays excepted.

Where confined when off duty.

ART. 3592. When not at labor, county convicts may be confined in the county jail or work-house, as may be most convenient, or as the regulations of the commissioners' court may prescribe.

Refractory convicts to be punished.

ART. 3593. When a convict refuses to labor, or is otherwise refractory or insubordinate, he may be punished by solitary confinement on bread and water, or in such other manner as the commissioners' court may direct.

Female convicts.

ART. 3594. Female convicts shall, under all circumstances, be kept separate and apart from male convicts, and they shall in no case be required to do manual labor, except in the work-house, or when hired out as is hereinafter provided.

Aged or disabled convicts not to work.

ART. 3595. A convict who, from age, disease or other disability, physical or mental, is unable to do manual labor, shall not be required to work, but shall remain in jail until his term of imprisonment is ended, or until the fine and costs adjudged against him are discharged, at the rate of one dollar for each day of such confinement in jail.

Inability, how determined.

ART. 3596. The inability of the convict to do manual labor may be determined by the opinion of a competent physician appointed for that purpose by the county judge or commissioners' court, who shall be paid for such service such compensation as the commissioners' court may allow.

Shall be credited for his labor.

ART. 3597. When a convict, who has been committed to jail in default of payment of fine and costs, is required to do manual labor, he shall be credited upon such fine and costs at the rate of one dollar for each day he may labor; and upon satisfaction of such fine and costs in full, at said rate, he shall be discharged.

Mechanic, etc., to have extra credit.  
*Ib.* §2.

ART. 3598. If a convict, of the kind described in the preceding article, be an artisan or mechanic, and be put to labor at his trade or calling in any work-house or on any public work, he may be credited upon the fine

and costs against him with such extra compensation for his labor as the county judge may determine to be just and proper.

ART. 3599. Convicts shall be so guarded while at work as to prevent escapes, and no convict shall be compelled to labor at any kind of work nor in any avocation that would endanger his life or health.

Convicts to be guarded, etc. *Ib.* p. 230, §11.

ART. 3600. When a convict, who has been committed to jail in default of payment of fine and costs, has satisfied such fine and costs in full by labor in the work-house or upon public works, the county judge shall issue a warrant upon the county treasurer in favor of each officer to whom costs may be due for the amount of his costs, and the same shall be paid out of the road fund of the county or out of any other county funds not otherwise appropriated.

Costs to be paid officers. *Ib.* p. 229, §8.

ART. 3601. A convict condemned to imprisonment in the county jail as the punishment, either in whole or in part, for his offense, may avoid manual labor in the work-house, or elsewhere, by payment into the county treasury of one dollar for each day of the term of his imprisonment; and the receipt of the county treasurer to that effect shall be sufficient authority to the sheriff to detain such convict in jail without labor.

Convict may commute his labor.

## CHAPTER TEN.

### OF HIRING COUNTY CONVICTS.

	Article		Article
Convicts may be hired out.....	3602	Suit on bond.....	3606
Either publicly, privately, or generally, etc	3603	Convict to receive full credit for labor.....	3607
Hirer shall give bond, and its requisites....	3604	Record in relation to county convicts.....	3608
Liability when convict escapes.....	3605	Officers' costs, how paid.....	3609

ARTICLE 3602. Any person who may be convicted of a misdemeanor or petty offense, and who shall be committed to jail in default of the payment of the fine and costs adjudged against him, may be hired out to any individual, company or corporation until the money received from his hire is sufficient to liquidate such fine and costs in full.

Convicts may be hired out. *Ib.* p. 228, §8.

ART. 3603. Such hiring may be either by private contract or at public auction, as may be deemed best for the interest of the county, or it may be by general contract for any specified term, embracing the labor of all county convicts of the class prescribed in the preceding article, at some fixed rate per day, week or month.

Either publicly or privately, generally or especially.

ART. 3604. Hirers of convicts shall execute bond payable to the county judge of the county, with two or more good and sufficient sureties, in the amount of hire agreed upon, conditioned as follows:

Hirer shall give bond and its requisites. *Ib.* pp. 228, 229, 230, §§4, 12.

1. That the hirer will promptly and faithfully pay the amount of money mentioned in the bond when the same becomes due, and it shall be stated in the bond when the same becomes due.

2. That he will treat the convict humanely while in his employment.

3. That he will furnish the convict with a sufficient quantity of good and wholesome food, with comfortable clothing and medicine when sick.

4. That he will not require the convict to work at unreasonable hours, or for a longer time during any one day than other laborers doing the same kind of labor are accustomed to work.

Such bond shall be approved by the county judge and filed in the office of the clerk of the county court.

ART. 3605. If a convict, hired out, escapes from the hirer, such hirer shall nevertheless be liable for the full amount of the bond, unless such convict is re-arrested and placed in the custody of the sheriff of the county in which he was convicted, before such bond becomes due; in which case such hirer shall only be liable to pay for the time that such convict remained with him.

Liability of hirer when convict escapes. *Ib.* p. 229, §4.

Suit on bond.  
*Ib.* §5.  
 (Const., art. 16,  
 §24.)

ART. 3606. Upon the breach of such bond, the county judge or commissioners' court shall cause such bond to be sued upon, in any court having jurisdiction thereof, and the amount collected thereon, after deducting therefrom the collection fees and all costs, shall be paid into the county treasury by the officer collecting the same, and constitute a part of the road and bridge fund of the county.

Convict shall  
 receive full  
 credit for  
 labor.  
*Ib.* §6.

ART. 3607. All moneys arising from hiring out convicts shall be paid over to the county judge and by him paid into the county treasury, and in every case the convict shall receive full credit for the amount of his labor, to be counted and entered in discharge of the fine and costs adjudged against him; and whenever his earnings shall be sufficient to pay in full such fine and costs he shall be discharged.

Record in rela-  
 tion to convicts  
 shall be kept.  
 (Act Aug. 21,  
 1876, p. 230,  
 §15.)

ART. 3608. County judges shall cause a record of all proceedings in relation to the employment or hiring out of convicts to be kept in well-bound books to be provided for that purpose. Said record shall contain—

1. A descriptive list of all persons known as "county convicts."
2. How such convict has been or is employed.
3. The name of the party hiring a convict.
4. The time when and the price at which such convict has been employed or hired out.
5. The amount credited such convict for such employment or hire.
6. The amount of such hire collected.
7. The amount of fine and costs due by such convict.
8. Such other information as may be necessary and requisite under the rules adopted by the commissioners' court.

Officer's costs,  
 how paid.  
*Ib.* §8.

ART. 3609. Whenever the amount realized from the hire of a convict is sufficient to discharge in full the fine and costs adjudged against him, the county judge shall issue a warrant upon the county treasurer in favor of each officer to whom costs may be due, for the amount of his costs, and the same shall be paid out of the road fund of the county, or out of any other funds in the county treasury not otherwise appropriated.

TITLE LXXII.

Pensions.

NOTE.—Chapter 34, acts 1879, without referring to this title, repeals the act of July 28, 1876, from which it was taken, and, in effect, repeals this chapter. It is, however, left standing, as the Codifier did not feel authorized under the law of his appointment, acts 1879, chapter 151, to strike it out. The sixteenth legislature afterward passed a law, chapter 156, acts 1879, granting the veterans a certificate for six hundred and forty acres of land, which will be found in the appendix.—L.

	Article		Article
Who are entitled to pensions.....	3610	No costs in application for pension.....	3618
Pensions granted to the resident indigent only.....	3611	Comptroller shall enter name of applicant upon roll of pensioners, when.....	3619
Application for pension.....	3612	Comptroller shall issue warrant for pension, when.....	3620
Clerk shall file and docket application and give notice.....	3613	Comptroller shall not issue warrant until he is satisfied that the claim is just.....	3621
Application shall be considered, when.....	3614	Treasurer shall pay warrant when presented.....	3622
Trial of the application.....	3615	Comptroller shall strike name of pensioner from roll, when.....	3623
Court shall grant application and issue certificate to applicant, when.....	3616	Pensions shall commence when.....	3624
Court shall deny and dismiss application, when.....	3617		

ARTICLE 3610. To every surviving soldier who served in the war between Texas and Mexico, in the army of the Republic of Texas, at any time between the commencement of the revolution at Gonzales, in 1835, and the first day of January, 1837; and to every surviving signer of the Declaration of Independence of Texas, made at the town of Washington, on the Brazos, on the second day of March, 1836; and to every surviving widow of any such soldier or signer, who remains and has always been unmarried since the death of such soldier or signer, there shall be and is hereby granted an annual pension of one hundred and fifty dollars.

Who are entitled to pensions. (Const., art. 16 §55.) (Act July 28, 1876, p. 61, §1.)

ART. 3611. No person shall be entitled to receive the pension provided for in the preceding article, unless he or she shall be in indigent circumstances and a resident of this state, proof of which shall be made as hereinafter required.

Pensions granted to the resident indigent only. *Ib.* §2.

ART. 3612. Any person desiring to obtain a pension, shall make application therefor in writing in the county of his or her residence, which application shall contain a full statement of the facts which entitle such person to receive such pension, and such application shall be supported by the affidavit of the applicant, and also of two credible persons who are cognizant of the facts therein stated; and such application shall be filed with the clerk of the county court.

Application for pension. *Ib.* §3.

ART. 3613. When the clerk receives such an application he shall file the same and docket it on the trial docket of the county court, and give a notice of the same having been made by posting on the court-house door of the county a written advertisement stating the name of such applicant and the nature of such application, for at least thirty days prior to the beginning of a regular term of the county court for civil business.

Clerk shall file and docket application and give notice. *Ib.* §4.

ART. 3614. After notice given as required in the preceding article, the application shall be considered by the county court at a regular term of such court for civil business in its regular order on the docket, and the state shall be represented therein by the district or county attorney, or by some attorney appointed by the court.

Application shall be considered, when. *Ib.* §5.

ART. 3615. The court, in the consideration of such application, may hear evidence both in support of and contradictory to the statements contained therein, under the same rules as in civil causes, and the trial shall be without a jury.

Trial of the application. *Ib.* §6.

Court shall grant application and issue certificate to applicant, when.

*Ib.* §7.

Court shall deny and dismiss application, when.

No costs in application for pension.

Comptroller shall enter name of applicant upon roll of pensioners, when.

*Ib.* §10.

Comptroller shall issue warrant for pension, when.

*Ib.* §11.

Comptroller shall not issue warrant until he is satisfied that the claim is just.

*Ib.* §12.

Treasurer shall pay warrant when presented.

*Ib.* §11.

Comptroller shall strike name of pensioner from roll, when.

*Ib.* §13.

Pensions shall commence, when.

*Ib.* §14.

ART. 3616. If the court is satisfied that the application states such facts as are required to entitle the applicant to a pension, and that the facts so stated in the application are true, the judge shall cause a certified copy of the application, and the certificate of the court to the truth of the same, to issue to the applicant, which action of the court shall be entered on the minutes thereof as in other cases.

ART. 3617. If the court is not satisfied from the application and the proof that the applicant is entitled to a pension, the certificate provided for in the preceding article shall be denied and such application shall be dismissed.

ART. 3618. No costs shall be taxed or demanded by any officer or witness in an application for a pension.

ART. 3619. Upon the presentation to the comptroller of the certificate of the county court, as provided for in article 3616, by the applicant for a pension, or his attorney, it shall be the duty of the comptroller to enter the name of such applicant upon the roll of pensioners.

ART. 3620. Pensions shall be due and payable quarterly in advance on the first day of January, April, July and October of each year, and it shall be the duty of the comptroller, upon the affidavit in writing of two witnesses as to the identity of the pensioner, together with the certificate under seal of the county judge and clerk of the county court of the county where such pensioner resides, that such pensioner is still living, to issue his warrant upon the treasurer in favor of such pensioner, for each quarter's pension due him, in advance.

ART. 3621. The comptroller shall not issue his warrant in favor of any applicant for a pension until he is satisfied that such applicant is entitled thereto under the provisions of this title, and he may be governed in his decisions by record or other credible and satisfactory evidence; and should the applicant have drawn a pension under the provisions of any former law, it may be taken by the comptroller as proof in his or her case; but should he entertain doubts of the justness of the claim, he shall require further proof.

ART. 3622. Upon presentation of the comptroller's warrant for a pension, at the state treasury, by a party entitled to demand payment thereof, the treasurer shall pay the same out of any funds appropriated for that purpose.

ART. 3623. Whenever the comptroller may be credibly informed that any pensioner has died, or become pecuniarily able to support himself, he shall strike the name of such person from the roll of pensioners, and report to the governor his reason for so doing.

ART. 3624. Pensions granted under this title shall commence on the first day of July, 1876.

TITLE LXXIII.

Physicians.

	Article		Article
Board of medical examiners shall be appointed by judge of each district.....	3625	Board shall issue certificate, when.....	3633
Board shall be composed, how.....	3626	Two members may grant certificate, and temporary certificate may be granted by one.....	3634
Duration of appointment.....	3627	Certificate shall be recorded, etc.....	3635
Shall organize and adopt rules.....	3628	Fee of board for examination.....	3636
Meeting of board and notice to be given, etc.....	3629	Persons to whom this act does not apply....	3637
Board shall have a seal.....	3630	Unlawful to practice medicine without certificate.....	3638
Vacancy in board filled by district judge....	3631		
Duty of board to examine applicants, etc....	3632		

ARTICLE 3625. The presiding judges of the several judicial districts shall, as soon as practicable, severally appoint a board of medical examiners for their respective districts, which appointment shall be in writing and signed by the judge making the same, and delivered to the person appointed.

ART. 3626. Said board of medical examiners shall be composed of not less than three practicing physicians of known ability, and who are graduates of some medical college recognized by the American Medical Association, and who are residents of the district for which they are appointed.

ART. 3627. The appointment of a member of the board of medical examiners shall continue for two years from the date of such appointment.

ART. 3628. The board shall, immediately after appointment, select one of their number president and one secretary, and adopt all necessary rules for the guidance and control of their meetings.

ART. 3629. Said boards shall meet regularly, semi-annually, at some central point in their respective districts, to conduct examinations and grant certificates as hereinafter provided, and they shall give at least one month's public notice of the time and place of their meeting, by publication in at least one newspaper published in the district in which such meeting is to be held.

ART. 3630. Each and every one of such boards shall procure a seal, as soon as practicable after their organization, which seal shall be impressed upon every certificate granted.

ART. 3631. Whenever a vacancy occurs in any of said boards, the same shall be filled by appointment by the judge of the district in which such vacancy occurs.

ART. 3632. It shall be the duty of said board to examine thoroughly all applicants for certificates of qualification to practice medicine in any of its branches or departments, whether such applicants are furnished with medical diplomas or not, upon the following named subjects, to wit: Anatomy, physiology, pathological anatomy and pathology, surgery, obstetrics and chemistry; but no preference shall be given to any school of medicine.

ART. 3633. When the board shall be satisfied as to the qualifications of an applicant, they shall grant to him a certificate to that effect, which certificate shall entitle the person to whom granted to practice medicine in any county, when the same has been recorded as required, by article 3635.

ART. 3634. Any two of the members of such board of medical examiners may grant a certificate of qualification to an applicant, and any member of said board shall have authority to grant a temporary certificate to an applicant upon examination until the next regular meeting of

Board of medical examiners shall be appointed by judge of each district. (Const., art. 16, §31.) (Act Aug. 21, 1876, p. 331, §3.) Board shall be composed, how

Duration of appointment. *Ib.* Shall organize and adopt rules. *Ib.*

Meetings of the board and notice thereof to be given. *Ib.* §4.

Board shall have a seal. *Ib.* §4.

Vacancy in board filled by district judge. *Ib.* §3.

Duty of board to examine applicants, etc. (Const., art. 16, §31.) *Ib.* §3.

Board shall issue certificate, when. *Ib.* §3.

Two members may grant certificate, and temporary certificate may be granted by one. *Ib.* §§3, 4.



the board, at which time the temporary certificate shall cease to be of force.

Certificate shall be recorded, etc.  
*Ib.* §§2, 3.

ART. 3635. The certificate provided for in the two preceding articles shall, before the person to whom it was granted is entitled to practice by virtue thereof, be recorded in the office of the clerk of the county court of the county in which such practitioner may reside or sojourn, in a well-bound book to be kept by the clerk for that purpose, and when so recorded the clerk shall certify thereon, under his official seal, the fact and the date of such record, and shall return such certificate to the person to whom the same was granted, and shall be entitled to demand and receive for such service, from the holder of such certificate, the sum of one dollar.

Fee of board for examination.  
*Ib.* §3.

ART. 3636. The board shall be entitled to demand and receive from each applicant examined the sum of fifteen dollars, whether a certificate be granted to such applicant or not.

Persons to whom this title does not apply.  
*Ib.* §1.

ART. 3637. The provisions of this title shall not apply to the following persons:

1. To those who may have been already qualified for the practice of medicine under an act entitled "An act to regulate the practice of medicine," passed May 16, 1873.

2. To those who have been regularly engaged in the general practice of medicine in this state, in any of its branches or departments, for a period of five consecutive years prior to the first day of January, 1875.

3. To females who follow the practice of midwifery, strictly as such.

Unlawful to practice medicine without certificate.  
*Ib.* §1.

ART. 3638. No person, except those named in the preceding article, shall be permitted to practice medicine in any of its branches or departments without first having obtained and recorded a certificate of qualification from some authorized board of medical examiners, as hereinbefore provided; and any person so offending shall be punished as provided in the Penal Code.

## TITLE LXXIV.

## Pilots.

## CHAPTER ONE.

## COMMISSIONERS OF PILOTS.

	Article		Article
Governor to appoint.....	3639	Further powers and duties.....	3642
Duties of commissioners.....	3640	Same subject.....	3643
Term of residence and of probation for pilots.....	3641	County judge to appoint committee, etc., to act in place of board.....	3644

ARTICLE 3639. The governor shall appoint, with the consent of the senate, for each port whose population and circumstances will warrant it, and also for Matagorda and Lavaca bays from Pass Cavallo to Indianola and Lavaca, a board of five persons of respectable standing, under the denomination of "commissioners of pilots" for such port and bays, three of whom shall be practical seamen and the other two merchants, who shall be commissioned by the governor for the term of two years; and the governor shall, during the recess of the legislature, be authorized to suspend, until the next session of the same, any of said commissioners, and to fill, until the same period, any vacancies in the board caused by death, resignation or otherwise; *provided, however*, that no member of the board of commissioners shall be directly or indirectly pecuniarily interested in any pilot boat or branch pilot in the business of their trust.

Governor to appoint.  
(Acts April 17, 1846, p. 79, §2; Feb. 9, 1861, p. 19.)  
P.D. 4762, 4775.

ART. 3640. Said board of commissioners shall be authorized, if they deem it advisable, to examine and decide on the qualifications of any branch or deputy pilot whom they find already appointed at the time of their organization; and it shall be their duty to examine each new applicant for the office of branch or deputy pilot, and to decide on his qualifications, recommending to the governor, where new appointments are proper, such as are meritorious; and it shall also be their duty to examine into any case of alleged or supposed misconduct or inefficiency in branch or deputy pilots; and they shall be authorized, after a due hearing of accusation, testimony and defense, to suspend such pilot if sufficient cause appear, and during such suspension he shall not be allowed to exercise the functions of his office; the governor shall, however, have power at his will and pleasure to remove any branch pilot, or to reinstate any one of the same who has been suspended by the commissioners.

Duties of commissioners  
(Act April 17, 1846, p. 79, §3.)  
P.D. 4763.

ART. 3641. The board of commissioners of pilots of each port shall require a certain term of residence in the State of Texas, not less than two years, to authorize any person to exercise the functions of branch pilot for their port or said bays; as also to establish a term of probation not exceeding one year, as a deputy pilot, before any person can exercise the functions of branch pilot.

Term of residence and probation for pilots.  
*Ib.* §4.  
P.D. 4764.

ART. 3642. The board of commissioners of pilots shall have authority, within the limits provided in this title, to fix the rates of pilotage, and to establish regulations respecting the stations whereat and the times wherein pilots shall be on duty, with provisions for leave of absence; as also respecting the class, condition, number and use of pilot boats, and such other minor regulations, compatible with the provisions of this title, as may be needed for the government of pilots and for the order and good effect of the proceedings of the board, of which proceedings a record

Further powers and duties.  
*Ib.* §7.  
P.D. 4766.

shall be kept; *provided*, no regulation shall be adopted repugnant to the constitution.

Same subject.  
*Ib.* §7.  
P.D. 4767.

ART. 3643. The board of commissioners of pilots shall be authorized and required to hear and determine all disputes that may arise respecting pilots and pilotage; to award to pilots extra compensation for extra services to vessels in distress; as also compensation for injurious loss of time incurred by pilots in waiting on vessels or by being carried off to sea on vessels by default of the master or owner when such pilots might have been landed; *provided, always*, that no more than three dollars for each day shall be awarded for mere loss of time; and it shall be the duty of said board to superintend and generally attend to all matters appertaining to pilots and pilotage; but from any decision of said board an appeal may be taken to the court having cognizance of the case.

County judge to appoint committee, etc., to act in place of board.  
*Ib.* §13.  
P.D. 4773.

ART. 3644. At any port whose population and circumstances do not warrant the appointment of a board of commissioners of pilots in the manner before provided, the governor may authorize the county judge of the county to appoint a provisional committee of from three to five persons of good character and maritime experience, who shall be authorized under this chapter to establish the rates of pilotage and the rules for governing pilots; to examine the qualifications of pilots and applicants for the office; to investigate the case of any pilot charged with misconduct or inefficiency, and to suspend him if sufficient cause appear.

CHAPTER TWO.

BRANCH PILOTS AND PILOTS FOR MOUTH OF BRAZOS RIVER AND MATAGORDA AND LAVACA BAYS.

	Article		Article
Appointment, term, and vacancies.....	3645	Pilots for mouth of Brazos.....	3653
Bond and oath.....	3646	Their bond, by whom approved.....	3654
May appoint deputies.....	3647	Pilots for Matagorda and Lavaca bays.....	3655
Malefiance and punishment.....	3648	To keep channels staked out.....	3656
Pilotage.....	3649	Pilotage for said bays.....	3657
Exemptions from extra pilotage.....	3650	Rules for branch pilots applicable.....	3658
Consignee responsible for pilotage.....	3651	Penalty for unlicensed pilot.....	3659
Unauthorized pilot to forfeit fifty dollars..	3652		

Appointment, term and vacancies.  
(Act April 17, 1846, p. 79, §1.)  
P.D. 4761.

ARTICLE 3645. The governor is authorized and required to appoint at each of the ports such number of branch pilots as may from time to time be necessary, each of whom shall hold his office for the term of two years; in case of a vacancy in said office the appointment shall be for the unexpired term.

Bond and oath.  
*Ib.* §5.  
(Act Feb. 9, 1861, p. 19, §1.)  
P.D. 4765, 4775.

ART. 3646. Before entering upon the duties of his office each branch pilot shall enter into bond, with two or more good and sufficient sureties, in the sum of five thousand dollars, payable to the governor and his successors in office, and conditioned for the faithful performance of the duties of his office; such bond shall be approved by the board of commissioners of pilots for the port, or if there be no such board, by the county judge of the county in which the port is situated, and forwarded to the governor, to be by him deposited in the office of the secretary of state; each pilot shall also take and subscribe the oath of office prescribed in the constitution, which shall be indorsed on said bond, and together with the bond, shall be recorded in the office of the clerk of the county court of the county in which such port is situated before being forwarded to the governor; and certified copies of said bonds, under the hand and seal of the county clerk, may be used as evidence in all the courts with like effect as the originals.

May appoint deputies.  
*Ib.* §8.  
P.D. 4768.

ART. 3647. Each branch pilot may appoint, subject to examination and approval by the board of commissioners, two deputies, for whose acts the branch pilot so appointed shall be responsible; and any branch pilot

who shall appoint a deputy without the approval of said board, shall forfeit his own appointment; and the said board shall have authority to restrict all deputy pilots from piloting over the bar, vessels of over a certain draught of water.

ART. 3648. Any branch or deputy pilot, who shall be guilty of taking charge of a vessel, in a state of inebriety shall, upon proof of the same, for the first offense be suspended for one month, and for the second offense be dismissed, and be rendered incapable of again serving in either capacity; and if any branch or deputy pilot shall willfully or by neglect cause the wreck of a vessel, he shall be dismissed and be rendered incapable of again serving in either capacity, and shall be subject to such punishment as is prescribed by law.

Malfeasance  
and punish-  
ment.  
*Ib.* §10.  
P.D. 4770.

ART. 3649. The rate of pilotage on any class of vessels shall not, in any port of this state, exceed four dollars for each foot of water which the vessel at the time of piloting draws, and whenever a vessel, except of the classes below excepted, shall decline the service of a pilot, offered outside the bar, and shall enter the port without the aid of one, she shall be liable to the first pilot, whose services she so declined, for the payment of half pilotage; and any vessel which, after being brought in by a pilot, shall go out without employing one, shall be liable to the payment of half pilotage to the pilot who brought her in, or if she has come in without the aid of a pilot, though offered outside, she shall, in so going out, be liable for the payment of half pilotage to the pilot who had first offered his services before she came in, but if she has come in without the aid of a pilot, or the offer of one outside, she shall not, in case of going out without a pilot, be liable to half pilotage. At any port where vessels shall receive or discharge their cargoes at an anchorage outside of the bar, such vessels shall be liable for pilotage at the above rate to such anchorage, but shall not be liable for or compelled to pay pilotage from such anchorage to the open sea; and if any vessel bound from the open sea to such anchorage, while under way, shall decline the services of a pilot, and shall afterward receive or discharge any portion of her cargo at such anchorage, on the lighters or otherwise, she shall be liable for the payment of half pilotage, at the above rate, to such anchorage to the first pilot whose services shall have been tendered to and declined by her, but not liable for any pilotage from such anchorage to the open sea; and when a pilot takes charge of a vessel twenty miles outside of the bar, and brings her to it, he shall be entitled to one-fourth pilotage for such *off shore service*, in addition to what he is entitled to recover for bringing her in; but, if such *off shore service* be declined, no portion of said compensation shall be recovered.

Pilotage.  
(Act Sept. 26,  
1866, pp. 14, 15.)  
P.D. 7201.  
(Acts 1879,  
ch. 89, p. 99.)

ART. 3650. The following classes of vessels shall be free from any charge for pilotage, unless for actual service, to wit: All vessels of twenty tons and under; all vessels of whatsoever burthen, owned in the State of Texas and registered and licensed in the district of Texas, when arriving from or departing to any port of the State of Texas; all vessels of seventy-five tons and under, owned and licensed for the coasting trade in any part of the United States, when arriving from or departing to any port in the State of Texas; all vessels of seventy-five tons and under, owned in the State of Texas and licensed for the coasting trade in the district of Texas, when arriving from or departing to any port in the United States.

Exemptions  
from extra  
pilotage.  
*Ib.* p. 15.  
P.D. 7201.

ART. 3651. The consignee of any vessel shall be held responsible for the pilotage of said vessel.

Consignee re-  
sponsible for  
pilotage.  
(Act April 17,  
1846, p. 79, §12.)  
P.D. 4772.  
Unauthorized  
pilot to forfeit  
\$50.  
*Ib.* §11.  
P.D. 4771.

ART. 3652. If any person not appointed a branch or deputy pilot, shall pilot any ship or vessel out of or into any port when a branch or deputy pilot has offered such service, the person so piloting shall forfeit

and pay to such branch or deputy pilot, the sum of fifty dollars, to be recovered before any court having cognizance of the case.

Pilots for mouth of Brazos.  
(Act March 18, 1848, p. 144.)  
P.D. 4776, 4782.

ART. 3653. The governor shall also appoint a sufficient number of competent pilots for the mouth of the Brazos river, whose terms of office, mode of qualification and pilotage shall be the same as prescribed in the preceding articles for branch pilots; and they shall be entitled to all the privileges, and shall exercise all the powers, and discharge all the duties prescribed for branch pilots, and be subject to like penalties.

Bond, by whom approved.  
*Ib.*

ART. 3654. The bonds of pilots for the mouth of the Brazos river shall be approved by the county judge of Brazoria county.

Pilots for Matagorda and Lavaca bays.  
(Act Feb. 9, 1861, p. 19.)  
P.D. 4775.

ART. 3655. The governor shall also appoint not less than two nor more than four competent pilots for Matagorda and Lavaca bays, from Pass Cavallo to Indianola and Lavaca, who shall hold their offices for the same term as branch pilots, and whose mode of qualification, powers and privileges, in so far as the same are applicable, shall be the same; the bonds of such pilots shall be approved by the county judge of Calhoun county.

To keep channels staked out.  
*Ib.*

ART. 3656. It shall be the duty of pilots appointed under the preceding article to keep the channels of said bays properly staked and marked out, and in default thereof, they shall be subject to removal or suspension.

Pilotage for said bays.  
*Ib.*

ART. 3657. The rate of pilotage for said bays shall be two dollars and fifty cents for each foot of water the vessel may draw at the time of piloting; and all vessels that may draw five feet or more, shall be subject to pay any licensed pilot for said bays, whose services are tendered and declined, one-half the pilotage herein prescribed.

Rules for branch pilots applicable.  
*Ib.*

ART. 3658. All the provisions of this chapter relating to branch pilots at ports, in so far as the same are applicable and not expressly qualified, shall apply to and govern pilots appointed for the mouth of the Brazos river and for Matagorda and Lavaca bays.

Penalty for unlicensed pilot.  
*Ib.*

ART. 3659. If any person not a licensed pilot or deputy shall pilot any vessel into or out of the mouth of said river, or through the channel of said bays, up or down, he shall forfeit and pay to any pilot licensed or commissioned for the mouth of said river, or for said bays, full pilotage for such vessel, to be recovered by suit in any court of competent jurisdiction.

TITLE LXXV.

Principal and Surety.

Article	Article
Surety may require suit to be brought..... 3660	Rights of surety who makes payment on judgment..... 3664
Discharged by failure to sue, when..... 3661	One surety may have execution against co-surety, when..... 3665
May have question of suretyship tried, when..... 3662	Sheriff, etc., has same right as surety, when..... 3666
Execution levied first on property of principal..... 3663	Surety not to be sued alone, unless, etc.... 3667
	Who is surety within this title..... 3668

ARTICLE 3660. Any person bound as surety upon any contract for the payment of money or the performance of any act when the right of action has accrued, may require, by notice in writing, the creditor or obligee forthwith to institute suit upon such contract.

Surety may require suit to be brought. (Act Feb. 5, 1858.) P.D. 4783.

ART. 3661. If the creditor or obligee, not being under legal disability, shall fail to bring his suit to the first term of the court thereafter, or to the second term, showing good cause why he did not bring it to the first term and prosecute the same to judgment and execution, the surety giving such notice shall be discharged from all liability thereon.

Discharged by failure to sue, when. P.D. 4784.

ART. 3662. When any suit is brought against two or more defendants upon any contract, any one or more of the defendants being surety for the others, the surety may, upon a written statement of the matter being set out in his answer, cause the question of suretyship to be tried and determined upon the issue made for the parties defendant at the trial of the cause or at any time before or after the trial, or at a subsequent term; but such proceedings shall not delay the suit of the plaintiff.

May have question of suretyship tried, when. P.D. 4785.

ART. 3663. If the finding of such issue be in favor of the surety the court shall make an order directing the sheriff to levy the execution first upon the property of the principal subject to execution, and situate in the county in which the judgment was rendered, before a levy shall be made upon the property of the surety, if so much property of the principal can be found as will in the opinion of the sheriff be sufficient to make the amount of the execution; otherwise the levy to be made on so much property of the principal as may be found, if any, and upon so much of the property of the surety as may be necessary to make the amount of the execution; and the clerk shall make a memorandum of such order on the execution.

Execution, levied first on property of principal. P.D. 4786.

ART. 3664. When any person, being surety in any undertaking whatever, shall be compelled to pay any judgment, or any part thereof, or shall make any payment which is applied upon such judgment by reason of such suretyship, the said judgment shall not be discharged by such payment, but shall remain in force for the use of such surety, and shall be considered as assigned to such surety, together with all the rights of the creditor thereunder, to the extent of the payment thereon made by such surety, and interest thereon; and such surety shall be entitled to have execution thereon in the name of the creditor for the use of such surety against the principal debtor for the full amount of such payment and interest thereon and all costs, which execution shall be issued upon the application of such surety to the clerk, or court, as the case may be, and shall be levied, collected and returned as in other cases.

Rights of surety, who makes payment on a judgment. P.D. 4787.

ART. 3665. Should there be more than one surety, and one or more of them has failed to pay his proportionate part of the judgment, execution may issue, as provided in the preceding article, against the principal for

One surety may have execution against a co-surety, when. P.D. 4788.

the use of the surety who has paid more than his proportionate part for the whole amount paid by him and interest thereon, and also against his co-sureties for their proportionate part of the excess so paid by him, and interest thereon.

Sheriff, etc.,  
has same  
rights as  
surety, when.  
P.D. 4787.

ART. 3666. If a sheriff or other officer shall be compelled to pay any judgment, or any part thereof, by reason of any default of such officer, except for failing to pay over any money collected, or for wasting property levied on, such sheriff or other officer shall be entitled to have execution therefor against the principal defendant in such judgment as provided in the case of a surety.

Surety not to  
be sued alone,  
unless, etc.

ART. 3667. No surety shall be sued unless his principal is joined with him, or unless a judgment has previously been rendered against his principal, except in the cases provided for in article 1208.

Who is surety  
within this  
title.  
P.D. 4789.

ART. 3668. The remedy provided for sureties by this title extends to indorsers, guarantors, drawers of bills which have been accepted, and every other suretyship, whether created by express contract or by the operation of law.

TITLE LXXVI.

Public Buildings and Grounds.

NOTE.—Chapter 143, general appropriation bill, acts 1879, page 158, puts the public buildings and grounds under the supervision of the commissioner of insurance, statistics and history.

And as to sale of useless or injured property belonging to the state, and disposition of the proceeds, see acts 1879, extra session, chapter 39.—L.

	Article		Article
Appointment and term of office of superintendent.....	3669	Duties pertaining to state cemetery.....	3673
Bond and oath.....	3670	Shall file inventory of property.....	3674
Removal and liability on bond.....	3671	Certain offices and buildings excepted from his control.....	3675
His duties.....	3672	Sheriffs to have charge of court-houses.....	3676

ARTICLE 3669. The governor shall appoint a suitable person as superintendent of public buildings and grounds, who shall hold his office for the term of two years. In case of a vacancy in said office, the appointment shall be for the unexpired term.

ART. 3670. Before entering upon the duties of his office the superintendent of public buildings and grounds shall execute a bond in the sum of two thousand dollars, payable to the state, with two or more good and sufficient sureties, to be approved by the governor, and conditioned for the faithful discharge of the duties of said office. He shall also take and subscribe the oath of office prescribed by the constitution, which oath and bond shall be filed in the office of the secretary of state.

ART. 3671. The superintendent of public buildings and grounds may be removed from office at any time by the governor for neglect of duty, incompetency, or other sufficient cause; and he and his sureties shall be liable on his official bond for all damages occasioned by the injury or loss of any public property under his care, or resulting from any neglect of duty on his part.

ART. 3672. It shall be the duty of the superintendent to take charge and control of the public halls of the capitol, including the senate chamber and hall of the house of representatives, and also of the capitol grounds and state cemetery, together with all public property pertaining thereto, and to take care that the same are safely kept and preserved. He shall keep the gates and fences in proper repair, shall give his personal attention and supervision to the trees and shrubbery therein, and prevent all depredations thereon from stock or otherwise; and from time to time, as may be authorized by law, he shall purchase and plant out additional trees or shrubbery, and do and perform such other duties as may be imposed upon him by law.

ART. 3673. The superintendent shall also control, superintend and beautify the grounds of the state cemetery. He shall preserve such grounds and everything pertaining thereto from depredation and injury, and shall procure and erect at the head of each grave without a permanent monument an obelisk of marble on which shall be engraved the name of the deceased therein buried.

ART. 3674. Upon his qualification the superintendent shall file in the office of the secretary of state a true and correct inventory of all public personal property committed to his custody, verified by his affidavit, and a like inventory for all additions to such property during his term of office; and on his retirement from office such property shall be delivered to his successor, who shall receipt for the same.

Appointment and term of office of superintendent. (Act April 29, 1874, p. 165.) P.D. 7234f.

Bond and oath. *Ib.* §2. P.D. 7234g.

Removal and liability on bond. *Ib.* §4. P.D. 7234i.

His duties. *Ib.* 1, 2, 3, 5. P.D. 7234f, 7234j.

Duties pertaining to state cemetery. (Act April 14, 1871, p. 35.) P.D. 5885.

Shall file inventory of property. (Act April 29, 1874, p. 165, §2.)



Certain offices  
and buildings  
excepted from  
his control.  
(Act Feb. 2,  
1860, p. 35, §4.)  
P.D. 4803.

ART. 3675. The executive mansion and executive offices in the basement of the capitol shall be under the special charge and control of the governor; the treasury building under the special charge and control of the comptroller and treasurer jointly; the supreme court building under the special charge and control of the judges of the supreme court, and when the court is not in session at Austin, under the special charge of the clerk of that court; the land office and grounds under the special charge of the commissioner; and the various offices in the capitol building occupied by heads of department, under the special control of their respective occupants. The several officers above enumerated shall be responsible for the safe-keeping of their respective offices and buildings, and their control of said offices and buildings shall not be interfered with by the superintendent of public buildings and grounds.

Sheriffs to  
have charge of  
court-houses.

ART. 3676. The sheriffs of the several counties shall have charge and control of the court-houses of their respective counties, subject to such regulations as the commissioners' court may prescribe; and the official bonds of such sheriffs shall extend to and include the faithful performance of their duties under this article.

TITLE LXXVII.

Public Debt.

Article	Article
Public bonded debt recognized.....	Laws to remain in force until bonds are paid
3677	3678

ARTICLE 3677. All outstanding bonds or other obligations, issued under the provisions of either of the following named acts of the legislature, are hereby recognized as valid and binding obligations upon the state, and the principal and interest thereof shall be paid in accordance with the terms of the laws under which they were respectively issued:

Public bonded debt recognized. (Const., art. 3, §48.) (Laws 1866, p. 122.) (Laws 1870, p. 45.) (Laws 1871, 1 sess. p. 67.) *Ib.* p. 106. (Laws 1871, 2 sess., p. 63.) (Laws 1873, p. 119.) (Laws 1874, pp. 14, 90, 152.) (Laws 1874, p. 114.) *Ib.* p. 207. (Laws 1876, p. 40.)

1. An act entitled "An act to ascertain the amount of, and adjusting and funding the state debt, and to state any and all accounts between the state and individuals," approved November 9, 1866.

2. An act entitled "An act providing for the issuance and sale of the bonds of the state for the purpose of meeting the appropriations made for maintaining ranging companies on the frontier," approved August 5, 1870.

3. An act entitled "An act to provide for the payment of the public debt of the State of Texas," approved May 2, 1871.

4. An act entitled "An act to authorize the governor to prepare and issue bonds to an amount sufficient to meet any deficiency in the receipts of revenue for the years 1871 and 1872, and also providing for the payment of said bonds and interest thereon," approved May 19, 1871.

5. An act entitled "An act authorizing a loan to meet deficiencies in the revenue of the state," approved December 2, 1871.

6. An act entitled "An act to authorize the holders of state warrants to surrender the same to the state treasurer and receive state bonds in lieu thereof," approved May 30, 1873.

7. An act entitled "An act to provide money to pay the floating indebtedness of the state," approved March 4, 1874; an act supplementary and amendatory thereof entitled "An act to further provide for the sale of bonds to pay the public debt," approved April 13, 1874; and an act supplemental to the last named act, entitled "An act supplemental to 'an act to further provide for the sale of bonds to pay the public debt, approved April 13, 1874,'" approved April 27, 1874.

8. An act entitled "An act granting pensions to the surviving veterans of the revolution which separated Texas from Mexico, including the Santa Fé and Mier prisoners; the survivors of the company of Captain Dawson, who was massacred near San Antonio in the year 1842; the survivors of those who were captured at the city of San Antonio in the fall of the year 1842 and taken to the castle of Perote and confined therein; and the survivors of Deaf Smith's spy company; and to provide for the liquidation and settlement of all arrearages due said veterans under an act of thirteenth of August, 1870, previous to the first of July, 1874," approved April 21, 1874.

9. An act entitled "An act to amend an act entitled 'an act to authorize the holders of state warrants to surrender the same to the state treasurer, and to receive state bonds in lieu thereof,' approved May 30, 1873," approved May 2, 1874.

10. An act entitled "An act to provide for the payment of the bonds of the State of Texas that will become due and that are retireable in the years 1876 and 1877, and to make adequate provision for the floating indebtedness of the state, and to make an appropriation to carry into effect the provisions of the same," approved July 6, 1876.

All laws to remain in force until bonds are paid.

ART. 3678. All the provisions of the several acts mentioned in the preceding article, in so far as the same may affect the public credit, the rights of public creditors thereunder, the payment of the principal and interest due or hereafter accruing on any bonds or obligations issued thereunder, or the creation and disposition of any sinking fund provided for therein, shall remain in full force and effect as laws of this state until the principal and interest of all bonds or obligations issued or accrued under such act are fully paid off and discharged.

NOTE.—As to the sale of new bonds for the purpose of retiring outstanding bonds of the state, see chapter 113, acts 1879.—L.

TITLE LXXVIII.

Public Education.

CHAPTER ONE.

UNIVERSITY OF TEXAS.

University funds.....	Article 3679	Investment shall continue, etc.....	Article 3681
Shall be held in trust and invested.....	3680		

ARTICLE 3679. The following shall constitute a permanent fund for the University of Texas, to be used for the benefit of said university when it shall be established and organized in accordance with the provisions of the constitution on the subject:

University funds.  
(Const., art. 5, §§10-15.)  
(Act Feb. 11, 1858, p. 148.)  
P. D. 3573.  
(See acts 1879, extra session, ch. 18.)

1. All lands and other property heretofore set apart and appropriated for the establishment and maintenance of the University of Texas under any previous law.

2. Also one million acres of the unappropriated public domain of the state set apart for that purpose by the present constitution.

3. All bonds that have heretofore or that may hereafter be purchased with the proceeds of the sales of the university lands.

4. All proceeds of the sales of the university lands that are now or may hereafter be placed in the treasury of the state.

5. In addition to the foregoing, all grants, donations and appropriations that may be hereafter made, or that may be received from any other source.

ART. 3680. Such portion of the funds specified in the preceding article as are now in the possession of the state, or that may hereafter be received, shall be held in trust by the state for the use and maintenance of said university; and all of such funds as are susceptible of investment, and that have not heretofore been invested, shall be invested for the benefit of such university in the manner provided in the constitution and laws on that subject.

Shall be held in trust and invested.  
*Ib.*

ART. 3681. Said investment shall continue until the legislature shall establish said university, and for such longer period thereafter as the legislature may determine.

Investment shall continue, etc.  
*Ib.*

CHAPTER TWO.

AGRICULTURAL AND MECHANICAL COLLEGE.

Agricultural and Mechanical College made branch of University of Texas.....	Article 3682	Board shall appoint president, professors, etc., of college, etc.....	Article 3693
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Pay shall not exceed \$100 per annum.....	3690		
Pay of secretary.....	3691	Powers and duties of board of directors....	3702
Director to be notified of his election, etc.....	3692		

Agricultural and Mechanical College made a branch of the University of Texas.  
(Const., art. 7, §13; 12 U.S. Stat., p. 503; 14 *Ib.* p. 203; act March 9, 1875, p. 73.)  
P. D. 5693 *et seq.*

ARTICLE 3682. The Agricultural and Mechanical College of Texas, established by an act of the legislature passed April 17, 1871, located in the county of Brazos, and by the constitution made and constituted a branch of the University of Texas, for instruction in agriculture, the

mechanical arts and the natural science connected therewith, shall be managed and controlled as herein provided.

ART. 3683. The leading object of this college shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanical arts, in such manner as the legislature may prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life.

ART. 3684. The governor, lieutenant-governor, speaker of the house of representatives and one director from each congressional district, shall be and are constituted a board of directors for said college.

ART. 3685. The directors named in the preceding article shall be elected by joint ballot of both branches of the legislature, and shall hold their offices for two years from the date of their election, and until their successors are qualified.

ART. 3686. Should a vacancy occur in the said board by the death, resignation or otherwise of any one of the directors so elected, the governor shall fill the same by appointment, which shall continue until the next general election.

ART. 3687. The governor shall *ex officio* be president of the board, and shall cause the same to convene whenever he shall deem it expedient to do so, for the transaction of business, and a majority of the board shall be sufficient for that purpose.

ART. 3688. The said board of directors shall elect a secretary, whose duty it shall be to keep in a well-bound book all the proceedings of said board.

ART. 3689. Each of the said board of directors, except the governor, shall be allowed the sum of five dollars per day for each day they may attend the meetings of the board, and they shall also be allowed five dollars for each and every twenty-five miles traveled from their place of residence to the place of meeting; but where the meeting of the board occurs during the session of the legislature, the lieutenant-governor and the speaker of the house of representatives shall not receive mileage and per diem for their attendance on the meeting of said board.

ART. 3690. The daily pay of the directors, as provided for in the preceding article, shall in no case exceed one hundred dollars per annum.

ART. 3691. The secretary of the board shall receive such compensation as the board may allow, but it shall in no event exceed the sum of five hundred dollars per annum.

ART. 3692. The chief clerk of the house of representatives and secretary of the senate shall forward a certificate to each director within ten days after his election, notifying him of the fact of his election as such director, and should any director so notified fail for sixty days to give notice to the governor of his acceptance of the office, his election shall be deemed void and his place shall be filled as in case of vacancy,

ART. 3693. The board of directors shall, when necessary, appoint the president and professors of the college and such other officers as from time to time they may think proper to keep the college in successful operation, and may, from time to time, abolish any office that is in their judgment unnecessary.

ART. 3694. Said board shall also, from time to time, make such by-laws, rules and regulations for the government of said college as they may deem meet and proper for that purpose, and shall regulate the course of study, the rates of tuition, the manner of performing labor, and the kind of labor to be performed by the students of said college, and shall also prescribe the course of discipline necessary to enforce the faithful discharge of the duties of the professors, officers and students.

Leading objects of the college.  
(12 U.S. Stat., p. 503; act Cong., July 2, 1862, §4.)

Board of directors, who shall constitute.

*Ib.*  
(Act March 9, 1875, p. 73, §1.)

Election of directors, and their term of office.

*Ib.* §2.

Vacancy, how filled.

*Ib.*

Governor shall be president of the board, etc.

*Ib.* §4.

Secretary to be elected, and his duty.

*Ib.* §6.

Pay of directors.  
(Acts Aug. 9, 1876, p. 93, §1; March 9, 1875, p. 73, §7.)

Pay shall not exceed \$100 per annum.

Pay of secretary.

(Act March 9, 1875, p. 73, §6.)

Director to be notified of his election, etc.

*Ib.* §5.

Board shall appoint president, professors, etc., of the college, etc.

*Ib.* §3.

May make by-laws, etc.

*Ib.*

ART. 3695. It shall be the duty of the board to have printed for the benefit of the people of the state and officers and students of the said college, such by-laws, rules and regulations as they are authorized by the preceding article to prescribe.

By-laws, etc., shall be printed  
*Ib.*

ART. 3696. The money arising from the sale of the one hundred and eighty thousand acres of land, donated to this state by the United States under the provisions of an act of Congress passed on the second day of July, 1862, and an amended act of congress of July 23, 1866, shall constitute a perpetual fund, under the conditions and restrictions imposed by the above recited acts, for the benefit of said college, and the investment of the same, heretofore made in the bonds of the state, shall continue until the legislature shall by law direct it to be invested otherwise in furtherance of the interests of said college and in accordance with the terms on which it was received.

Perpetual fund  
(12 U. S. Stat. p. 503; 14 U. S. Stat., p. 203.)  
(Act March 9, 1875, p. 73, §8.)  
P. D. 5793.

ART. 3697. The interest heretofore collected by the state board of education in accordance with the provisions of the act of August 21, 1876, due at the end of the fiscal year of 1876, on the bonds belonging to said Agricultural and Mechanical College and invested in six per cent. state bonds, shall also constitute a part of the perpetual fund of said college until the legislature shall otherwise provide.

Accrued interest on bonds, how invested.  
(Act Aug. 21, 1876, p. 283, §1.)

ART. 3698. It shall be the duty of the state board of education to collect the semi-annual interest on the bonds mentioned in the two preceding articles as the same becomes due, and place the same in the treasury of the state to the credit of said college fund.

Duty of state board of education.  
(Const., art. 7, §8.)  
(Acts Aug. 21, 1876, p. 283, §2; March 9, 1875, p. 73, §8.)

ART. 3699. The interest on the bonds which were purchased with the proceeds of the said land scrip, and also the interest on the bonds in which the accrued interest of said bonds was invested, as heretofore set out in this chapter, is set apart exclusively for the use of said college, and shall be drawn from the treasury by the board of directors on vouchers audited by said board, or approved by the governor and attested by the secretary of the board.

Money, how drawn from the treasury, and for what purpose.  
(Act March 9, 1875, p. 73, §8.)  
(See acts 1879, extra session, ch. 18.)

ART. 3700. On such vouchers being filed with the comptroller, it shall be his duty to draw his warrant on the state treasurer for the same from time to time as the same may be needed to pay the directors, professors and officers of the college.

Duty of comptroller to issue warrant, when.  
*Ib.*

ART. 3701. The Agricultural and Mechanical College for the benefit of colored youths, located in Waller county, as established by an act of the legislature, approved August 14, 1876, shall be under the supervision and control of the board of directors of the Agricultural and Mechanical College located in Brazos county, and established by an act of the legislature passed April 17, 1871.

College for colored youths.  
(Act Aug. 14, 1876, p. 136, §§1, 2.)

ART. 3702. The said board of directors shall in all respects have the same powers and perform the same duties in reference to the college named in the preceding article as they are clothed with in reference to the Agricultural and Mechanical College located in Brazos county.

Powers and duties of the board of directors.  
(Const., art. 7, §14.)

## CHAPTER THREE.

### THE PUBLIC FREE SCHOOLS.

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Constitutional provisions relating to the public free schools. (Const., art. 7, §§2-6.)

ARTICLE 3703. For the purpose of establishing and maintaining a system of public free schools, the constitution has made the following provision for a permanent and an available school fund, and in order that all the provisions of law relating thereto may be brought together, the several sections of the constitution are here reproduced :

*Art. vii, §2.* All funds, lands and other property heretofore set apart and appropriated for the support of public schools; all the alternate sections of land reserved by the state out of grants heretofore made or that may hereafter be made to railroads or other corporations of any nature

whatsoever; one-half of the public domain, and all sums of money that may come to the state from the sale of any portion of the same, shall constitute a perpetual public school fund.

§3. There shall be set apart annually not more than one-fourth of the general revenue, and a poll tax of one dollar on all male inhabitants of this state between the ages of twenty-one and sixty years, for the benefit of the public free schools.

§4. The lands herein set apart to the public free school fund shall be sold under such regulations at such times and on such terms as may be prescribed by law, and the legislature shall not have power to grant any relief to the purchasers thereof. The comptroller shall invest the proceeds of such sales, and of those heretofore made, as may be directed by the board of education herein provided for, in the bonds of this state, if the same can be obtained, otherwise in United States bonds; and the United States bonds now belonging to said fund shall likewise be invested in state bonds, if the same can be obtained on terms advantageous to the school fund.

§5. The principal of all bonds and other funds, and the principal arising from the sale of the lands hereinbefore set apart to said school fund, shall be the permanent school fund; and all the interest derivable therefrom and the taxes herein authorized and levied shall be the available school fund, which shall be applied annually to the support of the public free schools. And no law shall ever be enacted appropriating any part of the permanent or available school fund to any other purpose whatever; nor shall the same or any part thereof ever be appropriated to or used for the support of any sectarian school; and the available school fund herein provided shall be distributed to the several counties according to their scholastic population, and applied in such manner as may be provided by law.

§6. All lands heretofore or hereafter granted to the several counties for education or schools are of right the property of said counties respectively to which they were granted, and title thereto is vested in said counties, and no adverse possession or limitation shall ever be available against the title of any county. Each county may sell or dispose of its lands in whole or in part, in a manner to be provided by the commissioners' court of the county. Actual settlers residing on said land shall be protected in the prior right of purchasing the same to the extent of their settlement, not to exceed one hundred and sixty acres, at the price fixed by said court, which price shall not include the value of existing improvements made thereon by such settlers. Said lands and the proceeds thereof, when sold, shall be held by said counties alone as a trust for the benefit of public schools therein; said proceeds to be invested in bonds of the State of Texas or of the United States, and only the interest thereon to be used and expended annually.

#### GENERAL PROVISIONS.

ART. 3704. The one dollar poll tax, levied and collected for the use of public free schools, exclusive of the cost of collection; the interest arising from any bonds or funds belonging to the permanent school fund, and all the interest derivable from the proceeds of sales of land, heretofore set apart for the permanent school fund, which have hitherto, or may hereafter come into the state treasury; and such amount of the general revenue levied and collected after the thirty-first day of December, A. D. 1878, as the legislature shall from time to time appropriate, shall constitute the available school fund, and shall be appropriated to the support and maintenance of the public free schools.

Available school fund provided for. (Acts 1879, extra session, ch. 6, §§1, 2.) (And see *lb.* ch. 18.)

NOTE.—The rental of public free school lands, inclosed by private parties, is required by section 5, chapter 92, acts 1879, to be paid into the state treasury as a part of the available school fund. See appendix for the act in full. But chapter 6, acts 1879, extra session, repeals "all laws, or parts of laws, levying or collecting,

Rental of public free school lands.



segregating or setting apart any part of the revenue for the support of public free schools," except as stated in article 3704; and, query, does it repeal so much of chapter 92, acts of the regular session, as is cited above?—L.

Sectarian teachings prohibited.  
*Ib.* p. 201, §16.

ART. 3705. No form of religion shall ever be taught in any of the public free schools; and no school in which any sectarian religion is taught, either directly or indirectly, in or out of school hours, shall be entitled to any portion of the free school fund.

White and colored races to share pro rata.

ART. 3706. All free school funds shall be appropriated in each county for the education alike of white and colored children, and each race shall receive its just pro rata as far as practicable, in each county, according to the number of children of each race within the scholastic age embraced within the respective organized school communities.

Scholastic age.  
*Ib.* §19.

ART. 3707. All children, without regard to race or color, between the ages of eight and fourteen years, shall be entitled to the benefit of the available free school fund.

Scholastic year.

ART. 3708. The scholastic year shall commence on the first day of September of each year and end on the thirty-first day of August thereafter.

White and colored children to be separately taught. (Const., art. 7, §7.)  
(Act Aug. 19, 1876, p. 201, §54.)

ART. 3709. The children of the white and colored races shall be taught in separate schools; and in no case shall any school consisting partly of white and partly of colored children receive any aid from the free school fund.

"Colored race," etc., defined.  
*Ib.* p. 202, §20.  
P.C. 326-7.

ART. 3710. The terms "colored race" and "colored children," as used in the preceding articles and elsewhere in this chapter, include all persons of mixed blood, descended from negro ancestry to the third generation inclusive, although one ancestor of each generation may have been a white person.

Conveyances, etc., in trust for free schools (Act Aug. 19, 1876, p. 201, §13.)

ART. 3711. All conveyances, devises and bequests of property made by any one for the benefit of public free schools for any county, city or town, shall, when not otherwise directed by the grantor or devisor, vest said property in the county judge of the county or the mayor of said city or town, and their successors in office, as the trustee for those to be benefited thereby, and the same shall, when not otherwise directed, be administered by said judge or mayor, subject to the approval of the board of education.

Holidays, daily sessions, etc.  
*Ib.* p. 207, §46.

ART. 3712. Public free schools shall be closed on Saturday and on all state holidays. The session shall continue seven hours each day.

#### STATE BOARD OF EDUCATION.

State board of education provided for. (Const., art. 7, §8.)  
*Ib.* p. 199, §§1, 2.

ART. 3713. The governor, the secretary of state and the comptroller of public accounts shall constitute a state board of education, who shall hold their sessions at the seat of government; the governor shall be *ex officio* president of the board, and a majority of the members shall constitute a quorum for the transaction of business.

Board may appoint a secretary.  
*Ib.* §3.  
(Acts 1879, ch. 154, p. 169.)

ART. 3714. The state board of education may, in their discretion, appoint some competent person as secretary of the board, who shall hold his office during the pleasure of the board, and shall receive an annual salary of eighteen hundred dollars, payable out of the available school fund; the secretary shall take the oath of office prescribed by the constitution, and shall perform such official duties as may be required of him by the board.

Duties of the board.  
*Ib.* §4.  
(Acts 1879, ch. 154, p. 169.)

ART. 3715. The state board of education shall—

1. Keep a complete record of all its proceedings, which shall be signed by the president of the board, and attested by the secretary.

2. They shall cause to be filed all reports, documents and papers transmitted to them by county or city school officers, and keep a complete index of the reports.

3. They shall advise and counsel with the school officers of counties,

cities and towns, as to the best methods of conducting the public schools, and shall be empowered to issue instructions and regulations, binding for observance on all officers and teachers in all cases where the provisions of the school law may require interpretation, in order to carry out the designs expressed therein; also in cases that may arise in which the law has made no provision, and also where necessity requires some rule in order that there may be no hardships to individuals and no delays or inconvenience in the management of school affairs.

4. They shall, after the close of the present session of the legislature, cause to be printed in pamphlet form, for general distribution, fifteen thousand copies of this law.

ART. 3716. The state board of education shall require of county, city and town school officers and teachers such reports relating to the school funds and other school affairs as they may deem proper for collecting information and for advancing the interests of the public schools, and shall furnish to the county judges and mayors of cities and towns, for the use of such officers and teachers, the necessary blanks and forms for making such reports and carrying out such instructions as may be required of them.

May require reports, etc. *Ib.* p. 200, §§6, 7.

ART. 3717. The state board of education shall, one month prior to the meeting of each regular session of the legislature, and ten days prior to the meeting of any special session thereof, at which under the governor's proclamation convening the same, any legislation be had respecting the public schools, make a full report of the condition of the public free schools throughout the state. Such report shall show—

Shall report to the legislature. *Ib.* §5. (Acts 1879, ch. 154, p. 169.)

1. The whole number of white and colored schools which have been taught in each county and city or town during the preceding scholastic year.

2. The number of pupils, white and colored, in attendance receiving tuition free of charge.

3. The number paying tuition.

4. The number of white and colored children within scholastic age in the state.

5. The number of children within scholastic age who have not attended school.

6. The number within scholastic age unable to read.

7. The amount of public free school fund.

8. How the available school fund for the previous year has been distributed and expended.

9. The number of public school-houses in each county, city or town, with a description of their kind and condition.

10. And such other information and suggestions as they may deem important for promoting education.

ART. 3718. It shall be the duty of the governor to lay such report before the legislature within the first week of any session of the legislature having authority to legislate on matters relating to the public schools.

Report to be laid before the legislature. *Ib.*

ART. 3719. Two thousand copies of said report shall be printed in pamphlet form for the use of the legislature and for distribution, under the direction of the state board of education, among the various school officers and libraries within the state, and the superintendents of the public schools in the several states and territories of the United States.

Report to be printed and distributed. *Ib.*

ART. 3720. It shall be the duty of the board of education, on or before the first day of July of each and every year, to make an apportionment of the available school fund appropriated by the legislature, among the several counties of the state, and to the several cities and towns constituting separate school organizations, as herein provided, according to the scholastic population upon the latest and most reliable data. They shall deliver an abstract of such apportionment to the

Shall apportion available school fund among the counties, etc. (Const., art. 7, §8.) *Ib.* §8. (Acts 1879, ch. 154, p. 170.)

comptroller of public accounts, and to each county judge, and the mayor of each of such cities or towns as may have assumed control of their public schools, a statement of the amount apportioned to his county, city or town, as the case may be; and they shall issue to the county treasurer of each county, and to the city treasurer of each city or town having control of the public schools, a certificate for the amount of the available school fund so apportioned to his county, city or town, which certificate shall be signed by the president of the board of education, countersigned by the comptroller of public accounts, and attested by the secretary of the board.

Necessary expenses allowed  
*Ib.* p. 201, §10.

ART. 3721. The state board of education shall be allowed all necessary expenses for books, postage, printing and stationery required for the use of said board, to be paid out of the available school fund.

DUTIES OF THE COMPTROLLER IN REGARD TO THE SCHOOL FUND.

Comptroller's duties in regard to the school funds.  
*Ib.* §17.

ART. 3722. It shall be the duty of the comptroller of the state—  
1. To keep a separate account of the amount of the available school fund arising from every source.

2. To draw his warrant on the state treasurer in favor of any county treasurer, or in favor of any county collector of taxes, as hereinafter provided, or, as the case may be, in favor of the treasurer of any city or town constituting a separate school district, as hereinafter provided, for the amount of the available school fund due his county, city or town, as the case may be, on presentation of a certificate from the state board of education issued to the county, city or town treasurer, showing the amount to which such county, city or town is entitled, duly indorsed by such treasurer as hereinafter provided.

3. He shall, on or before the meeting of each regular session of the legislature, report to the legislature an estimate of the amount of the available school fund to be received for the succeeding two years, and which may be subject to appropriation for the establishment and support of the public free schools, and the several sources from which the same are to accrue.

DUTIES OF THE STATE TREASURER IN REGARD THERE TO.

State treasurer's duties, etc.  
*Ib.* p. 202, §18.

ART. 3723. It shall be the duty of the state treasurer—  
1. To receive and hold as a special deposit all moneys belonging to the available school fund, and to keep an account of the several sources from which they may accrue.

2. To pay out such moneys on the warrant of the comptroller as herein provided.

3. To report to the governor thirty days before each regular session of the legislature, and of each special session at which any legislation can be had respecting the public free schools, the condition of the permanent and available school fund, the amount of each in the treasury, and the amount and manner of disbursement since his last report.

4. To make a similar report at such other times as the state board of education may require.

Funds not to be used for other purposes  
*Ib.*

ART. 3724. The treasurer shall not, under any circumstances, use any portion of the permanent or available school fund in payment of any warrant drawn against any other fund whatever.

Treasurer of the available fund of his county.  
*Ib.* §22.

DUTIES OF THE COUNTY TREASURER PERTAINING TO THE SCHOOL FUND.

ART. 3725. The treasurers of the several counties shall be treasurers of the available public free school fund for their respective counties.

Compensation.  
*Ib.*  
(Act to adopt and establish R.C.S. passed Feb. 21, 1879.)  
Exchange allowed, when.  
*Ib.*

ART. 3726. The treasurers of the several counties shall be allowed for receiving and disbursing the school fund the fees provided in article 2403.

ART. 3727. Should the collector of taxes of the county make default in paying over to the treasurer, on the certificate of the board of educa-

tion, in a reasonable time, such treasurer shall be allowed in settlement of his account such exchange for collecting the pro rata distributive portion of school fund due his county as may be allowed and certified to by the board of education.

ART. 3728. Within twenty days after the receipt of his certificate of election, it shall be the duty of the county treasurer to execute a bond, with two or more good and sufficient sureties, for the faithful performance of his duties under this chapter.

Shall execute bond, etc.  
*Ib.* §23.

ART. 3729. Such bond shall be in double the probable amount of the available school fund which may come into his hands, to be estimated by the county judge, and shall be made payable and conditioned as prescribed in article 989.

Terms of the bond, etc.  
*Ib.*

ART. 3730. Upon the receipt of the certificate from the state board of education, duly countersigned by the comptroller, as in article 3720, showing the pro rata of the available school fund to which his county is entitled under the apportionment, the county treasurer shall present the same to the collector of taxes for his county, who shall pay the same from time to time out of the state taxes in his hands.

To receive from county collector the pro rata of school fund due his county.  
*Ib.* §27.

ART. 3731. The county treasurer shall indorse the amounts so paid by the collector on the certificate, and shall also execute and deliver to the collector duplicate receipts for such payments, and when the whole amount of such certificate shall have been paid, the county treasurer shall deliver the same to the collector, in whose hands it shall be a voucher for so much money in his settlement with the comptroller of public accounts.

Shall indorse payments and give vouchers, etc.  
*Ib.*

ART. 3732. The county treasurer shall keep a record of all school funds received by him, showing the year for which the same are to be disbursed, and shall credit school communities, after numbering and otherwise designating such communities, with such amounts as may be apportioned to them by the county judge. All balances of the general fund not appropriated for the current year shall be carried over by the treasurer as a part of the general fund for the county for the succeeding year, and balances unexpended or unappropriated for a school community shall be carried over for the benefit of such school community if it be reorganized for the following year; and if it be not reorganized, shall be added to the general fund for distribution for the general benefit of the county at large.

Record of school fund.  
*Ib.* §24.

#### SCHOLASTIC CENSUS.

ART. 3733. It shall be the duty of the assessor of taxes for each and every county in this state, prior to the first day of June of each and every year, to take an accurate census of all the children within their respective counties, who will be of the age of eight, and under the age of fourteen years, on the first day of September next succeeding the taking of such census; and a separate census shall be taken of such children as are embraced within the corporate limits of any city or town in his county as may have assumed control of the public schools therein.

Assessor to take scholastic census.  
*Ib.* §20.  
(Acts 1879, ch. 154, p. 170.)

ART. 3734. Such census shall state—

1. The name of each child.
2. Its sex.
3. Its age.
4. Its color.

Requisites of the census.  
*Ib.*

ART. 3735. For the purpose of ascertaining the facts required by the preceding article to be stated in such census, the assessor shall avail himself of all accessible information, and may, when he may deem it necessary, require the parent or guardian of any child, or any other person, to answer under oath touching such matters.

May require information under oath.  
*Ib.* p. 203, §21.

ART. 3736. No allowance shall be made by the comptroller of public accounts to any assessor of taxes for any assessment of taxes in his county, until such assessor shall have exhibited and filed with him a certificate from the county clerk, under his hand and seal of office, showing that

No allowance to assessor, unless, etc.  
*Ib.*

such census and abstracts, approved by the county judge as hereinafter required, have been delivered to him by the assessor within the time hereinafter provided.

Sworn to and returned to county clerk.

*Ib.*  
(Acts 1879,  
ch. 154, p. 170.)

Abstracts of census.

*Ib.*

ART. 3737. Such census shall be verified by the affidavit of the assessor, and shall be by him returned to the county judge on or before the tenth day of June in each year.

ART. 3738. It shall also be the duty of the assessor to make out and submit to the county judge, for his approval, two abstracts of such census showing the number of children, white and colored, male and female, and such other information as may have been required by the state board of education; and upon the approval thereof by the county judge, to deliver the same, on or before the said first day of July, to the clerk of the county court, who shall receipt to him therefor.

NOTE.—Article 3739 repealed by section 2, chapter 154, acts 1879.—L.

Compensation of the assessor for taking census, etc.

*Ib.*  
(Acts 1879,  
ch. 154, p. 170.)

ART. 3740. The assessor shall receive as compensation for taking such census and making out such abstracts, and the other duties required of him in connection therewith, for the first one thousand children enrolled five cents *per capita*, and for all children so enrolled in excess of one thousand three cents *per capita*, to be paid upon the warrant of the comptroller, out of the available school fund, by the tax collector of the county, upon the certificate of the county judge, attested by his signature and seal of his office, that said census and abstracts have been delivered to him as required by law.

NOTE.—Article 3741 repealed by section 2, chapter 154, acts 1879.—L.

#### BOARD OF EXAMINERS.

County judge to appoint a board of examiners.

*Ib.* §38.

ART. 3742. It shall be the duty of the county judge to appoint a board of examiners for his county for each scholastic year, consisting of three well-educated citizens of the county, who shall examine, before their employment, all teachers of public free schools, for which service they shall receive from each applicant examined by them three dollars.

Teacher must obtain certificate of qualification.

*Ib.*

ART. 3743. Every teacher, before being employed to teach any of the public free schools, must obtain from the county judge, on the report of the board of examiners, a certificate of qualification; and no teacher can make a valid contract to teach a public free school without first obtaining such certificate.

#### DUTIES OF THE COUNTY JUDGE.

Duties of the county judge under this chapter.

(Acts 1879,  
ch. 154, p. 171.)

ART. 3744. It shall be the duty of the county judge of each county in this state—

1. To appoint a board of examiners as hereinbefore provided for.
2. To receive applications for teacher's certificates of competency; to convene the board of examiners, and on a favorable report of said board, to issue such certificate; to renew such certificate of competency if satisfied of the propriety thereof, and to cancel the same under such circumstances as are hereinafter provided.
3. To distribute such blanks and forms for use by teachers of the public free schools of his county as may be furnished to him by the state board of education.
4. To act upon the bond of the county treasurer as hereinbefore required, and, if approved by him, to certify the execution and his approval of the same to the state board of education.
5. To file one copy of the assessor's abstracts of scholastic census in his office, and to forward the other copy, with a memorandum of the date of its delivery to him, to the state board of education at the seat of government, on or before the fifteenth day of June of each year.
6. To receive and pass upon petitions for organization of school communities, appoint trustees, and to distribute the available school fund

among the several organized school communities of his county as hereinafter provided.

7. To receive and pass upon all applications for the erection or purchase of school-houses.

8. To approve warrants lawfully drawn on the treasurer against the available school fund, and to draw warrants for appropriations made for building or purchasing public school-houses.

9. To enter all orders made by him in discharge of his duties, under this chapter, in a well-bound book to be kept for that purpose.

10. To approve contracts made between teachers and trustees, if said contracts be executed in conformity to law and instructions from the state board of education, or if not so executed to cause the same to be amended so as to comply with the terms of the law and instructions from the board of education made in pursuance thereof.

11. To discharge such other duties as may be prescribed in this chapter.

ART. 3745. County judges shall be paid for their services in the administration of the public school affairs of their respective counties as follows: Compensation.  
(Acts 1879,  
ch. 154, p. 171.)

For disbursement of five hundred dollars or less of state school fund, twenty-five dollars shall be allowed;

For disbursement of five hundred dollars and not exceeding one thousand dollars, fifty dollars shall be allowed;

For disbursement of each additional thousand dollars or fractional part thereof, ten dollars shall be allowed, and ten per cent. on the salary thus allowed shall be added thereto for postage, stationery and printing expenses connected with the administration of the school law. Said compensation herein authorized shall be paid to the county judge by the county treasurer out of the public school fund upon the order of the commissioners' court in such payments as said court may determine.

#### ORGANIZATION OF SCHOOL COMMUNITIES.

ART. 3746. It shall be lawful for the parents, guardians or other persons having control of any children residing in any county who may be within the scholastic age, to unite and organize themselves into free school communities, entitled to share in the benefits of the available school fund belonging to such county, upon complying with the conditions hereinafter prescribed. Organization  
of voluntary  
free school  
communities.  
*Ib.* p. 205, §29.

ART. 3747. The *bona fide* residents of this state desiring so to unite in the organization of a free school community, shall make an application in writing to the county judge, on or before the first day of August of each year, stating that they desire in good faith to organize a free school under the provisions of this law, and shall ask that their just pro rata of the available school fund of the county be set apart for the benefit of their school community. Said petition shall be signed in person by each petitioner, and should any petitioner be unable to sign his or her name, then said petitioner shall authorize the signing of his or her signature to the petition in the presence of at least two lawful witnesses. Application  
for.  
*Ib.*  
(Acts 1879,  
ch. 154, p. 171.)

ART. 3748. Such petition shall set forth—

1. That the application is made in behalf of a white or colored community, as the case may be. Requisites of  
application.  
*Ib.*  
(Acts 1879,  
ch. 154, pp.  
171-2.)

2. An alphabetical list of the names of the children within the scholastic age.

3. The age and sex of each child.

4. A similar list of all children within the scholastic age residing in convenient distances to the school-house of said community, who have no parents, guardians or other persons lawfully controlling them; and also a list of children not of scholastic age, who it is proposed shall be pupils of the community school.

5. The capacity of the school-house and the character of other school conveniences, if any.

6. The names of three or more competent persons to act as trustees for such school community. And the trustees of the community shall have the control of the public school-house, and during the time in which no public school is being taught, may rent out the house for such rent as can be obtained; such rent to be used to keep in repair such school-house.

7. That no similar petition has been signed by the petitioners for any other community for the scholastic year for which said community is then being organized. And should the seventh statement prove untrue as to any of the signers of said petition, the children under the control of such signer shall forfeit their interest in the school fund for the scholastic year for which such community is being formed.

Duty of county judge on receipt of application. *Ib.* §31. (Acts 1879, ch. 154, p. 172.)

ART. 3749. On receipt of such petition, the county judge shall revise and correct it by comparing the list of names with the official census returns, and shall keep the same open for such further correction as may be shown to his satisfaction to be just and proper, until the first day of August of each year, at which time, if satisfied that the petition is in good faith, he shall enter an order in a book kept for that purpose, sanctioning the establishment of such school community, and shall designate it by its name and number.

Separate male and female schools, when. *Ib.* §32. (Acts 1879, ch. 154, p. 172.)

ART. 3750. Such communities may be organized for male and female schools, separate or mixed, as the population and necessities and conditions of each community may require; *provided*, that in towns of not more than fifteen hundred inhabitants, no more than two school communities for white children and two communities for colored children shall be organized.

Child not included in application may be assigned to convenient community. *Ib.* §33.

ART. 3751. At any time before the apportionment of the available school fund to the several school communities in the county, the county judge may assign any child not included in the list of an organized school community to some convenient and proper school community, and set apart to such community the proper pro rata of such child out of the school fund of the county.

Appointment of trustees. *Ib.* §33. (Acts 1879, ch. 154, p. 172.)

ART. 3752. Three trustees shall be appointed by the county judge for each community school, and the three citizens named in the petition shall in all cases be appointed trustees, unless the county judge be satisfied from personal knowledge that the parties so named are either unworthy or incompetent. Said trustees shall discharge such duties as are herein prescribed, or which may be prescribed by the board of education, and shall see that the schools for which they are trustees are conducted in accordance with the provisions and limitations of this law. Said trustees shall be removed from office by the county judge upon the written application of a majority of the patrons of the school.

Trustees to employ teacher. *Ib.* §34. (Acts 1879, ch. 154, p. 172.)

ART. 3753. It shall be the duty of the trustees of a school community already provided with a school-house, to contract with a teacher holding a certificate of competency from the county judge, to teach school for the community for as long a period as the school fund entered to the credit of the community will warrant. The school shall open at such times as the trustees may decide and be taught continuously until the close of the term, unless suspended by the trustees. The trustees shall, in some public way, give two weeks' notice of the time of opening the school.

Contract with teacher. *Ib.* §36. (Acts 1879, ch. 154, pp. 172-3.)

ART. 3754. The contract entered into between the trustees and teacher shall be written and shall specify—

1. The grade of certificate held by the teacher.
2. The salary or compensation to be paid per month.
3. The length of school term.

4. The average per cent. of daily attendance agreed upon as necessary to warrant the continuance of the school; *provided*, no such contract shall authorize or permit any part of a school-house belonging to the state, for the benefit of free schools, to be used as a residence, but shall prohibit the same.

ART. 3755. After the receipt from the board of education of a certificate showing the amount of state school fund due the county for the next succeeding scholastic year, the county judge shall, on the second day of August of each year, apportion the fund called for in the certificate of credit to the organized school communities in his county, and to such children of scholastic age residing in his county but duly reported as listed in communities in adjoining counties. The apportionment shall be made upon the basis of the number of state pupils represented by the revised community lists on file in the county judge's office, together with the number of like pupils, residents of the county, duly reported as registered in adjoining counties. In no event shall the apportionment to any community exceed the sum necessary for the support of the school, as required by law, for a longer period than ten months, estimating twenty school days to the month. The apportionment being made, the county judge shall direct the county treasurer to credit each community, according to the name and number thereof, with the aggregate pro rata of the school fund ascertained to be due; and he shall give notice to the trustees of the respective communities of the sum entered to their credit.

Apportionment of school fund to the school communities.  
Tb. §33.  
(Acts 1879,  
ch. 154, p. 173.)

ART. 3756. All pupils within the scholastic age shall be entitled to tuition free in the following branches, to wit: Orthography, reading, writing, English grammar, composition, geography and arithmetic.

Tuition free to whom and in what branches.

ART. 3757. Pupils not of scholastic age, may attend the community school upon payment of such tuition fees as may be agreed upon between the teachers and parents of such children; but trustees shall not enter into any contract or permit any contract to be made whereby the interest of state pupils may be subordinated to the interest of private pupils.

Pupils not within the scholastic age or desiring to pursue other studies.  
(Acts 1879,  
ch. 154, p. 173.)

ART. 3758. Trustees shall make their contract with the teacher on the basis of the number of children of scholastic age registered in the community; but no teacher shall be entitled to full pay unless the average daily attendance of such pupils amount to at least seventy-five per cent. of the whole number registered on the community list, and if the average daily attendance be less than seventy-five per cent., but as much as fifty per cent., the teacher shall be entitled to seventy-five per cent. of the compensation set forth in the contract. If the average daily attendance should be less than fifty per cent. of all the pupils of scholastic age registered in the community, then the teacher shall only be paid for actual daily attendance, or the trustees may, at their discretion, cause the school to be discontinued. In lieu of a contract based on the number of state pupils registered in the community, the trustees may, at their discretion, contract for actual daily attendance only.

Trustees contract with teachers, how.  
(Acts 1879,  
ch. 154, p. 173.)

ART. 3759. Trustees, in making contracts with teachers, shall determine the salary to be allowed, or wages to be paid, upon the following rates of tuition: To teachers holding a first-class certificate, not more than two dollars; to those holding a second-class certificate, not more than one dollar and fifty cents; and to such as hold a third-class certificate, not more than one dollar per month *per capita* shall be allowed for pupils within scholastic age. And it shall not be lawful for trustees or teachers to demand, as a condition of admittance into school, the payment of extra tuition for pupils of scholastic age; *provided*, that in no event shall the teacher holding a first-class certificate receive from the public free-school fund more than sixty dollars per month, and those holding second-class certificates, more than forty dollars per month; and those holding third-class certificates, more than twenty-five dollars per month.

Pay based on attendance.

Trustees to determine salary of teachers.  
(Acts 1879,  
ch. 154, pp.  
173-4.)

Rates of tuition.

Teachers' pay limited.

ART. 3760. Trustees may employ one or more assistant teachers whenever the average daily attendance exceeds thirty-five pupils. If the necessity for employment of an assistant teacher is caused by the attendance of private pupils, then the trustees shall require the teacher to employ, at his or her expense, an assistant holding a certificate of competency as a teacher.

Trustees may employ assistant teacher.  
(Acts 1879,  
ch. 154, p. 174.)  
Teacher to employ assistant, when.



Teachers' salary, how paid.  
*Ib.* §38.

ART. 3761. The amount contracted by trustees to be paid a teacher shall be paid on a check drawn by a majority of the trustees on the county treasurer and approved by the county judge. The check shall, in all instances, be accompanied by the affidavit of the teacher that he is entitled to the amount specified in the check as compensation under his contract as a teacher.

Pupils not to change schools  
*Ib.* §39.

ART. 3762. A child within scholastic age, entered at one public school, shall afterward receive no benefit of the school fund by attending another school during the scholastic year.

Pupils from adjoining counties.  
*Ib.* §42.  
(Acts 1879, ch. 154, p. 174.)

ART. 3763. When the nearest school community for children within scholastic age, residing near a county line, is situated in an adjoining county, such children may be registered in said county, and the county treasurer of the county in which such children reside shall pay for the tuition of the same out of the fund entered to their credit, upon the presentation of a voucher therefor, approved by the county judge of the county in which said children reside.

NOTE.—Article 3764 repealed by section 2, chapter 154, acts 1879.—L.

Notice of intention to join such community.  
*Ib.*

ART. 3765. Notice of intention to join a school community in an adjoining county, as provided for in the two preceding articles, must be given to the county judge of the county in which the child resides, prior to the first of September.

#### TEACHERS.

Application for certificate of competency.  
*Ib.* §43.  
(Acts 1879, ch. 154, p. 174.)

ART. 3766. Any one desiring to teach a public free school shall, unless known to the county judge, present a certificate from the justice of the peace of the precinct in which he or she desires to teach, or in which he or she may reside; or in case the applicant has acquired no residence in this state, then some other certificate satisfactory to the county judge, that the applicant is of good moral character and of correct, exemplary habits; the county judge shall thereupon, unless satisfied that some good cause exists for refusing such certificate, convene the county school board of examiners and direct an examination of the applicant on the branches hereinafter named as follows, to wit:

Applicants for third grade certificates shall be examined in orthography, reading, writing, arithmetic and geography.

Applicants for second grade certificates shall be examined in the branches named in the third grade, and also in English grammar, composition and history of the United States.

Applicants for a first grade certificate shall be examined in the branches named in the third and second grades, and also in the elementary branches of algebra, geometry and natural philosophy, school discipline and methods of teaching.

The examination must be conducted in the English language, and no applicant shall receive a certificate unless the board of examiners be satisfied that he or she is competent to teach the branches named in the grade of certificate applied for, in the English language.

Certificate, how obtained.  
*Ib.* §44.  
(Acts 1879, ch. 154, p. 174.)

ART. 3767. The board of examiners shall examine such applicant as to his or her competency to teach the branches named in the preceding section, and shall make a report of such examination to the county judge, who shall, if such report be favorable, issue a certificate of competency (attaching the county seal thereto) to the applicant, according to the grade recommended by the board of examiners, authorizing his or her employment by the trustees of any school community in the county in which the same is issued.

Certificate valid for a year and renewable.  
*Ib.* §44.

ART. 3768. Such certificate shall be valid in the county where issued for the current scholastic year, and may be renewed by the county judge for any subsequent year without examination, if the judge be satisfied of the propriety of such renewal.

ART. 3769. A teacher's certificate shall be cancelled on account of such misconduct or immorality as the trustees shall report to the county judge disqualifying him, in their opinion, for the instruction of children; but, before making such report, the trustees shall give such teacher reasonable notice of the charges against him, and an opportunity to be heard.

Certificate cancelled, when.  
*Ib.* §40.

ART. 3770. It shall be the duty of teachers to keep an accurate record of the daily attendance of each pupil, and all other statistical data required by the state board of education, and shall make a full report thereof to the county judge at the close of their respective schools.

Teacher to keep record, etc.  
*Ib.* §47.  
(Acts 1879, ch. 154, p. 174.)

## SCHOOL-HOUSES.

ART. 3771. When a school community has no school-house, the available public free school fund for any one year, to the credit of said community with the county treasurer, may be used for the purpose of erecting a house upon the following conditions, to wit:

School fund used for building houses, when.  
*Ib.* §49.

1. A suitable piece of land shall be donated as a site, and a deed therefor executed and delivered to the county judge conveying said land to the county judge, and his successors in office, in trust for public free school purposes, which deed must be recorded as other deeds.

2. The members of the community must contribute of their labor and means an amount at least equal to the school fund so used.

ART. 3772. The trustees of such community must make an application to the county judge for the appropriation of said fund, which application shall give the plan and specifications of the house to be erected, and an estimate of the cost thereof. Said application must also be accompanied by a list of subscription of labor and means by the members of the community, amounting in value to at least one-half of the estimated cost of the house.

Application made to county judge.  
*Ib.*

ART. 3773. On receipt of such application, the county judge shall, if the law has been complied with, and the house to be erected is large enough to accommodate the pupils of the community, approve the same, and enter an order appropriating an amount of said fund, equal to one-half of the estimated cost of said building, for the erection thereof. But said appropriation shall not be drawn from the treasury or paid until the completion of the building in accordance with the plan and specification, and then only upon the warrant of the county judge.

Duty of county judge on receipt of application.  
*Ib.* §50.

ART. 3774. The trustees of such school community shall contract for the erection of such building and superintend the construction of the same; and the county judge shall draw his warrant, or warrants, for the school fund so appropriated only upon accounts first approved by them.

Duty of trustees as to erection of such building.  
*Ib.* §51.

ART. 3775. No mechanic, contractor, material man or other person can contract for, or in any other manner have or acquire any lien upon the house so erected, or the land upon which the same is situated, and all contracts with such parties shall expressly stipulate for a waiver of such lien.

No builder's or other lien upon school property.

ART. 3776. The available school fund of any school community for one year may be used in the purchase of suitable school property upon the execution of the deed, as provided in article 3771, and the contribution of the remainder of the purchase money by members of the community, which must be first paid.

School property may be purchased with school funds.

ART. 3777. The trustees of any school community, upon the order of the county commissioners' court approving the terms thereof, when deemed advisable, may make sale of any property belonging to said school community and apply the proceeds to the purchase of necessary grounds or to the building or repairing of school-houses.

School property may be sold, when.  
*Ib.* §49.

ART. 3778. The trustees of any school community not having a school-house, may rent or lease a suitable house instead of building or purchasing one, if deemed advisable by them; the rent shall be paid by the county treasurer out of the available fund to the credit of the community, upon the warrant of the trustees, approved by the county judge.

School-houses may be rented.  
*Ib.* §52.

School-houses and other property under control of trustees.

*Ib.*  
Whites not to use colored school-houses, etc.  
*Ib.* §53.

ART. 3779. All school-houses and grounds erected, purchased or leased for a school community, and all other property belonging thereto, shall be under the control of the trustees of such community.

ART. 3780. A school-house constructed in part by voluntary subscription by colored parents and guardians and for a colored school community, shall not be used without the consent of the colored community assisting in its erection for the education of white children; and a like rule shall protect the use of school-houses erected in part by voluntary subscription of white parents or guardians for the benefit of white children.

FREE SCHOOLS IN INCORPORATED CITIES AND TOWNS.

NOTE.—See chapter 67, acts 1879, page 76, for provisions, as to public free schools in cities and towns, somewhat similar to those contained in the following articles.—L.

Cities and towns may assume exclusive control of free schools, etc.

*Ib.* §55.

ART. 3781. All cities and towns which have heretofore under the act of May 2, 1875, or any subsequent law, assumed control of the public free schools within their limits, and have continued to exercise the same until the present time, or may hereafter determine so to do by a majority vote of the property taxpayers of said city or town voting at an election held for that purpose, may have exclusive control of the public free schools within their limits.

Election, how ordered, held, conducted, etc.

ART. 3782. The election required to be held by the preceding article, shall be ordered by the city or town council upon the petition of twenty property taxpayers, and shall be held and conducted, and the returns canvassed, and the result declared as other elections.

Powers of town council and board of aldermen.

*Ib.*

ART. 3783. The council or board of aldermen of such city or town are invested with exclusive power to maintain, regulate, control and govern all the public free schools now established, or hereafter to be established, within the limits of said city or town; and they are furthermore authorized to pass such ordinances, rules and regulations not inconsistent with the constitution and laws as may be necessary to establish and maintain free schools, purchase building sites, construct school-houses and generally to promote free public education within the limits of their respective cities or towns.

Such city or town to receive pro rata of school fund.

*Ib.* §56.

ART. 3784. Such city or town, after notice to the state board of education that it has determined to assume control of the public free schools within its limits, shall receive such pro rata of the available school fund as its scholastic population may entitle it to.

Additional amount may be raised by taxation, when.

*Ib.*  
(Acts 1879, extra session, ch. 53.)

ART. 3785. If, at an election held for that purpose, at which none but property taxpayers, as shown by the last assessment rolls, who are qualified voters of such city or town, shall vote, two-thirds of those voting shall vote in favor thereof, such an amount shall be raised by taxation, not to exceed one-half of one per cent. in addition to the pro rata of the available school fund received from the state, as may be necessary to conduct the schools for ten months in the year.

Duty of council to submit question of taxation.

ART. 3786. After a city or town has assumed control of the public free schools within its limits, as provided for in article 3781, the council or board of aldermen shall also submit the question to the property taxpayers as to whether or not the additional amount, as provided for in the preceding article, shall be raised by taxation.

If the vote is favorable, tax to be levied annually thereafter.

ART. 3787. If the vote of the taxpayers is in favor of the levy of said tax, then it shall be the duty of the council or board of aldermen annually thereafter to levy upon the taxable property in the limits of said city or town, in accordance with the usual assessment of taxes for municipal purposes, such additional tax as may be necessary for the support of the schools for ten months in the year, not to exceed one-half of one per cent.

Subject to general law.

*Ib.*

ART. 3788. Schools thus organized and provided for by incorporated cities or towns shall be subject to the general laws, so far as the same are

applicable; but each city or town having control of schools within its limits shall constitute a separate school district, and may by ordinance provide for the organization of schools and the appropriation of its school fund in such manner as may be best suited to its population and condition.

ART. 3789. Any city or town having voted a tax in addition to the pro rata of the available school fund from the state, may extend the scholastic age of the children in its schools, and prescribe such other studies as the council or board of aldermen may deem proper.

City or town may extend scholastic age, etc., when.

ART. 3790. It shall be the duty of the assessor and collector of taxes of such city or town as may have assumed control of the public free schools within its limits, to take the scholastic census annually, as hereinbefore required of the county assessor, to file abstracts of the same with the council or board of aldermen, and to report the same to the state board of education.

Scholastic census taken by city assessor and collector.

ART. 3791. Whenever any city or town shall have assumed control of the public schools therein, as herein provided, the treasurers of such cities and towns, respectively, shall have the same powers and perform the same duties as are herein prescribed for county treasurers, so far as the same are applicable.

Treasurers of cities and towns constituting separate school districts

ART. 3792. The title to all houses, lands and other property now owned, or which may hereafter be purchased or acquired by a city or town for the benefit of public free schools, and all houses, lands or other property purchased for the benefit of public free schools in the county, and lying within the limits of any town or city which may have assumed control and management of the public free schools within its limits in conformity with law, shall be vested in the mayor of such city or town, in trust for the sole use of public free schools established under this chapter.

Title to land, houses, etc.

ART. 3793. Any houses or lands held in trust by any city or town for public free school purposes, may be sold for the purpose of investing in more convenient and desirable school property, with the consent of the state board of education, by the council or board of aldermen of such city or town; and in such cases the mayor shall execute his deed to the purchaser for the same, reciting the resolution of the board of education giving consent thereto, and the resolution of the council or board of aldermen authorizing such sale.

Sale of houses, etc., held in trust.

TITLE LXXIX.

The Public Lands.

NOTE.—Chapter 52, acts 1879, extra session, provides for the sale of certain portions of the public lands and the investment of the proceeds thereof.—L.

CHAPTER ONE.

PUBLIC DOMAIN.

	Article		Article
Vacant lands belong to state.....	3794	Forfeiture on failure to comply, etc.....	3797-8
All public lands retained at annexation....	3795	Proceedings to forfeit land donations.....	3799
No reservation shall be made.....	3796	Title to mines, etc., released.....	3800

Vacant lands belong to state. (Act Dec. 14, 1837.)

H.D. 44-6.

All public lands retained at annexation. (Joint res., June 23, 1845.)

No reservation shall be made. (Const., art. 14, §3.)

Forfeiture on failure to comply, etc. *Ib.*

Same. *Ib.* §5.

Proceedings to forfeit land donations. *Ib.*

ARTICLE 3794. All the vacant lands are the property of the state and subject alone to the disposition of the proper authorities thereof.

ART. 3795. In order that the provisions of law relating to the public domain may be brought together, the following extract is made from the joint resolutions of the congress of the United States for annexing Texas to the United States, approved March 1, 1845, and the joint resolution of the congress of the Republic of Texas assenting to the same, approved June 23, 1845, viz:

“Said state, when admitted into the Union, \* \* \* \* shall also retain all the vacant and unappropriated lands lying within its limits, to be applied to the payment of the debts and liabilities of said Republic of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said state may direct,” etc.

ART. 3796. No reservation of any part of the public domain, for the purpose of satisfying a grant of lands to any railway company in this state, shall ever be made.

ART. 3797. No land certificate shall be issued to such railway company until it shall have equipped, constructed and in running order, at least ten miles of road, and on the failure of such company to comply with the terms of its charter or alienate its land at a period to be fixed by law, in no event to exceed twelve years from the issuance of the patent, all said land shall be forfeited to the state and become a portion of the public domain, and liable to location and survey.

ART. 3798. All lands heretofore or hereafter granted to railway companies, where the charter or law required or shall hereafter require their alienation within a certain period on pain of forfeiture, or is silent on the subject of forfeiture, and which lands have not been or shall not hereafter be alienated, in conformity with the terms of their charters and the laws under which the grants were made, are hereby declared forfeited to the state and subject to pre-emption, location and survey, as other vacant lands.

ART. 3799. All lands heretofore granted to said railroad companies to which no forfeiture was attached on their failure to alienate, are not included in the foregoing clause, but in all such last named cases it shall be the duty of the attorney-general, in every instance where alienations have been or hereafter may be made, to inquire into the same, and if such alienation has been made in fraud of the rights of the state, and is colorable only, the real and beneficial interest being still in such corporation, to institute legal proceedings, in the county where the seat of government is situated, to forfeit such lands to the state, and if such alienation be

judicially ascertained to be fraudulent and colorable as aforesaid, such lands shall be forfeited to the state and become a part of the vacant public domain, liable to pre-emption, location and survey.

ART. 3800. The State of Texas hereby releases to the owner or owners of the soil all mines or minerals that may be on the same, subject to taxation as other property.

Title to mines, etc., released. *Ib.* §7.

## CHAPTER TWO.

### GENERAL LAND OFFICE.

[See also title *xviii*, "Heads of Department," chapter 4, Commissioner of General Land Office.]

Article	Article
General land office established..... 3801	Certificate for unlocated balance to issue, when..... 3810
Commissioner to have custody of books, etc 3802	Certificate to be indorsed when patented... 3811
To keep lithographed county maps for sale..... 3802—Note	When survey, etc., is forfeited party interested to be notified, how..... 3812
Night watchman..... 3803	Certificate to be delivered only to owner... 3813
Examination of papers, etc., permitted, when..... 3804	Before delivery to assignee, evidence of title to be filed..... 3814
Indorsement of filing papers..... 3805	When commissioner is in doubt, proof, how made..... 3815
Clerk to be detailed, etc., when..... 3806	Receipts for papers, etc..... 3816
Clerk to examine papers, after, etc..... 3807	Commissioner, etc., responsible, when..... 3817
No transfer, etc., shall be withdrawn..... 3808	
Original certificate shall remain on file, etc 3809	

ARTICLE 3801. There shall be one general land office, which shall be at the seat of government, where all land titles which have emanated, or may hereafter emanate from the state, shall be registered, except those titles the registration of which may be prohibited by the constitution.

General land office established. *Ib.* §1.

ART. 3802. The commissioner of the general land office shall have custody and control of all books, records, papers, maps and original documents appertaining to the titles of lands heretofore, and by the provisions of the law, denominated archives; and the said books, records, papers and original documents shall become and be deemed the books and papers of said office.

Commissioner to have custody of books etc. (Act Dec. 14, 1837.) P.D. 71.

NOTE.—Chapter 41, acts 1879, authorizes the commissioner to have printed, and keep for sale, lithographic copies of maps of the various counties in the state. See appendix.—L.

ART. 3803. The said commissioner is hereby authorized to employ one night watchman for the general land office, at a salary not to exceed six hundred dollars per annum.

Night watchman. (Act Feb. 27, 1875, p. 56.)

ART. 3804. Any one desirous to examine any of the papers, records or files in the general land office shall first obtain the consent of the commissioner or the chief clerk, in writing, so to do, and an order for the detail of a clerk of said office to be present and superintend such examination.

Examination of papers, etc. permitted, when. (Act June 2, 1873, p. 180.) P.D. 7099*kk*.

ART. 3805. Any paper or document required or permitted by law to be filed in the general land office shall be indorsed by the commissioner, or in his absence by the chief clerk, with ink, "filed," with the date of filing and file number, and signed by the clerk filing the same; and on the wrapper or cover containing said paper or file shall be indorsed a list, with the corresponding numbers of the papers contained in said wrapper or cover, and signed by the clerk making the same; and if several papers constitute a single file they shall be numbered consecutively.

Indorsement of filing papers. *Ib.* §2. P.D. 7099*ll*.

ART. 3806. When an examination is desired by any person other than an employé of the office, the clerk detailed for such examination, before he shall permit such person to handle such papers or files, shall indorse, as required by the preceding article on the cover or wrapper of said papers, numbering them as herein required, and sign his name to said list.

Clerk to be detailed, etc. when. *Ib.* P.D. 7099*ll*.

ART. 3807. After an examination is made the clerk in charge of same shall carefully examine the papers of said file and see that they correspond with the list on the cover or wrapper, and are all in place.

Clerk to examine papers after, etc. *Ib.* §3. P.D. 7099*mm*.

No transfers, etc., shall be withdrawn.  
*Ib.* §4.  
 P.D. 7099nn.

ART. 3808. No transfer or deed that may be a link in any chain of title to any certificate on file in the general land office shall be withdrawn by any one; but the commissioner shall, on demand, deliver to the interested party certified copies, which shall have the same force and effect as the originals; *provided*, if, in any suit, there is any question as to the genuineness of any such original, the commissioner shall deliver the same to the party to whom the same may be ordered by the court where such suit is pending; and in such case, it shall be the duty of the commissioner of the general land office to retain in his office a duly certified copy of such original, which, in case of the loss of the original, shall have the same force and effect as the original.

Original certificate shall remain on file, etc.  
*Ib.* §5.  
 P.D. 7099oo.

ART. 3809. When the commissioner cancels a patent or permits the floating of a certificate, he shall not deliver the original certificate, but it shall remain in its original file.

Certificate for unlocated balance to issue, when.  
*Ib.* §6.  
 P.D. 7099pp.

ART. 3810. Where a certificate has been located in part, the original shall not be withdrawn from the general land office, but the commissioner shall deliver to the interested party a certificate for the unlocated balance, stating whether said certificate can be further divided.

Certificate to be indorsed when patented.  
*Ib.* §7.  
 P.D. 7099qq.

ART. 3811. When a certificate has been patented, the commissioner shall write in ink across the face of said certificate "patented," and sign his name thereto.

When survey is forfeited party interested to be notified, how.  
*Ib.* §7.  
 P.D. 7099qq.

ART. 3812. When a survey has become forfeited and void from any cause, so soon as such forfeiture is discovered, the commissioner shall notify the party interested in such survey or location, in writing by mail, directed to such party at his post-office address, if known, and if not known, directed to him at the county seat of the county in which the land is situated, of such forfeiture; and no new file or location shall be made on the land covered by such forfeited survey or location, except by the owner of such forfeited survey or location, for a period of ninety days after the mailing of such notice.

Certificate to be delivered only to owner.  
*Ib.* §8.  
 P.D. 7099rr.

ART. 3813. A certificate for an unlocated balance shall be delivered only to the owner, or his agent or attorney; and when the same is delivered to the agent or attorney, the legal authority to receive the same shall be filed with the commissioner.

Before delivery to assignee, evidence of title to be filed.  
*Ib.*

ART. 3814. If the assignee of the original grantee apply for the delivery of any paper, certificate, or copy of certificate, if the evidence of title to the assignee is not already on file in the land office, it shall be filed before delivering the same; and the owner shall, by himself or his lawful agent or attorney, file with his other proof of title an affidavit that the party claiming delivery is a *bona fide* owner.

When commissioner is in doubt, proof, how made.  
*Ib.*

ART. 3815. When the commissioner has doubts as to the identity of parties, or genuineness of any transfer or power of attorney, he shall not deliver such instrument to the party claiming until such doubtful matters are made clear by such additional proof as he may deem just and reasonable, which proof shall be by affidavits filed with the commissioner.

Receipts for papers, etc.  
*Ib.* §9.  
 P.D. 7099ss.

ART. 3816. No paper, certificate, copy or document, other than a patent, shall be delivered by the commissioner to the owner until he has received for the same, in which receipt shall be stated his place of residence, his post-office, and, if delivered to the agent or attorney, shall state in addition his residence and post-office, which receipt shall be filed by the commissioner with the other papers; *provided*, that when the commissioner has good reason to doubt the genuineness of any transfer, power of attorney or other paper on file in the general land office, he shall not permit any one to obtain an official copy thereof until such doubts have been removed.

ART. 3817. The commissioner of the general land office and the sureties on his official bond, shall be responsible to any party injured by removal, withdrawal or alteration of any record or file in said general land office unless said commissioner can show that such removal, withdrawal or alteration has taken place by permission of the party owning said file or record.

Commissioner and sureties responsible, when.  
Ib. §12.  
P.D. 7099ua.

## CHAPTER THREE.

### LAND DISTRICTS.

	Article		Article
What counties are separate land districts..	3818	"Young land district" defined.....	3826
When a county becomes a land district....	3819	"Eastland land district" defined.....	3827
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"Jack land district" defined.....	3824	Shackelford land district.....	3832
"Clay land district" defined.....	3825	Bexar land district.....	3833

ARTICLE 3818. Every organized county which shall have been a land district, or having elected a county surveyor, shall have complied with the laws heretofore in force permitting a county to become a land district, is hereby declared a separate land district.

What counties are separate land districts.

ART. 3819. When any organized county shall hereafter elect a surveyor, and he shall give bond and be qualified as provided by law, said county shall be a separate land district.

When county becomes a land district. (Acts Jan. 26, 1858.)  
P.D. 1082.

ART. 3820. Each county becoming a land district shall have at least one surveyor, who shall keep his office at the county seat; and such office shall be supplied with a map or maps of all the surveys made in such county, with a file or entry book, a pre-emption book, and a record book of the field-notes of all surveys in the county.

When county to have a surveyor.

ART. 3821. All "land districts" now created by law and having a district surveyor, shall remain and continue as such, subject, however, to alteration by any organized county within its limits, or any part of such district, becoming a separate land district as provided by law.

"Land districts" defined.

ART. 3822. Any organized county or newly created district which may fail or refuse to organize as a separate land district as provided by law, shall continue to form a part of the land district to which it was formerly attached, until it shall have complied with the provisions of law relating to the election and qualification of a surveyor, and until such surveyor shall have procured the necessary maps, field-notes, copies and records as required by law.

County or district failing to organize as separate land district. (Act Feb. 8, 1860.)  
P.D. 1083.

ART. 3823. The counties of Palo Pinto, Jones and Taylor, and the territory included within the following described limits, viz: Beginning at the northwest corner of Jones county; thence in a straight line due west from said northwest corner of Jones county to the twenty-sixth meridian of longitude west from Washington, the same being the east boundary line of the territory of New Mexico; thence south along the twenty-sixth meridian to the Pecos river; thence down said river to the Horsehead crossing of the same; thence in a northeasterly direction to the southwest corner of Runnels county; thence north to the southwest corner of Taylor county, be and the same are hereby made and constituted the Palo Pinto land district, until limited by the organization of the Shackelford land district hereinafter created; and the county surveyor of Palo Pinto county shall be the surveyor of said district. He shall keep his office in the town of Palo Pinto, and the records of all files and surveys of land in said district shall be kept in said office.

Palo Pinto land district. (Acts April 29, 1874, p. 161, §1; Aug. 21, 1876, p. 242.)  
P.D. 7099ogg.



Jack land district.  
(Acts April 29, 1874, §2; Aug. 21, 1876, p. 242.)

ART. 3824. The counties of Jack, Archer, Baylor, Knox, Hardeman, Bailey, Lamb, Hale, Motley, Cottle, Floyd, Briscoe, Swisher, Castro, Parmer, Deaf Smith, Oldham, Hartley, Moore, Hutchinson, Hansford, Sherman, Dallam, Potter, Carson, Randall and Armstrong are hereby made and constituted the Jack land district, and the county surveyor of Jack county shall be the surveyor for said district, and shall keep his office in the town of Jacksboro, in Jack county, and the records of all files and surveys of land for said district shall be kept in said office.

Clay land district.  
(Acts April 29, 1874, §3; Aug. 21, 1876, p. 242.)

ART. 3825. The counties of Clay, Wichita, Wilbarger, Greer, Collingsworth, Donley, Gray, Wheeler, Roberts, Hemphill, Lipscomb, Hall, Ochiltree and Childress shall constitute the Clay land district, and the county surveyor of Clay county shall be the surveyor of said district, and shall keep his office in the town of Henrietta, in Clay county, and the records of all files and surveys of land in said district shall be kept in said office.

Young land district.  
(Acts April 29, 1874, §4; Aug. 21, 1876, p. 242.)

ART. 3826. The counties of Young, Throckmorton, Haskell, King, Dickens, Crosby, Lubbock, Hockley, Cochran, Stonewall, Kent, Garza, Lynn, Terry and Yoakum are hereby made and constituted the Young land district, and the county surveyor of Young county shall be the surveyor of said district, and shall keep his office at the county seat of Young county, and the records of all files and surveys of land in said district shall be kept in said office.

Eastland land district.  
(Act April 29, 1874, §5.)

ART. 3827. The counties of Eastland and Callahan shall constitute the Eastland land district, and the county surveyor of Eastland county shall be the surveyor of said district, and shall keep his office at the county seat of said county, and the records of all files and surveys of land in said district shall be kept in said office.

Brown land district.  
(Act April 30, 1874, p. 180, §1.)  
P.D. 7099000.

ART. 3828. The counties of Brown, Coleman and Runnels, and the territory embraced in said counties, are declared to constitute the land district of Brown, and the principal office of said district shall be kept at the town of Brownwood, in Brown county, and the county surveyor of Brown county shall be the surveyor of said land district.

San Saba land district.  
(Act April 30, 1874, §2.)

ART. 3829. The counties of San Saba, McCulloch and Concho, and the territory embraced in said counties, are declared to constitute the land district of San Saba, and the principal office of said district shall be kept at the town of San Saba, in San Saba county, and the county surveyor of San Saba county shall be the surveyor of said San Saba land district.

LaSalle to be attached to Nueces district.  
(Act May 2, 1874, p. 193.)  
P.D. 70991777.

ART. 3830. The unorganized county of La Salle, until the same shall be organized, is attached to the Nueces land district for surveying purposes.

Surveyors to procure copies of surveys, etc.  
(Act April 29, 1874, p. 163, §7.)

ART. 3831. None of the foregoing articles of this chapter shall be construed as affecting any survey of land legally and lawfully made by the surveyors of the respective counties or districts who had legal authority for so doing, and the surveyors of land districts are hereby required to procure a certified transcript of all records pertaining to the location and survey of lands made by previous surveyors in the counties or territory to which they have been appointed, and shall keep the same in their offices.

Shackelford land district.  
(Act Aug. 21, 1876, p. 242, §7.)

ART. 3832. The counties of Shackelford, Fisher, Scurry, Borden, Dawson, Gaines, Andrews, Martin, Howard, Mitchell and Nolan shall constitute the Shackelford land district, and the principal office of said district shall be kept at the county seat of said Shackelford county, and the county surveyor of Shackelford county shall be the surveyor of said district.

Bexar land district.

ART. 3833. The counties of Crockett, Edwards, Zavala, and a part of Dimmit county, shall each continue to form a part of Bexar land district until it shall become a separate land district in manner and form as provided by law.

CHAPTER FOUR.

COUNTY AND DISTRICT SURVEYORS.

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ARTICLE 3834. At each regular biennial election for state and county officers, there shall be elected in each county, by the qualified voters thereof, a county surveyor, who shall reside in the county and keep his office at the county seat, who shall hold his said office for two years, and until his successor may be elected and qualified.

ART. 3835. Before entering upon the duties of county surveyor each person shall take the oath of office prescribed by the constitution, and shall enter into bond with two or more good and sufficient sureties, to be approved by the commissioners' court of the county in the sum of ten thousand dollars, payable to the governor and his successors in office, conditioned that he will faithfully perform the duties of his office, which bond shall be deposited and recorded in the clerk's office of said county.

ART. 3836. Whenever there shall be a vacancy in the office of county or district surveyor in any of the counties, it shall be the duty of the county commissioners' court of the county in which such vacancy occurs to fill by appointment such vacancy, such appointment to continue in force until the next general election.

ART. 3837. Each county surveyor shall receive and examine all field-notes of surveys which have been or may hereafter be made in said county, and upon which patents are to be obtained, and shall certify to the same according to law, and shall record such field-notes in a book to be kept by him for that purpose; and he shall perform such other duties as may be required of him by law.

ART. 3838. It shall be the duty of every district, county and special county surveyor, once in every three months, to plat upon the map of his district or county all surveys made to that date, within the three preceding months, and transmit sketches and field-notes of same to the commissioner of the general land office, together with a list of all land certificates or warrants on file in his office, giving the number, date and quantity in acres of each, stating by whom and to whom the same purports to have been issued, and when and by whom filed; and any surveyor failing or refusing to comply with the provisions of this article shall be subject to a fine of five hundred dollars for each offense, to be recovered by the state before the district court, on complaint of any party aggrieved, or of the proper county or district attorney, whose duty it shall be to prosecute all such suits. A certificate from a postmaster certifying that a letter or package containing the returns herein provided for was mailed in his office, addressed to the commissioner of the general land office, shall be evidence of the fact in any suit against a surveyor under this article.

County surveyor, when elected. (Const., art. 16, §44.) (Acts Jan. 26, 1858, p. 199; Aug. 19, 1876.) Oath and bond required. (Act Dec. 14, 1837.) P.D. 1081, 4522.

Commissioners' court to fill vacancy. (Act Aug. 19, 1876, p. 219.)

Duties of county surveyor. (Act Dec. 14, 1837.) P.D. 4522.

Shall plat surveys upon map, etc. (Act Jan. 26, 1858.) P.D. 1087.

Record books furnished.  
(Acts March 9, 1875; Feb. 2, 1860.)

P.D. 1089.

Deputies appointed; oath and bond required, etc.  
(Act Dec. 14, 1837.)

P.D. 4522.

ART. 3839. The county courts of the several counties shall furnish the county surveyors of their respective counties with the necessary books of record pertaining thereto.

ART. 3840. The county or district surveyor shall appoint as many deputy surveyors as he may deem necessary for the county or district, and shall administer to them the oath of office, and take the bond hereinafter prescribed, and shall furnish them such instructions as may be furnished to him from time to time by the commissioner of the general land office; and such deputy surveyor, before he enters upon the duties of his office, shall enter into bond with two or more good and sufficient sureties, to be approved by the commissioners' court, in the sum of five thousand dollars, payable to the governor and his successors in office, conditioned for the faithful performance of the duties of his office, which bond shall be deposited and recorded in the clerk's office of the same county; and the county or district surveyor shall immediately report such appointment to the commissioner of the general land office, and state when such deputy entered upon the discharge of the duties of his office.

Chain carriers and markers.  
(Act Dec. 14, 1837.)

P.D. 4523.

ART. 3841. It shall be the duty of each deputy district or county surveyor to administer an oath to each individual employed by him as chain carrier or marker for the faithful performance of his duties as such, in accordance with the instructions given him; and no person under the age of sixteen years shall be employed in either of the above capacities; *and further*, it shall be the duty of said deputy to subscribe the name of each of the chain carriers to his field-notes previous to his returning the same to the county surveyor.

Deputy surveyors shall return field-notes.  
(Act Feb. 5, 1840.)

P.D. 4112.

ART. 3842. It shall be the duty of all deputy surveyors to make returns of the field-notes of every survey by them made, within three months after making the survey, to the county or district surveyor for his approval; and any deputy neglecting to do so shall be liable for damages at the suit of any person thereby injured.

County surveyor may do work of deputy.  
(Act Dec. 20, 1837.)

ART. 3843. Any county surveyor may do the work of a practical surveyor, and may also perform all the duties required of a deputy surveyor, and in such case he shall make out, certify to, record and return the field-notes under his own official signature.

Shall keep a map in his office for inspection.  
(Act Feb. 5, 1840.)

ART. 3844. It shall be the duty of each county or district surveyor to make out and keep in his office, free for the inspection of all persons, a map on which all the surveys made in his county shall be laid down and properly connected; which map shall be corrected at the end of every three months.

Duty on change of boundary.  
(Act Feb. 5, 1840.)

ART. 3845. Hereafter, when any change may take place in the boundaries of any county, it shall be the duty of the surveyor of any county from which territory may be so taken, to furnish the surveyor of the county, including such territory, with a full and complete copy of all the field-notes of surveys made in the same.

Contested elections, by what court tried.  
(Act Feb. 7, 1853.)

ART. 3846. Whenever the election of any person to the office of county or district surveyor may be contested, like notice shall be given and proceedings had as in case of contested elections for county officers. When the district is composed of one county the contest shall be tried in such county; but where the district is composed of more than one county, then such contest shall be tried in the county from which the district takes its name.

Their duties, how regulated.  
(Act May 12, 1846.)

ART. 3847. All district surveyors shall be governed in the discharge of their official duties by the same provisions of law which regulate and prescribe the duties of county surveyors, so far as the same may be applicable; and upon their removal from office, or at the expiration of their term of office, they shall deliver to their successors all records, books, papers, maps and other things appertaining to the office.

ART. 3848. Each district surveyor shall appoint one or more deputy surveyors, who shall qualify and give bond in manner and form as required of deputy county surveyors, and whose duties shall be the same as those of deputy county surveyors, so far as the same may be applicable; and when such surveyor does the work of surveying in a new county he shall notify the special county surveyor acting under his direction, and report his work to him to be mapped and noted on his records.

Deputy district surveyors

ART. 3849. It shall be the duty of each district surveyor, within twenty days after his election, to appoint as his deputy a special county surveyor for each unorganized county within his district, who shall hold his office during the term of his principal, unless sooner superseded by the appointment of another as his successor. The district surveyor shall immediately notify the commissioner of the general land office of every such appointment. Each special county surveyor so appointed shall have all the powers, perform all the duties and be subject to all the penalties appertaining to county surveyors, and shall keep, in addition to the returns to be made to his principal, a record and map of all the transactions in his office, to become a part of the county surveyor's records of such county whenever it may be organized. All such special county surveyors shall reside and keep their offices in their respective counties, if there be settlements in the same, but if there be no settlements in the county, then at the nearest town to such county. Whenever any county may elect a county surveyor, who shall have qualified and given bond, and who shall have procured the maps and records required by law, the district surveyor within whose district such county may have been or may be at the time, and his deputy shall cease to exercise any official acts within the same.

Special county surveyor for unorganized county. (Act Jan. 26, 1858.) P.D. 1085.

ART. 3850. Deputy surveyors of the several new counties shall procure from the district surveyor of their respective district, or make out the same, a map of all the surveyed lands situated in the new county to which such deputy may be assigned, which shall be kept in the office of such deputy at the county site, for the inspection of all persons interested.

Deputy surveyor of new county to procure maps. (Act May 11, 1846.) P.D. 4276.

ART. 3851. All surveys made by a deputy surveyor in a new county, after being examined and placed upon the map of the district, shall be placed upon the county map.

Surveys of deputy to be placed on map. *Id.* P.D. 4277.

ART. 3852. In any unorganized county to which a special deputy surveyor may have been appointed, or may hereafter be appointed, the district surveyor of the land district to which it is attached, or his deputies, may make surveys, the field-notes of which shall be recorded in a separate book for each of such unorganized counties, and also in the ordinary record books of the land district; but before making such surveys he shall notify the special deputy surveyor thereof, and afterward report the field-notes to him, to be mapped and noted on his records.

Surveys in unorganized counties. (Act Feb. 8, 1860.) P.D. 1091.

ART. 3853. The district or county surveyor of any county shall have the power to appoint a special deputy, who shall be empowered to perform all official acts which said district or county surveyor may legally perform, and the said special deputy surveyor, before entering on the discharge of his duties, shall give bond with two or more good and sufficient sureties, in the sum of five thousand dollars, payable to the governor, for the faithful discharge of the same, which shall be approved by the commissioners' court of the county and filed with the county clerk thereof.

Special deputies, bond, etc. *Id.* P.D. 1092.

ART. 3854. Before any surveyor, elected as provided by law, in a county not previously a separate land district, shall receive any file or location of a certificate, or any application for a homestead donation, or make any survey therein, he shall procure a certified map of the surveys in said county, and a certified copy of all files, applications and locations of lands therein from the surveyor's office of the land districts to which said county belonged, and file the same in his office for the inspection of any one interested in examining the same.

Surveyor not authorized to survey, until, etc. (Act Jan. 26, 1858.)

Shall return field-notes of new county.

ART. 3855. When the surveyor shall have complied with the provisions of the preceding article, it shall be his duty immediately to make out and return to the general land office field-notes, properly certified to, of the boundaries of such county; and the commissioners' court of said county shall make the necessary provision for paying the expenses thereof.

Surveyor to obtain copies of field-notes, etc.

*Ib.*  
P.D. 1084.

ART. 3856. Any one elected surveyor in a newly organized county shall, within twelve months from the date of his qualification, obtain from the office of the districts from which his county is taken, a transcript of the field-notes of surveys in his county, certified to as required by law, and for obtaining which he shall be entitled to ten cents per hundred words, to be paid by the commissioners' court of his county; said transcript of records, so certified, shall answer all the purposes and have the same force and effect in law that the originals could have.

Authorized to rent office (Act Aug. 18, 1876, p. 136.)

ART. 3857. The district and county surveyors are authorized to rent some suitable building or room in which to keep their offices, in case the said surveyors can not be provided with offices in the court-houses of their respective counties.

Rent of office, how paid.

*Ib.*

ART. 3858. The county commissioners' court shall make the necessary arrangement for paying the rent of an office rented by said surveyors, upon satisfactory evidence showing that the rent was reasonable and the office necessary, and that there was no office provided for said surveyors in their county.

To have a deputy in office, when. (Act Feb. 25, 1863.)

P.D. 1093.

ART. 3859. In all cases where the county surveyors do not reside at the county seats of their respective counties, they shall and are hereby required to have deputies in their respective offices residing at said county seats, who shall keep their offices open and the records thereof subject to the examination of any person interested therein, and who shall have authority to receive and file land certificates or other evidences of right to land, and also to receive and record all files or designations of land to be surveyed.

Authority to survey. (Act Dec. 14, 1837.)

ART. 3860. Any certificate of claim to land, which has been or may be obtained in the manner and form prescribed by law, shall be sufficient evidence to authorize any lawful surveyor to survey for any person holding such certificates, any lands which he may point out agreeably to all the laws which do now or may hereafter exist on that subject; *provided*, that where more than one application is made for the same tract of land to be surveyed, the settler or occupant shall have the preference if their claims be otherwise equal.

Conflicting claims settled by jury.

*Ib.*

ART. 3861. In all cases where there is more than one claimant to the same location, or in case there be more occupant claimants than one, the conflicting claims shall be summarily tried by the nearest justice of the peace and six disinterested jurors summoned for that purpose, who shall in all cases give preference to the oldest occupant and settler; and upon their decision the surveyor shall grant to the successful party the field-notes of the tract of land.

Right to examine books, etc. (Act Jan. 26, 1858.)

P.D. 1086.

ART. 3862. Any person interested for himself, or as agent or attorney of another, shall at all times have the right to examine the books, papers, plats, maps or other archives belonging to the office of any district, county or special surveyor, on the payment of the fee fixed by law.

Right to demand statement, when. (Act Jan. 26, 1858.)

P.D. 1086.

ART. 3863. Whenever an applicant calls upon a district, county, deputy or special surveyor, to make an entry for location on his books, and shall be informed that the land indicated by the applicant has already been located, or located and surveyed, the applicant may demand of the surveyor a certificate in writing, setting forth the time at which the entry, location and survey, or either, was made, at whose instance, upon what certificate or warrant, and all the facts in the case, which certificate shall be held good evidence in law and equity against such surveyor in any suit brought against him to test the truth of the certificate and recover

damages by the applicant; and any surveyor refusing any examination of his books and archives, or to give the certificates as herein provided, shall be subject to a fine of five hundred dollars for each offense, to be recovered before the district court by the party injured.

ART. 3864. The transcript of records and maps, together with the examination of the same, shall be paid for by the county for the benefit of which they are made, allowing ten cents for every hundred words in copying said records, and three dollars per day for each day the draftsman may be actually and necessarily engaged in copying maps, as provided by law; and clerks and district surveyors for examining and certifying transcripts of records shall have three dollars per day.

Transcripts, etc., by whom paid for. (Act March 20, 1848.) P.D. 1078.

ART. 3865. The district or county surveyors of the several counties, in order to secure uniformity in the courses indicated by the different surveyors' compasses or other instruments used within their several jurisdictions, shall, in some convenient place at their respective county seats, establish a true meridian, by a substantial monument, to be erected at the expense of the county, and shall adjust, or cause to be adjusted to the said meridian, all such instruments before being used within their respective jurisdictions, and shall keep in their offices a standard chain of the true measurement of ten varas, to which all chains used by themselves or their deputies shall be adjusted before being used in the measurement of lines of surveys.

Surveyors to establish true meridian, etc. (Act June 2, 1873, p. 173.) P.D. 7099sss.

ART. 3866. All surveyors shall be held responsible to parties interested for any cost that may accrue in rectifying any errors that may occur in their work by reason of neglect or failure to comply with the requirements of the preceding article.

Responsible for neglect or failure, etc. *Ib.* P.D. 7099ttt.

ART. 3867. Upon the removal from office, or at the expiration of the term of office of any county or district surveyor, he shall deliver to his successor all records, books, papers, maps and other things appertaining to his office.

Shall turn over records, etc. (Act May 12, 1846.) P.D. 4525.

ART. 3868. The election of all county surveyors on the fifteenth day of February, 1876, is ratified and made valid, and all the official acts of the county surveyors, elected as aforesaid, are hereby declared valid and shall be of full force and effect.

Election of county surveyors legalized and their acts validated. (Act July 12, 1876, p. 314.)

ART. 3869. Whenever an organized county, from any cause, has not a qualified county surveyor, the county clerk of such county is hereby required to take charge of all records, maps and papers belonging to the county surveyor's office, and safely keep the same in his office.

County clerk shall take charge of books, etc., when. (Act Oct. 18, 1866, p. 31.)

ART. 3870. Whenever the county commissioners' court of any county shall deem the same necessary, they shall order the surveyor's records to be transcribed in good and substantial books, in a plain hand, by the surveyor or special deputies duly sworn to make true copies of the same; for which services they shall be allowed not more than ten cents per hundred words, to be paid out of the county treasury.

Surveyor's records may be transcribed. (Act Nov. 6, 1871, p. 18.)

NOTE.—Section 2, chapter 92, acts 1879, provides as follows:

“Sec. 2. 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 in each year, of the number of sections of public school lands in his county inclosed during the past year, and the name of the person or persons controlling such inclosed lands, and the number of sections controlled by him or them.” See appendix.—L.

Surveyor to report school lands inclosed.

## CHAPTER FIVE.

## LAND CERTIFICATES.

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Land certificates classified.

ARTICLE 3871. Land certificates, by virtue of which surveys have been and are now being made and patents have been issued by the Republic and State of Texas, comprise headright certificates, augmentation certificates, bounty warrants, donation warrants, land scrip, railroad certificates, river certificates and canal and ditch certificates.

ART. 3872. Headright certificates are described as follows: viz:

1. Certificates for one league and labor issued to heads of families, and one-third of a league issued to single men, residing in Texas March 2, 1836, who had received no land under the colonization laws of Mexico.

2. Certificates for one league and labor issued to the volunteers who arrived after March 2, 1836, and before August 1, 1836, and were honorably discharged.

3. Unconditional certificates for twelve hundred and eighty acres issued to heads of families, and six hundred and forty acres to single men, who emigrated to Texas after March 2, 1836, but before October 1, 1837.

4. Unconditional certificates for six hundred and forty acres issued to heads of families, and three hundred and twenty acres issued to single men, who arrived in Texas after October 1, 1837, but before January 1, 1840; and also before January 1, 1842; and colony headrights.

ART. 3873. Augmentation certificates are described as follows, viz:

1. Certificates for two-thirds of a league and labor (3129 acres), issued to single men who resided in Texas March 2, 1836, and who married after that date and before December 14, 1838.

2. Certificates for six hundred and forty acres issued to single men who arrived after March 2, 1836, and before October 1, 1837, on marriage before October 1, 1837.

3. Certificates for three hundred and sixty-nine acres issued to single men who had received one-fourth of a league.

4. Certificates for one hundred and seventy-seven acres issued to heads of families, residing in Texas March 2, 1836, who had only received one league from the Mexican government.

ART. 3874. Bounty warrants are certificates which have been issued to each citizen volunteer who served in the army or navy up to and inclusive of April 21, 1836, for *three* months, three hundred and twenty acres; for *six* months, six hundred and forty acres; for *nine* months, nine hundred and sixty acres, and for *twelve* months, twelve hundred and eighty acres; also six hundred and forty acres issued to the heirs of volunteers killed in battle.

ART. 3875. Donation warrants are certificates which have been issued for six hundred and forty acres each to all soldiers who participated in the battle of San Jacinto, the siege of Bexar, under Milani; the battle of

Headright certificates,  
1 league and labor; 1/4 do.  
(Const. Republic, Gen. Provis. §10.)  
H.D. p. 36.  
1 league and labor.  
(Act Dec. 14, 1837.)  
H.D. 1865.

1280 acres.  
640 do.  
*Ib.*  
H.D. 1865.

640 acres.  
320 do.  
(Act Jan. 4, 1839.)  
H.D. 1835.  
(Act Jan. 4, 1841.)  
H.D. 2005.

Augmentation certificates.  
2/3 of league and labor.  
(Act Dec. 14, 1837.)  
H.D. 1859.

640 acres.  
*Ib.*  
H.D. 1865.

369 acres.  
(Const. Rep., Gen. Provis. §10.)  
177 acres.  
*Ib.*

Bounty warrants.  
320 acres.  
640 do.  
960 do.  
1280 do.  
(Act Dec. 4, 1837.)  
H.D. 1834.

Donation warrants.  
(Act Dec. 21, 1837.)  
H.D. 1881, 1886, 1896.

March 9, 1836, and the heirs of those who fell at the Alamo and under Fannin at Goliad.

ART. 3876. Land scrip are certificates which have been issued for six hundred and forty acres each by the president of the Republic of Texas to William Bryan, Thomas Toby and others for services rendered or for sales made as agents of the government.

Land scrip  
640 acres.  
(Acts Dec. 6  
and 10, 1836.)  
H.D. 1776, 1787.

ART. 3877. Railroad certificates are described as follows, viz:

Railroad cer-  
tificates.  
640 acres.

1. Certificates for six hundred and forty acres granted as a bonus to aid in the building of railroads in the state.

2. Certificates for six hundred and forty acres granted as a bonus to railroads, to be located on the odd sections, the even sections being reserved to the state for the school fund.

640 acres.  
(Act Jan. 30,  
1854.)

3. International certificates issued to the International railroad company, privileged to be located as headright certificates and exempted from taxes for twenty-five years.

640 acres.  
(Act March 10,  
1875; special  
laws. pp. 70,  
71.)

ART. 3878. River certificates are such as have been issued to aid in improving certain rivers and making them navigable, to be located also on the odd sections, the even sections being reserved to the state for the school fund.

River certifi-  
cates.  
640 acres.  
(Acts April 29,  
1874, p. 169;  
May 1, 1874, p.  
185; Feb. 13,  
1875, p. 23.)

ART. 3879. Canal and ditch certificates are such as have been issued for six hundred and forty acres to encourage the making of canals and ditches for navigation and irrigation purposes.

Canal and  
ditch certifi-  
cates.  
(Act March 10,  
1875, pp. 77-8.)

ART. 3880. All unsatisfied genuine land certificates barred by article 10, section four, of the constitution of 1869, by reason of the holders or owners thereof failing to have them surveyed and returned to the land office by the first day of January, 1875, are declared to have been revived on the eighteenth day of April, 1876.

Genuine land  
certificates  
revived.  
(Const., art. 16,  
§2.)

ART. 3881. All unsatisfied genuine land certificates in existence on the eighteenth day of April, 1876, shall be surveyed and returned to the general land office within five years thereafter, and on failure thereof shall be forever barred.

Shall be sur-  
veyed, etc.,  
within five  
years.  
*Ib.*

ART. 3882. All genuine land certificates issued by the state after the eighteenth day of April, 1876, shall be surveyed and returned to the general land office within five years after issuance, and on failure thereof shall be forever barred.

Certificates  
hereafter is-  
sued to be sur-  
veyed within  
five years.  
*Ib.*

ART. 3883. Whenever any headright certificate, soldier's discharge, bounty warrant, donation warrant, or any other land certificate described in this chapter shall have been lost or destroyed, a duplicate thereof may be issued by the commissioner of the general land office as hereinafter provided.

Duplicate cer-  
tificates may  
be issued,  
when.  
(Act May 11,  
1846.)  
P.D. 4122.

ART. 3884. Whenever any of the above mentioned certificates or evidence of claim to land may have been lost or destroyed the owner thereof, or his agent or legal representative, shall cause a notice of such loss or destruction to be published for eight successive weeks in some weekly newspaper published in the county where such person, his agent or legal representative resides, or in the nearest county if none be so published, and such notice shall describe substantially, or as near as may be, the certificate or paper lost, and shall further state that unless intelligence of the same is received by him, or by the commissioner of the general land office, within three months of the date of said publication, he will apply to the proper officer for a duplicate of the certificate or paper so lost or destroyed.

Notice to be  
published for  
eight weeks.  
(Act Jan. 14,  
1840.)  
P.D. 4123.

ART. 3885. When any person shall apply for a duplicate of any such certificate or claim against the government, he shall be required to prove by the affidavit of the printer or publisher, duly made before some officer authorized to administer oaths, that the notice has been published as

Proofs to be  
made.  
*Ib.*  
P.D. 4124.



required in the preceding article; and he or his agent shall take and subscribe an oath before some officer, authorized as aforesaid, to the following effect: That he is the just owner of the said certificate or claim [*describing it*]; that he has not sold, alienated nor transferred the same in any manner; that it has been lost [or destroyed, as the case may be], and that since lost [or destroyed] he has not known or heard of the existence of the same. And he shall file said proof and affidavit in the general land office; and when the assignee of the original grantee applies for such duplicate, the evidence of this title shall be filed in the general land office, if not already on file; whereupon, if it shall appear to the commissioner of the general land office that the certificate or claim so lost or destroyed is a genuine and subsisting claim against the government, and that the provisions of this article have been fully complied with, no intelligence of said certificate or claim having been received by him, it shall be his duty to issue to the claimant, in the name of the original grantee, a duplicate certificate under his hand and the seal of his office, entitling him to the same quantity of land as was conferred by the original; *provided*, that administrators and the legal representatives of deceased owners shall not be required to take the oath above prescribed; *and provided further*, that when an agent or attorney applies for such duplicate, his legal authority to receive and receipt for the same be filed before delivery.

ART. 3886. When any certificate or evidence of claim to land mentioned in this chapter, shall be owned by two or more parties, and the same shall be lost or destroyed, the parties owning the same may jointly or severally make the affidavit required of such owner.

ART. 3887. When two or more surveys have been made by virtue of any legal claim to land and patents obtained therefor, if it shall appear by the district or county maps in the general land office, or by a plat or sketch giving a connection of the adjacent surveys certified to by the district or county surveyor and returned to said office, that the survey last made is so circumscribed by other surveys that no more vacant land can be obtained in that place, and the survey or surveys already made do not satisfy the claim, the commissioner of the general land office shall issue, on demand, to the owner or holder of said claim a certificate for the unlocated balance thereof, which may be located, surveyed and patented as other certificates.

ART. 3888. Whenever the field-notes of a survey have been returned to the general land office, and, upon examination, the same are found to be in conflict with previous claims, it shall be lawful for the rightful claimant of the certificate so located in conflict to file his affidavit with the commissioner, setting forth that the certificate was not intentionally so located in conflict, but that he believed, at the date of such location, that the land covered thereby was vacant and unappropriated public domain; to abandon said survey and surrender all claim thereto, by reason of the file, entry and survey made by him; and to receive from the commissioner a copy of the certificate on which the same was based, if such certificate be valid and genuine; and it shall be the duty of the commissioner to indorse upon the said copy that the original certificate is floated, and the county where the land is situated which is covered by such floated certificate; and that the copy is given in lieu of the original, but without any prejudice to the rights of any person by virtue of said certificate, and that the said copy may be located upon any unappropriated or vacant land.

ART. 3889. Whenever any patent to land has been cancelled according to law, it shall be the duty of the commissioner of the general land office to issue to the owner, his agent or legal representative, on his demand, a duplicate of the original certificate, or a certificate for the unlocated balance of said certificate, as the case may be, which may be located and surveyed and patented upon as in other cases; and the commissioner shall

Joint owners may join or sever in affidavit. (Act Feb. 7, 1852.)

P. D. 4127.

When unlocated balance certificate may be issued. (Act Jan. 10, 1852.)

Duplicate when certificate is floated.

(Acts Nov. 25, 1871, p. 41; June 2, 1873, p. 180.)

P. D. 7095.

P. D. 709900. (Acts 1873, extra session, ch. 23.)

When patent cancelled a duplicate certificate may issue.

(Acts Feb. 3, 1854; June 2, 1873, p. 180, §5.)

P. D. 4301-2, P. D. 709900.

certify upon such certificate that the original patent has been cancelled, the county where the land is situated, and that the duplicate or certificate is given in lieu of the original, but without any prejudice to the rights of any person.

ART. 3890. Whenever any genuine land certificate has been located and surveyed in part, and the same with the field-notes has been returned to and filed in the general land office, it shall be the duty of the commissioner of the general land office to issue to the owner thereof, his agent or legal representative, on demand, a certificate for the unlocated balance of said original, stating thereon the number and amount of locations made on the original; and the same may be located, surveyed and patented as in other cases.

Where surveyed in part certificate for unlocated balance to issue. (June 2, 1873, P. 180, § 8.) P.D. 7099pp.

ART. 3891. When any person may have applied for and obtained a duplicate land warrant, headright or other land certificate, or certificate for unlocated balance, under the provisions of this chapter, and the same may have been lost or destroyed, such person shall be entitled to demand and receive a triplicate thereof, or other certificate of unlocated balance, by complying with the provisions hereof in reference to obtaining duplicate certificates or certificates for unlocated balance.

Triplicate certificate, when obtained. (Act Nov. 27, 1861.) P.D. 4128.

ART. 3892. All certificates heretofore or that may be hereafter issued by the supreme or district courts, in accordance with the provisions of an act passed by the fifth congress of the Republic of Texas, approved February 4, 1841, shall be as valid and legal as if issued by any other legal authority.

Certificates issued by supreme and district courts validated. (Act March 18, 1848.)

ART. 3893. The commissioner of the general land office is hereby authorized to issue to all persons and corporations such land certificates as they may be entitled to under any general or special law.

P.D. 4237. Commissioner authorized to issue certificate. (Act March 6, 1863, p. 23, § 1.) P.D. 4244.

NOTE.—Chapter 107, acts of 1879, requires that the governor shall countersign, if he approve the issuance, certificates, when any doubt arises as to the propriety of their issuance, or whenever a suit arises in any court to compel or restrain the issuance of such certificates. If he disapprove the issuance thereof he may refuse to countersign the certificates and all surveyors are forbidden to make a survey by virtue of them, they being declared invalid for all purposes whatsoever. See appendix.—L.

Governor to countersign land certificates, when.

## CHAPTER SIX.

### ENTRIES AND LOCATIONS.

	Article		Article
Surveyor shall keep a register of entries...	3894	Certificate re-located on same land, when...	3900
Entry, etc., how made.....	3895	Re-location, how made, etc.....	3901
Survey, how made.....	3896	Surveys to be made within twelve months.....	3902
Shall confer a preference right.....	3897	May be made in more than two places.....	3903
Certificate not to be lifted after entry, except.....	3898	When land lies in two or more districts may be located in either.....	3904
Effect of location on a valid title.....	3899	Surveyor to record such location.....	3905

Surveyor shall keep a register of entries. (Act Aug. 30, 1856.) P.D. 4573.

ARTICLE 3894. Each county, district and special deputy surveyor shall keep in his office a well-bound book as a register of entries, in which he shall register all entries or applications for land in his county or district.

ART. 3895. An entry or application shall be in writing, and be dated and signed by the applicant. It shall particularly describe the claim to be surveyed and the land applied for; which entry or application, together with the land certificate or scrip, or other legal evidence of title to be surveyed, shall be filed in the office of the county or district surveyor in which the land is situated; and where the said claim to be surveyed shall remain until returned, together with the field-notes, to the general land office.

Entry, etc., how made. *Ib.*

ART. 3896. The survey shall be made by a copy of the entry or application, and strictly in accordance with the same; and hereafter no survey shall be made until after entry or application, as provided in the preceding article.

Survey, how made. *Ib.*

Shall confer a preference right.

ART. 3897. Every entry or application, made according to the two preceding articles, shall confer a preference right of location or survey over any subsequent entry or application.

Certificate not to be lifted after entry. *Ib.* §2. P.D. 4574.

ART. 3898. It shall not be lawful for such surveyor to allow the holder of any land certificate or scrip, or other legal evidence of title to land, to lift or float the same after entry, location, file or survey, when the same is not made upon land previously appropriated. But when a conflict of entries, files, locations or surveys occur, upon a proper showing of the facts, which may be by the certificate of one of his deputies or from his own knowledge, he shall allow the party having his entry, file, location or survey of subsequent date, to lift so much thereof as shall be affected by such conflict.

Effect of location on a valid title, etc. *Ib.* P.D. 4575.

ART. 3899. Whenever an entry is made by virtue of a genuine certificate, upon any land which appears to be appropriated, deeded or patented, by the books of the proper surveyor's office, or records of the county court or general land office, the party making such entry shall abide by the same. And in the event that judgment final shall be rendered against the right of the party making such entry to hold such land, he shall not have the right to lift or re-enter said certificate. But the same shall be forfeited, and so declared to be by the judgment of the court.

Certificate may be re-located on same land, when. (Act Feb. 10, 1853.) P.D. 4563.

ART. 3900. Any person holding a genuine certificate or other legal evidence of right to land under the Republic or State of Texas, and having a survey made by virtue of the same, the field-notes of which may not have been returned to the general land office before the period prescribed by law, shall have the right to re-locate the same certificate or other evidence of legal right to land, upon the same survey, but without being compelled to have the same re-surveyed; *provided*, said survey shall not have been previously located by some other person by right of a genuine land claim.

Re-location, how made, etc. *Ib.* P.D. 4564.

ART. 3901. Any person wishing to avail himself of the privilege of re-locating the same land claim upon the same land, as permitted by the preceding article, shall present his land claim, or cause the same to be done for that purpose, to the district or county surveyor, as the case may be, of the district or county where the field-notes were first recorded, who shall duly enter such re-location upon the record of field-notes of the office, and duly certify the same to the commissioner of the general land office, which shall be sufficient authority for him to issue the patent for the land so re-located, as in other cases.

Surveys shall be made within twelve months. *Ib.* P.D. 4568.

ART. 3902. All lands which may be located by entry or application, as aforesaid, shall be surveyed within twelve months from the date of entry, or the same shall be null and void, and the lands be subject to re-location and survey; but such lands shall not in any case be subject to re-location at any time by the same certificate.

May be made in more than two places. *Ib.* P.D. 4532.

ART. 3903. Locations of land by entry or application may be made in more than two places by virtue of any genuine land certificate, bounty warrant, or other legal evidence of claim to land; *provided*, such other places be bounded by previous surveys, and shall be enough to satisfy only a part of said claim.

Where land lies in two or more districts may be located in either.

ART. 3904. Whenever it appears that an entry or location is made on the boundary of any county or land district, and a part of the land so entered or located upon is in the adjoining county or land district, the same shall be as valid and legal as if the land were situated entirely within the county or land district in which such entry or location was made; and it shall be the duty of the county or district surveyor to make out a certified copy of such entry or location, and forward the same to the county or district surveyor of the county or district affected thereby.

Surveyor to record such location.

ART. 3905. It shall be the duty of the county or district surveyor receiving the entry or location mentioned in the preceding article, and

which purports to locate part of the land within his district or county, to record the same as if such entry or location had been made in his own district or county.

CHAPTER SEVEN.

SURVEYS AND THE FIELD-NOTES THEREOF.

	Article		Article
What authorizes a survey.....	3906	Surveys stricken from the map, when.....	3913
Survey must be upon certificate certified to.....	3907	Liability for failing to survey.....	3917
Field-notes shall describe, what.....	3908	Field-notes to be sent back for correction, when.....	3918
Surveys to be returned in twelve months.....	3909	The same, corrected and returned, how.....	3919
Copy obtained on loss of original field-notes.....	3910	Correction by certificate, when made.....	3920
Surveys on navigable streams.....	3911	All surveys properly returned validated.....	3921
Surveys shall be in a square.....	3912	Field-notes withdrawn to be returned, when.....	3922
Two or more surveys permitted, when.....	3913	Locations on the line and within two districts may be surveyed by either.....	3923
Notice to settlers.....	3914		
Trial as to disputed line before justice of the peace.....	3915		

ARTICLE 3906. All surveys shall be made by authority of law, or under or by virtue of some genuine land certificate which is at the time on file in the county or district surveyor's office where the land is situated, and by a county, district or deputy surveyor, duly appointed or elected and qualified.

What authorizes a survey.

ART. 3907. It shall not be lawful for any county, district or deputy surveyor to locate any certificate for land issued prior to May 1, 1840, or to survey any land for any person holding such certificate, unless the same be certified 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 survey made contrary to the meaning and intent hereof shall be null and void.

Survey must be upon land certificate properly certified to (Act Feb. 5, 1840.) P.D. 4537.

ART. 3908. The field-notes of every survey shall state—

1. The county or land district in which the land is situated.
2. The certificate or other authority under or by virtue of which it is made, giving a true description of same by numbers, date, when and where issued, name of original grantee and quantity.
3. The land, by proper field-notes, with the necessary calls and connections for identification (observing the Spanish measurement by varas).
4. A diagram of the survey; and,
5. The variation at which the running was made.
6. It shall show the names of the chain carriers.
7. It shall be dated and signed by the surveyor.
8. The correctness of the survey, and that it was made according to law, shall be certified to officially by the surveyor who made the same; and also that such survey was actually made in the field, and that the field-notes have been duly recorded, giving book and page.
9. When the survey has been made by a deputy, the county or district surveyor shall certify officially that he has examined the field-notes, has found them correct, and that they are duly recorded, giving book and page of record.

Field-notes shall describe what.

ART. 3909. The field-notes of all surveys shall be returned to and filed in the general land office within twelve months from the date of survey.

Surveys to be returned in twelve months. (Act Feb. 10, 1852.) P.D. 4566.

ART. 3910. When the original field-notes of any survey made by authority of law shall have been heretofore or may be hereafter lost or destroyed, it shall be lawful for the party who owned the same, or his agent, on making affidavit of the loss or destruction of such field-notes, and filing the same in the office of the county or district surveyor, to apply

Copy obtained on loss of original field-notes. *Ib.* P.D. 4562.

to such surveyor of the county where the survey was made and recorded, and obtain from him a certified copy of the record thereof, which copy shall be as valid and efficient in law as the original was, and shall secure to the party all the rights before the commissioner of the general land office that the original would have done.

Surveys on navigable streams. (Act Dec. 14, 1837.)  
P.D. 4529.

ART. 3911. All lands surveyed for individuals, lying on navigable water courses, shall front one-half of the square on the water course and the line running at right angles with the general course of the stream, if circumstances of lines previously surveyed under the laws will permit; and all streams, so far as they retain an average width of thirty feet, shall be considered navigable streams within the meaning hereof, and they shall not be crossed by the lines of any survey.

Surveys shall be in a square. *Id.*

ART. 3912. All surveys not made upon navigable water courses shall be in a square, so far as lines previously surveyed will permit.

Two or more surveys permitted, when. (Act Feb. 10, 1854.)  
P.D. 4532.

ART. 3913. Two surveys may be made under any genuine land certificate, and more than two surveys may be made thereunder, provided the land to be located be bounded by previous surveys, and shall be enough to satisfy only a part of said claim, which fact shall be specially certified to by the surveyor making the survey.

Notice to settlers. (Act Dec. 14, 1837.)  
P.D. 4528.

ART. 3914. It shall be the duty of the surveyor in all cases, before he runs a division line between two settlers or occupants claiming lands, to notify in writing the parties interested, before running the same; and any survey which may be made contrary to the true intent and meaning of this article shall not be a lawful one.

Trial as to disputed line before justice of the peace. *Id.*  
P.D. 4527.

ART. 3915. When two or more persons can not agree to a division line of any land which has never been surveyed agreeably to law, it shall be lawful for either party to apply to any justice of the county or territory in which the land lies, or if there be no justice of the peace in the county or territory, then to the nearest justice in any county or territory, and make oath that he has tried and has not been able to settle the dispute between himself and one or more other persons (naming them), concerning a division line, and the said justice shall issue a warrant to any lawful officer to summon the party or parties defendant, together with six disinterested jurors, to meet upon the premises in dispute, together with such witnesses as either party may choose to have summoned, to give evidence, on a certain day, naming at what time and place; the justice shall also meet the parties, examine all the testimony before the jury, who shall, on oath, hear and determine the case in dispute, and shall also determine who shall pay the costs of suit; each juror in such case shall be allowed two dollars per day for such services; the other officers, such fees as have already been established by law for other similar services; *provided*, that if the land in dispute shall be on a county line, it shall be lawful for a justice of either county in which part of the land may be to act in such case; and in case either party be dissatisfied with the decision, they shall have the right to appeal to the county court within ten days, upon giving bond and security for the costs.

Surveys stricken from the maps, when. (Act Feb. 10, 1852.)  
P.D. 4565.

ART. 3916. All surveys represented upon the maps of the general land office, the field-notes of which shall not be returned to the general land office under the provisions of this chapter, and for which there are no titles on file in said office, shall be null and void, and be stricken from the maps of said office.

Liability for failing to survey. *Id.*  
P.D. 4569.

ART. 3917. If any district or county surveyor shall fail, neglect or refuse, when the amount of lawful surveying fees of any location of land may be tendered to him by any person legally entitled to the survey, to make or cause the survey of the same to be made within one month of the time of the tender to him of said surveying fees, he and his sureties shall be liable on his official bond to the party or parties legally entitled to the same, in the amount of the damages or injury said party or parties

may sustain by reason of such neglect, refusal or failure, to be recovered before any competent tribunal.

ART. 3918. If, upon examination of the field-notes of a survey in the general land-office, they are found to be incorrect, it shall be the duty of the commissioners to cause a plain statement of the errors, with a sketch of the map, to be forwarded by mail or by the party interested, to the surveyor who made the survey, with a requisition to correct the same and return corrected field-notes to the general land office.

Field-notes to be sent back for correction, when.  
(Act Oct. 24, 1871, p. 11.)  
P.D. 7091.

ART. 3919. It is hereby made the duty of surveyors who shall have made and delivered incorrect field-notes, upon the requisition of the commissioner of the general land office, provided for in the preceding article, or of the party interested, to make corrected field-notes and return the same to the general land office without delay and without any additional compensation.

The same, corrected and returned, how.  
*Ib.*  
P.D. 7092.

ART. 3920. When a conflict of surveys does not exist on the ground, but appears only on the maps or in the field-notes, it shall only be required of the surveyor to make an official certificate of the facts and furnish a true sketch of the survey with its connections.

Correction by certificate, when made.  
*Ib.*

ART. 3921. All surveys properly made by virtue of genuine or valid land certificates, which surveys, together with the certificates by virtue of which they were made, have been returned and are now on file in the general land office, or were so on file on the twenty-fifth of April, 1871, and not in conflict with any other valid land claim, shall be deemed valid, and the commissioner of the general land office is hereby authorized and required to issue patents for the same.

All surveys properly returned validated.  
(Act April 25, 1871, p. 60, §2.)  
P.D. 7093.

ART. 3922. In all cases where field-notes shall be withdrawn from the general land office, the same shall be returned thereto within twelve months from the date of withdrawal, or such survey or surveys shall be null and void.

Field-notes withdrawn to be returned, when.  
(Act Nov. 29, 1871, p. 45, §3.)  
P.D. 7098.

ART. 3923. An entry or location made by virtue of a genuine land certificate upon any vacant and unappropriated land which lies partly in one and partly in another land district or county, shall be surveyed by the surveyor of the district or county in which the entry or location was made; and the field-notes thereof shall be recorded in both districts or counties before they are returned to the general land office.

Locations on the line and within two districts may be surveyed by either.

## CHAPTER EIGHT.

### PREÉMPTIONS.

	Article		Article
Who are entitled to préemption.....	3924	Shall issue to heirs, when.....	3931
Who are not entitled.....	3925	Shall have preference right, when.....	3932
Shall present application in writing.....	3926	Shall forfeit right and title, when.....	3933
Shall be sworn to, filed and recorded.....	3927	Land certificate may be received and applied to the claim.....	3934
Person occupying public domain may apply for préemption, when.....	3927—Note	Temporary abandonment not computed, when.....	3935
Shall be surveyed in three months.....	3928	Time of enlistment in military forces not computed.....	3935—Note
Field-notes returned to general land office in twelve months.....	3929	Préemption of titled lands prohibited.....	3936
Patent shall issue, when.....	3930		

ARTICLE 3924. Every person eighteen years of age or over, who is a citizen of the State of Texas, and who shall hereafter, in good faith, settle upon and occupy any part of the vacant and unappropriated public domain, not exceeding one hundred and sixty acres, shall have the right to purchase the same, including his improvements, at the sum of one dollar per acre, under the stipulations hereinafter provided.

Who are entitled to préemption.  
(Act May 16, 1871, p. 93.)  
P.D. 7047.

ART. 3925. Any person who is the proprietor of one hundred and sixty acres of land in this state, or who quits and abandons his residence on his own land in this state to reside on the public lands, shall not acquire any right of préemption under the provisions of this chapter.

Who are not entitled.

Shall present application in writing.

ART. 3926. Any person desiring to acquire any portion of the public domain as a preëmtor, and who is entitled to a preëmption under the provisions of this chapter, shall present to the surveyor of the district or county in which the land is situated his application in writing, designating the land which he claims, and stating that he claims the same for himself in good faith, under the laws granting land to preëmtors, that he is not the proprietor of one hundred and sixty acres of land in this state, and that he has no residence on land of his own, and that he has actually settled upon the land which he claims, and that he believes the same to be vacant and unappropriated public domain.

Shall be sworn to, filed and recorded.

ART. 3927. Said application shall be made at the time of settlement or occupancy of the land, or within thirty days thereafter, and shall be sworn to before some officer authorized to administer oaths, and shall be filed with the said surveyor and recorded by him in a well-bound book kept for that purpose.

Persons occupying public domain may apply for preëmption, how and when.

NOTE.—Chapter 145, acts 1879, provides that "Any person who has occupied and is now occupying any portion of the public domain as a homestead, subject to such occupancy under any previous or existing law, and who may wish to make application for a homestead, shall have the right to make such application in accordance with the provisions of existing law at any time within twelve months from the date of the approval of this act; *provided*, that such occupant shall not acquire any right to land that, prior to the taking effect of this act, has been filed upon, or surveyed, by virtue of a valid land certificate." The act was approved and took effect April 24, A. D. 1879.—L.

Shall be surveyed in three months.

ART. 3928. The land described in the application aforesaid shall be surveyed by the surveyor of the proper county or district, within three months after the date of said application, and the field-notes thereof shall be certified to, recorded and mapped as required by law in other cases; and the county or district surveyor shall annex to the field-notes his further certificate that the applicant is an actual settler on or occupant of said land.

Field-notes returned to general land office in twelve months.

ART. 3929. The field-notes of every preëmption survey after being duly made, certified to and recorded, shall be returned to and filed in the general land office within twelve months after the date of the survey.

Patent shall issue, when.

ART. 3930. Whenever the terms and conditions of preëmption prescribed in this chapter shall have been complied with, and the preëmtor, or some one for him, shall have paid to the receiving clerk of the general land office the sum of one dollar per acre for the land claimed, within twelve months from the date of the survey aforesaid, and shall have continued to occupy said land, it shall be the duty of the commissioner of the general land office to issue a patent therefor to such preëmtor; *provided*, that the certificate of the county or district surveyor shall be sufficient evidence of compliance with the law.

Shall issue to heirs, when.

ART. 3931. In case of the death of the preëmtor before patent has issued, the same shall issue to his heirs upon compliance with the conditions of purchase by him or them.

Shall have preference right, when.

ART. 3932. Any applicant for a preëmption after having settled on public land, and having made his application in writing for a survey, as required by article 3926 of this chapter, and continuing his occupation thereof, shall have a preference right to a patent for the land from the state, on payment of the purchase price aforesaid, within twelve months after the date of his application.

Shall forfeit right and title, when.

ART. 3933. Should any preëmtor fail to make the written application as provided in this chapter, and within the time therein prescribed, or should he fail to have the survey made and the field-notes thereof duly certified and recorded, returned to and filed in the general land office within twelve months after the date of said survey, or should he fail to make the proof of settlement or occupancy, or should he fail to make payment for said land, as provided in this chapter, he shall, in either

event, forfeit all right and title to said land, and the same shall become subject to entry or location as other vacant and unappropriated land.

ART. 3934. Any genuine and unsatisfied land certificate or certificate for unlocated balance, which would otherwise be permitted by law to be located on the land, if vacant and unappropriated, and which is the property of the preëmtor by proper transfer, shall be received by the commissioner of the general land office in payment of the preëmption claim at the rate of one dollar per acre; and the same shall be applied to the land and the patent shall issue thereon, as in other cases of location by certificate.

Land certificate may be received and applied to the claim.

ART. 3935. If any person shall be driven from his preëmption by hostile Indians or other public enemies, or having reasonable grounds to fear violence from such Indians or enemies to himself or family, shall temporarily abandon his preëmption, and shall return to and occupy the same as soon as it shall appear reasonably safe for him to do so, he shall not forfeit or lose any right by reason thereof; and proof of the same may be made by the affidavit of the party and the certificate of the county or district surveyor.

Temporary abandonment when not computed. (Act March 13, 1875, p. 107.)

NOTE.—Section 1, chapter 72, acts 1879, provides as follows:

“Section 1. All preëmption settlers, who have heretofore, or may hereafter, enlist in the frontier battalion, or other military forces of this state, prior to the completion of the three years’ occupancy of their respective preëmptions, required by law, shall have six months, from the date of their discharge from such forces, to return and settle upon their preëmption claims and complete the occupancy thereof; and, during the time of their enlistment, and the six months herein extended to them to return upon the same, no such preëmption claim shall be liable to location or preëmption by any other person whomsoever.” The act went into force April 7, 1879.—L.

Time of enlistment in military forces not computed.

ART. 3936. No person shall settle upon or occupy, nor shall any survey be made or patented under the provisions of this chapter upon any land titled or equitably owned under color of title from the sovereignty of the state, evidence of the appropriation of which is on the county records or in the general land office; or when the appropriation is evidenced by the occupation of the owner, or of some person holding for him.

Preëmptions on titled lands prohibited. (Const., art. 14, §2.)

## CHAPTER NINE.

### HOMESTEAD DONATIONS.

Who is entitled to one hundred and sixty acres.....	Article	Proof shall be by affidavit, etc.....	Article
Who is entitled to eighty acres.....	3937	Patents shall issue to the heirs, when.....	3945
Shall present application in writing.....	3938	No assignment valid, unless by deed, etc....	3946
Shall be sworn to, filed and recorded.....	3939	Shall forfeit right and title, when.....	3947
Shall be surveyed in twelve months.....	3940	Land certificate may be applied, etc.....	3948
Preference right to survey and patent.....	3941	Temporary abandonment not computed, when.....	3949
Field-notes to be returned to general land office in twelve months.....	3942	Homestead donations on titled lands prohibited.....	3950
Entitled to patent after three years’ residence.....	3943		3951
	3944		

ARTICLE 3937. Every person who is the head of a family and without a homestead shall be entitled to receive a donation from the State of Texas of one hundred and sixty acres of vacant and unappropriated public land, upon the conditions and under the stipulations hereinafter provided.

Who is entitled to 160 acres. (Const., art. 14, §6.)

ART. 3938. Every single man of the age of eighteen years or upward shall be entitled to receive a donation from the State of Texas of eighty acres of vacant and unappropriated public land, upon the conditions and under the stipulations hereinafter provided.

Who is entitled to 80 acres. *Ib.*

ART. 3939. Any person desiring to acquire any portion of the public domain as a homestead donation, and who is entitled to apply for the same under the provisions of this chapter, shall present to the surveyor

Shall present application in writing.



of the district or county in which the land is situated his application in writing, designating the land which he claims, and stating that he claims the same for himself, in good faith, under the laws granting homestead donations; that he is without any homestead of his own, and that he has actually settled upon the land which he claims, and that he believes the same to be vacant and unappropriated public domain.

Shall be sworn to, filed and recorded.

ART. 3940. Said application shall be made at the time of settlement or occupancy of the land, or within thirty days thereafter, and shall be sworn to before some officer authorized to administer oaths, and shall be filed with the said surveyor and recorded by him in a well-bound book kept for recording preëmption and homestead applications; and the said surveyor shall give a receipt therefor, if desired.

Shall be surveyed in twelve months.

ART. 3941. It shall be the duty of the surveyor of the proper district or county to survey the land described in the application aforesaid, as soon as practicable and within twelve months after the date of said application, and the field-notes thereof shall be certified to, recorded and mapped as required by law in other cases, the applicant paying all legal surveyors' fees.

Preference right to survey and patent. (Act Aug. 19, 1876, p. 197.)

ART. 3942. Any applicant for a homestead donation, after having settled upon the public land he claims, and having made his application in writing for a survey, as required by the provisions of this chapter, and continuing his said occupation, shall have a preference right over all subsequent location or settlements to have the same surveyed for a period of twelve months from the date of his application, and to secure a patent for the same under the provisions of this chapter.

Field-notes to be returned to general land office in twelve months. (Act May 26, 1873, p. 197.)  
Entitled to patent after three years' residence.

ART. 3943. The field-notes of every survey made under the provisions of this chapter, after being duly certified, mapped and recorded, shall be returned to and filed in the general land office within twelve months after the date of the survey aforesaid.

ART. 3944. Whenever the field-notes of a homestead donation survey shall have been returned to the general land office, according to the provisions of the preceding article, and when proof shall be made to the satisfaction of the commissioner of the general land office that the original applicant for a homestead donation has by himself, or in case the claim has been transferred, that he and his assignee have together in good faith resided upon, occupied and improved the land so claimed by him for a period of three consecutive years from the date of the application, it shall be the duty of said commissioner to issue a patent therefor to the original applicant or his assignee, as the case may be, upon payment of all the office and patent fees.

Proof shall be by affidavit, etc. (Act Aug. 19, 1876, p. 197.)

ART. 3945. The proof required in the preceding article shall be by an affidavit of the claimant to the effect that such original applicant has by himself, or in case the claim has been transferred, that he and his assignee have together in good faith resided upon, occupied and improved said land for three consecutive years from the date of his application for a homestead donation; which affidavit shall be corroborated by the affidavit of two disinterested and credible citizens of the county or surveyor's district in which the land is situated, which affidavits shall be subscribed and sworn to before some officer authorized to administer oaths, who shall certify to the same and to the credibility of said witnesses under his hand and the seal of his office.

Patents shall issue to the heirs, when. (Act March 24, 1871, p. 16.)

ART. 3946. When the original occupant or his assignee is dead, the patent shall issue to his heirs on application of the surviving widow, one of the heirs or his legal representative.

P. D. 7053.  
No assignment valid unless by deed, etc.  
Ib.

ART. 3947. No assignment of the homestead donation right by the occupant or settler before the patent has been obtained shall be good and valid in law, unless the same be by deed duly authenticated as required by law.

P. D. 7053.

ART. 3948. Should any person claiming a homestead donation fail to make the written application as provided in this chapter, or should he fail to have the survey made and to have the field-notes thereof (duly certified to and recorded) returned to and filed in the general land office within twelve months after the date of his application, or should he or his assignor fail to make satisfactory proof that he had resided upon, occupied and improved the land claimed by him for three years after the date of his application, as provided in this chapter, he shall in either event forfeit all right and title to said land and the same shall become subject to entry or location as other vacant and unappropriated public land.

Shall forfeit right and title, when.

ART. 3949. Any person who shall have filed his application for a homestead donation, according to the provisions of this chapter, or the vendee of such person, shall have the right and privilege at any time to locate upon his said claim or survey any genuine and unsatisfied land certificate, which shall have been duly transferred to him; and after returning the said certificate to and filing it in the general land office, he shall be entitled to receive a patent for the land in the same manner as if the certificate had been originally located upon it; *provided*, that the field-notes of the survey shall have been returned to the general land office within twelve months, as hereinbefore provided, and the homestead donation claim has not been forfeited under the preceding article.

Land certificate may be applied, etc., at any time.

ART. 3950. If any person shall be driven from the land claimed or occupied by him as a homestead donation by hostile Indians or other public enemies, or having reasonable grounds to fear violence from such Indians or enemies to himself or family, shall temporarily abandon his said land and shall return to and occupy the same as soon as it shall appear reasonably safe for him to so do, he shall not forfeit or lose any right by reason thereof; and proof of the same may be made by the affidavit of the party and the certificate of the county or district surveyor.

Temporary abandonment, when not commuted. (Act March 13, 1875, p. 107.)

ART. 3951. No person shall settle upon or occupy, nor shall any survey be made or patented under the provisions of this chapter upon any land titled or equitably owned under color of title from the sovereignty of the state, evidence of the appropriation of which is on the county records or in the general land office, or when the appropriation is evidenced by the occupation of the owner or of some person holding for him.

Homestead donations on titled lands prohibited. (Const., art. 4, §2.)

## CHAPTER TEN.

### PATENTS.

	Article		Article
Requisites of patent.....	3952	Patents on non-recommended certificates prohibited.....	3963
When patent to be issued.....	3953	Certificates not presented to court of claims may be patented.....	3964
When to be referred to attorney-general... ..	3954	Patent may be cancelled in whole or in part when issued by mistake.....	3965
Map of county to be filed.....	3955	Where partial conflict, may be cancelled.....	3966
Patents on surveys in two counties.....	3956	When patent may be delivered to agent.....	3967
Patents on more than two surveys, when... ..	3957	Patent fees to be paid, when.....	3967—Note
In case of conflict how patent may issue... ..	3958	If not paid, what.....	3967—Note
Shall issue patent to assignee, when.....	3959	State has a lien for fees.....	3967—Note
Patent may issue to assignee without transfer, when.....	3960	Attorney-general to sue for fees, when.....	3967—Note
Patents to deceased persons shall inure, to whom.....	3961	Venue.....	3967—Note
In what order patents shall issue.....	3962		

ARTICLE 3952. Every patent for land emanating from the state shall be issued in the name and by the authority of the state, under the seal of the state, and under the seal of the general land office, and shall be signed by the governor and countersigned by the commissioner of the general land office; and before the delivery thereof to the party entitled thereto it shall be registered in a well-bound book kept in the general land office for the recording of patents.

Requisites of patent. (Act May 12, 1846.) P.D. 4279, 4281.

When patent to be issued. (Act Jan. 20, 1840.)  
P.D. 4236.

ART. 3953. Whenever the field-notes of a survey and the land certificate by virtue of which the same was made, have been returned to and filed in the general land office within the time prescribed by law, if it shall appear after due examination that such survey was correctly and legally made upon vacant and unappropriated land, and that the land certificate is genuine and unsatisfied, and it shall be the duty of the commissioner of the general land office to make out and deliver to the rightful owner thereof, his agent or legal representative, a patent for the land described in said survey.

When to be referred to attorney-general.

ART. 3954. Should it appear to the commissioner of the general land office, from the records of his office or from information on oath given him, that there is some illegality in the claim, he shall, if he deems it necessary, refer the matter to the attorney-general, whose decision in writing shall be sufficient authority for him to issue or withhold the patent as the case may be.

Map of county to be filed. (Act Jan. 19, 1841.)  
P.D. 4305.  
(Acts 1879, ch. 121, p. 129.)

ART. 3955. No patent shall be issued upon any claim, unless a map of the county in which the same is situated shall be on file in the general land office.

Patents on surveys in two counties. (Act May 9, 1846.)  
P.D. 4315.

ART. 3956. The commissioner of the general land office is hereby authorized and required to issue patents in all cases upon surveys of land lying in two or more counties or districts, where no conflict between such surveys and others exist, and to which there is no other objection than that of a division in said surveys, occasioned by a county or district boundary passing through them; *provided*, the field-notes shall have been recorded in the office of the county or district surveyor of both counties or districts.

Patents on more than two surveys, when. (Act April 7, 1846.)  
P.D. 4314.

ART. 3957. The commissioner of the general land office is hereby authorized and required to issue patents to the legal owner of a land certificate in all cases where the same has been located in two surveys, and where the same is bounded by other surveys.

In case of conflict, how patent may issue. (Act May 9, 1846.)  
P.D. 4316.

ART. 3958. In cases where conflicts exist between surveys, the commissioner of the general land office shall be authorized, and is hereby required to issue patents to such portions of such surveys as are free from conflicts, and also to issue a certificate for the residue in each case.

Shall issue patent to assignee, when. (Act May 12, 1846.)  
P.D. 4294.

ART. 3959. The commissioner of the general land office is hereby required to issue patents to, and in the name of, the assignee of any genuine land certificate issued in conformity to law, upon such assignee presenting a sufficient and properly authenticated chain of transfer, assignment, or obligation for title, or a power of attorney showing a transfer from the original grantee to the assignee.

Patent may issue to assignee without transfer, when. (Act Feb. 3, 1845.)  
P.D. 4292.

ART. 3960. All patents may issue in the name of the assignee when the certificate was granted in the name of the assignee, without an exhibition of a chain of transfers as prescribed in the preceding article.

Patents to deceased persons shall inure to whom. (Act Dec. 24, 1851.)  
P.D. 4228a.

ART. 3961. All patents which have heretofore been issued by the authorities of the Republic or State of Texas, in the names of persons deceased at the time of issuing such patents, and all patents for lands which may be issued hereafter by authority of the State of Texas, in the names of persons deceased at the time at which said patents may be issued, shall be, to all intents and purposes, as valid and effectual to convey and secure to the heirs or assignee as the case may be, of such deceased persons, the land so patented, or which may be so patented as though such deceased persons had been in being at the time such patents bear date.

**ART. 3962.** The commissioner of the general land office is authorized and required to patent surveys in the order in which they may be made ready for patenting, without regard to the order of filing in the general land office, or the order of application; *provided*, that when application is made for patent on any claim, and the office fees therefor have been paid, such claim shall have preference over claims for which no application has been made; *provided*, such surveys shall have been regularly mapped, or there be sufficient evidence that no previous survey has been legally filed in the land office covering the same ground as represented on the maps of the office.

In what order patents shall issue.  
(Act April 8, 1861.)  
P.D. 4300.  
(Acts 1879, extra session, ch. 27.)

**ART. 3963.** The commissioner of the general land office is hereby prohibited from issuing a patent upon any survey that shall have been made, by authority of a certificate issued prior to March 16, 1840, and has not been returned as genuine and legal by the commissioners appointed by the act of January 29, 1840, or by authority of a warrant issued for military services, unless the same shall have been presented to and approved by the secretary of war, the adjutant-general or the commissioner of the court of claims, as heretofore prescribed by law, [or] unless said certificate or warrant shall have been issued by authority of a special act of the legislature; and any patent issued contrary to the provisions of this article shall be null and void, unless the person claiming such patent shall produce to the commissioner of the general land office the judgment or decree of a district court of the Republic or State of Texas, from which no appeal was taken within the time prescribed by law, that he is justly entitled to the amount of land under the constitution and laws.

Patents on non-recommended certificates prohibited.  
(Act Jan. 29, 1840.)  
P.D. 4288.  
(Acts 1879, ch. 121, p. 129.)

**ART. 3964.** All genuine headright certificates, or genuine Toby or Bryan scrip, and all genuine certificates of any district or supreme court of this state establishing headrights that have been legally issued and properly reported to the proper officers, that have not been presented to the court of claims within the time prescribed by law, shall be recognized and patented the same as though they had been presented and approved by the commissioner of claims. The commissioner of the general land office may also patent in the same manner all certificates or warrants issued by the commissioner of claims or comptroller, acting commissioner of claims, but should any fraudulent certificate for land, by accident, inadvertence or design, be perfected into a patent under this article, said patent shall be void and no title shall vest.

Certificates not presented to court of claims may be patented.  
(Act Dec. 15, 1859.)  
P.D. 1148.

**ART. 3965.** Where a patent to land has been or may hereafter through mistake be issued upon any valid claim for land which is afterward found to be in conflict with any older title, it shall be competent for the owner of such patent, or any part of the land embraced therein, and within such conflict, to return the same to the commissioner of the general land office for cancellation, or in case the owner of such land in conflict can not obtain the patent, then he shall return instead thereof legal evidence of his title to such patent or part thereof, and in either case he shall make and file with the said commissioner an affidavit in writing that he is still the owner of the same, and has not sold or transferred it; and should it appear from the records of the general land office, or from a duly certified copy of a judgment of any court of competent jurisdiction before which the title to such land may have been adjudicated, that such conflict really exists, it shall be lawful for him to cancel the patent or such part thereof as shall appear to belong to the party so applying, and deliver a new certificate or other evidence of claim upon which it is issued to the owner for re-location.

Patent may be cancelled in whole or in part where issued by mistake.  
(Act March 10, 1885, p. 76.)

**ART. 3966.** In cases where there is only a partial conflict the commissioner of the general land office may, under like circumstances and in like manner as is provided for in the preceding article, cancel any patent presented to him, and issue a patent to the applicant for such portion of the land covered by his patent as may not be in conflict with the older

When partial conflict may be cancelled.  
(Act Feb. 3, 1874.)  
P.D. 4905.

title, where from the field-notes the same may be done, and also issue to such applicant a certificate for the unlocated balance.

When patent may be delivered to agent.

ART. 3967. No patent shall be delivered in any case to an agent or legal representative until he shall have filed written authority from the owner.

Patent fees to be paid, when.

NOTE.—Chapter 45, acts of 1879, requires—  
1. Fees to be paid on patents to the land office within sixty days from the passage of the act, March 25, 1879.

If not paid, what.  
Commissioner not to issue until fees, etc., paid.

2. If not paid in the time required the commissioner is to add ten per centum per month for the time the fees remain unpaid. Prohibits the commissioner from delivering either patent, copy, field-notes or certificate relative thereto, until the whole amount of fees and the penalty have been paid.

State has a lien for fees.

3. Gives the state a lien on all lands included in patents, for fees, penalties, etc., and the right to sell the land to satisfy the lien.

Attorney-general to sue for fees, when. venue.

4. The attorney-general is required, after six months (sixty days' notice being given by the commissioner, notifying the party that the patent had issued) to institute suit in the district court of Travis county for the fees, penalties and foreclosure of the lien on the land. See appendix for the act in full.—L.

## CHAPTER ELEVEN.

### LAND RESERVATIONS.

	Article	Article
Mississippi and Pacific railroad reserve, opened when.....	3968	Forfeiture to be judicially declared..... 3970
Lapsed reservations reserved from location, etc.....	3969	Indian reservations set apart, etc..... 3971
Reservation surrendered, how.....	3969—Note	Titles of settlers heretofore, how perfected 3972
Subject to location, how.....	3969—Note	Settlers hereafter may obtain title, how.... 3973
Effect of surrender.....	3969—Note	What shall be sufficient description..... 3974
		Original field-notes may be adopted..... 3975
		Patent shall issue, when..... 3976

M. and P. R. R. reservation, when opened, etc.  
(Acts Aug., 26, 1856; Dec. 21, 1857; special act Dec. 21, 1853, p. 7.)  
P. D. 5033-9.

ARTICLE 3968. The Mississippi and Pacific railroad reservation, created by the act of December 21, 1853, the boundaries of which are defined in said act and in the act of December 21, 1857, shall be considered as opened up and made subject to location, sale and settlement, on and after the first day of January, 1857.

Lapsed reservations reserved from location, etc.  
(Act Aug. 17, 1876, p. 168.)  
(See acts 1879, extra session, ch. 24.)

ART. 3969. All reservations of the public domain for the benefit of any railroad or railroad company heretofore made by law, and the right to which reservation has lapsed since January 1, 1872, or may hereafter lapse, are hereby declared then to have been severed from the mass of the public domain, and in the event of forfeiture to the state are expressly reserved from location, except the three million acres of land reserved for constructing a new state capitol and other public buildings, and to actual settlers under the laws, and whenever a preëmption or homestead donation survey of one hundred and sixty acres or of eighty acres shall be made for any settler, a like quantity shall be made adjoining said preëmption survey for the public free school fund.

Reservation surrendered, how.

NOTE.—Chapter 155, acts 1879, provides that any railroad company, in whose favor a reservation from the public domain may heretofore have been created by any law, general or special, may surrender its exclusive right to further locate lands within said reservation; and whenever any such railroad company shall file in the office of the secretary of state, within ninety days from the passage of the act, an instrument in writing, approved as to form by the attorney-general, relinquishing or surrendering its claim to such reservation, said relinquishment shall, upon the payment of all costs of suit, if one has been instituted, be accepted by the state, instead of a judicial forfeiture of the reservation, and shall be deemed a satisfaction of said suit; and it is especially provided that the lands so relinquished shall be subject to location only under the provisions of law embraced in this chapter. The surrender is not to affect the right of the company to construct its road in accordance with its charter, nor its relation to the laws regulating railroads and granting land subsidies to aid in their construction. Any action taken by any railroad company under the provisions of the act, is to be held to be a complete acceptance of all the provisions of the constitution applicable to railroads, and of the laws of the state regulating railroads.—L.

Subject to location, how.

Effect of surrender.

ART. 3970. The settler having the survey made under the provisions of the preceding article shall pay to the surveyor the fees for both the preëmption survey and the one for the school fund, and also the fees for recording the field-notes of both surveys, and said field-notes shall be returned to the general land office together; *provided*, that no right of any such railroad company to such reservation shall be in any manner impaired until a forfeiture has been judicially declared thereon.

Forfeiture to be judicially declared. *Id.*

ART. 3971. So much of the seventeen leagues of land known as the "Indian reservations," which were set apart and appropriated by the act of January 25, 1875, one-half for the public school fund and the remaining half for settlement by actual settlers, and which have not been settled upon and appropriated according to the provisions of said act, shall continue to be set apart and appropriated, one-half for the public free school fund and the other half for preëmptors and claimants of homestead donations.

Indian reservations set apart, etc. (Act Jan. 25, 1875, p. 4.)

ART. 3972. Any actual settler who has settled upon the land described in the preceding article, and who was entitled to a donation of land under said act of January 25, 1875, shall be entitled to perfect his claim and receive his patent according to the provisions thereof, but the disposition of said lands shall be hereafter made in the manner following.

Titles of settlers heretofore, how perfected. *Id.* §4.

ART. 3973. Any person who is entitled to a preëmption or a homestead donation under the laws may enter upon and secure the title to any one of the odd-numbered quarter sections of said lands by complying with the laws relating to preëmption or homestead donations.

Settlers hereafter may obtain title, how.

ART. 3974. It shall be a sufficient description of the land to designate in the application the number of the quarter-section claimed; or if by a single man, the particular half of the quarter-section claimed.

What shall be sufficient description.

ART. 3975. It shall not be necessary for the surveyor to re-survey the section of one hundred and sixty acres claimed as aforesaid, but it shall be sufficient to adopt the original field-notes, except when a half of a quarter-section is claimed by a single man as aforesaid; and there shall be charged against the claimant the expenses of the original survey.

Original field-notes may be adopted.

ART. 3976. Whenever any settler shall comply with the provisions of this chapter, and with the laws relating to preëmtions and homestead donations, so far as they are applicable, it shall be the duty of the commissioner of the general land office to issue a patent for the odd section so settled upon and claimed, to such settler or his assignee.

Patent shall issue, when.

## CHAPTER TWELVE.

### GENERAL PROVISIONS.

	Article		Article
Certificates shall not be located on titled land	3977	Commissioner to make out abstract of patented lands, etc.	3983
Fisher & Miller's colony opened to location, etc.	3978	Commissioner to employ draftsmen and clerks.	3984
Patents sealed with original seal validated.	3979	Pay of employés provided for.	3985
The use of old seals legalized.	3980	Abstract to be corrected when necessary.	3986
Commissioner to supply surveyors' records, when	3981	Supplemental abstract furnished, when	3987
No officer shall be interested in public land	3982	Abstract to be printed, etc.	3988
		Printing, how paid for, etc.	3989

ARTICLE 3977. All genuine land certificates heretofore or hereafter issued shall be located, surveyed or patented only upon vacant and unappropriated public domain, and not upon any land titled or equitably owned under color of title from the sovereignty of the state, evidence of the appropriation of which is on the county records or in the general land office, or when the appropriation is evidenced by the occupation of the owner, or of some person holding for him.

Certificates shall not be located, etc., on titled land. (Const., art. 14, §2.

Fisher & Miller's colony opened to location. (Act Feb. 27, 1875, p. 193.)

ART. 3978. The territory known as Fisher & Miller's colony is hereby declared to have been opened for location since the twenty-seventh day of February, 1875, as other vacant lands, in accordance with the laws governing locations; and it is further declared that all patents which were issued by the commissioner of the general land office, either to preëmp-tors or to owners of certificates, prior to the date aforesaid, or which have been issued since that date, are legal and valid; *provided*, that this article shall not be construed so as to affect any rights which had vested or accrued prior to the twenty-seventh day of February, 1875, under pre-ex-isting laws.

Patents sealed with original seal validated. (Act April 29, 1846.) P.D. 4088.

ART. 3979. All patents for lands issued by the Republic of Texas which have been sealed with the original seal of the general land office, having for device thereon a buffalo under a live oak tree, or which have been sealed with the other seal of said office, having for device thereon a cotton plant, plow, scythe, sheaf of wheat, and meridian sun, shall be as valid as though both of said seals had been devised and adopted by law.

The use of old seals legalized. (Act April 29, 1846.)

ART. 3980. All certified copies heretofore made of deeds, patents, books, records and papers belonging to the general land office, under the signature of the commissioner or chief clerk of said office, and sealed with either of the seals described, shall be as valid and shall have the same force and effect as if both of said seals had been devised and adopted by law.

*Ib.*  
P.D. 4088.

Commissioner to supply surveyors' records when. (Act April 29, 1874, p. 168.)

ART. 3981. Whenever the records of any surveyor's office shall have been destroyed by fire or otherwise, it shall be the duty of the commissioner of the general land office, upon application of the county court, to furnish said surveyor's office with copies of all surveys and field-notes thereof that may properly belong to said county; *provided*, the county shall pay for such records at the rate of ten cents per one hundred words.

No officer shall be interested in public land, etc. (Act Dec. 14, 1837.) P.D. 4090.

ART. 3982. No person elected or appointed to any position of trust in the general land office, or employed in such land office, shall directly or indirectly be concerned in the purchase of any right, title or interest in any public land, either in his own name, right or interest for any other person, or in the name or right of any other person, in trust for himself; nor shall take or receive any fee or emolument for negotiating or trans-acting the business of said office, other than those fees allowed by law.

Commissioner to make out abstract of patented lands, etc. (Act March 9, 1875, p. 71, §1.)

ART. 3983. The commissioner of the general land office shall make out and return to the comptroller of public accounts, as soon as practicable, an abstract of all the titled, patented and located lands in the State of Texas, which may have been patented or titled, or which have been located and surveyed, and the certificates and field-notes returned to the general land office up to September 1, 1875, which abstract shall designate the grantee and patentee, the amount of the grant, the class to which it belongs, whether headright, bounty, donation, special grant, or preëmp-tion, date and number of patent, number of certificate, name of grantee of certificate, or name of preëmption locator, and name of the county in which situated; an abstract number shall also be affixed, but the numbers of the present official abstracts shall be preserved.

Commissioner to employ draftsman and clerks *Ib.* §2.

ART. 3984. The commissioner of the general land office shall employ one draftsman and two clerks to complete said abstract as soon as possible.

Pay of employes provided for. *Ib.* §3.

ART. 3985. The pay of the employés provided for in the preceding article shall be in conformity with the salaries paid to compiling drafts-men and examining clerks, and the payment of the same shall be provided for in the general appropriation for the general land office.

Abstract to be corrected, when neces-sary. *Ib.* §4.

ART. 3986. After compilation of said abstract, the commissioner of the general land office shall make it the special duty of one of his clerks to constantly correct said abstract according to errors discovered, changes

by cancellation of patents, changes of county lines, and creation of new counties, and to add all new patented surveys at the date of the patent.

ART. 3987. During the month of August of each year hereafter the commissioner of the general land office shall have made out and furnished to the comptroller of public accounts a supplemental abstract of all patents that have been issued from his office during the year ending on the thirty-first day of August, to include all locations filed during the year not patented.

Supplemental  
abstract  
furnished,  
when.  
Ib. §5.

ART. 3988. The comptroller of public accounts is hereby authorized to have one thousand copies of said abstract printed and bound for distribution among those officers of the state and counties whose duties require the use of said abstract; the surplus copies to be sold at a reasonable price to parties applying for them; *provided*, that if the demand for copies of said abstract shall be greater than the supply provided for by this article, an additional number of five hundred copies may be printed.

Abstract to be  
printed, etc.  
Ib. §6.

ART. 3989. The sum necessary to pay for the printing and binding of said abstract shall be paid out of the general appropriation made by the legislature for printing, and all moneys received by the comptroller by the sale of said abstract shall be paid into the treasury to the credit of said appropriation.

Printing of,  
how paid  
for, etc.  
Ib. §7.



TITLE LXXX.

Public Printing.

	Article		Article
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Proposals to include, what.....	4004	Contract may be abrogated, when, etc.....	4020
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Board of public printing provided for. (Act June 27, 1876, p. 31, §§1, 16.)

Record of the proceedings of the board, etc. *Ib.* §16.

Board shall contract for public printing, etc. *Ib.* §1.

An expert may be employed, etc.

*Ib.* §15. (Act March 13, 1875, p. 91, §1.)

Classification of the public printing, etc., and maximum prices therefor *Ib.* §§3, 9.

ARTICLE 3990. The attorney-general, the state treasurer and the secretary of state shall constitute a board of public printing, and a majority of the board shall constitute a quorum for the transaction of business.

ART. 3991. The secretary of state shall keep a record of the proceedings of the board, and of all acts done by him in connection with the public printing, under the provisions of this title.

ART. 3992. The board of public printing are authorized and required to contract, as hereinafter prescribed, with some suitable person or persons, who shall be a resident of this state, to print and bind the laws and the journals of the senate and house of representatives, and to do such other printing and binding, and to furnish such stationery as may be required by law, or may be needed by any department of the state government, or by either house of the legislature, not to include such work as may be done at the deaf and dumb asylum, nor such stationery, printing and binding as may be needed by the judicial department. They are authorized to make a separate contract when printing is to be done in any other language than the English, and in such case the printing board shall employ a competent person, at a price not to exceed thirty cents per hundred words, to translate the matter required into such other language.

ART. 3993. The board of public printing shall be authorized to employ a competent practical printer at a salary not to exceed seventy-five dollars per month, who shall be *ex officio* instructor in the art of printing at the deaf and dumb asylum, and whose further duty it shall be to advise with and assist the board in advertising for proposals for printing and stationery, and in making contracts therefor, and to examine the work done and stationery furnished under such contracts, and to certify to the board whether the same are correct and in accordance with law, and with the contracts of the contractors.

ART. 3994. The public printing shall be divided into four classes as follows:

1. The first-class shall include the printing and binding of the laws, journals, department reports, governor's message and like documents; which shall be printed on white calendered No. 2 book paper, of uniform color, 24x38 inches in size, and weighing not less than forty-five pounds to the ream, on long primer type (except tabular work, which may be in

such type smaller than long primer as the nature of the work and good taste may require), the pages to be fifty-seven ems long, including head and foot lines, and thirty-two ems wide, long primer measure, and not to contain less than one thousand eight hundred ems; and when printed the laws and reports shall be neatly folded, stitched and covered; and the journals and message folded, stitched and trimmed. Cover paper shall be thirty-five pounds to the ream. The index to the laws shall be printed in like style and type as the index to the general laws of the ninth legislature. The maximum prices for work of the first-class shall be: For paper, white and cover, \$9.00 per ream, and no allowance shall be made for waste; composition, \$1.00 per one thousand ems, printer's measurement; presswork, sixteen pages to the form (unless the nature of the work requires a smaller number of pages), \$1.00 per token of two hundred and forty impressions or less; binding, fifty cents per one hundred for folding, stitching and covering first signature of sixteen pages, and twenty-five cents per one hundred for each additional signature of sixteen pages or less; for folding, stitching and trimming, without covering, forty cents per one hundred for first signature of sixteen pages, and twenty cents per one hundred for each additional signature of sixteen pages or less; but no matter shall be leaded, except by the express direction of the printing board.

2. Work of the second-class shall consist of all blanks and printed stationery required by any department of the state government, except the judicial department, and shall be on first-class sized and calendered white wove paper, of such dimensions and weights as the nature of the work may require. The maximum rate for such work shall be as follows: For composition, ninety cents per one thousand ems, printer's measurement; for presswork, on forms the size of a flat cap sheet or less, seventy-five cents per token; on forms larger than flat cap, \$1.00 per token; and a token shall be two hundred and forty impressions, or less when the number of blanks ordered shall require a less number of impressions. The maximum rate for paper required for work of the second-class shall be as follows:

*Letter paper*—Ten pounds to the ream, \$4.20 per ream; twelve pounds to the ream, \$5.05 per ream.

*Flat cap paper*—Twelve pounds to the ream, \$5.05 per ream; fourteen pounds to the ream, \$5.90 per ream; sixteen pounds to the ream, \$6.75 per ream; eighteen pounds to the ream, \$7.60 per ream; twenty pounds to the ream, \$8.40 per ream.

*Demy paper*—Twenty-eight pounds to the ream, \$11.75 per ream; thirty pounds to the ream, \$12.60 per ream.

*Folio post paper*—Eighteen pounds to the ream, \$7.60 per ream; twenty-two pounds to the ream, \$9.25 per ream; twenty-four pounds to the ream, \$10.00 per ream.

*Medium paper*—Twenty-eight pounds to the ream, \$11.75 per ream; thirty-six pounds to the ream, \$15.00 per ream.

*Double flat cap paper*—Twenty-eight pounds to the ream, \$11.75 per ream; thirty-two pounds to the ream, \$13.45 per ream; thirty-six pounds to the ream, \$15.00 per ream; forty pounds to the ream, \$16.80 per ream.

*Super-royal paper*—Fifty-four pounds to the ream, \$22.70 per ream.

For ruling work of the second-class the maximum price shall be forty cents per one hundred for each passage through the ruling machine. For binding work of the second-class the maximum price shall be: For pads of one hundred sheets each, quarter sheet cap, demy or folio, twenty cents per pad; half sheet cap, demy or folio, twenty-five cents per pad. For quarter binding, quarter sheet cap, demy or folio, twenty-five cents per quire; half sheet cap, demy or folio, forty cents per quire. For half binding, quarter sheet cap, demy or folio, fifty cents per quire; half sheet cap, demy or folio, seventy-five cents per quire. For binding full skiver,

quarter sheet cap, demy or folio, sixty cents per quire; half sheet cap, demy or folio, ninety cents per quire.

3. Work of the third-class shall consist of blank books, either ruled and printed, or ruled without printing. The paper used shall be sized and calendered, made of linen stock, and of the quality known among paper dealers as "P" paper, and the following shall be maximum rates:

*Cap paper*—Eighteen pounds to the ream, plain ruled, half bound, \$1.25 per quire; ditto, printed heads, \$1.75 per quire; ditto, plain ruled, extra full bound, \$2.00 per quire; ditto, printed heads, \$2.50 per quire.

*Demy paper*—Twenty-eight pounds to the ream, plain ruled, half bound, \$1.50 per quire; ditto, printed heads, \$2.00 per quire; ditto, plain ruled, extra full bound, \$2.50 per quire; ditto, printed heads, \$3.00 per quire.

*Medium paper*—Thirty-six pounds to the ream, plain ruled, half bound, \$2.00 per quire; ditto, printed heads, \$2.50 per quire; ditto, plain ruled, extra full bound, \$3.00 per quire; ditto, printed heads, \$3.50 per quire.

*Medium paper*—Forty pounds to the ream, plain ruled, extra full bound, \$4.00 per quire; ditto, printed heads, \$4.50 per quire.

*Super-royal paper*—Fifty-four pounds to the ream, plain ruled, extra full bound, \$4.50 per quire; ditto, printed heads, \$5.00 per quire.

4. Work of the fourth-class shall consist of the printing of bills, resolutions, committee reports and such other like work as may be ordered by the legislature or either house thereof; and shall be on first-class sized and calendered white wove flat cap paper of twelve pounds to the ream, printed on pica type, lines numbered in the margin, with space between the lines of the size of pica, the printing to be thirty-six ems pica wide and sixty-five ems in length. The maximum price for work of the fourth-class shall be: For two hundred copies, or any number of copies less than two hundred ordered by either house of the legislature, including composition, paper, press work and binding, \$3.25 per page for as many pages as are contained in one copy thereof; and when more than two hundred copies of work mentioned in this class are ordered by either house of the legislature, the printer shall be paid only for the paper, press work and binding for such additional copies, at such rates as are contracted for, for work of the second-class.

Executive proclamations, advertisements, etc., not included, and prices of.  
*Ib.*

ART. 3995. No contract with the public printer shall be made for the publication of executive proclamations, advertisements and other like documents; but the maximum price for such work shall be one dollar per square of one hundred words for the first publication and fifty cents per square for each subsequent publication that may be ordered, and fractional parts of a square at proportionate rates, and each square shall contain not less than one hundred words.

When published in more than one paper.  
*Ib.* §4.

ART. 3996. When proclamations, advertisements and like publications are authorized or required by law to be published in more newspapers than one, they shall be published under like rules; *provided*, that proclamations and like documents shall not be published in more than two newspapers in each congressional district, and at different points, and shall not be inserted for a longer period than three months; and proposed amendments to the constitution shall be published once a week for four weeks, commencing at least three months before the time specified by the legislature for an election thereon, in one weekly newspaper in each county in which such newspaper may be published; and all claims presented for publishing advertisements shall be accompanied by a copy of the advertisement as printed, and shall state the dates when the same was published.

Stationery, maximum prices of.  
*Ib.* §5.

ART. 3997. The maximum rates for stationery shall be as follows:

*Legal cap paper*—Eighteen pounds to the ream, \$7.20 per ream; sixteen pounds to the ream, \$6.40 per ream; fourteen pounds to the ream, \$5.60 per ream.

*Booksap paper*—Sixteen pounds to the ream, \$6.40 per ream; fourteen pounds to the ream, \$5.60 per ream.

*Letter paper*—Twelve pounds to the ream, \$4.80 per ream; ten pounds to the ream, \$4.00 per ream.

*Note paper*—Eight pounds to the ream, \$3.20 per ream; six pounds to the ream, \$2.40 per ream; five pounds to the ream, \$2.00 per ream.

*Engrossing paper*—Twenty-eight pounds demy, one-quarter sheets, \$7.20 per ream; eighteen pounds cap, one-half sheets, \$8.00 per ream.

*Envelopes*—xx white or buff, number ten, plain, \$7.20 per thousand; printed, \$8.80 per thousand; xx white or buff, number six, plain, \$4.80 per thousand; printed, \$6.40 per thousand; xx white or buff, number five, plain, \$4.00 per thousand.

*Blotting paper*—One hundred and twenty pounds to the ream, \$6.40 per one hundred sheets; one hundred pounds to the ream, \$5.20 per one hundred sheets.

*Pencils*—The kind to be specified in bid, \$8.00 per gross.

*Red ink*—The manufacturer to be named in bid, \$2.40 per dozen.

*Mucilage*—Quarts, \$7.20 per dozen; pints, \$4.80 per dozen.

*Steel pens*—Brand to be named, \$2.00 per box.

*Penholders*—\$5.60 per gross.

*Rubber bands*—Best, all sizes, \$2.40 per box.

*Mammoth ink and pencil erasers*—\$4.00 per dozen.

*Rubber rulers*—Twelve inch, \$1.20 each.

*Wood rulers*—Fifteen inch, eighty cents each.

*Erasing knives*—Eighty cents each.

*Recording ink*—Maker to be named in bid; quarts, \$14.40 per dozen.

*Copying ink*—Maker to be named in bid; quarts, \$19.20 per dozen.

*Inkstands*—C. H. number three, sixty cents each; glass, flat, eighty cents each.

*Paper fasteners*—Forty cents per box.

ART. 3998. All printing and stationery not embraced within the provisions of the preceding articles of this title shall be furnished by the contractor at rates proportionate to those stipulated for in the contract for work and stationery of similar character, to be fixed by the board of public printing.

Other printing and stationery.  
Ib. §6.

ART. 3999. The current printing of the legislature shall be done at the seat of government.

Current printing of legislature to be done at Austin.  
Ib. §12.

ART. 4000. There shall be printed not less than eight thousand copies of the laws of a general nature, and as many more as the printing board may require, not to exceed twelve thousand in all; and fifteen hundred copies of the special laws, including all acts for private relief, all acts incorporating towns and cities, all acts having a local application, all of a personal nature, and all acts incorporating private associations of every description that may be passed at each session of the legislature; and five hundred copies of the journals of each house of the legislature.

Number of copies of laws, etc.  
Ib. §8.

ART. 4001. There shall be printed such number of copies of the messages of the governor and other documents as the legislature or either house thereof may order.

Of the governor's message, etc.  
Ib.

ART. 4002. There shall be printed, under the supervision of the secretary of state, eleven hundred copies of the annual reports of the comptroller of public accounts, treasurer, commissioner of the general land office, superintendent of the penitentiary, superintendent of the lunatic asylum, of the asylums of the blind, deaf and dumb, and the reports of all other officers who are required to report to the governor or the legislature; three hundred copies of which reports shall be delivered by the secretary of state to the two houses of the legislature for their use, at as early a day as practicable after they are printed; three hundred copies

Of other public documents.  
Ib. §8.

shall be delivered to the officer making the report for his use, and the remaining five hundred copies shall be kept by the secretary of state for public use; but the printing board may increase the number of copies of such reports required to be printed not to exceed two thousand.

Advertisement  
for proposals  
to do public  
printing, etc.  
*Ib.* § 1.

ART. 4003. It shall be the duty of the secretary of state, on the first day of August next, and every two years thereafter, or as soon after the first day of August as may be practicable, to advertise for sealed proposals to furnish such stationery and to do such public printing and binding as may be required by the several departments of the government, under the provisions of this title. Such advertisement shall be published for thirty days in not less than two nor more than five newspapers published within the state and having the largest circulation therein. It shall invite separate proposals to furnish the stationery and to do the printing and binding, and shall state as nearly as practicable the probable amount of such printing, binding and stationery which will be required under the contract. It shall also state the time and place of opening the bids and of awarding the contract, which shall be at the office of the secretary of state, not exceeding forty days from the date of the first publication of such advertisement.

Proposal to  
include, what.  
*Ib.* § 2.

ART. 4004. Separate proposals shall be made for furnishing the stationery and for doing the printing and binding, and the proposals for printing and binding shall embrace all such work as is included under articles 3994 and 3997, except such as may be done at the deaf and dumb asylum and the material therefor; and the proposals for stationery shall embrace all material specified in article 3997, and such other articles as are usually included under the term stationery.

Bid to be  
accompanied  
by bond.  
*Ib.* § 2.

ART. 4005. Each bid shall be accompanied by the bond of the bidder, with two or more good and sufficient sureties, conditioned that should the contract be awarded to him, he will, without delay, upon being notified of such award, enter into a written contract in accordance with law, and with his said proposal, and will give bond and security, as required by law, for the faithful performance of such contract.

No officer to be  
interested in  
contract, etc.  
*Ib.* § 17.

ART. 4006. No member or officer of any department of the government shall be in any way interested in such contract, except in contracts for the translation of any public document into some other language.

Proposals,  
to whom  
addressed, etc.  
*Ib.* § 2.

ART. 4007. Such proposals shall be sealed and addressed to the secretary of state at the seat of government, and shall be indorsed with a memorandum showing that they are proposals for the public printing and binding, or for stationery for the several departments, as the case may be; and upon their receipt they shall be filed by the secretary of state and the seals thereof shall not be broken until the day named in the advertisement for awarding the contracts, when they shall be opened in the presence of the printing board and such bidders and others as may desire to be present.

Awarding of  
contracts.  
*Ib.*

ART. 4008. It shall be the duty of the printing board on the day fixed in such advertisement, or as soon thereafter as practicable, to make a careful examination and comparison of such bids and to award the contracts to the lowest and best responsible bidder whose bid may be below the maximum rates as herein prescribed; *provided*, such bid shall be approved by the governor and comptroller of public accounts.

Successful  
bidders to be  
notified.

ART. 4009. It shall be the duty of the secretary of state, upon the making of such awards, immediately to notify the successful bidders, respectively, of the acceptance of their said bids, and that they will be required without delay to execute and deliver to him their contracts with the state for the due performance of their said undertakings.

Requisites of  
the contract.  
*Ib.* § 12.

ART. 4010. Such contract shall be in writing and shall be signed by the bidder, with two or more good and sufficient sureties, to be approved by the printing board in such sum as they shall prescribe, made payable to the state and conditioned for his faithful compliance with his bid and

with the provisions of the law relating thereto, for the period of two years, and until a new contract shall have been made and approved; the contract shall also be signed on behalf of the state by the members of the printing board, and shall be approved by the governor and comptroller and filed in the office of the secretary of state.

ART. 4011. On breach by the contractor of the bond provided for in the preceding article, the same may be put in suit on the order of the governor, and such suit may be brought in the proper court of the county in which the seat of government may be, and such bond shall not become void on the first recovery, but suits may be maintained thereon until the whole amount thereof shall be recovered.

Suits on contractor's bond.  
*Ib.*

ART. 4012. It shall be the duty of the secretary of the senate and of the chief clerk of the house of representatives to deliver to the contractor for the public printing the journals of their respective houses, for the purpose of being printed, together with a comprehensive index to the same, to be printed at the end thereof; and it shall be the duty of the contractor to carefully use the same, and to return them without delay uninjured to such secretary and clerk, respectively, when the printing thereof is completed.

Secretary of the senate and chief clerk of house to furnish journals, etc., to contractor.  
*Ib.* §9.

ART. 4013. It shall be the duty of the secretary of state to deliver to such contractor, as soon as practicable after their passage or approval, copies of all laws and resolutions adopted by the legislature, together with a comprehensive index to the same.

Secretary of state to furnish laws, etc.  
*Ib.*

ART. 4014. It shall also be the duty of the secretary of state to read and revise the proofs of such laws and resolutions, and to superintend the printing of the same and to compare the same with the originals in his office, and to certify that the laws and resolutions as published are true copies of such originals; which certificate, together with a statement of the date on which the legislature adjourned, shall be appended to and printed at the end of each volume of such laws and resolutions. But the provision requiring the secretary of state to read and revise the proofs shall not dispense with the duty of the contractor to see that such proofs are properly read and corrected.

Secretary of state to compare copies and certify, etc.  
*Ib.* §§9, 11.

ART. 4015. The whole number of laws and journals, reports of public officers, and other public documents authorized to be printed, shall be delivered to the secretary of state at his office, except such printing as may be ordered by the two houses of the legislature, or either of them, for their use, which shall be delivered to such persons and at such times as such houses, or either of them, may direct.

Work to be delivered to whom.  
*Ib.* §10.

ART. 4016. The laws and journals shall be delivered within sixty days after the last copy shall have been furnished to the contractor. The reports of public officers shall be delivered to the governor, by the respective officers making the same, in sufficient time to be delivered to the contractor one month before the meeting of the legislature; and if so furnished to said contractor shall be delivered by him to the secretary of state within the first week of said session; and if furnished less than one month before the meeting of the legislature, or after, the same shall be delivered by the contractor to the secretary of state within one month after they are so furnished.

When to be delivered.  
*Ib.* §11.

ART. 4017. All accounts for printing done or stationery furnished, under the provisions of this title, except that for the legislature when in session, shall be audited as follows: The account shall be verified by the affidavit of the contractor that said account is just and correct; that the amount of work charged for has actually been performed, or the actual amount of stationery delivered, and that the prices charged in said account are in accordance with the stipulations of the contract, and shall be accompanied with a sample of the work done and stationery furnished. After which it shall be examined by the practical printer and printing board, and if found correct approved by said board. Such claim, when,

Account, how audited and paid.  
*Ib.* §13.

thus examined and approved, shall be sufficient authority for the comptroller to issue his warrant, to be paid out of the appropriations for public printing or stationery.

Accounts for  
current print-  
ing of legis-  
ture.  
*Ib.* §14.

ART. 4018. All accounts for printing done or stationery used in either house of the legislature shall, in addition to the requirements contained in the preceding article, be approved by the chairman of the committee on public printing and the chairman of the committee on contingent expenses of the house ordering the work, before being presented to the printing board; for which account, when thus approved, the comptroller is authorized to draw his warrant, payable out of the contingent fund.

Legislature  
may alter  
maximum  
rates, etc.  
*Ib.* §17.

ART. 4019. It shall be competent for the legislature, at any time, to change by law the maximum rates hereinbefore prescribed for stationery or printing and binding, and should the contractors decline to do such work, or to furnish such stationery at the maximum rates so fixed, the printing board shall immediately proceed to re-let such contract.

Contract may  
be abrogated,  
when, etc.  
*Ib.*

ART. 4020. The contracts for printing and stationery herein provided for may be abrogated by the legislature when in session, or by the printing board, with the consent of the governor and comptroller, when the legislature is not in session, if the contractor should fail to perform the work or to furnish the supplies in accordance with law and with his contract, and as promptly as the exigencies of the public service demands.

Board may re-  
let contract,  
etc.  
*Ib.*

ART. 4021. Should there be no bid for the public printing or stationery within the maximum rates as fixed by law, or should the successful bidder fail to execute the bond with security as herein required, or should the contract be abrogated, it shall be the duty of the printing board, with or without advertisement, as the interest of the state and the exigencies of the public service may seem to require, to proceed to let out a new contract as hereinbefore provided; and they may, in their discretion, make such temporary arrangements to meet the emergency as is demanded by the public interest.

TITLE LXXXI.

Public School, Asylum and University Lands.

CHAPTER ONE.

THE UNIVERSITY AND ASYLUM LANDS.

The fifty leagues appropriation.....	Article 4022	Locations prohibited, when.....	Article 4027
The one million acres appropriation.....	4023	Copies of field-notes, etc., forwarded to	
The asylum lands .....	4024	district surveyors .....	4028
Such lands to be surveyed, if necessary.....	4025	Surveys to continue, until, etc.....	4029
Surveys, how made and returned.....	4026	Surveyors, how paid.....	4030

ARTICLE 4022. The fifty leagues of land set apart and appropriated for the establishment and maintenance of the "University of Texas," by an act of the congress of the Republic of Texas, entitled "An act appropriating certain lands for the establishment of a general system of education," approved January 26, 1839, shall continue and remain as a part of the permanent university fund.

The 50 leagues appropriation, (Const., art. 7, §11.) (Act Jan. 26, 1839, p. 120.) P.D. 3550.

ART. 4023. In addition to the lands heretofore granted to the University of Texas, there is hereby set apart and appropriated for the endowment, maintenance and support of said university and its branches, one million acres of the unappropriated public domain, to be designated and surveyed as hereinafter provided.

The 1,000,000 acres appropriation. (Const., art. 7, §15.)

ART. 4024. The four hundred thousand acres of land set apart for the lunatic asylum, the blind asylum, the asylum for the deaf and dumb, and an orphan asylum, in equal portions of one hundred thousand acres for each of said asylums, by the provisions of an act of the legislature, entitled "An act setting aside and appropriating land for the benefit of asylums," approved August 30, 1856, is hereby recognized and set apart to provide a permanent fund for the support, maintenance and improvement of such asylums.

The asylum lands. I.D. §9. (Act Aug. 30, 1856, p. 76.)

ART. 4025. In case any of the lands appropriated and set apart by the provisions of the three preceding articles have not been surveyed, and the field-notes thereof returned to the general land office in accordance with law, the commissioner of the general land office shall, as soon as may be practicable, appoint one or more competent surveyors to survey such lands out of any vacant and unappropriated public lands.

Such lands to be surveyed if necessary. (Act Jan. 26, 1839, p. 120.) P.D. 3550.

ART. 4026. Such surveys shall be made in sections of six hundred and forty acres each, so far as the same may be practicable; and the surveyor shall locate and survey said lands under the direction of the commissioner of the general land office, and return the field-notes and maps thereof to the general land office within such time as may be prescribed by the commissioner, verified by his affidavit, in substance as follows: "I, A B, do solemnly swear [or affirm] that I have well and truly discharged my duties as surveyor of university [or asylum] lands to the best of my skill and ability; that in the performance of such duties I have selected and surveyed the most valuable unappropriated lands ascertainable by me in the locality designated by the commissioner of the general land office for my operations; and that the field-notes, maps and description of the lands herewith returned are as correct as I can make them, so help me God."

Surveys, how made and returned. P.D. 3551.

ART. 4027. At the time of appointment of any surveyor for the purposes indicated in this chapter, the commissioner of the general land office shall designate the general limits of the territory in which such sur-

Locations prohibited, when.



veyor shall operate, and notify the district surveyor having jurisdiction over such territory of such appointment and designation, and thereafter no locations shall be permitted within such limits until after receipt by the district surveyor of a certified copy of the maps and field-notes as provided in the succeeding article.

Copies of field-notes, etc., forwarded to district surveyors.

ART. 4028. After the return of the field-notes and maps to the general land office by the surveyor appointed to make any such locations, the commissioner of the general land office shall cause certified copies thereof to be forwarded to the district or county surveyor of any district or county in which any such lands are situated, who shall record the same in their respective offices as in other cases.

Surveyors to continue until, etc.

ART. 4029. Appointments of surveyors for the purpose indicated in the preceding article may be renewed or continued by the commissioner of the general land office, and additional surveys made until the whole amount of lands appropriated for the university or asylums are finally designated and surveyed.

Surveyors, how paid.

ART. 4030. The expenses of surveys made under the provisions of this chapter shall be paid out of the university fund of this state, or the fund of the proper asylum, upon the sworn account of the surveyor, approved by the commissioner of the general land office, and filed with the comptroller of public accounts.

## CHAPTER TWO.

### THE PUBLIC FREE SCHOOL AND COUNTY SCHOOL LANDS.

	Article		Article
The public school lands.....	4031	Such lands belong to the counties.....	4035
Certain lands bought by state for taxes are.....	4031—Note	Lands, how sold, and proceeds invested.....	4036
County school lands.....	4032	Rent of, and timber sold from, how invested.....	4036—Note
Location of county school certificates.....	4033	Unlawful for court to invest otherwise.....	4036—Note
Previous locations to be patented.....	4034	Actual settlers to have preference.....	4037

The public school lands. (Const., art. 7, §2.)

ARTICLE 4031. All the alternate sections of lands reserved by the state out of grants heretofore made, or that may hereafter be made to railroads or other corporations of any nature whatever, one-half of the public domain, and all other lands heretofore set apart, or that may hereafter be set apart for the benefit of public free schools, shall constitute a part of the perpetual public free school fund.

Certain lands bought by state for taxes are.

NOTE.—Section 10, chapter 133, acts 1879, provides that land of non-residents of unorganized counties, bid off to the state by the comptroller at his sales of the same for taxes, and, not redeemed by the owner within two years, shall become vacant and revert to, and become a part of, the public free school fund, to be sold and disposed of as other lands belonging to the same fund. See also appendix.—L.

County school lands. *Ib.* §6. (Act March 13, 1875, p. 104.) P.D. 3464, 3468.

ART. 4032. Each county shall be entitled to four leagues of land, out of the vacant and unappropriated public domain, for free school purposes; and if any organized county has not heretofore received such grant the commissioner of the general land office shall, upon the application of the commissioners' court of such county, issue to such county four certificates for one league of land each, which certificates may be located on any of the unappropriated public domain.

Location of county school certificates. (Acts Jan. 26, 1839, p. 120; March 13, 1875, p. 104.) P.D. 3464.

ART. 4033. All land certificates issued to any county under the provisions of the preceding article or any former law, may be located, surveyed and patented as other certificates for land, but in no case in tracts of less than one hundred and sixty acres; and the expenses thereof shall be paid by the county to which any such certificates are issued. In no case shall any county be required to pay any office fees in the general land office.

Previous locations to be patented. P.D. 3464, 3468, 3474.

ART. 4034. In all cases where certificates have been issued to counties, and lands have been located and surveyed thereunder in accordance with previous laws, the commissioner of the general land office shall issue

patents to such counties for said lands, upon the application of the commissioners' court of any such county, accompanied with a certified transcript of the field-notes of the surveys, under the hand and official seal of the clerk of the county court of the county.

ART. 4035. All lands granted to counties for educational purposes, under the provisions of this chapter or any former law, shall belong to such counties respectively, and the titles thereto shall be fully vested in said counties; and no adverse possession or limitation shall ever be available against the title of any county to such lands.

Such lands belong to the counties. (Const., art. 7, §6.)

ART. 4036. Each county may sell or dispose of the lands granted to it for educational purposes, in such manner as may be provided by the commissioners' court of such county; and the proceeds of any such sale shall be invested in bonds of the State of Texas, or of the United States, and held by such county alone as a trust for the benefit of public free schools therein, only the interest thereon to be used and expended annually.

Lands, how sold and proceeds invested. *Ib.*

NOTE.—Section 1, chapter 135, acts 1879, provides: "That the proceeds of any leasing or renting of lands, heretofore granted by the state to the several counties for educational purposes, and the proceeds arising from any sale of timber on said lands, or any part thereof, shall be applied exclusively to the purposes of public education in said counties respectively, and shall be invested in like manner as the constitution and laws require for the proceeds of sales of said lands, and it shall be unlawful for the commissioners' court of any county to apply said proceeds, or any part thereof to any other purpose, or to loan the same, or to invest the same, except as above required.—L."

Rent of, and timber sold from county school lands, invested how.

Unlawful for court to invest it otherwise.

ART. 4037. In any sale of county school lands, under the provisions of the preceding article, the actual settlers residing on said lands shall be protected in the prior right of purchasing the same to the extent of their settlement, not to exceed one hundred and sixty acres, at the price fixed by the commissioners' court, which price shall not include the value of existing improvements made thereon by such settlers.

Actual settlers to have preference. *Ib.*

## CHAPTER THREE.

### SALES OF UNIVERSITY, PUBLIC FREE SCHOOL AND ASYLUM LANDS.

NOTE.—Chapter 28, acts 1879, extra session, provides for the sale of the alternate sections of the common free school lands in organized counties, and for the investment of the proceeds, and repeals all laws in conflict therewith.—L.

Article		Article	
4038	University lands, etc., may be sold.....	4062	Surveyor's fee for application.....
4043	After subdivision, etc., lands may be sold..	4063	Cash payment and obligation by purchaser
4044	Appointment of commissioners.....	4064	Certificate of surveyor.....
4045	Oath of commissioners.....		Purchaser's obligation to be forwarded to
4046	Oath to be filed in land office.....	4065	commissioner.....
4047	Maps, etc., to be forwarded commissioners	4066	Commissioner to keep book of accounts...
4048	Commissioners to appraise the lands.....	4067	Commissioner to note payments.....
4049	Pay of commissioners.....	4068	Forfeiture of land for non-payment.....
4050	Appraisalment to be forwarded to county	4069	Forfeiture to be certified to district attorney
4051	surveyor.....	4070	Judicial proceedings in case of forfeiture..
4052	Surveyor to give notice.....	4071	Judgment to be certified to commissioner.
4053	Actual settlers to have preference.....	4072	Extension of payment in case of death....
4053	Application to be made in six months.....	4073	Purchasers may sell their lands.....
4054	Prospective settlers may purchase in	4074	Taxation of such lands.....
4055	eighteen months.....	4075	Waste, how punished.....
4056	All persons may purchase, when.....	4076	Proceedings in such cases.....
4057	Purchasers, other than actual settlers, to	4077	Patent to issue, when.....
4058	pay for improvements.....		To issue in accordance with original sub-
4059	Affidavit of purchaser other than settler..	4077—Note	divisions.....
4060	Improvements to be assessed, when.....	4077—Note	Where subdivision contains more than one
4060	Sales to be made on written application....	4078	hundred and sixty acres.....
4061	Record of such application.....	4079	Proceeds of sale, how devoted.....
	Certified copy to be forwarded to commis-	4080	Commissioner may prescribe regulations..
	sioner.....	4080	Previous purchases not affected.....

University lands, etc., may be sold. (Const., art. 7, Acts April 8, 24, 25, 1874, pp. 72, 142, 146.)

ARTICLE 4038. All lands heretofore donated and set aside, or that may hereafter be donated and set aside for the endowment, support and maintenance of the University of Texas, the public free schools or the

several asylums, may be sold in accordance with the provisions of this chapter.

NOTE.—Articles 4039, 4040, 4041 and 4042 repealed by chapter 153, acts 1879.—L.

After sub-  
division, etc.,  
lands may be  
sold.  
(Acts 1874, p.  
84, §7; p. 144,  
§6; p. 147, §3.)

ART. 4043. After any such lands have been surveyed and subdivided in accordance with the provisions of the preceding article, and such surveys and subdivisions have been platted on the maps of the general land office, such lands may be sold for their real value, but in no case for a less price than one dollar and fifty cents per acre.

Appointment  
of commis-  
sioners.  
Ib. p. 73, §5; p.  
143, §3; p. 146,  
§1.)

ART. 4044. In order to ascertain the value of any such lands the governor shall appoint three commissioners for each organized county in which any of such lands are situated, whose duty it shall be to value each quarter-section and fractional section in such county. Said commissioners shall be qualified electors and freeholders of the state, in no wise interested in said lands by settlement upon the same or otherwise, or of kin to any one so interested.

Oath of the  
commissioners  
Ib. p. 73, §5;  
p. 143, §3;  
p. 146, §2.

ART. 4045. Upon receipt of their commissions the said commissioners shall take and subscribe an oath before some officer authorized to administer oaths, that they are in no wise interested in said land by settlement upon the same or otherwise, nor related by consanguinity or affinity to any one who is settled thereon, and that they will assess the real and true value of each tract they are called on to value, without reference to the enhanced value of the same by reason of any improvement thereon, unless otherwise expressly directed by law.

Oath to be filed  
in land office.  
Ib. p. 74, §5.

ART. 4046. The oath of the commissioners provided for in the preceding article, together with the certificate of the officer administering the same, shall be forwarded by such commissioners to the commissioner of the general land office and be filed in his office.

Maps, etc., to  
be forwarded to  
commissioners.  
Ib. p. 74, §6.

ART. 4047. Upon receipt of the oath provided for in the two preceding articles, the commissioner of the general land office shall forward to said commissioners, or any one of them, a certified copy of the maps and field-notes, hereinbefore provided for, of the lands situated in such county.

Commissioners  
to appraise  
the land.  
Ib. p. 74, §7.

ART. 4048. Within six months from the receipt of said maps and field-notes, said commissioners, or any two of them, shall assess the real value of said land embraced in their said counties, without reference to the improvements thereon, which shall in no case be less than one dollar and fifty cents per acre, and shall make a report thereof in writing, designating the price of each quarter-section of said land according to the number thereof, and append to said report their affidavit in writing, sworn to and subscribed before any officer authorized to administer oaths, stating that the valuation set forth in their report is a true and correct valuation of the same; which said report shall be by them forwarded to the commissioner of the general land office.

Pay of commis-  
sioners.  
Ib. §8.

ART. 4049. Said commissioners shall receive for their services for said appraisement three dollars each per day for each day necessarily employed in making said valuation, and upon presentation of their accounts, sworn to before some officer authorized to administer oaths, setting forth the number of days actually employed in making such appraisement, and that no more time is embraced in said account than was actually necessary, the comptroller shall, upon the approval of the account by the commissioner of the general land office, draw his warrant on the treasurer for the amounts due said commissioners, to be paid out of the funds of the university, public free schools, or asylums, as the case may be.

Appraisement  
to be for-  
warded to  
county  
surveyor.  
Ib. §9.

ART. 4050. As soon as the report of the commissioners shall be received, the commissioner of the general land office shall forward to the surveyor of the county in which the lands are situated a correct statement of the valuation of the same as may be made by said commissioners.

Surveyor to  
give notice.  
Ib. p. 76, §10.

ART. 4051. Said surveyor shall, within ten days from the receipt of the statement of the valuation of said lands, as provided in the preceding article cause notice of the fact that his office is open for the sale of said

lands to be posted, one at the court-house door and one each at five other places in his county, and also to be published in some newspaper, if one be published in said county, for at least thirty days.

ART. 4052. In making sales of lands under the provisions of this chapter, all actual settlers on any of such lands, who had fenced and put in cultivation any portion thereof prior to April 25, 1874, shall have a preference right to purchase not more than one hundred and sixty acres, and not less than eighty acres, to include his improvements; and for that purpose any quarter-section on which any such improvements are located may be subdivided into eighty-acre tracts, surveyed at right angles as near as practicable, at the expense of the purchaser, and the field-notes thereof forwarded to the general land office.

Actual settlers to have preference.  
*Ib.* p. 75, §10.

ART. 4053. Any actual settler desiring to avail himself of the provisions of the preceding article shall file his written application to that effect with the county surveyor, within six months from the date of the notice of the sale of such lands hereinbefore provided for, which application shall conform to the requirements hereinafter provided.

Application to be made in six months.  
*Ib.* §11.

ART. 4054. All quarter-sections of such lands which have not been applied for by an actual settler in accordance with the provisions of the two preceding articles may be sold to any person who may make application therefor within eighteen months after the date of the notice of sale aforesaid; and such applicant shall enter into an obligation, to be inserted in the same instrument with his obligation for payment of the purchase money, to the effect that he will settle upon and improve said quarter-section within twelve months from the date of his application; and if he fails to settle upon the land within said time he shall forfeit all right and claim to the same.

Prospective settlers may purchase in 18 months.  
*Ib.* p. 76, §13; p. 143, §5

ART. 4055. In case any portion of said lands are not sold to actual or prospective settlers, in accordance with the provisions of the preceding articles, within two years from the date of the notice of the sale of such lands, any other person may purchase not less than eighty acres and not more than one hundred and sixty acres, at the appraised value thereof, and upon the same terms of payment as actual or prospective settlers, but in no case shall any such person purchase more than a quarter-section of such lands.

All persons may purchase, when.  
(Act July 29, 1876, p. 75.)

ART. 4056. Any person other than an actual settler who may purchase any of the lands, the sale of which is provided for in this chapter, shall, in addition to the appraised value, pay the value of any improvements upon said lands, which last named value shall be assessed under oath by two disinterested freeholders of the county in which the land may be situated, and the same reported under oath to the commissioner of the general land office, who shall add the same to the appraised value of said land; in such cases the purchaser shall pay the expenses of such assessment and report.

Purchasers other than actual settlers to pay for improvements.  
*Ib.*

ART. 4057. When any person other than an actual settler makes application for the purchase of any land under the provisions of this chapter before the expiration of two years from the date when such lands are thrown open for sale, such application shall be accompanied by his affidavit, taken before some officer authorized to administer oaths, to the effect that there is no actual settler upon said land and specifying whether such land is improved or unimproved.

Affidavit of purchaser other than settler.  
*Ib.*

ART. 4058. If any person has settled upon any of such lands since the twenty-fifth day of April, 1874, or shall hereafter settle upon the same, without complying with the provisions of this chapter or former laws, he shall, in making purchase of such land, pay the value of the land and any improvements thereon, and in such cases the commissioner shall appraise the land and improvements together.

Improvements to be assessed, when.  
(Act April 24, 1874, p. 144, §6.)

Sales to be made on written application. *Ib.* pp. 75, 142, §§11, 2.

ART. 4059. When any actual or prospective settler or other person may desire to purchase any of the lands, the sale of which is herein provided for, he shall file his written application with the county surveyor of the county in which such land is situated, designating the quantity or quarter-section he may desire to purchase, which application shall be filed in the office of such surveyor.

Record of such application. *Ib.*

ART. 4060. The surveyor shall make a memorandum of such application and enter the same in a book to be kept for that purpose, in which shall be stated—

1. The name of the applicant.
2. The quantity of land he desires to purchase.
3. The number of the section and quarter-section.
4. The date of the application.

Certified copy to be forwarded to commissioner. *Ib.*

ART. 4061. Immediately after such record and entry the surveyor shall forward a certified copy thereof to the commissioner of the general land office, who shall cause the same to be recorded in a well-bound book to be kept in his office for that purpose.

Surveyor's fee for application. *Ib.*

ART. 4062. Each county surveyor shall be allowed one dollar for each application to purchase land under the provisions of this chapter, which shall be paid by the purchaser.

Cash payment and obligation by purchaser. (Acts April 3, 1874, p. 75-6, §12; April 24, 1874, p. 143, §4.)

ART. 4063. At the time of such application to purchase, the applicant shall forward one-tenth of the assessed value of the tract to the treasurer of the state, who shall return to such applicant a receipt for the amount received; and such applicant shall make, execute and deliver to the surveyor his obligation in writing, payable to the treasurer of the state, for the balance of the assessed value of the land, stipulating and agreeing therein to pay ten per cent. interest on said amount annually, with one-tenth of the principal for ten years, which interest, with one-tenth of the principal, shall be due and payable on the first day of March of each year; but said purchaser may have the privilege of paying the entire amount of principal and interest due at any time and liquidate his said obligation.

Certificate of surveyor. *Ib.* p. 76, §14, p. 144, §7.

ART. 4064. The surveyor shall give to such applicant who complies with the preceding requirements a certificate to that effect, designating the quarter-section or parts of quarter-section by him purchased.

Purchaser's obligation to be forwarded to commissioner. *Ib.* §§15, 8.

ART. 4065. The obligation entered into by any purchaser of said lands shall be forwarded to the commissioner of the general land office by the surveyor, and the commissioner shall have the same recorded in a well-bound book kept for that purpose; and after such record, he shall deliver the said obligations to the treasurer of this state, who shall carefully file the same in his office.

Commissioner to keep book of accounts. *Ib.* §§17, 9.

ART. 4066. The commissioner of the general land office shall procure a well-bound book, in which shall be kept an account with such purchasers of said lands, showing the amount for which the same were sold and the interest accruing thereon.

Commissioner to note payments. *Ib.* §§18, 10.

ART. 4067. Upon the presentation of the receipt of the treasurer of the state by any purchaser of said lands, for any amount due by him on his obligation, to the commissioner of the general land office, said commissioner shall cause to be entered a credit on said purchaser's account for said sum and the date of payment, and issue to him a certificate showing such payment.

Forfeiture of land for non-payment. *Ib.* §§19, 11.

ART. 4068. Should any purchaser fail to pay the annual installments required by his obligation to the treasurer, and present his receipt to the commissioner of the general land office, on or before the first day of June following the maturity thereof, said commissioner shall notify the treasurer of such failure, who shall indorse on such obligation a statement of such failure, and sign his name thereto, and said purchaser shall forfeit all his right and interest in said land, such forfeiture to be established in accordance with the provisions of the succeeding articles.

ART. 4069. Upon the occurrence of any forfeiture in accordance with the provisions of the preceding article, the treasurer of the state shall forward to the proper district or county attorney of the county in which the land may be situated, a copy of the obligation of the purchaser, with his indorsements thereon, duly certified under the hand and seal of office of such treasurer, which certified copy shall be *prima facie* evidence of the fact of non-payment and other facts therein contained, which may be authorized by law in all the courts of this state; in case any purchaser should deny the execution of any such obligation, the state treasurer, on notification of that fact, shall forward to the county or district attorney the original obligation of such purchaser.

Forfeitures to be certified to district attorneys.

ART. 4070. Upon receipt of any certified copy, as provided in the preceding article, the district or county attorney shall institute a suit in the district court of the county, in the name of the state against the defaulting purchaser, his heirs or legal representatives, which suit shall be entered on the civil docket of the court and be proceeded with in all respects as other civil actions; and upon the failure of any such purchaser to show that he has paid such installments and interest thereon, as hereinbefore provided, judgment of forfeiture shall be entered against him, and a writ of possession for the land be issued in favor of the state.

Judicial proceedings in case of forfeiture.  
(Acts April 8, 1874, p. 77, §21; April 24, 1874, p. 145, §13.)

ART. 4071. Upon the entry of any final judgment of forfeiture, in accordance with the provisions of the preceding articles, if an appeal be not taken, the clerk of the court shall forward, without delay, to the commissioner of the general land office, a certified copy of such judgment, who shall mark the land on his maps as forfeited, and thereupon such land shall be subject to sale as other lands.

Judgment to be certified to commissioner.  
(Act April 25, 1874, p. 148, §7.)

ART. 4072. Should any purchaser die before any one installment and interest thereon falls due, his administrators, executors or heirs shall have an extension of twelve months in which to pay the same.

Extension of payment in case of death.  
(Act April 8, 1874, p. 77, §20.)

ART. 4073. Any purchaser of lands, under the provisions of this chapter, may sell the same, but in that event the vendee shall substitute his obligation in lieu of the obligation of such original purchaser; and if such original purchaser be a settler upon the land, or has purchased such land as a prospective settler under the provisions of this chapter, such vendee shall settle upon said land within twelve months from the date of his purchase.

Purchasers may sell their lands.  
*Ib.* §22.  
(Act April 24, 1874, p. 145, §14.)

ART. 4074. All lands purchased under the provisions of this chapter, or any former law, shall be subject to taxation from the date of purchase.

Taxation of such lands.  
*Ib.* §15.

ART. 4075. If any purchaser of said lands, before final and full payment for the same, shall cut, sell or destroy, or permit any one else to cut, sell or destroy any more timber than is necessary in clearing and improving said lands, and for necessary fire wood, he shall forfeit all claim to said lands, and it shall be subject to settlement by any other person under the provisions of this chapter.

(Act April 8, 1874, p. 77, §23.)  
Waste, how punished.  
(Act April 25, 1874, p. 148, §10.)

ART. 4076. In case of any violation of the preceding article, it shall be the duty of the proper district or county attorney to institute suit in the district court of the county where the land lies, in the name of the state, against such purchaser, and to have such forfeiture duly adjudged and executed, and a judgment entered for the state for such damages as may be established on the trial of said cause.

Proceedings in such case.  
*Ib.* §11.

ART. 4077. Upon final and full payment on any purchase made under the provisions of this chapter, the commissioner of the general land office shall issue a patent to the purchaser making the same, or to his vendee or heirs.

Patent to issue, when.  
(Act April 8, 1874, p. 78, §25.)

NOTE.—Section 1, chapter 39, acts 1879, authorizes and requires the commissioner to issue patents to all parties purchasing university lands, in accordance with the original subdivisions as made under the provisions of "An act authorizing the disposition and sale of university lands," approved August 30, 1856, where said subdivi-

To issue in accordance with original subdivisions.

Where subdivision contains more than 100 acres. (See acts 1879, extra session, ch. 18.)

Proceeds of sales, how devoted. (Const., art. 7.) (Acts April 8, 1874, p. 78, §24; April 24, 1874, p. 145, §16; April 25, 1874, p. 149, §127)

Commissioner may prescribe regulations. (Act April 24, 1874, p. 145, §18.)

Previous purchases not affected. (Act April 8, 1874, p. 78, §26.)

visions have been made and field-notes filed in the general land office in accordance with said act; and where it appears from actual survey on the ground, conforming to lines and corners of the original subdivisions, that any subdivision contains more or less than one hundred and sixty acres, the patent is to issue for the number of acres in the subdivision; *provided*, that the act shall not affect any rights heretofore acquired under existing laws relative to said lands.—L.

ART. 4078. The proceeds arising from the sale of the lands herein provided for shall be paid into the university fund, the public free school fund, or the fund for the proper asylum to which the lands sold may belong, and shall constitute a permanent fund for the endowment, support and maintenance of said institutions; and such funds shall be kept separate and apart from each other and all other funds by the state treasurer, the interest thereon to be expended annually, as may be directed by law.

ART. 4079. The commissioner of the general land office, with the approval of the attorney-general, may prescribe such regulations, not inconsistent with the constitution and laws, as may be found necessary to carry into effect the provisions of this chapter; and such regulations shall be binding upon all commissioners of appraisement, surveyors and purchasers of such lands.

ART. 4080. The provisions of this chapter shall not affect the rights of any parties who may have purchased any of these lands by virtue of any former laws.

TITLE LXXXII.

Public Weighers.

NOTE.—Chapter 108, acts 1879, whilst it does not refer in terms to this chapter of the Revised Civil Statutes, yet it embodies some of its provisions, changes others and contains additional provisions not found here. By section 20, final title of this Code, it is the law, and will be found in the appendix.—L.

Office of public weigher .....	Article 4081	Shall keep accurate scales, etc.....	Article 4086
Governor shall appoint, etc.....	4082	Liability upon bond, etc.....	4087
Oath and bond of, etc.....	4083	Unlawful for person other than public	
Duties of.....	4084	weigher to weigh cotton, etc.....	4088
May appoint deputies.....	4085	Owner of cotton, etc., may weigh it himself	4089

ARTICLE 4081. The office treated of in this title shall be styled the "Office of Public Weigher."

ART. 4082. The governor is hereby authorized and required to appoint three competent persons as public weighers in the city of Galveston, and one or more, not to exceed three in any one city, competent persons as public weighers in the cities of Houston, Sherman, Dallas, Austin and Waco, and at such other incorporated cities or towns as in the judgment of the governor may be expedient, who shall hold his office two years and until his successor is appointed and qualified, subject to removal by the governor for misconduct or incompetency in office.

Office of public weigher.  
Act March 15, 1875, p. 162, §1.)  
Governor shall appoint, etc.  
*Ib.* §2.

ART. 4083. Every person so appointed, before entering upon the duties of his office, shall take and subscribe an oath faithfully and impartially to administer the duties of his office; and he shall also execute a bond, with good and sufficient sureties, in the sum of ten thousand dollars, payable to the governor and his successors in office, conditioned for the faithful performance of his official duties, which said bond shall be certified to be sufficient by the county judge of the county wherein the city for which said appointment shall be made is situated; which said bond, certified as aforesaid, shall be filed and recorded in the office of the clerk of the county court of the county wherein said city shall be situated.

Oath and bond of, etc.  
*Ib.* §3.

ART. 4084. When the person so appointed as aforesaid shall have qualified as aforesaid, he shall enter upon the duties of his office and shall weigh without unnecessary delay all cotton, wool, sugar and hides required to be weighed, and shall mark upon the same plainly in figures the weight thereof, and make a return of such weights in detailed form to the owner or owners thereof, or their agents or factors, after first certifying the correctness thereof. He shall also keep copies of the weights of all articles weighed by him, and shall furnish a certified copy of the same at any time to the owner or his agents or the purchaser thereof on demand.

Duties of, etc.  
*Ib.* §4.

ART. 4085. The public weighers shall have power to appoint one or more deputies, who shall take and subscribe an oath similar to the one herein provided, to be taken by the public weigher, for whose acts the principal shall be responsible.

May appoint deputies, etc.  
*Ib.* §5.

ART. 4086. He shall keep accurate and well adjusted scales and balances and accurate weights, and shall have the same tested and certified to as provided by law.

Shall keep accurate scales, etc.  
*Ib.* §6.

ART. 4087. Any public weigher who shall violate any of the provisions of this title, or fail to comply with any of such provisions, shall be liable, at the suit of any person injured, upon his bond, for all damages that may have accrued to such person by such violation or failure.

Liability upon bond, etc.  
*Ib.* §10.



Unlawful for person other than public weigher to weigh cotton, etc.

*Ib.* §8.

ART. 4088. 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 sold or offered for sale in any city having a public weigher duly qualified, and any person 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, bale of hides or hogshead of sugar so unlawfully weighed, to be recovered in any court of such county having jurisdiction thereof.

Owner of cotton, etc., to weigh it himself.

*Ib.*

ART. 4089. The preceding article shall not be construed to prevent any person from weighing his cotton, wool, hides or sugar in person without being compelled to call upon a public weigher to weigh the same.

TITLE LXXXIII.

Quarantine.

Article		Article	
4090	Governor may declare quarantine.....	4090f	Local authorities to establish stations, when.....
4090	Houston a coast town.....	4090g	Shall furnish persons detained subsistence, etc.....
4090a	Governor to appoint state health officer..	4090h	Persons detained willfully absenting themselves, how punished.....
4090a	His qualifications.....	4090m	Expenses enforcing quarantine, how paid
4090b	Health officer's age.....	4090m	Pay of quarantine officers.....
4090b	He to be under control of governor.....	4090m	May administer oaths to suspected persons.....
4090c	Pay of health officer.....	4090m	False swearing, how punished.....
4090d	Governor to declare temporary quarantine, when.....	4090m	Corporate authorities to appoint health officer.....
4090d	Duty of health officer when points are threatened with disease.....	4091	Governor may appoint in coast towns, when
4090e	To report condition of threatened point to governor.....	4093	Duties of health officer.....
4090e	Governor may continue or dissolve temporary quarantine.....	4094	Vessel arriving at station, seized, when
4090f	State quarantine laws to remain in force on coast.....	4095	Payment of fine not to release vessel.....
4090g	Governor may add to or change stations.....	4097	Corporate authorities shall report receipts and expenditures to comptroller.....
4090g	Local quarantine laws to remain in force	4098	Town, city, or county may establish quarantine.....
4090h	Disputes between localities to be reported to, and decided by, the governor.....	4098	County courts to appoint local officers, when.....
4090i	Bond and term of office of health officer.....	Sup., sec. 1	Pay of officers and guards.....
4090i	May be removed by governor.....	Sup., sec. 2	

ARTICLE 4090. The governor is empowered to issue his proclamation declaring quarantine on the coast, or any of the borders of Texas, whenever in his judgment it shall be necessary, and for such length of time as he may decide to be essential, to prevent the introduction of any infectious or contagious disease; *provided*, Houston, in Harris county, shall be considered a coast town within the meaning of this act.

Governor may declare quarantine. (Act June 10, 1870, p. 3, §1.) P. D. 7339.

Houston a coast town. (Acts 1879, ch. 77, p. 86.)

ART. 4090a. It shall be the duty of the governor of the State of Texas, and he is hereby authorized and empowered to select and appoint, by and with the advice and consent of the senate, from the most skillful, regular physicians of the State of Texas, one physician, who shall be known as the medical health officer for the state, and shall, from previous and active practice be familiar with yellow fever, and thereby as competent as possible of discriminating between it and other diseases, and pledged to the importance of both quarantine and sanitation.

Governor to appoint state health officer.

His qualifications. (Acts 1879, ch. 57, p. 86.)

ART. 4090b. He shall be of sufficient age to have acquired mature judgment and not so old as to be inactive and incapable of active duty, and he shall be entirely under the direction and control of the governor.

Health officer's age.

He to be under control of governor. *Ib.* p. 86.

ART. 4090c. Such health and quarantine officer shall, during the time he is actively engaged in public duty, receive for his services ten dollars per day and all necessary traveling expenses, a bill of which must be made out in detail and sworn to and then approved by the governor, on which approved account the comptroller shall issue his warrant on the treasurer for the amount of such account.

Pay of health officer. *Ib.* p. 87.

ART. 4090d. When the governor is informed, or has any reason to believe that the State of Texas is threatened at any point or points with the introduction of yellow fever, cholera or plague, he shall immediately order such quarantine officer to the point or points threatened, with instructions to carefully examine into such information or alarm, and if satisfied that the report or information is true and that there is danger to the state at such place or places of any of said diseases being introduced, the governor shall immediately declare quarantine at such places against

Governor to declare temporary quarantine, when.

Duties of health officer when points are threatened with disease. *Ib.*

the locality where such disease prevails or is said to exist, until such time as the same can be examined into and determined, having power to command state, county and municipal authorities to aid him in establishing and maintaining the same.

To report condition of threatened point to governor.

*Ib.*

Governor may continue or dissolve temporary quarantine.

*Ib.*

State quarantine laws to remain in force on coast.

Governor may add to or change stations.

*Ib.*

Local quarantine laws to remain in force.

Disputes between localities to be reported to and decided by the governor.

*Ib.*

Bond and term of office of health officer.

May be removed by governor.

*Ib.*

Local authorities to establish stations, when.

*Ib.* pp. 87-8.

Shall furnish persons detained at stations with subsistence and shelter.

*Ib.* and acts 1879, extra session, ch. 37.

Persons detained, willfully absenting themselves, how punished. (Acts 1879, ch. 57, p. 88.)

ART. 4090e. As soon as this is done he shall immediately report, in person if possible, to the governor the exact state of things, or if at such point or in such emergency as that he can not leave the place he shall, by telegraph or mail, make an exact and truthful report of the same.

ART. 4090f. It shall then be discretionary with the governor to continue or dissolve such temporary quarantine, as the facts set forth may justify or as subsequent developments may indicate.

ART. 4090g. The laws in regard to state quarantine shall remain and be in full force and operation on the coast, and be enforced by the governor as heretofore, with such additional changes in stations and general management as the governor may think proper and more effective.

ART. 4090h. The laws in regard to local quarantine by the inhabitants of places or points shall remain in full force; *provided*, that in all differences and disputes between points or places, contiguous or remote, within the state, such differences and disputes shall be immediately, by the local health authorities, if any, and if none, by such authorities, county or municipal, if any there be, and if none, by the inhabitants themselves, reported and submitted to the governor, and on the receipt of such report he shall forthwith order the aforesaid health officer to said points or places with instructions to investigate the same and report to the governor the exact condition of things, and upon due investigation and deliberation the governor shall issue his proclamation declaring the determination of the issue, and by said proclamation the aforesaid disputes shall be governed.

ART. 4090i. Said health and quarantine officer shall give a good and sufficient bond, in the sum of ten thousand dollars, made payable to the governor, to be approved by him, for the honest and impartial performance of his duties, and he shall hold his position for the space of two years, subject to removal at any time that the governor may be satisfied that the public good demands it.

ART. 4090j. Whenever quarantine is declared by the governor, or any county or corporate authorities of this state, it shall be the duty of such authority, within twenty-four hours of the issuance of such declaration, to establish a quarantine station or stations, where any person may be detained for such length of time as, in the discretion of the quarantine officers, is demanded by public safety.

ART. 4090k. It shall be the duty of the quarantine officer of the state, county or city authorities, as the case may be, to furnish persons detained by them at quarantine stations with subsistence and shelter, not including the crews of vessels, except such as are removed by the quarantine officers; and said subsistence account, and all contracts for the construction of quarantine stations and wharves, and hire or purchase of boats or vessels accepted by the state health officer and the governor, and received by them after completion, and all accounts for the same and for all other expenses shall be approved by the governor, and when so approved the comptroller shall draw his warrant upon the treasurer in favor of the same for the amount specified.

ART. 4090l. Any person detained at any quarantine station, who shall willfully absent himself from such quarantine station, without leave of the officer having charge thereof, shall be guilty of a misdemeanor, and shall be fined not less than ten, nor more than one thousand dollars. by a court of competent jurisdiction.

ART. 4090m. All the costs and expenses of enforcing and maintaining the general quarantines, or such as are ordered by the governor for the state, shall be paid out of the fund appropriated for quarantine purposes.

Expenses of enforcing quarantine, how paid.

2. No quarantine officer of this state shall be empowered to draw more than ten dollars per day for such services, and all contracts made by any town, city or county, authorities for a greater amount shall be disallowed by the comptroller.

Pay of quarantine officers.

3. All quarantine officers, whether of towns, cities, or counties, or state, shall be authorized to administer oaths to any person suspected of violating any quarantine regulation, and any person swearing falsely, upon conviction thereof before any court of competent jurisdiction, may be punished therefor, as in other cases made and provided.

All quarantine officers may administer oaths to suspected persons.

False swearing, how punished.  
Ib.

ART. 4091. It is hereby made the duty of the corporate authorities of each and every town or city upon the coast of Texas, at as early a moment as practicable after the promulgation of the proclamation of the governor, provided in the preceding article, to establish a quarantine station at a sufficient distance from the usual place of landing of vessels at their respective towns or cities, and to appoint, select and employ a competent physician as the health officer at such station, and to furnish said officer with all things necessary for the proper and efficient discharge of his duties; and said town or city corporation shall have power to provide for quarantine and to enforce the same by ordinance.

Corporate authorities to appoint health officer, etc.  
Ib. §2.  
P.D. 7240.

ART. 4092. Wherever on the coast of Texas there shall be no town or city corporations, and quarantine be there required, the governor shall have power to appoint a health officer, and to prescribe such regulations for the quarantine of such places as he may deem necessary.

Governor may appoint health officer, when.  
Ib. §3.  
P.D. 7341.

ART. 4093. It shall be the duty of said health officer to stop every vessel from an infected port or district, and to make a rigid examination of the said vessel, notwithstanding the said vessel may have a clean bill of health, and if deemed necessary (and he is hereby empowered so to do) to take the affidavit of the master of said vessel as to the health of himself and crew from the time of sailing from said infected port. And the said health officer shall detain said vessel at quarantine for such length of time as may be designated by the governor in his proclamation establishing said quarantine; and he may use force, if necessary, in order to discharge the duties imposed upon him by this title.

Duties of health officer.  
Ib.  
P.D. 7341.

ART. 4094. Any vessel arriving at any of the quarantine stations designated by the authorities aforesaid, from an infected port without a clean bill of health from the proper officer of said port, shall be taken possession of by the health officer at the station at which said vessel arrives, and shall be held by such officer until all fines which may have been assessed against the master of said vessel for a violation of the quarantine law shall have been paid, or until said vessel shall have been replevied in accordance with law.

Vessel arriving at station shall be seized by health officer, etc.  
(Act Aug. 13, 1870, p. 75, §2.)  
P.D. 7342.

ART. 4095. The payment of the fine which may be assessed against the master of such vessel shall not operate as a release or discharge of the vessel from quarantine, but the same rule shall apply and be observed as in cases of other vessels placed in quarantine.

Payment of fine shall not release vessel from quarantine.  
Ib. §4.

NOTE.—Article 4096 repealed by section 3, chapter 37, acts 1879, extra session.—L.

ART. 4097. It shall be the duty of the town or city authorities aforesaid, as soon as the quarantine ceases to exist, to make a succinct statement of receipts and expenditures, and forward the same to the comptroller; and should the expenditures amount to a greater sum than the receipts, they shall draw from the treasury of the state, upon an order from the comptroller, the excess of such expenditures over the receipts as in other cases made and provided; and should the receipts

Corporate authorities shall report receipts and expenditures to comptroller etc.  
Ib. p. 76, §5.  
P.D. 7346.

exceed the expenditures, the aforesaid town or city authorities are hereby authorized and empowered to appropriate and use such excess for the maintenance of marine hospitals in their respective towns or cities.

ART. 4098. Nothing in this title contained shall prevent any town, city or county from establishing any quarantine which they may think necessary for the preservation of the health of said town, city or county not inconsistent with the provisions of this title.

## SUPPLEMENT.

SECTION 1. It is hereby made the duty of the county courts of the several counties on the borders or coast of Texas, when required by the circular or proclamation of the governor, where there shall be no corporate town or city within such county, requiring quarantine, to appoint competent quarantine guards or health officers at such place or places as may be designated by the governor; and should said duty be disregarded by the officers of such counties, then it shall be the duty of the governor to appoint such guards or quarantine officers, and whenever any local board fails or refuses to carry out an effective system of quarantine, the governor is authorized and required to enforce the same in such manner as may be necessary; said guards and health officers shall receive such pay and in such manner as is provided for in section two of this act.

SEC. 2. Whenever the governor appoints any health or quarantine officers or guards, as provided for in article 4092, title lxxxiii of the Revised Civil Statutes, such officer or officers or guards shall be paid not more than one hundred dollars per month whilst on duty for such services; said amount per month shall be approved by the state health officer and the governor, and when so approved the comptroller shall draw his warrant on the treasurer for the amount so approved in the name of the party performing said quarantine services.

Town, city or county may establish quarantine.

*Ib.*

(Act May 4, 1874, p. 223, §1.)  
P.D. 7345.

County courts to appoint local officers, when.  
(Acts 1879, extra session, ch. 37.)

Pay of officers and guards.

*Ib.*

TITLE LXXXIV.

Railroads.

CHAPTER ONE.

INCORPORATION OF RAILROAD COMPANIES.

	Article		Article
Not less than ten persons may form company	4099	Shall be filed in office of secretary of state.	4103
Amount of stock which must be subscribed and paid	4100	Existence of corporation shall begin, when	4104
Articles of incorporation shall contain, what	4101	Corporators may proceed to act, when	4105
Articles shall be submitted to attorney-general, etc.	4102	Corporation shall not be formed for more than fifty years, but, etc.	4106
		Manner of renewing corporations	4107
		Fee for charter and amendments	4107—Note

ARTICLE 4099. Any number of persons, not less than ten, being subscribers to the stock of any contemplated railroad, may be formed into a corporation for the purpose of constructing, owning, maintaining and operating such railroad, by complying with the requirements of this chapter.

Not less than ten persons may form company. (Act Aug. 15, 1876, p. 141, §1.)

ART. 4100. No railroad corporation shall be formed until stock to the amount of one thousand dollars for every mile of said road so intended to be built shall be in good faith subscribed, and five per cent. of the amount subscribed paid in to the directors of such proposed company.

Amount of stock which must be subscribed and paid. *Ib.*

ART. 4101. The persons proposing to form a railroad corporation shall adopt and sign articles of incorporation, which shall contain—

Articles of incorporation shall contain, what. *Ib.* §3.

1. The name of the proposed corporation.

2. The places from and to which it is intended to construct the proposed railroad and the intermediate counties through which it is proposed to construct the same.

3. The place at which shall be established and maintained the principal business office of the proposed corporation.

4. The time of the commencement and the period of the continuation of the proposed corporation.

5. The amount of the capital stock of the corporation.

6. The names and places of residence of the several persons forming the association for incorporation.

7. The names of the members of the first board of directors, and in what officers or persons the government of the proposed corporation and the management of its affairs shall be vested.

8. The number and amount of shares in the capital stock of the proposed corporation.

ART. 4102. The articles of incorporation, when so prepared, adopted and signed, shall be submitted to the attorney-general of the state, whose duty it shall be to carefully examine the same, and if he finds them to be in accordance with the provisions of this chapter and not in conflict with the laws of the United States or of this state, he shall attach thereto a certificate to that effect.

Articles shall be submitted to attorney-general, etc. *Ib.* §2.

ART. 4103. When said articles have been examined and certified, as provided in the preceding article, the same shall be filed in the office of the secretary of state, accompanied by an affidavit in writing, signed and sworn to by at least three of the directors named in such articles, before some officer of the state authorized by law to administer oaths, which affidavit shall state that the amount of one thousand dollars for every mile of such proposed road has been in good faith subscribed, and that

Shall be filed in office of secretary of state. *Ib.* §3.

five per cent. of the amount subscribed has been actually paid to the directors named in such articles; and the secretary of state shall cause such articles, together with said affidavit, to be recorded in his office, and shall attach a certificate of the fact of such record to said articles and return the same to such corporation.

Existence of corporation begins, when. *Ib.* §5.

ART. 4104. The existence of such corporation shall date from the filing of the articles of incorporation in the office of the secretary of state, and the certificate of the secretary of state, under the seal of the state, shall be evidence of such filing.

Corporators may proceed to act, when. *Ib.* §4.

ART. 4105. When the articles of incorporation have been filed and recorded as herein provided, the persons named as corporators therein shall thereupon become and be deemed a body corporate, and be authorized to proceed to carry into effect the objects set forth in such articles, in accordance with the provisions of this title.

Corporation shall not be for more than than fifty years, but, etc. *Ib.* p. 144, §8.

ART. 4106. No railroad corporation shall be formed to continue more than fifty years in the first instance, but such corporation may be renewed from time to time for periods not longer than fifty years, in the manner provided in the succeeding articles.

Manner of renewing corporation. *Ib.*

ART. 4107. The manner of renewing a railroad corporation which has expired by lapse of time shall be as follows:

1. By a resolution in writing adopted by a majority of three-fourths of the stockholders of the company at a regular meeting of the stockholders, which resolution shall specify the period of time for which the corporation is renewed.

2. Those desiring a renewal of the corporation shall purchase the stock of those opposed thereto at its current value.

3. The resolution, when adopted, shall be certified to by the president of the company, and he shall state in his certificate thereto that it was adopted by a majority vote of three-fourths of all the stockholders of said company, at a regular meeting of such stockholders, and that the stockholders desiring such renewal have purchased the stock of those who oppose such renewal, and such certificate shall be attested by the secretary of the company under the seal of the company.

4. The said resolution and certificate shall then be filed and recorded in the office of the secretary of state, and the renewal of said corporation shall date from said filing.

Fee for charter and amendments.

NOTE.—Chapter 15, acts 1879, requires the department of state to charge and collect a fee of one hundred dollars "for each and every charter, or amendment or supplement thereto of a private corporation, created for the purpose of operating or constructing a railroad, or magnetic telegraph line, or street railway, in a town or city, authorized or required by law to be recorded in said department, to be paid when the same is filed for record."—L.

## CHAPTER TWO.

### AMENDING OR CHANGING CHARTER.

Corporation may amend, etc., articles, etc. (Act Aug. 15, 1876, p. 142, §5.) How amendment, etc., shall be made. *Ib.* §5.

	Article		Article
Corporation may amend, etc., articles, etc.	4108	Same subject.....	4112
How amendment, etc., shall be made.....	4109	May project, etc., branch line by amendment	4115
Shall take effect, when.....	4110	Branch line shall be completed ten miles	
Shall not amend, etc., when.....	4111	first year.....	4114

ARTICLE 4108. Any railroad corporation may amend or change its articles or act of incorporation in the manner provided in the following articles of this chapter.

ART. 4109. Said amendment or change shall be made in the manner following:

1. It shall be in writing and signed by the president and board of directors of the corporation, and attested by the secretary under the seal of the corporation.

2. It shall be submitted to the attorney-general as in the case of origi-

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nal articles of incorporation, and examined and certified by him in the same manner.

3. It shall then be filed and recorded in the office of the secretary of state.

4. In the case of a corporation created by a special act of the legislature, the said amendment or change, together with the original charter and such amendments and changes as have been made by special act of the legislature, shall be filed and recorded in the office of the secretary of state.

ART. 4110. Such amendment or change shall be in force from the date of the filing of the same in the office of the secretary of state in accordance with the provisions of this chapter. Shall take effect, when. *Ib.*

ART. 4111. Where, by the special act or articles of incorporating any railroad company, any privileges, rights or benefits are conferred upon said corporation, such as it could not claim, exercise or receive under this title or the general laws, then the said corporation shall not be permitted so to amend or change its charter or articles of incorporation as to relieve it from any of the requirements of such special act or acts conferring said privileges, rights or benefits. Shall not amend, etc., when. *Ib.*

ART. 4112. Nothing in this chapter shall be so construed as to allow any railroad company incorporated under the provisions of this title or under a special act of the legislature, to amend or change any part of its charter requiring it to build its road through and to maintain passenger and freight depots in or near any city or town in this state, and within the time named in its charter. Same subject. *Ib.*

ART. 4113. Any railroad corporation may, by amendment to its charter, project and provide for the locating, constructing, owning, maintaining and operating a branch line to its original or trunk line of railroad from any point on the said original main or trunk line to any other point in this state, by a branch line to the main line, making an angle with said main line of at least twenty-five degrees in the general course of said branch line, and also so projected that said branch line shall in no case be so located as to be or become such a line of railroad as that, if the same were owned by another corporation, the corporation owning the main line or any one of the other branches thereof, would be forbidden by the constitution and laws from consolidating therewith on account of the lines being parallel or competing lines. May project, etc., a branch line by amendment. *Ib.* p. 143, §7.

ART. 4114. Any such corporation making such amendment to its charter as is authorized by the preceding article, shall complete and put in good running order at least ten miles of its said branch line in said amendment proposed within one year from the filing of such amendment, and an additional extent of at least twenty miles each and every succeeding year until the entire extent of the projected branch line is completed. Branch line shall be completed 10 miles first year, etc. *Ib.*

**CHAPTER THREE.**

**PUBLIC OFFICE AND BOOKS.**

	Article		Article
Shall have office on line of road in this state	4115	Notice of establishment of public office, in first instance, shall be given.....	4119
Meetings of stockholders, etc., shall be at public office.....	4116	Public office the domicile of the corporation.....	4120
Books shall be kept in which shall be recorded, etc.....	4117	Books shall be open to inspection.....	4121
May change public office.....	4118	Legislature may examine books.....	4122

Shall have office on line of road in this state. (Const., art. 10, §3.) (Act Aug. 15, 1876, p. 144, §10.)

ARTICLE 4115. Every railroad corporation shall have and maintain a public office at some place upon the line of its road in this state.

ART. 4116. All meetings of the stockholders and directors of such corporation shall be held at such public office and all transfers of stock in such corporation shall be made at such office, and the general business of such corporation shall be transacted at such office. Meetings of stockholders, etc., shall be at public office. *Ib.*



Books shall be kept in which shall be recorded, etc.  
*Ib.* §10.

ART. 4117. There shall be kept at such office, for the inspection of the stockholders of such corporation, books in which shall be recorded—

1. The amount of capital stock subscribed.
2. The names of the owners of the stock and the amounts owned by each of them respectively.
3. The amount of stock paid and by whom.
4. The transfer of stock with the date of the transfer.
5. The amount of the assets and liabilities of the corporation.
6. The names and places of residence of its officers.

May change public office.  
(Act Feb. 7, 1864.)  
P.D. 4888.

ART. 4118. Every railroad corporation may change at pleasure its public office by publishing a notice of such change in some newspaper published on the line of its road, if any there be, and if not, then in some newspaper in the state and having a general circulation in the state, for four successive weeks prior to such change.

Notice of establishment of public office, in first instance, shall be given.

ART. 4119. Every railroad corporation shall also, as soon as it has in the first instance established its public office, give notice of such establishment by a like publication as required in the preceding article.

Public office the domicile of the corporation.  
(Act Aug. 15, 1876, p. 150, §32.)

ART. 4120. The public office of a railroad corporation shall be considered the domicile of such corporation.

Books shall be open to inspection.  
(Act Dec. 19, 1857.)  
P.D. 4909.

ART. 4121. The books of such corporation kept at its public office shall, at all reasonable business hours, be open to the inspection of each stockholder and to any agent or officer of the state whose duty it may be to inspect such books.

Legislature may examine books.  
(Act Feb. 7, 1854.)  
P.D. 4906.

ART. 4122. The legislature may examine the books of any railroad corporation, by committee or otherwise, as often as may be deemed necessary.

## CHAPTER FOUR.

### OFFICERS OF RAILROAD CORPORATIONS.

	Article		Article
Board of directors.....	4123	Corporate powers vested in directors.....	4130
Qualifications of directors.....	4124	President and other officers.....	4131
Directors shall be elected by stockholders.....	4125	Majority of directors required to elect or appoint officers.....	4132
Majority of stock required to elect director.....	4126	Directors liable when false and fraudulent dividend is declared.....	4133
By-laws in regard to election of officers shall not be changed, except, etc.....	4127	All the officers liable when false representations are made.....	4134
Manner of voting for directors.....	4128		
Failure to hold election for directors.....	4129		

Board of directors.  
(Act, Aug. 15, 1876, p. 144, §11.)

ARTICLE 4123. Every railroad corporation shall have a board of directors of not less than seven nor more than nine persons.

Qualifications of directors.  
*Ib.* p. 145, §14.

ART. 4124. Each director shall be a stockholder in said corporation, and a majority of said directors shall be resident citizens of this state, and shall so remain resident citizens during their continuance as such directors.

Directors shall be elected by stockholders.  
*Ib.* p. 144, §11.

ART. 4125. The board of directors shall be elected by the stockholders of the corporation at their regular annual meeting in each year, in such manner as may be prescribed in the by-laws of such corporation and by this title, and the directors shall hold their offices until their successors are elected.

Majority of stock required to elect a director.  
*Ib.* p. 145, §14.

ART. 4126. It shall require a majority in value of the stock of such corporation to elect any member of such board of directors.

By-laws in regard to election of directors shall not be changed, except, etc.  
*Ib.* p. 144, §11.

ART. 4127. The by-laws of the corporation shall prescribe the manner and time of electing directors, and the mode of filling a vacancy in the office of director, and such provisions in such by-laws shall not be changed,

except at a regular annual meeting of the stockholders, and by a majority in value of the stockholders of such corporation.

ART. 4128. In all elections for directors of such corporation, every stockholder shall have the right to vote in person or by proxy for the number of shares of stock owned by him, for as many persons as there are directors to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors to be elected multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he may see fit; and such directors shall not be elected in any other manner.

Manner of voting for directors.  
*Ib.* p. 149, §29.

ART. 4129. In case it shall happen at any time that an election of directors shall not be made on the day designated by the by-laws of the corporation for that purpose, the stockholders shall meet and hold an election for directors in such manner as shall be provided by the by-laws of the corporation.

Failure to hold election for directors.  
*Ib.* p. 145, §14.

ART. 4130. All the corporate powers of every railroad corporation shall be vested in and be exercised by its legally constituted board of directors.

Corporate powers vested in directors.  
*Ib.* p. 144, §11.

ART. 4131. There shall be a president of the corporation, who shall be chosen from and by the board of directors, and such other subordinate officers as the corporation by its by-laws may designate, who may be elected or appointed, and shall perform such duties and be required to give such security for the faithful performance thereof as the corporation, by its by-laws, shall require.

President and other officers.  
*Ib.* p. 145, §15.

ART. 4132. In all cases it shall require a majority of the directors to elect or appoint any officer of the corporation.

Majority of directors required to elect or appoint officers.  
*Ib.*

ART. 4133. If the directors of any railroad company shall declare and pay any dividend when the company is insolvent, or any dividend the payment of which would render it insolvent, they shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be thereafter contracted so long as they shall respectively continue in office; *provided*, that if any of the directors shall be absent at the time of making the dividend, or shall object thereto, and shall within thirty days thereafter, or after their return, if absent, file a certificate of their absence or objection in writing with the clerk of the company and with the clerk of the county in which the principal office of said company is located, they shall be exempt from said liability.

*Ib.* Directors liable when false and fraudulent dividend is declared.  
P. D. 4886.

ART. 4134. If any certificate or report made, or public notice given by the officers of any such company, in pursuance of the provisions of this title, shall be false in any material representation, all the officers who shall have signed the same shall be jointly and severally liable for all the debts of the company contracted while they are officers or stockholders thereof.

All the officers liable when false representations are made.  
P. D. 4887.

## CHAPTER FIVE.

### BY-LAWS.

	Article		Article
Power to enact by-laws.....	4135	When and by what vote by-laws shall be enacted .....	4137
Each share entitled to a vote.....	4136		

ARTICLE 4135. Every railroad corporation shall have the power to make such by-laws as it may think proper for the government of such company, the same not being inconsistent with the charter of such company or the laws.

Power to enact by-laws.  
(Act Dec. 19, 1857, p. 95.)  
P. D. 4911.

ART. 4136. In the enactment of a by-law, the stockholders of the corporation shall be entitled to one vote for each share of stock held by them, and a stockholder may vote in person or by written proxy.

Each share entitled to vote, etc.  
*Ib.*

When and by what vote shall be enacted, etc.  
*Ib.*

ART. 4137. No by-law shall be enacted, altered, amended, added to, repealed or suspended, except at a regular annual meeting of the stockholders and by a majority vote of two-thirds in value of all the stock of the corporation.

CHAPTER SIX.

STOCK AND STOCKHOLDERS.

	Article		Article
Railroad stock is personal estate and transferable.....	4138	Increase may be not exceeding amount named in notice.....	4148
Directors may require payment of stock, etc.....	4139	Order or resolution increasing, shall be recorded.....	4149
Sale of stock when owner neglects to pay.....	4140	President and directors shall furnish statement to stockholders at regular meeting.....	4150
Stockholder shall have access to books, etc., of corporation.....	4141	May be required to furnish statement at special meeting.....	4151
Funds of corporation shall be used only for legitimate purposes.....	4142	Stockholders may fix amount of loans and interest thereon.....	4152
Extent of stockholder's liability for debts of corporation.....	4143	Stockholders may remove officers and elect others.....	4153
Persons holding stock who are not liable.....	4144	No stock shall be issued, except, etc.....	4154
Capital stock may be increased.....	4145	Fictitious dividends, etc., void.....	4155
Notice of meeting for such increase.....	4146	Penalty for violating two preceding articles.....	4156
Notice shall state, what.....	4147		

Railroad stock is personal estate and transferable.  
(Act Aug. 15, 1876, p. 145, §17; p. 144, §10.)

ARTICLE 4138. The stock of a railroad corporation shall be deemed personal estate, and shall be transferable in the manner prescribed by the by-laws of the corporation; but no such transfer shall be valid until the same shall have been made on the stock and transfer books of the company; nor shall any share be transferable until all previous calls thereon have been paid.

Directors may require payment of stock, etc.  
*Ib.* p. 145, §16.

ART. 4139. The directors of such corporation may require the subscribers to the capital stock of the corporation to pay the amount by them respectively subscribed, in such manner and in such installments as the directors may deem proper.

Sale of stock when owner neglects to pay  
*Ib.* p. 145, §16.

ART. 4140. If any stockholder shall neglect to pay any installment as required by a resolution or order of the board of directors, the said board shall be authorized to advertise said stock for sale by publication once a week for thirty days in some newspaper published on the line of said road, if there be one, and if not, in some newspaper published in the state having a general circulation in the state, which notice shall name the stock to be sold and the time and place of such sale, and all stock so sold shall be sold at the public office or place of business of such company, and between the hours of 10 o'clock A. M. and 4 o'clock P. M., and to the highest bidder for cash, the proceeds of such sale to be credited to the delinquent stockholder.

Stockholders shall have access to books, etc., of corporation.  
*Ib.* p. 145, §13.

ART. 4141. All stockholders shall at all reasonable hours have access to and may examine all books, records and papers of such corporation.

Funds of corporation shall be used only for legitimate purposes.  
*Ib.* §17.

ART. 4142. It shall not be lawful for any railroad corporation to use any of the funds thereof in the purchase of its own stock, or that of any other corporation, or to loan any of its funds to any director or other officer thereof, or to permit them, or any of them, to use the same for other than the legitimate purposes of the corporation.

Extent of stockholder's liability for debts of corporation.  
*Ib.* p. 146, §20.

ART. 4143. Each stockholder of any railroad corporation shall be held individually liable to the creditors of such corporation to an amount not exceeding the amount unpaid on the stock held by him, for any and all debts and liabilities of such corporation until the whole amount of the capital stock of such corporation so held by him shall have been paid.

Persons holding stock who are not liable.  
*Ib.* §19.

ART. 4144. No person holding stock in any railroad corporation as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as a stockholder of such corporation, but the estate or person owning such

stock shall be considered as holding the same and liable as a stockholder accordingly.

ART. 4145. In case the capital stock of any railroad corporation shall be found insufficient for constructing and operating its road, such corporation may, with the concurrence of two-thirds in value of all its stock, increase its capital stock from time to time to any amount required for the purposes aforesaid.

Capital stock may be increased.  
*Ib.* §18.

ART. 4146. Such increase shall be sanctioned by a vote in person, or by written proxy, of two-thirds in amount of all the stock of such corporation, at a meeting of such stockholders called by the directors of the corporation for such purpose, by giving notice in writing to each stockholder, to be served personally or by depositing the same in a post-office directed to the post-office addresses of each of said stockholders severally, postage prepaid, at least sixty days prior to the day appointed for such meeting, and also by advertising the time, place and purpose of such meeting in some newspaper published in each county through or into which the said road shall run or be intended to run (if any newspaper shall be published therein) at least sixty days next preceding the day appointed for such meeting.

Notice of meeting for such increase, etc.  
*Ib.*

ART. 4147. Such notice shall state the time and place of the meeting, the object thereof, and the amount to which it is proposed to increase such capital stock.

Notice shall state what.  
*Ib.*

ART. 4148. At such meeting the capital stock of the corporation may be so increased by a vote of two-thirds in amount of the capital stock of the corporation, to an amount not exceeding the amount mentioned in the notice so given.

Increase may be not exceeding amount named in notice.  
*Ib.*

ART. 4149. Every order or resolution increasing the capital stock of any such corporation shall be recorded in the office of the secretary of state, and such increase shall not take effect until such order or resolution has been so recorded.

Order or resolution increasing, shall be recorded.  
*Ib.*

ART. 4150. At the regular annual meeting of the stockholders it shall be the duty of the president and directors to exhibit a full, distinct and accurate statement of the affairs of the corporation to the stockholders.

President and directors shall furnish statement to stockholders at regular meeting.  
*Ib.* p. 145, §13.

ART. 4151. The stockholders may, at any special meeting of stockholders, require statements similar to the one required by the preceding article from the president and directors, and when so required it shall be the duty of such president and directors to furnish the same.

May be required to furnish statement at special meeting.  
*Ib.*

ART. 4152. At a regular annual meeting of stockholders, or at a special meeting called for the purpose, the stockholders may, by a majority in value of all the stock of such corporation, determine the amount of loans which may be negotiated by such company for the construction of its railway and its equipments, and fix the rates of interest which may be paid and provided for the security of such loans.

Stockholders may fix amount of loans and interest thereon.  
*Ib.*

ART. 4153. The stockholders may, by a two-thirds vote in value of all the stock, at any regular or special meeting of stockholders, remove the president or any director, or other officer of such corporation, and elect others instead of those so removed, in accordance with the by-laws of such corporation and this title.

Stockholders may remove officers and elect others.  
*Ib.*

ART. 4154. No railroad corporation shall issue any stock or bonds except for money, labor or property actually received and applied to the purpose for which such corporation was organized; nor shall it issue any shares of stock in said company, except at its par value and to actual subscribers who pay or become liable to pay the par value thereof.

No stock shall be issued, except, etc.  
*Ib.* p. 148, §25.  
P.D. 4921.

ART. 4155. All fictitious dividends and other fictitious increase of the capital stock or indebtedness of any such corporation shall be void.

Fictitious dividends, etc., void.  
*Ib.*

Penalty for violation of two preceding articles.  
P.D. 4921.

ART. 4156. Every officer or director of a railroad company who shall violate, or consent to the violation of either of the two preceding articles, shall become personally liable to the stockholders and creditors of such company for the full par value of such illegal stock, or for the full amount of such fictitious dividends, increase of stock or indebtedness, as the case may be.

CHAPTER SEVEN.

MEETINGS OF DIRECTORS AND STOCKHOLDERS.

	Article		Article
Annual meeting of directors.....	4157	Special meeting of stockholders.....	4161
Annual meeting of stockholders.....	4158	Notice of special meeting.....	4162
Directors and stockholders may meet at same time and place.....	4159	If quorum of stockholders should not meet.....	4163
Quorum of directors and stockholders.....	4160	Proxy must be dated, within what time.....	4164
		What stock shall not vote.....	4165

Annual meeting of directors (Const., art. 10, §3.)

ARTICLE 4157. The directors of every railroad company shall hold at least one meeting annually at the public office or place of business of such corporation in this state, public notice of which shall be given thirty days previously of the time and place of such meeting in some newspaper published in each county through or into which its railway shall run, or be intended to run, if there be any newspaper published in said counties, and if not, then in some newspaper published in the state and having a general circulation in the state.

Annual meeting of stockholders. (Act Aug. 15, 1876, p. 144, §12.)

ART. 4158. The stockholders of every railroad corporation shall hold at least one meeting annually at the public office or place of business of such corporation in this state, and it shall be the duty of the board of directors to cause public notice to be given of the time and place of such meeting for thirty days previously thereto, as provided in the preceding article.

Directors and stockholders may meet at same time and place.

ART. 4159. The annual meetings of the board of directors and of the stockholders provided for in the two preceding articles, may be called to meet and may be held at the same time and place, in which case one notice shall answer the purpose of both meetings, provided it be so stated in such notice.

Quorum of directors and stockholders. *Ib.* §12.

ART. 4160. A majority of the directors of any railroad corporation shall constitute a quorum to transact business, and a majority in value of two-thirds of all the stock owned by such corporation shall constitute a quorum of stockholders to transact business.

Special meeting of stockholders. *Ib.*

ART. 4161. A special meeting of stockholders may be called at any time during the interval between the regular annual meetings of such stockholders by the directors, or by stockholders owning not less than one-fourth of all the stock of such company.

Notice of special meeting. *Ib.*

ART. 4162. When any such special meeting of stockholders is called, notice of the time and place of such meeting shall be given for at least thirty days prior to the time fixed for such meeting, in the same manner as is required in the case of a regular annual meeting, and such notice shall specify the purpose or purposes for which the said special meeting is called, and no other business shall be transacted at such special meeting, except that specified in such notice.

If quorum of stockholders should not meet. *Ib.* p. 145, §14.

ART. 4163. If at any meeting of stockholders a majority in value of the stockholders equal to two-thirds of the stock of such corporation shall not be represented in person or by proxy, such meeting shall be adjourned from day to day, not exceeding three days, without transacting any business, and if within said three days two-thirds in value of such stock shall not be represented at such meeting, then the meeting shall be adjourned, and another meeting called, and notice thereof given as hereinbefore provided.

ART. 4164. Every proxy from a stockholder shall be dated within six months previous to the meeting of the stockholders at which it is proposed to vote by virtue thereof, and if not dated within such time shall not be voted. Proxy must be dated within what time. P.D. 4908.

ART. 4165. Stock issued within thirty days before any stockholders' meeting shall not entitle the holder to vote thereat, except at the first stockholders' meeting under their articles or act of incorporation for organization; nor shall any stock be voted upon, except in proportion to the amount paid thereon, or secured to be paid, by good security, in addition to the subscription and stock. What stock shall not vote. P.D. 4928.

## CHAPTER EIGHT.

### RIGHT OF WAY.

Article		Article	
Right to construct road, etc., anywhere in state.....	4166	Shall issue written notice to parties.....	4186
Right of way over public lands.....	4167	Manner of serving notice.....	4187
Lineal survey.....	4168	Return of notice.....	4188
May lay out road two hundred feet in width, etc.....	4169	When property belongs to an estate or to a minor, notice shall be served, on whom..	4189
May construct road across water, street, highway, etc.....	4170	Service by publication, when.....	4190
Shall first construct necessary culverts, sluices, etc.....	4171	Proceedings of commissioners.....	4191
Navigable waters shall not be obstructed..	4172	Powers of commissioners.....	4192
Streets of incorporated cities or towns shall not be taken without, etc.....	4173	Rule of damages.....	4193
In case of highways, plank-roads, etc.....	4174	Same subject.....	4194
Shall have the right to cross, intersect, etc., other railways.....	4175	Same subject.....	4195
Intersected railway shall do, what.....	4176	Injuries and benefits which shall not be estimated.....	4196
When two corporations can not agree, etc.....	4177	Assessment shall be in writing, dated, signed, etc.....	4197
May enter upon adjacent land and take material, etc.....	4178	Other commissioners may be appointed, when.....	4198
Value of same and damages shall first be paid.....	4179	Pay of commissioners.....	4199
In case corporation and owner can not agree, etc.....	4180	Corporation shall pay expenses of serving notice.....	4200
Shall not enter upon land except for lineal survey.....	4181	Commissioners shall make out cost bill, etc	4201
Mode of condemning property.....	4182	Either party, if dissatisfied with decision, may remove cause, etc.....	4202
County judge shall appoint commissioners, etc.....	4183	Decision shall be made the judgment of the court, when.....	4203
Commissioners shall be sworn.....	4184	Costs shall be awarded, by what rule.....	4204
Commissioners shall select a day and place of hearing.....	4185	Damages must be paid before property is taken.....	4205
		The right of way, how construed.....	4206
		Right of way reserved out of lands granted to railway companies.....	4207
		Right of way vested by judgment of court.	4208

ARTICLE 4166. Any railroad corporation shall have the right to construct and operate a railroad between any points within this state and to connect at the state line with railroads of other states. Right to construct, etc., road anywhere in the state. (Const., art. 10, §1.)

ART. 4167. Every such corporation shall have the right of way for its line of road through and over any lands belonging to this state, and to use any earth, timber, stone or other material upon any such land necessary to the construction and operation of its road through or over said land. Right of way over public lands.

ART. 4168. Every railroad corporation shall have the right to cause such examination and survey for its proposed railway to be made as may be necessary to the selection of the most advantageous route, and for such purpose may enter upon the lands or waters of any person or corporation, but subject to responsibility for all damage that may be occasioned thereby. Lineal survey. (Act Aug. 15, 1876, p. 147, §23.)

ART. 4169. Such corporation shall have the right to lay out its road not exceeding two hundred feet in width, and to construct the same; and for the purpose of cuttings and embankments to take as much more land as may be necessary for the proper construction and security of its railway, and to cut down any standing trees that may be in danger of falling upon or obstructing the railway, making compensation in the manner provided by law. May lay out road 200 feet in width, etc. Ib.

May construct roads across waters, streets, highways, etc.  
*Ib.*

ART. 4170. Such corporation shall have the right to construct across, along or upon any stream of water, water course, street, highway, plank-road, turnpike or canal which the route of said railway shall intersect or touch; but such corporation shall restore the stream, water course, street, highway, plank-road, turnpike or canal thus intersected or touched, to its former state, or to such state as not to unnecessarily impair its usefulness, and shall keep such crossing in repair.

Shall first construct necessary culverts, or sluices.  
*Ib.*

ART. 4171. In no case shall any railroad company construct a road-bed without first constructing the necessary culverts or sluices, as the natural lay of the land requires for the necessary drainage thereof.

Navigable waters shall not be obstructed.  
*Ib.*

ART. 4172. Nothing in this chapter shall be so construed as to authorize the erection of any bridge or any other obstruction across or over any stream or water navigable by steamboats or sail vessels at the place where any bridge or other obstruction may be proposed to be placed, so as to prevent the navigation of such stream or water.

Streets, etc., of incorporated cities or towns shall not be taken without, etc.  
*Ib.*

ART. 4173. Nothing in this chapter shall be so construed as to authorize the construction of any railroad upon or across any street, alley, square or highway of any incorporated city or town without the assent of the corporation of said city or town.

In case of highways, plank-roads, etc.  
*Ib.*

ART. 4174. In case of the construction of any railway along highways, plank-roads, turnpikes or canals, such railroad corporation shall either first obtain the consent of the lawful authorities having control or jurisdiction of the same or condemn the same under the provisions of law.

Shall have the right to cross, intersect, etc., other railways.  
*Ib.*

ART. 4175. Such corporation shall have the right to cross, intersect, join and unite its railway with any other railway before constructed at any point on its route and upon the grounds of such other railway corporation, with the necessary turnouts, sidings and switches, and other conveniences in furtherance of the objects of its connection.

Intersected railways shall do what.  
*Ib.*

ART. 4176. Every corporation whose railway is or shall be hereafter intersected by any new railway shall unite with the corporation owning such new railway in forming intersections and connections and grant to such new railway facilities therefor.

When the two corporations can not agree.  
*Ib.*

ART. 4177. If the two corporations can not agree upon the amount of compensation for any such crossing, intersection or connection, or the points and manner of the same, their differences shall be adjusted in the manner provided by law.

May enter upon adjacent land and take material, etc.  
*Ib.* §32.

ART. 4178. Any railroad corporation may enter upon and take from any land adjacent to its road, earth, gravel, stone or other materials, except fuel and wood, necessary for the construction of its railway, paying, if the owner of such land and the corporation can agree thereto, the value of such material taken and the amount of damage occasioned to any such land or appurtenances, and if such owner and corporation can not agree, then the value of such material and the damage occasioned to such real estate may be ascertained, determined and paid in the manner provided in this chapter.

Value of same, and damages shall first be paid.  
*Ib.*

ART. 4179. The value of such material and the damage to such real estate shall in all cases be ascertained, determined and paid before such corporation can enter upon and take such material.

In case corporation and owner can not agree, etc.  
*Ib.* p. 146, §21.

ART. 4180. If any railroad corporation shall at any time be unable to agree with the owner for the purchase of any real estate or the material thereon required for the purposes of its incorporation or the transaction of its business, for its depots, station buildings, machine and repair shops, or for the right of way, or any other lawful purpose connected with or necessary to the building, operating or running its road, such corporation may acquire such property in the manner provided in this chapter.

Shall not enter upon land, etc., except for a lineal survey.  
P.D. 4922.

ART. 4181. No railroad company shall enter upon, except for a lineal survey, any real estate whatever, the same being private property, for the purpose of taking and condemning the same or any material thereon,

for any purpose whatever, until the said company shall agree with and pay the owner thereof all damages that may be caused to the lands and property of said owner by the condemnation of said real estate and property, and by the construction of such road.

ART. 4182. If such company and said owner can not agree upon the damages, it shall be the duty of said company to state in writing the real estate and property sought to be condemned, the object for which the same is sought to be condemned, the name of the owner thereof and his residence if known, and file the same with the county judge of the county in which such property is situated.

Mode of  
condemning  
property.  
P. D. 4922.

ART. 4183. Upon the filing of such statement the county judge shall forthwith, either in term time or in vacation, appoint three disinterested freeholders of said county as special commissioners to assess said damages, giving preference to those that may be agreed on between said corporation and said owner.

County judge  
shall appoint  
commissioners  
*Ib.*

ART. 4184. The said commissioners shall be sworn by the county judge, or by any officer authorized by law to administer oaths, to assess said damages fairly and impartially and in accordance with law.

Commissioners  
shall be sworn.  
*Ib.*

ART. 4185. Said commissioner shall, without delay, appoint a day and place for hearing said parties, and the day appointed shall be the earliest practicable day, and the place selected for such hearing shall be as near as practicable to the property in controversy, or at the county seat of the county in which the property is situated.

Commissioners  
shall select a  
day and place  
of hearing.  
*Ib.*

ART. 4186. The commissioners shall issue a notice in writing to each of the parties, notifying them of the time and place selected for the hearing.

Shall issue  
written notice  
to parties.  
*Ib.*

ART. 4187. Said notice shall be served upon said parties at least five days before the day of hearing, exclusive of the day of service, and shall be served by delivering a copy of the same to the party, his agent or attorney, and may be served by any person competent to testify.

Manner of serv-  
ing notice.

ART. 4188. The person making such service shall return the original notice to said commissioners, or any one of them, on or before the day set for the hearing, with his return in writing thereon stating how and when the same was served.

Return of  
notice.

ART. 4189. When the property in controversy is the property of the estate of a deceased person or of a minor, and such estate has a legal representative or such minor has a guardian, the notice shall be served upon such legal representative or guardian.

When the  
property be-  
longs to estate  
or to a minor,  
notice shall  
be served on  
whom. *Ib.*

ART. 4190. When the property in controversy belongs to a non-resident of this state, or to an unknown person, or to a person whose residence is unknown, such notice may be served upon such owner by publication in the same manner as is provided for service of citation by publication in civil suits.

Service by  
publication,  
when.  
P. D. 4922.

ART. 4191. When service of notice has been perfected, the commissioners shall, at the time and place appointed, or at any other time and place to which said hearing has been adjourned, proceed to fully hear said parties; but if upon the day set for the hearing the service of notice has not been perfected, the said hearing shall be postponed from time to time until such service has been perfected.

Proceedings of  
commissioners

ART. 4192. Said commissioners for the purpose mentioned in this chapter shall have power to compel the attendance of witnesses and the production of testimony, and to administer oaths, and punish for contempt as fully as is provided by law for the district or county court.

Powers of  
commissioners

ART. 4193. Said commissioners shall hear evidence as to the value of the property sought to be condemned, and as to the damages which will be sustained by the owner thereof by reason of such condemnation, and as to the benefits that will result to the remainder of such property belonging to such owner, if any, by the construction and operation of

Rule of  
damages.



- such railroad, and shall according to this rule assess the actual damage that will accrue to such owner by said condemnation.
- Same subject. ART. 4194. When the whole of a person's real estate is condemned, the damages to which he shall be entitled shall be the market value thereof in the market in which the same is located.
- Same subject. ART. 4195. When only a portion of a person's real estate is condemned, the commissioners shall estimate the injuries sustained and the benefits received thereby by the owner as to the remaining portion of such real estate; whether such remaining portion is increased or diminished in value by such condemnation, and the extent of such increase or diminution; and shall assess the damages accordingly.
- Injuries and benefits which shall not be estimated. ART. 4196. In estimating either the injuries or the benefits, as provided in the preceding article, those injuries or benefits which the owner of such real estate sustains or receives in common with the community generally, and which are not peculiar to him and connected with his ownership, use and enjoyment of the particular parcel of land, shall be altogether excluded from such estimate.
- Assessment shall be in writing, dated, signed, etc. ART. 4197. When the said commissioners shall have assessed the damages, they shall reduce their decision to writing, stating therein the amount of damages due to the owner of such real estate, if any be found to be due, and shall date the same and sign it, and shall file the said assessment, together with all other papers connected with the case, with the county judge without delay.
- Other commissioners may be appointed, when. ART. 4198. Should the said commissioners, or either of them, from any cause be unable or fail to act as such, the county judge may at any time appoint another commissioner or commissioners to supply the place or places of those who are unable or who fail to act.
- Pay of commissioners. ART. 4199. Commissioners appointed under this chapter shall be entitled to receive for their services three dollars each for every day they may be engaged in the performance of their duties as such commissioners, and they may withhold their decision until their said fees are paid to them.
- Corporation shall pay expenses of serving notice. ART. 4200. The railroad company seeking to condemn property shall defray all expenses of serving notice upon the owner of such property, but shall be entitled to recover said expenses from such owner in case it shall be decided that said owner shall pay the costs of the proceeding.
- Commissioners shall make out cost bill, etc. ART. 4201. The commissioners may adjudge the costs against either party, and shall make out a statement in writing of all the costs which have accrued before them, and shall state therein against which party the said costs have been adjudged, and shall sign the same and deliver it, with the other papers of the cause, to the county judge.
- Either party, if dissatisfied with decision, may remove cause, etc. P.D. 4922. ART. 4202. If either party be dissatisfied with the decision of such commissioners he may, within ten days after the same has been filed with the county judge, file his opposition thereto in writing, setting forth the particular cause or causes of his objection, and thereupon the adverse party shall be cited, and said cause shall be tried and determined as in other civil causes in said court.
- Decision shall be made the judgment of the court, when. ART. 4203. If no objections are filed to such decision within the time prescribed in the preceding article, the county judge shall cause the said decision to be recorded in the minutes of his court, and shall make the same the judgment of said court, and may issue the necessary process to enforce the same.
- Costs shall be awarded, by what rule. *Id.* ART. 4204. The costs of the proceedings before the commissioners and in the court shall be determined as follows, to wit: If the said commissioners shall award greater damages than the said company offered to pay before the proceedings commenced, or if objections are filed to the decision in the county court under the provisions of this chapter, and the judgment of the court is for a greater sum than the amount awarded by the commissioners, then the said company shall pay all costs; but if the amount awarded by said commissioners as damages, or if the judgment

of the county court shall be for the same or less amount of damages than the amount offered by the company before proceedings were commenced, then the costs shall be paid by the owner of the property.

ART. 4205. In no case shall such corporation be entitled to enter upon and take the property condemned without first having paid whatever amount of damages and costs may have been awarded or adjudged against it.

ART. 4206. The right of way secured or to be secured to any railroad company in this state, in the manner provided by law, shall not be so construed as to include the fee simple estate in lands, either public or private, nor shall the same be lost by the forfeiture or expiration of the charter, but shall remain subject to an extension of the charter or the grant of a new charter over the same way without a new condemnation.

ART. 4207. The right of way is hereby reserved to any railroad companies incorporated by the laws of this state, or that may hereafter be so incorporated, to the extent of one hundred feet on each side of said road, or roads that cross over, or extend through any lands granted, or that may be hereafter granted to any railroad company by the legislature, with the right to take from the lands so granted such stone, timber and earth as such road may need in the construction of its line of road.

ART. 4208. Whenever the right of way has been acquired as hereinbefore provided, the judgment of the court shall vest such right in the company so acquiring the same.

Damages must be paid before property is taken. (Const., art. 1. §17.)

The right of way, how construed. (Act Feb. 7, 1861, p. 12.)

Right of way reserved out of lands granted to railroad companies. P.D. 7389a.

Right of way vested by judgment of the court.

## CHAPTER NINE.

### OTHER RIGHTS OF RAILROAD CORPORATIONS.

	Article		Article
Shall have succession, etc.	4209	Right to erect and maintain buildings, etc.	4216
May have a seal, etc.	4210	Right to regulate time, etc., of transportation	4217
Shall have the right to hold lands and other property	4211	Right to fix rates of transportation	4218
Shall have the right to receive and hold grants, etc.	4212	Right to borrow money, issue bonds, etc.	4219
Shall alienate lands, except, etc.	4213	Mortgage invalid, unless, etc.	4220
Preceding articles apply to all companies.	4214	Resolution authorizing mortgage shall be recorded	4221
Right to convey persons and property	4215	Directors may pay bonds with stock	4222

ARTICLE 4209. All railroad corporations shall have succession, and in their corporate name may sue and be sued, plead and be impleaded.

ART. 4210. Any such corporation may have and use a seal, which it may alter at pleasure.

ART. 4211. Any railroad company shall have the right to purchase, hold and use all such real estate and other property as may be necessary for the construction and use of its railway and the stations and other accommodations necessary to accomplish the objects of its incorporation, and to convey the same when no longer required for the use of such railway.

ART. 4212. Such corporation shall have the right to take, hold and use such voluntary grants of real estate and other property as shall be made to it in aid of the construction and use of its railway, and to convey the same when no longer required for the uses of such railway, in any manner not incompatible with the terms of the original grant.

ART. 4213. All lands purchased by or donated to a railroad corporation, except such as are used for depot purposes, reservations for the establishment of machine shops, turn-outs and switches, shall be alienated and disposed of by said company in the same manner and time as is required where lands have been received from the state.

ART. 4214. The three preceding articles shall apply to such corporations as are prohibited by their acts of incorporation from purchasing or receiving donations of land, as well as to those corporations that are not so prohibited.

Shall have succession, etc. (Act Aug. 15, 1876, p. 142, §4.)

May have a seal.

*Ib.*  
Shall have the right to purchase and hold lands and other property. *Ib.* p. 146, §§6, 23.

Shall have the right to receive and hold grants, etc. *Ib.*

Shall alienate lands, except, etc. *Ib.*

Preceding articles to apply to all companies. *Ib.* p. 146, §6.

Right to convey persons and property.  
b. p. 147, §23.

ART. 4215. Such corporation shall have the right to receive and convey persons and property on its railway by the power and force of steam or by any mechanical power.

Right to erect and maintain buildings, etc.  
75.

ART. 4216. Such corporation shall have the right to erect and maintain all necessary and convenient buildings and stations, fixtures and machinery for the accommodation and use of passengers, freights and business interests, or which may be necessary for the construction or operation of its railway; but no railway company shall have the power, either by its own employés or other persons, to construct any buildings along the line of their railroad to be occupied by their employés or others, except at their respective depot stations and section-houses, and at such places only such buildings as may be necessary for the transaction of their legitimate business operations, and for shelter for their employés, nor shall they use, occupy or cultivate any part of the right of way over which their respective roads may pass, with the exception aforesaid, for any other purpose than the construction and keeping in repair their respective railways.

Right to regulate time, etc., of transportation.  
Ib.

ART. 4217. Such corporation shall have the right to regulate the time and manner in which passengers and property shall be transported, and the compensation to be paid therefor, subject nevertheless, to the provisions of this or any other law that may hereafter be enacted.

Right to fix rates of transportation  
Ib. p. 149, §30.

ART. 4218. In all cases when any such corporation, to induce aid in its construction, either by donation or subscription to its capital stock, shall desire to fix the rates for any period of time for the transportation of passengers or property, such corporation may adopt a resolution fixing such rates and the time during which the same shall continue, and have such resolution recorded in the office of the recorder of deeds in the several counties through which said road runs or is proposed to be run, and during the time for which said rates are so fixed, the same shall in no case be amended by said corporation or its successors; *provided*, that said rates shall not exceed the rates allowed by law.

Right to borrow money, issue bonds, etc.  
Ib. p. 147, §23.

ART. 4219. Such corporation shall have the right from time to time to borrow such sums of money as may be necessary for constructing, completing, improving or operating its railway, and to issue and dispose of its bonds for any amount so borrowed, and to mortgage its corporate property and franchise to secure the payment of any debt contracted by such corporation for the purposes aforesaid.

Mortgage invalid, unless, etc.  
Ib.

ART. 4220. No mortgage by such corporation shall be valid unless authorized by a resolution adopted by a vote of two-thirds of all the stock of such company, after notice and in a manner provided in this title for increasing the capital stock of such corporations.

Resolution authorizing mortgage shall be recorded.  
Ib.

ART. 4221. When any such resolution has been adopted in the manner provided by the preceding article, it shall be recorded in the office of the secretary of state, and no such resolution shall take effect until so recorded.

Directors may pay bonds with stock.  
Ib.

ART. 4222. The directors shall be empowered, in pursuance of any such resolution, to confer on any holder of any bond, for money so borrowed as aforesaid, the right to convert the principal of such bond into the stock of such corporation at any time not exceeding ten years after the date of such bond, under such regulations as may be provided in the **by-laws of such corporation.**

CHAPTER TEN.

RESTRICTIONS UPON, DUTIES AND LIABILITIES OF RAILROAD CORPORATIONS.

Article	Article		
Road shall pass through county seat, when	4223	Owner may place and keep in repair cattle-	Article
Shall survey twenty-five miles of road,	4224	guards and stops at cost of company, when	4243
locate depot, etc.	4224	Liability of company for neglect to place	
Subsequent surveys of each twenty-five	4225	and keep in repair cattle-guards and	
miles of road.	4225	stops.	4244
Trains to be regular and notice to be given	4226	Liability of company for stock killed or	
To stop trains thirty minutes on state	4226—Note	injured.	4245
line.	4226—Note	Consolidation of railroads prohibited.	4246
Refusal to transport.	4227	Same subject.	4247
Conductor, etc., shall wear badge.	4228	Map and profile of road, etc., shall be re-	
Without badge shall not receive fare, etc.	4229	corded.	4248
Baggage shall be checked, etc.	4230	Corporation shall make annual report, and	
Signs shall be erected at cross-roads, etc.	4231	what it shall contain.	4249
Bell or steam whistle, when to be and how	4232	Penalty for neglect to make report.	4250
used.	4232	Shall draw cars, etc., of other company.	4251
Passenger trains, how formed.	4233	Commissioners to fix the periods of draw-	
Brakes and brakemen.	4234	ing same.	4252
Shall carry United States mails, and com-	4235	Penalty for failure to draw cars.	4253
penensation therefor.	4235	Terms, etc., to be advertised, and penalty	
Station depots shall be erected, etc.	4236	for refusal to carry out same.	4254
No storage to be charged, except, etc.	4237	Powers of state engineer to compel con-	
Connecting depots.	4238	nections, etc.	4255
Switch cars shall be furnished.	4239	Maximum rate of passenger fare.	4256
Cattle-guards and stops, at what places.	4240	Maximum rate of freight.	4257
Same subject.	4241	Penalty for violation of two preceding	
Character of cattle-guards and stops.	4242	articles.	4258

ARTICLE 4223. No railroad hereafter constructed in this state shall pass within a distance of three miles of any county seat without passing through the same and establishing and maintaining a depot therein, unless prevented by natural obstacles, such as streams, hills or mountains; *provided*, such town or its citizens shall grant the right of way through its limits and sufficient ground for ordinary depot purposes.

Road shall pass through county seat, when. (Const., art. 10, §9.)

ART. 4224. Every railroad company organized under this title shall make an actual survey of its route or line for a distance of twenty-five miles on its projected route, and shall designate the depot grounds along said first twenty-five miles before the road-bed is begun, and no railway company shall change its route or depot grounds after the same have been so designated.

Shall survey 25 miles of road, locate depot, etc. (Act Aug. 15, 1876, p. 142, §5.)

ART. 4225. Every railroad company organized under this title shall, on the completion of the first twenty-five miles of its road-bed, make a survey of the next twenty-five miles, and of each subsequent twenty-five miles as the preceding twenty-five miles shall be completed, and every subsequent twenty-five miles shall be controlled by the provisions applicable to the first twenty-five miles of the road.

Subsequent survey of each 25 miles of road. *Id.*

ART. 4226. 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, within a reasonable time previous thereto, offer or be offered for transportation at the place of starting, and the junction of other railroads, 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.

Trains to be regular, and notice to be given. P.D. 4893.

NOTE.—Chapter 95, acts 1879, provides as follows: "Any railroad, or railway Company in this state, whose line of road does now, or may hereafter terminate at the boundary line of this state, shall stop its trains at least thirty minutes at said line, or at their depot established thereat; *provided*, said company have a depot within three hundred yards of said line." And a fine of not less than fifty nor more than two hundred dollars is prescribed for any violations of the law by conductors, engineers or agents in charge of trains.—L.

To stop trains 30 minutes on state line.

Refusal to transport.  
P.D. 4894.

ART. 4227. In case of refusal by such corporation, or their agents, so to take and transport any passenger or property, or to deliver the same, or either of them, at the regular or appointed time, such corporation shall pay to the party aggrieved all damages which shall be sustained thereby, with costs of suit.

Conductor, etc., shall wear badge.  
P.D. 4891.

ART. 4228. Every conductor, baggage-master, engineer, brakeman, or other servant of any such railroad corporation, employed in a passenger train or at stations for passengers, shall wear upon his hat or cap a badge which shall indicate his office, and the initial letters of the style of the corporation by which he is employed.

Without badge shall not receive fare, etc.  
do

ART. 4229. No conductor or collector without such badge shall demand or be entitled to receive from any passenger any fare, toll, ticket, or exercise any of the powers of his office, and no other of the said officers or servants, without such badge, shall have any authority to meddle or interfere with the passengers, their baggage or property.

Baggage shall be checked, etc.  
P.D. 4895.

ART. 4230. A check shall be affixed to every package or parcel of baggage when taken for transportation by the agent or servant of such corporation, and a duplicate thereof given to the passenger or person delivering the same on his behalf; and if such check be refused on demand, the corporation shall pay to such passenger the sum of ten dollars, to be recovered in an action of debt; and, further, no fare or toll shall be collected or received from such passenger; and if such passenger shall have paid his fare, the same shall be refunded by the conductor in charge of the train.

Signs shall be erected at cross-roads, etc.  
P.D. 4890.

ART. 4231. Such corporations shall erect at all points where its road shall cross any first or second-class public road, at a sufficient elevation from such public road to admit of the free passage of vehicles of every kind, a sign with large and distinct letters placed thereon, to give notice of the proximity of the railroad and warn persons of the necessity of looking out for the cars; and any company neglecting or refusing to erect such sign shall be liable in damages for all injuries occurring to persons or property from such neglect or refusal.

Bell or steam whistle, when to be and how used.  
P.D. 4897.

ART. 4232. A bell of at least thirty pounds weight, or a steam whistle, shall be placed on each locomotive engine, and the bell shall be rung or the whistle blown at the distance of at least eighty rods from the place where the railroad shall cross any road or street, and to be kept ringing or blowing until it shall have crossed such road or street, or stopped, under a penalty of fifty dollars for every neglect, to be paid by the corporation owning the railroad; one-half thereof to go to the informer and the other half to the state, and also be liable for all damage which shall be sustained by any person by reason of such neglect.

Passenger trains, how formed.  
P.D. 4896.

ART. 4233. In forming a passenger train, baggage or freight or merchandise or lumber cars shall not be placed in rear of passenger cars; and if they or any of them shall be so placed, and any accident happen to life or limb, the officer or agent who so directed, or knowingly suffered, such arrangement, and the conductor and engineer of the train, shall each and all be held guilty of intentionally causing the injury, and be punished accordingly.

Brakes and brakeman.  
P.D. 4907.

ART. 4234. Every such company shall have a good and sufficient brake upon the hindmost car on all trains transporting passengers and merchandise, and also permanently stationed there a trusty and faithful brakeman, under a penalty of not exceeding one hundred dollars for each offense, to be recovered by suit in the name of the state.

Shall carry U. S. mails, and compensation therefor.  
P.D. 4903.

ART. 4235. Every such corporation shall, when applied to by the postmaster-general, convey the mail of the United States on its road or roads; and in case such corporation shall not agree as to the rate of transportation therefor, and as to the time, rate or speed, manner and condition of conveying the same, it shall be lawful for the governor to appoint three commissioners, who, or a majority of them, after fifteen

days' notice, in writing of the time and place of meeting, to the corporation, shall determine and fix the prices, terms and condition aforesaid; but such price shall not be less for conveying such mails in the regular passenger trains than the amount which such corporation would receive as freight on a like weight of merchandise transported in their merchandise trains, and a fair compensation for the post-office car; and in case the post-master-general shall require the mail to be carried at other hours, or at a higher speed than the passenger train be run at, the corporation shall furnish an extra train for the mail and be allowed an extra compensation for the expenses and wear and tear thereof and for the services, to be fixed as aforesaid.

ART. 4236. Each and every railroad company is hereby required to erect at each and every depot, station or place established by such company for the reception and delivery of freight, suitable buildings or inclosures to protect produce, goods, wares and merchandise and freight of every description from damage by exposure to the weather, stock or otherwise, in default of which such railroad company shall be liable to the owner of such produce, goods, wares or merchandise for the amount of damages or loss sustained by reason of such improper exposure, together with all costs and expenses of recovering the same, including necessary attorney's fees.

Station depots shall be erected, etc. P.D. 4923.

ART. 4237. Railroad companies shall in no case be allowed to charge storage upon freight received by them for delivery, unless the owner or consignee thereof neglect to remove it from the depot of the company within three days after notice of its reception, which notice may be given by posting the same on the depot door, and after the expiration of such time the company may remove and store said freight at the expense of the owner or consignee, and said freight shall be held liable for the freight and charges due thereon.

No storage to be charged, except, etc. P.D. 4923.

ART. 4238. The point at which the roads of two companies intersect or connects, is declared to be a depot for the receipt and delivery of freight, and the companies must receive, carry and deliver freight and passengers to and from the same, under the same regulations and the same penalties as in other cases.

Connecting depots. P.D. 4933

ART. 4239. When a company constructs a switch on its road for the accommodation of freighters, they shall be bound to furnish a sufficient number of cars for the transportation of freight therefrom when requested so to do, and in default shall be subject to the same penalties as in other cases of neglect of the like character.

Switch cars shall be furnished. P.D. 4934.

ART. 4240. Each and every railroad company whose railway passes through a field or inclosure, is hereby required to place a good and sufficient cattle-guard or stop at the points of entering such field or inclosure, and keep them in good repair.

Cattle-guards and stops, at what places. P.D. 4925.

ART. 4241. In case an inclosure or field through which a railway passes shall be enlarged or extended, or the owner of the land over which a railway runs, shall clear and open a field so as to embrace the track of a railway, such railroad company is hereby required to place good and sufficient cattle-guards or stops at the margins of such extended inclosures or fields, or such new fields, and keep the same in repair.

Same subject.

ART. 4242. Such cattle guards or stops shall in all cases be so constructed and kept in repair as to protect such fields and inclosures from the depredations of stock of every description.

Character of cattle-guards and stops.

ART. 4243. Should any such company fail to construct and keep in repair such cattle-guards and stops, the owner of such inclosure or field may have such cattle-guards and stops placed at the proper places and kept in repair, and may recover the costs thereof from such railroad company, unless it be shown that the enlargement or extension, as above provided, was made capriciously and with intent to annoy and molest such company.

Owner may place and keep in repair cattle-guards and stops at cost of company, when. P.D. 4922.

Liability of company for neglect to place and keep in repair cattle-guards and stops.

ART. 4244. Should any such company neglect to construct the proper cattle-guards and stops and keep the same in repair as required by law, such company shall be liable to the party injured by such neglect, for all damages that may result from such neglect, to be recovered by suit in any court having jurisdiction.

*Ib.*  
Liability of companies for stock killed or injured.

ART. 4245. Each and every railroad company shall be liable to the owner for the value of all stock killed or injured by the locomotives and cars of such railroad company in running over their respective railways, which may be recovered by suit before any court having competent jurisdiction of the amount. If the railroad company fence in their road, they shall only then be liable in cases of injury resulting from the want of ordinary care.

Consolidation of railroads prohibited. (Const., art. 10, §5.)

ART. 4246. No railroad corporation, or the lessees, purchasers or managers thereof, shall consolidate the stock, property or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control any railroad corporation owning, or having under its control, a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having control of a competing or parallel line.

Same subject. *Ib.* §6.

ART. 4247. No railroad company organized under the laws of this state shall consolidate, by private or judicial sale or otherwise, with any railroad company organized under the laws of any other state or of the United States.

Map and profile of road, etc., shall be recorded. P.D. 4904.

ART. 4248. Every such corporation shall, within a reasonable time after their road shall be located, cause to be made—

1. A map and profile thereof and of the land taken or obtained for the use thereof, and file the same in the general land office, and also like maps of the parts thereof located in different counties, and file the same in the offices of the county clerk and district surveyor of the county in which such parts of said roads shall be, there to remain as a record forever. Every such map shall be drawn on a scale and on paper to be designated by the commissioner of the general land office, and certified and signed by the president of the corporation.

2. A certificate specifying the line upon which it is proposed to construct the railroad and the grades and curves, certified and signed and filed as aforesaid.

Corporation shall make annual report, and what it shall contain. P.D. 4901.

ART. 4249. Every such corporation shall make an annual report to the comptroller of public accounts of the operations of the year, ending on the first day of October, which report shall be verified by the oaths of the treasurer and acting superintendent of operations, and filed in his office by the twentieth of October in each year, and shall state—

1. The capital stock and the amount actually paid in.

2. The amount expended for the purchase of land, for the construction of the road, for buildings and for engines and cars, respectively.

3. The amount and nature of its indebtedness, and the amount due the corporation.

4. The amount received for the transportation of passengers, of property, of the mail, and from all other sources.

5. The amount of freight, specifying the quantity in tons, of the product of the forest, of animals, of vegetable food, other agricultural products, manufactures, merchandise and other articles.

6. The amount paid out for repairs, engines, cars, buildings and salaries, respectively.

7. The number and amount of dividends and when made.

8. The number of engine-houses and shops of engines and cars, and their character.

9. The number of miles run by passenger, freight and other trains, respectively.

10. The number of men employed and their occupations.

11. The number of persons injured in life or limb, and the cause of such injuries.

12. Whether any accidents have arisen from carelessness or negligence of any person in the employment of the corporation, and whether such person is retained in the service of the corporation.

13. The sales of lands donated by the state and the quantity remaining unsold.

ART. 4250. Any such corporation which shall neglect to make such report shall be liable to a penalty of one thousand dollars, to be sued for in the name of the state.

Penalty for neglect to make report.  
P. D. 4901.

ART. 4251. Every such company shall, for a reasonable compensation, draw over their railroad, without delay, the passengers, merchandise and cars of every other railroad company which may enter and connect with their railroad; and if the respective companies can not agree upon the compensation aforesaid, it shall be the duty of the president of each company to select one man as commissioner, and the two commissioners so selected (and in case of disagreement the state engineer, or such person as the governor may appoint, shall be the umpire), neither of whom shall be a stockholder in either road, nor shall at any time have been in the employment of either company, or in any way interested in either company, and they shall fix the rates at which said cars shall be drawn over said roads, which rates shall not be changed for one year from the time of going into effect.

Shall draw cars, etc., of other company (Const., art. 10, §1.) (Act Nov. 3, 1866, p. 84.)  
P. D. 7352.

ART. 4252. The said commissioners shall also fix the stated periods at which said cars shall be drawn over said roads without delay as aforesaid, which shall not be less than three times a week, and oftener if the necessities of the company may require it, due regard being had to the convenience and interest of each company and the public who shall be accommodated thereby.

Commissioners to fix the periods for drawing same.  
P. D. 7353.

ART. 4253. In case said companies or either of them should fail or refuse to make, or carry out when made, the necessary agreement or arrangement to draw the cars of each over their respective roads without delay as aforesaid, the president of said company so failing shall be individually responsible to the person or his agent who is deprived thereby of the privilege of shipping freight on the cars which should be drawn over said road, in the sum of five hundred dollars, which sum shall be recovered in any court of competent jurisdiction.

Penalty for failure to draw cars.  
P. D. 7354.

ART. 4254. When the agreement for drawing cars of companies over their respective roads, as prescribed in this section, is effected, a synopsis of the terms of the same shall be posted up in the office of the respective companies, and shall be published by said companies as a standing advertisement in a newspaper published in the cities of Houston and Galveston, and said companies shall be required to receive and receipt for freight to be shipped over the roads of the companies with which they may connect, in cars to be drawn over said roads, as prescribed by the agreement aforesaid, which freight shall go through on said cars without breaking bulk and re-shipping the same at any depot where said roads connect; and should any railroad agent fail or refuse to receive and receipt for freights to be shipped over the road of his principal, or to be shipped by drawing cars over roads that connect with the road of his principal, in the manner prescribed in this chapter, said agent shall pay to the party, or his agent so refused, the sum of two hundred dollars, which sum shall be recovered before any court of competent jurisdiction.

Terms, etc., to be advertised, and penalty for refusal to carry out same.  
P. D. 7355.

ART. 4255. The state engineer, and in case there is no such officer, such person as the governor shall appoint to act as such, shall have the right and power to compel all railroads that connect with each other in this state to make their connections regular and proper, so as to accommodate the public travel on said roads, and shall have the right and power to compel said companies to draw the passengers and freights of each

Powers of state engineer to compel connections, etc.  
P. D. 7356.



other on their respective roads and cars, and in case said company should refuse to do so, then said engineer, or such person as may be appointed by the governor, shall take possession of said railroad and rolling stock in the name of the state, and report the same to the governor thereof; said road so taken shall be used for the use and benefit of the state until said company make satisfactory arrangements with the governor to insure the state that they will carry out in good faith the objects of this title; but unavoidable circumstances, when proven, shall be a good defense to any recovery under this article.

Maximum rate of passenger fare.

ART. 4256. No railroad company shall demand or receive for transporting a passenger over its line of road exceeding five cents for each mile or fraction of a mile it may transport such passenger, and any passenger shall be entitled to have transported with him baggage not to exceed one hundred pounds free of charge.

Maximum rate of freight. (Acts 1879, ch. 109, p. 117.)

ART. 4257. Railroad companies may charge and receive not exceeding the rate of fifty cents per hundred pounds per hundred miles for the transportation of freight over their roads; but the charges for transportation, on each class or kind of freight, shall be uniform, and no unjust discrimination in the rates or charges for the transportation of any freight shall be made against any person or place on any railroad in this state; and it shall be *prima facie* evidence of an unjust discrimination for any railroad company to demand or receive from one person, firm or company, a greater compensation than from another for the transportation in this state of any freight of the same kind or class, in equal or greater quantities, for the same or a less distance, which *prima facie* evidence may be rebutted by competent testimony, on part of such company, showing that the discrimination, if any, was not an unjust one, and the question, upon an issue as to whether any alleged discrimination is unjust or not, shall be a question of fact, to be tried and determined as any other issue of fact in a case; *provided*, that, when the distance from the place of shipment to the point of destination of any freight is fifty miles or less, a charge not exceeding thirty cents per hundred pounds may be made for the transportation thereof.

Penalty for violation of two preceding articles.

ART. 4258. Any railroad company which may violate either of the two preceding articles shall forfeit and pay, to the person injured thereby the sum of five hundred dollars, to be recovered before any court having jurisdiction of the amount, in any county through or into which the passenger or freight may have been transported.

## CHAPTER ELEVEN

### COLLECTION OF DEBTS FROM RAILROAD CORPORATIONS.

	Article		Article
Property of company subject to execution	4259	Unpaid stock subscriptions of stockholders	4263
Road, etc., liable to be sold for debts.....	4260	of sold-out companies.....	4263
Sale under deed of trust, when and where made.....	4261	After sale, old directors to be trustees, etc.....	4264
Judgment, execution, levy, advertisement and sale.....	4262	Suits not to abate.....	4265
		This title not to apply.....	4266

Property of company subject to execution. (Const., art. 10, §4.)

ARTICLE 4259. The rolling stock and all other movable property belonging to any railroad company or corporation shall be considered personal property, and its real and personal property or any part thereof, shall be liable to execution and sale in the same manner as the property of individuals, and no such property shall be exempt from execution and sale.

Road, etc., liable to be sold for debts. P. D. 4912.

ART. 4260. In case of the sale of the entire road-bed, track, franchise and chartered right of a railroad company, whether by virtue of an execution, order of sale, deed of trust or any other power, the purchaser or purchasers at such sale and their associates, shall be entitled to have

and exercise all the powers, privileges and franchises granted to said company by its charter, or by virtue of the general laws; and the said purchaser or purchasers and their associates shall be deemed and taken to be the true owners of said charter and corporators under the same, and vested with all the powers, rights, privileges and benefits thereof, in the same manner and to the same extent as if they were the original coporators of said company; and shall have power to construct, complete, equip and work the road upon the same terms and under the same conditions and restrictions as are imposed by their charter and the general laws.

ART. 4261. Whenever a sale of the road-bed, track, franchise and chartered rights and privileges of any railroad company is made by virtue of any deed of trust or power, the same shall be made at the time and place mentioned in the deed of trust or power, and in accordance with the provisions of the same as to notice, and in other respects; and if the same be not specified, such sale shall be made as hereinafter provided for sales under execution or order of sale.

Sale under deed of trust, when and where made.  
P.D. 4913.

ART. 4262. Whenever judgment is rendered against any railroad company execution shall issue thereon, and be levied and collected as in other civil causes, except that when the road-bed, track, franchise and chartered powers and privileges of said railroad company is levied upon, the levy and sale must take place in the county where the principal office of such company is situated, and the entire road-bed, track, franchise and chartered powers and privileges of such company shall be levied upon and sold. The provisions of this article shall be observed so far as they are applicable in all cases where, by any decree of a competent court, a sale of the road-bed, track, franchise and chartered powers and privileges of any railroad company is directed to be made.

Judgment, execution, levy and sale.  
P.D. 4914.

ART. 4263. The sale of the road-bed, track, franchise and chartered rights, as hereinbefore provided, shall not be held to pass or convey to the purchaser any right or claim to recover from the former stockholders of said company any sums which may remain due upon their subscriptions of stock, but the said stockholders shall continue liable to pay the same in discharge and liquidation of the debts due by the sold-out company, as hereinafter provided.

Unpaid stock subscriptions of stockholders of sold-out company.  
P.D. 4915.

ART. 4264. Whenever a sale of the road-bed, track, franchise and chartered powers and privileges is made as hereinbefore provided (unless other persons shall be appointed by the legislature, or by some court of competent authority), the directors or managers of the sold-out company at the time of the sale, by whatever name they may be known in law, shall be the trustees of the creditors and stockholders of the sold-out company, and shall have full powers to settle the affairs of the sold-out company, collect and pay the outstanding debts, and divide among the stockholders the money and other property that shall remain after the payment of the debts and necessary expenses; and the persons so constituted trustees, shall have authority to sue by the name of the trustees of such sold-out company, and may be sued as such, and shall be jointly and severally responsible to the creditors and stockholders of such company, to the extent of its property and effects that shall come to their hands.

After sale old directors to be trustees.  
P.D. 4916.

ART. 4265. No suit pending for or against any railroad company at the time that the sale may be made of its road-bed, track, franchise and chartered privileges shall abate, but the same shall be continued in the name of the trustees of the sold-out company.

Suits not to abate.  
Ib.

ART. 4266. The provisions of this title shall not apply to any debt, execution or deed of trust held by the state against any railroad company, because of any loan made by the state to any company under the provisions of the act to provide for the investment of the special school fund, or any other law which authorizes the loan of money to railroad companies; nor shall any creditor of any railroad company be allowed to make the state a party to any suit brought for the enforcement of any

This title not to apply to state loans, etc.  
P.D. 4917.

debt, mortgage, or deed of trust or lien on any railroad, or permitted to require the state to foreclose any lien which it may have upon any road, but the lien of the state and its right to enforce the same shall continue as if this title had never been passed, and as if no sale had been made under the provisions of the same.

## CHAPTER TWELVE.

### LANDS OF RAILROAD CORPORATIONS.

	Article		Article
State grant of sixteen sections for every mile completed.....	4267	Duty of commissioner of land office to issue certificates, when .....	4276
Roads of less than three feet gauge not entitled.....	4268	Owner of certificate may apply to have land surveyed.....	4274
Prismoidal roads entitled to eight sections.....	4269	How the surveys shall be made.....	4275
This chapter shall not be construed, how..	4270	Map and field-notes to be returned and duty of commissioner to issue patents, etc ..	4276
Governor shall appoint engineer to examine road, etc.....	4271	Lands acquired under this chapter shall be alienated, within what time.....	4277
Report of engineer must show, what.....	4272		

State grant of 16 sections for every mile completed. (Act Aug. 15, 1876, p. 153, §1.)

ARTICLE 4267. Any railroad corporation heretofore chartered, or which may be hereafter organized under the general laws, shall, upon the completion of a section of ten miles or more of its road, be entitled to receive, and there is hereby granted to every such railroad sixteen sections of land for every mile of its road so completed and put in good running order.

Roads of less than three feet gauge not entitled.

ART. 4268. No company whose road is of less than three feet gauge shall be entitled to receive any grant of lands under the preceding article.

*Ib.*  
Prismoidal roads entitled to 8 sections.

ART. 4269. Companies constructing railroads on the prismoidal plan shall be entitled to receive from the state eight sections of land to the mile, on the same terms as other roads.

This chapter shall not be construed, how. *Ib.*

ART. 4270. This chapter shall not be construed to renew or continue any right to any company which has failed or may fail, to comply with the terms of its charter, with reference to the completion of portions of its road in stated times; nor so as to grant the aid herein provided for to any railroad that has already received or is otherwise entitled to receive aid from the state to the amount of sixteen sections of land to the mile.

Governor shall appoint engineer to examine road, etc. (15th leg., p. 153, §2.)

ART. 4271. Any railroad company having completed and put in good running order a section of ten miles or more of its road may give notice of the same to the governor, whose duty it shall be to appoint some skillful engineer, if there be no state engineer, to examine said completed road, and report in writing and under oath to the governor the result of such examination.

Report of engineer, must show what. *Ib.*

ART. 4272. It must appear from said report—

1. That said road is substantially built.
2. That it is fully equipped for the transportation of both passengers and freight.
3. That the same is operated by steam or other mechanical power.
4. That it is constructed of iron rails not less than thirty pounds to the lineal yard.
5. If it be a prismoidal road, that the rails weigh not less than twenty-two pounds to the lineal yard.
6. The length of such completed road; and,
7. That the same has been constructed in accordance with its charter, or with the general laws under which it may be constructed, or with the general laws in force regulating railroads.

Duty of commissioner of land office to issue certificates, when.

ART. 4273. The report mentioned in the preceding article shall be made to the governor, and thereupon, if the governor be fully satisfied that the same is correct and true, he may certify the fact to the commis-

sioner of the general land office, stating in such certificate the number of sections of land to which said railroad company is entitled, and said commissioner shall file said certificate in his office, and proceed to issue certificates to said company for the number of sections of land to which they are entitled.

ART. 4274. When said certificates have been issued, the company to whom issued, or its assignees, may apply to the surveyor of any land district to survey such lands out of any unappropriated public land in his district.

Owner of certificate may apply to have land surveyed. *Id.* p. 153, §2.

ART. 4275. Said surveys shall be made in alternate sections or half sections, as nearly square as practicable, one of such surveys for the company and one for the state for the benefit of the public school fund.

How the survey shall be made. *Id.*

ART. 4276. A map of all such surveys shall be returned with the field-notes thereof to the general land office, when the commissioner of the general land office shall number contiguous surveys with even and odd numbers, and shall issue to the company patents for the odd surveys

Map of field-notes to be returned, and duty of commissioner to issue patents, etc. *Id.*

ART. 4277. All lands acquired by railroad companies, under the provisions of this chapter or any general laws, shall be alienated by said companies, one-half in six years and one-half in twelve years from the issuance of patents to the same, and all lands so acquired by railroad companies, and not alienated as herein required, shall be forfeited to the state and become a part of the public domain and liable to location and survey as other unappropriated lands.

Lands acquired under this chapter shall be alienated, within what time. *Id.* §3.

## CHAPTER THIRTEEN.

### FORFEITURE OF CHARTER.

	Article	Article
Forfeiture upon failure to construct road, etc.....	4278	4279
		Neglect to make annual report..... 4280

ARTICLE 4278. If any railway corporation organized under this title shall not, within two years after its articles of association have been filed and recorded as provided by this title, begin the construction of its road, and construct, equip and put in good running order at least ten miles of its proposed road, and if any such railroad corporation, after the first two years from the date of its organization, shall fail to construct, equip and put in good running order at least twenty additional miles of its road each and every succeeding year until the entire completion of its line, such corporation shall, in either such cases, forfeit its corporate existence, and its powers shall cease as far as it relates to that portion of said road then unfinished, and shall be incapable of resumption by any subsequent act of incorporation.

Forfeiture upon failure to construct road. (Act Aug. 15, 1876, p. 149, §31.)

NOTE.—Chapter 51, acts 1879, extra session, instead of amending the above article, amends section thirty-one of the act of 1876, and cuts the following figure in amending the Revised Statutes:

Same subject.

“Section 31. If any railway corporation, organized under this act, shall not, within two years after its articles of association, shall be filed and recorded as provided in the second section of this act, begin the construction of its road, and construct, equip and put in good running order at least ten miles of its proposed road, and if any such railroad corporation, after the first two years, shall fail to construct, equip and put in good running order at least twenty additional miles of its road each and every succeeding year, until the entire completion of its line, such corporation shall, in either of such cases, forfeit its corporate existence, and its powers shall cease as far as relates to that portion of said road then unfinished, and shall be incapable of resumption by any subsequent act of incorporation; *provided*, that any railroad company heretofore organized under the act to which this is an amendment, which shall, previous to the taking effect of this amendment, have graded as much as ten miles of its road-bed, shall have an additional time of twelve months from the day of the passage of this amended act to construct, equip and put in good running

order at least ten miles of its proposed road, as required in the section herein amended; and any such company may then and thereafter proceed to construct twenty miles of its proposed road each and every succeeding year after the lapse of the additional period of twelve months hereby given, and shall not, in such case, forfeit its corporate existence, or any of the powers or privileges conferred by said act or any other law of this state.

"Section 2. That article 4278, chapter 13 [title lxxxiv] of the Revised Statutes, be and the same is hereby repealed, in so far as it conflicts with the provisions of this act."—L.

Same as to  
branch lines.  
*Id.* p. 143, §7.

Neglect to  
make annual  
report.  
P.D. 4902.

ART. 4279. The preceding article shall apply as well to branch lines as to main lines of railroad.

ART. 4280. Any railroad corporation which shall neglect to make the annual report to the comptroller required by this title, and which has been notified by the comptroller of such failure, and shall still neglect to make such report, within three months after such notice, shall forfeit its charter.

TITLE LXXXV.

Records.

CHAPTER ONE.

TRANSCRIBING OLD RECORDS.

	Article		Article
Old records to be transcribed, when and how	4281	Correctness to be certified to, and effect of same	4283
Shall conform to the original record and be compared	4282	Original books to be preserved	4285
		To what records this chapter shall apply	4284

ARTICLE 4281. It shall be the duty of the county commissioners' court of any county, when the records or indexes of such county have become or may become defaced, worn, or in any condition endangering their perservation in a safe and legible form, to procure a good and well-bound book or books, as the case may be, and require the county clerk to transcribe, or have transcribed by a sworn deputy, the records contained in such book or books, in a plain, legible hand, and with some standard ink of a permanent black color.

Old records to be transcribed, when and how. (Act Aug. 7, 1876, p. 84, §1.)

ART. 4282. The book or books so transcribed shall conform in all respects to the original record as indexed; and the designation of such transcribed book or books, whether by letter or number, shall not be changed from the original, and they shall be carefully compared with the original record by the said clerk or sworn deputy so transcribing the same, assisted by some other sworn deputy.

Shall conform to the original record and be compared. *Id.* §§2, 1.

ART. 4283. When said record or records shall have been found to be truly and correctly transcribed, the county clerk, with the sworn deputies so transcribing and verifying the same, shall certify officially, at the conclusion of the record, with the impress of the seal of said court affixed on the same page to the correctness of the same, reciting the number of pages contained in said book, from one to the highest number; after which said transcribed record or records shall have all the force and effect in judicial proceedings in the courts of the state as the original records.

Correctness to be certified to, and effect of same. *Id.* §2.

ART. 4284. The original book or books transcribed according to the provisions of this chapter shall be carefully kept and preserved by such clerk, as other archives of his office.

Original books to be preserved. *Id.*

ART. 4285. The provisions of this chapter shall apply to all records belonging to the district court, county court and commissioners' court, including all records used for registration, except the records of the surveyor's office; but the clerk of the district court shall perform all the duties herein required of the county clerk so far as the same appertains to the records of the said district clerk's office; and the records so transcribed by the district clerk shall have the same force and effect as the original records.

To what records this chapter shall apply.

CHAPTER TWO.

SUPPLYING LOST RECORDS, Etc.

Article	Article
Lost records may be supplied by proof, etc. 4286	Effect of judgment, etc. 4290
Proceedings to establish lost records, etc. 4287	Certified copies may be recorded. 4291
Judgment, etc. 4288	Original deeds, etc., recorded again, when. 4291
Proceedings in the county court. 4289	Judgment shall have force of originals. 4291

Lost records may be supplied by proof, etc. (Act July 13, 1876, p. 45, §1.)

ARTICLE 4286. All deeds, bonds, bills of sale, mortgages, deeds of trust, powers of attorney and conveyances of any and every description, which are required or permitted by law to be acknowledged or recorded, and which have been so acknowledged or recorded; and any and every judgment of a court of record in this state, and which record and minutes of court containing such judgment have been or may hereafter be lost, destroyed or carried away, may be supplied by parol proof of the contents thereof; which proof shall be taken in the manner hereinafter provided.

Proceedings to establish lost records, etc. *Ib.* §2.

ART. 4287. Any person having any interest in any such deed, instrument in writing, or any judgment, order or decree in the district court, the record or entry of which has been or may hereafter be lost, destroyed or carried away, may, in addition to any mode now provided by law for establishing the existence of such record, and the contents thereof, file, with the clerk of the district court of the county where such loss or destruction took place, his written application setting forth the facts entitling him to the relief sought; whereupon such clerk shall issue a citation to the grantor in such deed, or to the party or parties interested in such instrument of writing, or to the party or parties who were interested adversely to the applicant at the time of the rendition of any such judgment, or who may be now interested, or the heirs and legal representatives of such parties, to appear at a term of the district court to be designated in said citation, and contest the right of the applicant to have any such deed, instrument in writing or judgment substituted and recorded; and service shall be as now provided for process in other cases.

Judgment, etc. *Ib.*

ART. 4288. On hearing said application, if the court shall be satisfied from the evidence of the existence of such deed, instrument in writing, record, judgment, order or decree, and of the loss, destruction, or carrying away of the same, as alleged by the applicant, and the contents thereof, an order shall be entered on the minutes of the district court to that effect, which order shall contain a description of the lost deed, instrument in writing, judgment or record, and the contents thereof, and a certified copy of such order may be recorded in the records of the proper county.

Proceedings in the county court.

ART. 4289. Whenever any judgment, order or decree duly entered in the county court of any county has been or may hereafter be lost, destroyed or carried away, any person interested therein may file his written application with the clerk of the county court to which the original record belonged, setting forth the facts entitling him to the relief sought, when the same proceedings shall be had, and the court shall enter a like judgment as provided in the two preceding articles, so far as applicable.

Effect of judgment, etc. *Ib.*

ART. 4290. Whenever such judgment, order or decree, rendered in the district or county court shall be duly entered, it shall stand in the place of and have the same force and effect as the original of said lost deed, instrument in writing, judgment or record; and when duly recorded may be used in evidence in any of the courts of this state with like effect as the original thereof.

Certified copies may be recorded. *Ib.* §3.

ART. 4291. All certified copies from the records of such county, the record of which has been or may hereafter be lost, destroyed or carried

away, and all certified copies from the records of the county or counties from which said county was created, may be recorded in such county; *provided*, the loss of the original shall first be established.

ART. 4292. When any of the original papers mentioned in the first article of this chapter may have been saved or preserved from loss, the record of said originals having been lost, destroyed or carried away, the same may be recorded again, and this last registration shall have force and effect from the filing for original registration; *provided*, said originals are recorded within four years next after such loss, destruction or removal of the records; and certified copies from any record authorized by the provisions of this title to be made, may be received in evidence in all the courts of this state in the same manner and with like effect as certified copies of the original rec

Original deeds,  
etc., recorded  
again, when.  
*Ib.* §4.  
(Acts 1879,  
ch. 35, p. 35.)

ART. 4293. Judgments, orders and decrees, when substituted as here-  
inbefore provided, shall carry all the rights thereunder in every respect  
as the originals, especially preserving the liens from the date of the origi-  
nals, and giving the parties the right to issue executions under the sub-  
stituted judgments as under the originals.

Judgments  
shall have  
force of  
originals.  
*Ib.*



TITLE LXXXVI.

Registration.

CHAPTER ONE.

RECORDERS AND THEIR DUTIES.

	Article		Article
County clerks shall be recorders.....	4294	Shall record without delay in the order presented.....	4298
What shall be their seal.....	4295	Record shall take effect from date of deposit.....	4299
Shall provide books, etc.....	4296	Shall keep alphabetical indexes, etc.....	4300
Shall keep memorandum and give receipt, etc.....	4297	What they shall contain.....	4301
Shall file and indorse chattel mortgages.....	4297—Note	Same subject.....	4302
Shall enter minute of same in book.....	4297—Note	Shall give attested copies, when.....	4303
Effect of filing.....	4297—Note	Mortgages, etc., to be recorded in separate book.....	4304

County clerks shall be recorders. (Act May 12, 1846, §1.) P.D. 5001.

ARTICLE 4294. The county clerks of the several counties shall be the recorders for their respective counties; they shall provide and keep in their offices well-bound books in which they shall record in a fair and legible hand all instruments of writing authorized or required to be recorded in the recorder's office of their respective counties, in the manner hereinafter provided.

What shall be his seal. *Ib.* §2. P.D. 5002.

ART. 4295. The seal of the county court shall be the seal of the recorder, and shall be used for the authentication of all his official acts.

Shall provide books, etc. *Ib.* §3. P.D. 5003.

ART. 4296. Each recorder shall provide suitable books and presses for his office, and keep regular and faithful accounts of the expenses thereof, and such accounts shall be audited by the commissioners' court and paid out of the county treasury.

Shall keep a memorandum and give receipts, etc. *Ib.* §12. P.D. 5012.

ART. 4297. When any instrument of writing authorized by law to be recorded shall be deposited in the recorder's office for record, if the same shall be acknowledged or proved in the manner prescribed by law for record, the recorder shall enter in a book to be provided for that purpose, in alphabetical order, the names of the parties and date and nature thereof and the time of delivery for record; and shall give to the person depositing the same, if required, a receipt specifying the particulars thereof.

Shall indorse and file chattel mortgages.

NOTE.—Section 2, chapter 127, acts 1879, requires the county clerk, upon receipt of a chattel mortgage or trust deed upon personal property, for filing, to indorse on the back thereof the time of receiving it, and to file the same in his office to be kept for the inspection of all parties interested.

Shall enter minute of same in book.

Section 4 requires him to keep a book in which shall be entered a minute of all such instruments, which shall be ruled off into separate columns with heads as follows: "Time of reception," "Name of mortgagor," "Name of mortgagee," "Trustee, or *cestui que trust*," "Date of instrument," "Amount secured," "When due," "Property mortgaged," and "Remarks;" and when an instrument is filed, to make the proper entry under each head. This filing has the force and effect of registration. The act in full will be found in the appendix.—L.

Effect of filing.

ART. 4298. Each recorder shall, without delay, record every instrument of writing authorized to be recorded by him, which is deposited with him for record, with the acknowledgments, proofs, affidavits and certificates written or printed on the same, and all other papers referred to and thereto annexed, in the order and as of the time when the same shall have been deposited for record, by entering them word for word and letter for letter, and noting at the foot of such record all interlineations, erasures and words visibly written on erasures, and noting at the foot of the record the hour and the day of the month and year when the instrument so recorded was deposited in his office for record.

Shall record without delay in the order presented. *Ib.* §13. P.D. 5013.

**ART. 4299.** Every such instrument of writing shall be considered as recorded from the time it was deposited for record; and the recorder shall certify under his hand and seal of office to every such instrument of writing so recorded, the hour, day, month and year when he recorded it, and the book and page or pages in which it is recorded; and when recorded deliver the same to the party entitled thereto or to his order.

Record shall take effect from date of deposit.  
Ib. §14.  
P.D. 5014.

**ART. 4300.** Each recorder shall make and enter in a well-bound book an index, in alphabetical order, to all books of records wherein deeds, mortgages or other instruments of writing concerning lands and tenements are recorded, distinguishing the books and pages in which every such deed or writing is recorded.

Shall keep alphabetical indexes.  
Ib. §15.  
P.D. 5015.

**ART. 4301.** It shall be a cross-index and shall contain the names of the several grantors and grantees in alphabetical order; and in case the deed be made by a sheriff, the name of the sheriff and defendant in execution; and if by executors, administrators or guardians, their names and the names of their testators, intestates or wards; and if by attorney, the name of such attorney and his constituents; and if by a commissioner, the name of such commissioner and the person whose estate is conveyed.

What they shall contain.  
Ib. §16.  
P.D. 5016.

**ART. 4302.** Each recorder shall, in like manner, make and keep in his office a full and perfect alphabetical index to all books of record in his office, wherein all instruments of writing in relation to goods and chattels, or movable property of any description, marriage contracts and powers of attorney, and all other instruments of writing authorized or required to be recorded in his office are recorded; and a like index of all the books of record wherein official bonds are recorded, the names of the officers appointed, and of the obligors in any bond recorded, and a reference to the book and page where the same are recorded.

Same subject.  
Ib. §17.  
P.D. 5017.

**ART. 4303.** It shall be the duty of the recorder to give attested copies whenever demanded of all papers recorded in his office; and the recorder shall receive for all such copies, and all other writings required of him by virtue of his office, such fees as may be provided by law.

Shall give attested copies, when. (Act Dec. 20, 1886, §36.)  
P.D. 4979.

**ART. 4304.** All deeds of trust, mortgages, judgments which are required to be recorded in order to create a judgment lien, or other instruments of writing intended to create a lien, shall be recorded in a book or books separate from those in which deeds or other conveyances are recorded.

Mortgages, etc., to be recorded in separate book.

## CHAPTER TWO.

### ACKNOWLEDGMENT AND PROOF OF DEEDS, ETC., FOR RECORD.

	Article		Article
Before whom acknowledgment may be made in this state.....	4305	Handwriting may be proved, when.....	4317
Without this state and within the United States.....	4306	Evidence must prove what.....	4318
Without the United States.....	4307	Proof, how made when grantor has made his mark.....	4319
Acknowledgment, how made.....	4308	Proofs, how made and certified.....	4320
Party must be known or proven.....	4309	Officers are authorized to administer oaths, etc.....	4321
Acknowledgment of married woman, when and how taken.....	4310	Subpoena shall issue, when.....	4322
Certificate of officer.....	4311	May compel attendance and answers of witness.....	4323
Form of certificate of acknowledgment.....	4312	Statement of the acknowledgment, etc., to be recorded.....	4324
Form of certificate of acknowledgment of married woman.....	4313	What statement for record shall contain.....	4325
Proof of instrument by witness.....	4314	Statement shall further recite.....	4326
Witness must be personally known to the officer.....	4315	The book to be a public record.....	4327
Form of certificate of proof by witness.....	4316	Action for damages will lie by person injured.....	4328

**ARTICLE 4305.** The acknowledgment or proof of an instrument of writing for record may be made within this state before either—

1. A clerk of the district court.
2. A judge or clerk of the county court.
3. A notary public.

Before whom acknowledgment may be made in this state. (Act May 6, 1871, §1.)  
P.D. 7418.

Without this state and within the United States. *Ib.* §1. P.D. 7410.

ART. 4306. The acknowledgment or proof of an instrument of writing for record may be made without this state, but within the United States or their territories, before either—

1. A clerk of some court of record having a seal.
2. A commissioner of deeds duly appointed under the laws of this state.
3. A notary public.

Without the United States. *Ib.*

ART. 4307. The acknowledgment or proof of an instrument of writing for record may be made without the United States before either—

1. A minister, commissioner, or chargé d'affaires of the United States, resident and accredited in the country where the proof or acknowledgment is made.
2. A consul-general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul or consular agent of the United States, resident in the country where the proof or acknowledgment is made.
3. A notary public.

Acknowledgment, how made. (Act May 12, 1846, §7.) P.D. 5007.

ART. 4308. The acknowledgment of an instrument of writing for the purpose of being recorded shall be by the grantor or person who executed the same appearing before some officer authorized to take such acknowledgment, and stating that he had executed the same for the consideration and purposes therein stated; and the officer taking such acknowledgment shall make a certificate thereof, sign and seal the same with his seal of office.

Party must be known or proven. *Ib.* §10. P.D. 5010.

ART. 4309. No acknowledgment of any instrument of writing shall be taken, unless the officer taking it knows or has satisfactory evidence on the oath or affirmation of a credible witness, which shall be noted in his certificate, that the person making such acknowledgment is the individual who executed and is described in the instrument.

Acknowledgment of married woman, when and how taken. (Act April 30, 1846, §1.) P.D. 1003.

ART. 4310. No acknowledgment of a married woman to any conveyance or other instrument purporting to be executed by her shall be taken unless she has had the same shown to her, and then and there fully explained by the officer taking the acknowledgment, on an examination privily and apart from her husband; nor shall he certify to the same unless she thereupon acknowledges to such officer that the same is her act and deed, that she has willingly signed the same, and that she wishes not to retract it.

Certificate of officer.

ART. 4311. Any officer taking the acknowledgment of a deed or other instrument of writing must place thereon his official certificate, signed by him and given under his seal of office, substantially in form as hereinafter prescribed.

Form of certificate of acknowledgment

ART. 4312. The form of an ordinary certificate of acknowledgment must be substantially as follows:

“THE STATE OF....., }  
 “ County of..... }  
 “ Before me.....[here insert the name and character of the officer] on this day personally appeared....., known to me (or proved to me on the oath of.....) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.  
 [SEAL.] “Given under my hand and seal of office, this..... day of.....A. D.....  
 “.....”

Form of acknowledgment by a married woman. *Ib.* P.D. 1003.

ART. 4313. The certificate of acknowledgment of a married woman must be substantially in the following form:

“THE STATE OF....., }  
 “ County of..... }  
 “ Before me.....[here insert the name and character of the officer] on this day personally appeared....., wife of....., known to me

(or proved to me on the oath of.....) to be the person whose name is subscribed to the foregoing instrument, and having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said....., acknowledged such instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

[SEAL.] "Given under my hand and seal of office this.....day of....., A. D....."

"....."

ART. 4314. The proof of any instrument of writing for the purpose of being recorded shall be by one or more of the subscribing witnesses personally appearing before some officer authorized to take such proof, and stating on oath that he or they saw the grantor or person who executed such instrument subscribe the same, or that the grantor or person who executed such instrument of writing acknowledged in his or their presence, that he had executed the same for the purposes and consideration therein stated, and that he or they had signed the same as witnesses, at the request of the grantor or person who executed such instrument; and the officer taking such proof shall make a certificate thereof, sign and seal the same with his official seal.

Proof of instrument by witness. (Act May 12, 1846, §8. P.D. 5008.

ART. 4315. The proof by a subscribing witness must be by some one personally known to the officer taking the proof to be the person whose name is subscribed to the instrument as a witness, or must be proved to be such by the oath of a credible witness, which fact shall be noted in the certificate.

Witness must be personally known to officer. *Id.* §10. P.D. 5010.

ART. 4316. The certificate of the officer, where the execution of the instrument is proved by a witness, must be substantially in the following form:

Form of certificate of proof by witness.

"THE STATE OF....., }  
" County of..... }"

"Before me,..... [here insert the name and character of the officer], on this day personally appeared....., known to me (or proved to me on the oath of.....), to be the person whose name is subscribed as a witness to the foregoing instrument of writing, and after being duly sworn by me stated on oath that he saw....., the grantor or person who executed the foregoing instrument, subscribe the same (or that the grantor or person who executed such instrument of writing acknowledged in his presence that he had executed the same for the purposes and consideration therein expressed), and that he had signed the same as a witness at the request of the grantor [or person who executed the same.]

[SEAL.] "Given under my hand and seal of office this.....day of....., A. D....."

"....."

ART. 4317. The execution of an instrument may be established for record by proof of the handwriting of the grantor and of at least one of the subscribing witnesses in the following cases:

Handwriting may be proved, when.

1. When the grantor and all the subscribing witnesses are dead; or,
2. When the grantor and all the subscribing witnesses are non-residents of this state; or,
3. When the place of their residence is unknown to the party desiring the proof and can not be ascertained; or,
4. When the subscribing witnesses have been convicted of felony, or have become of unsound mind, or have otherwise become incompetent to testify.
5. When all the subscribing witnesses to an instrument are dead or are non-residents of this state, or when their residence is unknown, or when

they are incompetent to testify, and the grantor in such instrument refuses to acknowledge the execution of the same for record.

Evidence must prove, what.

ART. 4318. The evidence taken under the preceding article must satisfactorily prove to the officer the following facts:

1. The existence of one or more of the conditions mentioned therein; and,

2. That the witness testifying knew the person whose name purports to be subscribed to the instrument as a party, and is well acquainted with his signature, and that it is genuine; and,

3. That the witness testifying personally knew the person who subscribed the instrument as a witness, and is well acquainted with his signature, and that it is genuine; and,

4. The place of residence of the witness testifying.

Proof, how made when grantor made his mark. (Act March 6, 1863, §1.) P.D. 5009.

ART. 4319. When the grantor or person who executed the instrument signed the same by making his mark, and when also any one or more of the conditions mentioned in article 4317 exists, the execution of any such instrument may be established by proof of the handwriting of two subscribing witnesses and of the place of residence of such witnesses testifying.

Proofs, how made and certified. *Ib.* P.D. 5009.

ART. 4320. The proofs mentioned in the three preceding articles must be made by the deposition or affidavit of two or more disinterested persons in writing; and the officer taking such proof shall make a certificate thereof, and sign and seal the same with his official seal; which proofs and certificate shall be attached to such instrument.

Officers are authorized to administer oath, etc.

ART. 4321. Officers authorized to take the proof of instruments of writing under the provisions of this chapter, are also authorized in such proceedings—

1. To administer oaths or affirmations.

2. To employ and swear interpreters.

3. To issue subpoenas.

4. To punish for contempt as hereinafter provided.

Subpoena shall issue, when. (Act Feb. 9, 1860, §1.) P.D. 5020.

ART. 4322. Upon the sworn application of any person interested in the proof of any instrument required or permitted by law to be recorded, stating that any witness to the instrument refuses to appear and testify touching the execution thereof, and that such instrument can not be proved without his evidence, any officer authorized to take the proof of said instrument, shall issue a subpoena requiring such witness to appear and testify before such officer touching the execution of such instrument.

May compel attendance and answers of witness.

ART. 4323. When such witness shall fail to appear in obedience to such subpoena, said officer shall have the same power to enforce his attendance and to compel his answers on oath touching the execution of such instrument as a judge of the district court has to compel the attendance and answers of witnesses; *provided*, that an attachment shall in no case issue without the same compensation is made or tendered to each witness as is allowed to witnesses in other cases; *and further provided*, that no witness shall be required to go beyond the limits of the county of his residence, unless he shall, for the time being, be found in the county where the execution of such instrument is sought to be proved for registration.

Statement of acknowledgment, etc., to be recorded. (Act April 28, 1874, p. 155, §1.) P.D. 7418b.

ART. 4324. All officers authorized or permitted by law to take the acknowledgment or proof of any deed, bond, mortgage, bill of sale, or any other written instrument required or permitted by law to be placed on record, shall procure a well-bound book in which they shall enter and record a short statement of each acknowledgment or proof taken by them, which statement shall be by them signed officially.

What the statement for record shall contain. *Ib.* §1.

ART. 4325. Such statement shall recite the true date on which such acknowledgment or proof was 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.

ART. 4326. 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.

Statement shall further recite. *Ib.* §1.

ART. 4327. The book herein required to be procured and kept, and the statements herein required to be recorded in the same shall be an original public record, and shall be delivered to his successor, and the same shall be open to the inspection and examination of any citizen at all reasonable times.

The book to be a public record *Ib.*

ART. 4328. Any person injured by the failure, refusal or neglect of any officer whose duty it is to comply with any of the provisions of this chapter, shall have a right of action against such officer so failing, refusing or neglecting, before any court of competent jurisdiction for the recovery of all damages resulting from such neglect, failure or refusal.

Action for damages will lie by person injured. *Ib.*

### CHAPTER THREE.

#### INSTRUMENTS AUTHORIZED TO BE RECORDED, AND THE EFFECT OF RECORDING.

NOTE.—For an important law in relation to assignments for the benefit of creditors, and to regulate proceedings thereunder, see acts of 1879, chapter 53, page 57, and see appendix.—L.

Articles	Articles		
Patents and grants may be recorded without proof.....	4329	Deeds, etc., valid against subsequent creditors from, etc.....	4334
Copies of archives recorded.....	4330	Marriage contract, when valid.....	4335
What may be recorded.....	4331	Recorder shall record, etc.....	4336
All sales, etc., to be void as to creditors and purchasers unless registered.....	4332	Copies from land office to be recorded.....	4337
Chattel mortgages void, when.....	4332—Note	Judgments to be recorded, when.....	4338
Deeds, etc., to be recorded in county where land is situated.....	4333	Partition to be recorded.....	4339
		Decree may be abbreviated.....	4340
		Title to chattels, where recorded.....	4341
		Record of any grant, etc., when notice.....	4342

ARTICLE 4329. Letters patent from the State of Texas, or any grant from the government, executed and authenticated pursuant to existing law, may be recorded without further acknowledgment or proof.

Patents and grants may be recorded without proof.

ART. 4330. Copies of all deeds, transfers or any other written evidence of title to land which have been filed in the general land office, in accordance with law, or copies when the originals remain in the public archives, and were executed in conformity with the laws existing at their dates, duly certified by the officers having lawful custody thereof, shall be admitted to record in the county where such land lies.

Copies of archives recorded. (Act Jan. 19, 1839, §2.) P. D. 4984.

ART. 4331. The following instruments of writing, which shall have been acknowledged or proved according to law, are authorized to be recorded, viz: All deeds, mortgages, conveyances, deeds of trust, bonds for title, covenants, defeasances, or other instruments of writing concerning any lands and tenements, or goods and chattels, or movable property of any description.

What may be recorded. (Act May 12, 1846, §4.) P. D. 5004.

ART. 4332. All bargains, sales and other conveyances whatever, of any lands, tenements and hereditaments, whether they may be made for passing any estate of freehold or inheritance or for a term of years; and deeds of settlement upon marriage, whether land, money or other personal thing; and all deeds of trust and mortgages whatsoever, which shall here-

All sales, etc., to be void as to creditors and purchasers, unless registered. (Act Feb. 5, 1840, p. 69, §4.) P. D. 4983.

after be made and executed, shall be void as to all creditors and subsequent purchasers for valuable consideration without notice, unless they shall be acknowledged or proved and filed with the clerk, to be recorded as required by law; but the same, as between the parties and their heirs, and, as to all subsequent purchasers, with notice thereof, or without valuable consideration, shall nevertheless be valid and binding.

Chattel mortgage void, when.

NOTE.—Section 1, chapter 127, acts 1879, provides that every chattel mortgage, deed of trust, or other instrument of writing intended to operate as a mortgage or lien upon personal property, which shall not be accompanied by an immediate delivery, and be followed by an actual and continued change of possession of the property mortgaged or pledged by such instrument, shall be absolutely void as to creditors and subsequent purchasers, and mortgagees or lien holders, in good faith, unless such instrument or a copy shall be forthwith filed in the clerk's office of the county where the property is situated; or, if a resident of the state, where the mortgagor resides. For the act in full see appendix.—L.

Deeds, etc., to be recorded in county where land is situated

ART. 4333. All deeds, conveyances, mortgages, deeds of trust or any other written contract relating to real estate, which are authorized to be recorded, shall be recorded in the county where such real estate or a part thereof is situated.

Deed, etc., valid against subsequent creditors from, etc. *Ib.* p. 153, §13. P.D. 4994.

ART. 4334. Every conveyance, covenant, agreement, deed, deed of trust or mortgage in this chapter mentioned, which shall be acknowledged, proved or certified according to law, and delivered to the clerk of the proper court to be recorded, shall take effect and be valid as to all subsequent purchasers for a valuable consideration, without notice, and as to all creditors, from the time when such instrument shall be so acknowledged, proved or certified, and delivered to such clerk to be recorded, and from that time only.

Marriage contract, when valid. *Ib.* §2. P.D. 4987

ART. 4335. No covenant or agreement made in consideration of marriage shall be good against a purchaser for a valuable consideration, or any creditor not having notice thereof, unless such covenant or agreement shall be duly acknowledged or proven and recorded in manner and form as provided by law for deeds and other conveyances.

Recorder shall record, etc. (Act May 12, 1846, p. 236, §5.) P.D. 5005.

ART. 4336. Each recorder shall also record in books to be provided for that purpose, all marriage contracts and powers of attorney, and all official bonds required to be recorded in his office, and all other instruments of writing authorized or required to be recorded in his office, which shall be proved or acknowledged according to law, and delivered to him for record.

Copies from land office to be recorded. *Ib.* §6. P.D. 5006.

ART. 4337. Each recorder shall record all copies of titles recorded in the general land office presented for record; *provided*, such copies are attested with the seal of the general land office.

Judgments to be recorded, when. *Ib.* P.D. 5006.

ART. 4338. Each recorder shall also record all judgments and abstracts of judgments rendered by any court of this state presented to him for record; *provided*, such judgment or abstracts of judgment are attested under the hand and seal of the clerks of the court where such judgment was obtained.

Partition to be recorded. (Act Feb. 9, 1860, p. 75, §4.) P.D. 5023.

ART. 4339. Every partition of any tract of land or lot, made under any order or decree of any court, and every judgment or decree by which the title of any tract of land or lot is recovered shall be duly recorded in the clerk's office of the county court in which such tract of land or lot or part thereof may lie, and until so recorded, such partition, judgment or decree shall not be received in evidence in support of any right claimed by virtue thereof.

Decree may be abbreviated. *Ib.*

ART. 4340. It shall not be necessary in the cases mentioned in the preceding article to record the proceedings or the decree rendered in such cases in full, but a brief statement by the clerk of the court in which the same is made, under his hand and seal, setting forth the case in which the partition or decree was made, and the date thereof, and the names of the parties in the suit or partition, and the particular land or lot lying in the county in which the record is made and the name of the party to whom

the same is decreed, shall be deemed and held to be a sufficient record of such partition, judgment or decree.

ART. 4341. Every deed, mortgage or other writing respecting the title of personal property hereafter executed, which, by law, ought to be recorded, shall be recorded in the clerk's office of the county court of that county in which the property shall remain; and if afterward the person claiming title under such deed, mortgage or other writing shall permit any other person in whose possession such property may be to remove with the same or any part thereof out of the county in which the same shall be recorded, and shall not, within four months after such removal, cause the same to be recorded in the county to which such property shall be removed, such deed, mortgage or other writing for so long as it shall not be recorded in such last mentioned county, and for so much of the property aforesaid as shall have been removed, shall be void as to all creditors and purchasers thereof for valuable consideration without notice.

Title to chattels, where recorded (Act Feb. 5, 1840, §12.) P.D. 4993.

ART. 4342. The record of any grant, deed or instrument of writing authorized or required to be recorded, which shall have been duly proven up or acknowledged for record and duly recorded in the proper county, shall be taken and held as notice to all persons of the existence of such grant, deed or instrument.

Record of any grant, etc., when noticed.

## CHAPTER FOUR.

### REGISTRATION OF SEPARATE PROPERTY OF MARRIED WOMEN.

	Article		Article
Marriage contract to be recorded.....	4343	Property acquired after marriage.....	4346
Property of married woman to be registered	4344	In what county registration must be made.	4347
May present and prove schedule for record.....	4345	Registrations confirmed.....	4348
		Conclusive as to subsequent creditors, etc.	4349

ARTICLE 4343. When the wife by a marriage contract may reserve to herself any property or rights to property (whether such rights be *in esse* or expectancy), for such reservation to be valid as to the subsequent purchasers or creditors of her husband, the said contract must be acknowledged by her husband or proved by at least one witness, and recorded in the clerk's office of the county court of the county in which said married parties may reside.

Marriage contract to be recorded. (Act Jan. 20, 1840, p. 3, §8.) P.D. 4935.

ART. 4344. All property, real and personal, which may be owned or claimed at the time of marriage by any woman, or which she may acquire after marriage by gift, devise or descent, shall be registered as herein directed.

Property of married women to be registered. (Act April 29, 1846, p. 153, §1.) P.D. 4995.

ART. 4345. Each woman now married, or who may be hereafter married, may present to any officer authorized by law to take acknowledgments or proof of instruments for record, a schedule particularly describing all the property, real and personal, which she now owns and possesses, or which she may own and possess at the time of her marriage, and make her statement under oath before such officer that the property described in the schedule is her separate property; and upon such statement being made such officer shall annex to the schedule a certificate of the fact under his hand and seal of office; which certificate shall be sufficient evidence for the recorder of any county to record the same.

May present and prove schedule for record. P.D. §2. P.D. 4996.

ART. 4346. Each married woman upon coming into possession of any property, real or personal, to which she had claim at the time of her marriage, or which she may afterward acquire by gift, devise or descent, shall have the same recorded in the same manner as prescribed in the foregoing article.

Property acquired after marriage. P.D. §3. P.D. 4997.



**In what county registration must be made.**  
*Ib.* §1.  
 P.D. 4998.

ART. 4347. The registration of the wife's separate property herein provided for, if real estate, shall be made in the county or counties in which the same or a part thereof is situated; if personal property in the county or counties where the same remains; and in case such personal property be removed out of the county, the registration must also be made in the county to which the property is removed within four months after such removal.

**Registrations confirmed.**  
*Ib.* §5.  
 P.D. 4999.

ART. 4348. All registrations of the wife's separate property which have been made heretofore shall be deemed good and valid under this chapter; *provided*, said registrations were made in accordance with the laws then in force.

**Conclusive as to subsequent creditors, etc.**  
*Ib.* §6.  
 P.D. 5000.

ART. 4349. The registration of any schedule of a wife's separate property, made in accordance with the provisions of this chapter, shall be conclusive as against all subsequent creditors of and purchasers from her husband.

## CHAPTER FIVE. GENERAL PROVISIONS.

	Article		Article
Penalty for failing to record, etc.....	4350	Effect of judgment in such action.....	4355
Conveyances heretofore made to be governed by the then existing laws.....	4351	Record of certain titles confirmed.....	4356
Recording, and as evidence, to be governed by the then existing laws.....	4352	Shall be evidence, when.....	4357
Party may have action to correct error when certificate is imperfect.....	4353	Old registration operative after creating new county.....	4358
May obtain judgment of proof of any instrument.....	4354	Transcripts to have effect of original records.....	4358—Note

**Penalty for failing to record, etc.**  
 (Act May 12, 1846, p. 236, §18.)  
 P.D. 5018.

ARTICLE 4350. If any recorder to whom any instrument of writing authorized to be recorded by him, and proved or acknowledged according to law, which shall be delivered for record, shall neglect or refuse to make an entry thereof, or give receipt therefor, as required by law, or shall neglect or refuse to record such instrument of writing within a reasonable time after receiving the same, or shall record any instrument of writing affecting the same property, or any part thereof, before another first deposited in his office and entitled to be recorded, or shall record any such instrument incorrectly, or shall neglect or refuse to provide and keep in his office such indexes as required by law, he shall forfeit and pay any sum not exceeding five hundred dollars, to be recovered on motion in the district court, one-half to the use of the county, and the other half to the use of the person who shall sue for the same, such clerk having three days' notice of such motion, and shall also be liable to the party for all damages he may have sustained thereby, to be recovered by suit on the official bond of such recorder, given by him as the clerk of the county court, against such clerk and his sureties.

**Conveyances heretofore made to be governed by the then existing laws.**

ART. 4351. The legality of the execution, acknowledgment, proof, form or record of any conveyance or other instrument heretofore made, executed, acknowledged, proved or recorded, shall not be affected by any thing contained in this title, but shall depend for its validity and legality upon the laws in force when the act was performed.

**Recording, and as evidence, to be governed by the then existing laws.**

ART. 4352. All conveyances of real property heretofore made and acknowledged or proved according to the laws in force at the time of such making and acknowledgment or proof shall have the same force as evidence, and may be recorded in the same manner and with the like effect as conveyances executed and acknowledged in pursuance of this title.

**Party may have action to correct error where certificate is imperfect.**

ART. 4353. When the acknowledgment or proof of the execution of any instrument in writing may be properly made, but defectively certified, any party interested may have an action in the district court to obtain a judgment correcting the certificate.

ART. 4354. Any person interested under any instrument in writing entitled to be proved for record may institute an action in the district court against the proper parties to obtain a judgment proving such instrument.

May obtain judgment of proof of any instrument.

ART. 4355. A certified copy of the judgment in a proceeding instituted under either of the two preceding articles, showing the proof of the instrument, and attached thereto, shall entitle such instrument to record, with like effect as if acknowledged.

Effect of judgment in such action.

ART. 4356. Any grant, deed, or other instrument of writing for the conveyance of real estate or personal property, or both, or for the settlement thereof in marriage, or separate property, or conveyance of the same in mortgage, or trust to uses, or on conditions, as well as any and every other deed or instrument required or permitted by law to be registered, and which shall have been prior to the ninth day of February, 1860, registered or recorded, shall be held to have been lawfully registered, with the full effect and consequences of existing laws; *provided*, the same shall have been acknowledged by the grantor or grantors before any chief justice, or associate justices, or clerk of the county court, or notary public in any county within the late Republic or the now State of Texas, or judge of the department of Brazos, or any primary judge, or judge of the first instance in 1835 or 1836, or proven before any such officer by one or more of the subscribing witnesses thereto, and certified by such officer, whether such acknowledgment or proof shall have been made before any such officer of the county where such instrument should have been recorded or not.

Record of certain titles confirmed. (Act Feb. 9, 1860, §2.) P.D. 5021.

ART. 4357. All such instruments which shall have been acknowledged or proven before any officer named in the preceding article, and which shall have been afterward recorded in the proper county, or certified copies thereof, shall be evidence in the courts, as full and sufficient as if such acknowledgment had been taken or proof made in accordance with existing laws; but this article and the article preceding shall not be construed so as to affect or bind, in any manner, any person or party with constructive notice of the existence of any deed or other instrument of writing as a recorded deed or instrument, except after the ninth day of February, 1860, and in the future.

Shall be evidence, when. *Ib.* §3. P.D. 5022.

ART. 4358. Where an instrument in writing has been duly registered in the proper county, and any property conveyed or encumbered by such instrument shall fall within another county subsequently created, the prior registration shall not be deemed to be thereby invalidated or in any manner affected, but shall still continue to be equivalent to an actual notice of its contents to all persons whomsoever, and it shall be the duty of the county court of the new county (and at the expense thereof), to cause a transcript of the record of all such instruments to be made and duly certified and deposited in the recorder's office of said new county, for public inspection, and indexes of the same to be made.

Old registration operative after creating new county.

NOTE.—Chapter 99, acts 1879, provides the manner in which transcripts of the records of the old county shall be made for the new, and, when made and certified, such transcripts are to have all the force and effect in judicial proceedings as the original records. See appendix for the act in full; and also article 2263.—L.

Transcripts to have effect of original records.

TITLE LXXXVII.

Roads, Bridges and Ferries.

CHAPTER ONE.

ESTABLISHMENT OF PUBLIC ROADS.

	Article		Article
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Power and duty of commissioners' courts to open, etc., roads.....	4360	Service of order of appointment on juror.....	4377
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Second-class roads.....	4363	Ten freeholders may make application.....	4380
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Court may order opening of road, but damages assessed must be first paid, etc.....	4373	Damages to be assessed, how, etc.....	4390
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Road may be altered or changed, how.....	4375		

What roads are declared to be public. (Act July 29, 1876, p. 64, §6.) Power and duty of commissioners' courts to open, etc., roads. *Ib.* §1.

Roads shall be classified. *Ib.*

First-class roads. *Ib.* §2.

Second-class roads. *Ib.* §3.

Third-class roads. *Ib.* §4.

Application for new road, etc., shall not be granted until notice has been given, etc. *Ib.* §6.

ARTICLE 4359. All public roads and highways that have heretofore been laid out and established agreeably to law, except such as have been discontinued, are hereby declared to be public roads.

ART. 4360. The commissioners' courts of the several counties shall have full power, and it shall be their duty to order the laying out and opening of public roads when necessary, and to discontinue or alter any road whenever it shall be deemed expedient, as hereinafter prescribed.

ART. 4361. It shall be the duty of the commissioners' courts to classify all public roads in their counties into first, second and third-class roads.

ART. 4362. First-class roads shall be clear of all obstructions, and not less than forty feet nor more than sixty feet wide; all stumps over six inches in diameter to be cut down to six inches of the surface and rounded off, all stumps six inches and under to be cut smooth with the ground, and all causeways made at least sixteen feet wide.

ART. 4363. Second-class roads shall be clear of all obstructions and not less than thirty feet wide; stumps six inches and over in diameter to be cut down to six inches of the surface and rounded off; and all stumps less than six inches in diameter to be cut smooth with the ground; all causeways to be made at least sixteen feet wide.

ART. 4364. Third-class roads shall be clear of all obstructions, and not less than twenty feet wide; stumps six inches and over in diameter to be cut down to six inches of the surface and rounded off; all stumps less than six inches in diameter to be cut smooth with the ground, and all causeways made at least twelve feet wide.

ART. 4365. The commissioners' court shall in no instance grant an order on an application for any new road, or to discontinue an original one, unless the persons making application therefor, or some one of them, shall have given at least twenty days' notice by written advertisement of their intended application, posted up at the court-house door of the county and

at two other public places in the vicinity of the route of the proposed new road, or the road proposed to be discontinued.

ART. 4366. All applications for a new road, and all applications to discontinue an existing one, shall be by petition to the commissioners' court signed by at least eight freeholders of the precinct or precincts in which such road is desired to be made or discontinued, specifying in such petition the beginning and termination of such road proposed to be opened or discontinued.

Requisites of application.  
*Ib.* §7.

ART. 4367. All roads hereafter ordered to be made shall be laid out by a jury of freeholders of the county to be appointed by the commissioners' court; said jury shall consist of five persons, a majority of whom may proceed to lay out and mark the road so ordered to the greatest advantage to the public, and with as little prejudice to inclosures as may be.

Jury of freeholders shall lay out new road.  
*Ib.* §8.

ART. 4368. The jurors provided for in the preceding article shall, before proceeding to act as such, take the following oath before some officer authorized to administer oaths, to wit:

Oath of jury.  
*Ib.*

"I, ....., do solemnly swear that I will lay out the road now directed to be laid out by the order to us directed from the commissioners' court, according to law, without favor or affection, malice or hatred, to the best of my skill and knowledge, so help me God."

ART. 4369. It shall be the duty of such jurors, when qualified as provided in the preceding article, to proceed to lay out and mark the road in accordance with the order of the court and the law, and to report their proceedings in writing to the next regular term of the commissioners' court.

Duty of jury to perform the work and report.  
*Ib.*

ART. 4370. No public road shall be surveyed or laid out upon or across any farm, lot or inclosure, without first obtaining the written consent of the owner or his agent or attorney to the same, except as hereinafter provided.

Consent of owner of land required, when.  
*Ib.* §9.

ART. 4371. If such written consent should be refused it shall be the duty of the commissioners' court to appoint five disinterested freeholders, residents of the county, as commissioners, a majority of whom may act, to view the same, assess the damages incidental to the opening of the road of the first, second or third-class through any part of said farm, lot or inclosure as proposed, taking into consideration the advantages and disadvantages accruing to such owner from the opening of such road, and report their action in writing and under oath to the next regular term of the commissioners' court.

Proceedings when owner refuses consent.  
*Ib.* §10.

ART. 4372. If the owner of any inclosed land, his agent or attorney, shall file in the commissioners' court a written protest against opening a road, viewed and marked out through such inclosed land, it shall be the duty of the commissioners' court to appoint five disinterested freeholders, residents of the county, as commissioners, a majority of whom may act, to view said road, assess the damages and report in manner and form as provided in the preceding article.

When owner files protest.  
*Ib.* §11.

ART. 4373. If, in the judgment of the commissioners' court, from the report of the commissioners named in the two preceding articles, the road should be deemed of sufficient importance, the court may order the survey or opening of the same; but the court shall first order the payment of the damages assessed, if any, by the commissioners of view to be made to the owner of the land out of the county treasury, and the county treasurer shall have paid the same or secured its payment by a special deposit of the amount in his office, subject to the order of such owner, and shall notify such owner by mail or otherwise of such deposit.

Court may order opening of road, but damages assessed must be first paid, etc.  
*Ib.* §12.

ART. 4374. If no objection be filed, upon the report of a jury appointed upon an application to open a new road, the court shall proceed to establish and classify such road, and order the opening out of the same, and shall appoint an overseer and apportion hands for the same, as in other cases.

Road shall be established, etc., if no objection be made.  
*Ib.* §13.

Road may be altered or changed, how.  
*Ib.* §7.

ART. 4375. The commissioners' court may alter or change the course of any public road, after notice and upon application in the same manner as provided in this chapter for the discontinuance of a road, except that the application need not be signed by more than one freeholder of the precinct in which such alteration or change is proposed to be made.

Duty of clerk when jury of view is appointed.  
*Ib.* §14.

ART. 4376. When juries of view are appointed it shall be the duty of the clerk of the court to make out copies of the order appointing them in duplicate, and to deliver such copies to the sheriff of the county within ten days after such order of appointment was made, indorsing on such copies the date of such order.

Service of order of appointment on juror.  
*Ib.*

ART. 4377. The sheriff receiving such copies shall serve the same upon the jurors by delivering to each of them in person a copy of the order of appointment provided for in the preceding article, or by leaving one of said copies at the usual place of abode of such juror. Service shall be made within twenty days after the sheriff receives said copies, and he shall make his return to the clerk on the duplicate copies, stating the date and manner of service, or if service has not been made, stating the cause of his failure to make the same.

Defaulting juror shall be punished, how.  
*Ib.*

ART. 4378. Any juror of view, summoned as such, who shall fail or refuse to perform the service required of him by law as such juror, shall forfeit and pay for every such failure the sum of ten dollars, to be recovered by judgment on motion of the district or county attorney, in the name of the county, in any court of competent jurisdiction of the county in which such defaulter may reside.

Neighborhood roads.  
*Ib.* p. 69, §32.

ART. 4379. For the further and better providing for public roads, any lines between different persons or owners of land may, upon the conditions provided for in the following articles of this chapter, be declared public highways, and left open and free from all obstructions for ten feet on either side of said lines; but the marked trees and other objects used to designate said lines and the corners of surveys shall not be removed or defaced.

Ten freeholders may make an application for.  
*Ib.* §33.

ART. 4380. Whenever ten freeholders may desire the boundary lines between different persons or owners of land to be declared a public highway, in order to give them a nearer, better or more practicable road to their church, county seat, mill, timber or water, they may apply to the commissioners' court for an order establishing such road.

Requisites of application.  
*Ib.*

ART. 4381. The application provided for in the preceding article shall be in writing, and shall be signed and sworn to by the applicants. It shall designate the lines sought to be opened and the names and residences of the persons or owners to be affected by such proposed road, and shall state the facts which show a necessity for such road.

Clerk shall issue notice.  
*Ib.*

ART. 4382. Upon the filing of such application the clerk shall issue a notice reciting the substance thereof, directed to the sheriff or any constable of the county, commanding him to summon the owners of the land, naming them, whose lines are proposed to be left open, to appear at the next regular term of the commissioners' court and show cause why said lines should not be declared public highways.

Service of notice and return of same.

ART. 4383. The notice provided for in the preceding article shall be served in the manner and for the length of time provided for the service of citations in civil actions in justices' courts, and shall be returned in like manner as such citations.

Court may declare the lines a public highway.  
*Ib.*

ART. 4384. At a regular term of the court, after due service of notice as provided in the preceding article, the commissioners' court may, in its discretion, should it deem the road of sufficient public importance, issue an order declaring the lines designated in the application to be public highways, and direct that the same be opened by the owners thereof and left opened for the space of ten feet on each side of said lines.

ART. 4385. When an order as provided in the preceding article is made, the clerk shall, without delay, issue a notice reciting said order or its substance, directed to the sheriff or any constable of the county, commanding him to serve the owners of such lines named in such notice with a true copy thereof, and the officer to whom said notice is delivered shall without delay serve the same as therein directed, and return the same to the clerk, indorsing thereon the manner and date of such service.

Notice of the order of the court shall be served upon the owners of the land.  
*Ib.*

ART. 4386. The commissioners' court shall not be required to keep any such road, as is mentioned in the last seven articles, worked by road hands as in the case of other public roads.

Such roads not required to be controlled by the public.  
*Ib.*

ART. 4387. All costs attending the proceedings provided for in relation to opening of neighborhood roads, shall be paid by the applicants for any such road whether their application be granted or not, and may be collected as other costs in a civil action.

Costs of proceeding shall be paid by applicants

ART. 4388. The commissioners' court may discontinue any neighborhood road which has been established as a public highway, in the same manner provided in this chapter for discontinuing other public roads.

Neighborhood road may be discontinued, how.

ART. 4389. The owner or owners of the land whose lines have been or may be declared public highways, and also any person through whose land a third-class road may run, shall have the right to erect a gate or gates across said road or roads when necessary, said gate or gates to be not less than ten feet wide.

Owner of land may erect gates across a neighborhood or third-class road.  
*Ib.* §35.

ART. 4390. The amount of damages to be allowed to the owners of said lands for opening the lines of a neighborhood road, as provided in this chapter, shall be assessed as provided for in the case of first, second and third-class roads in this chapter. Said damages to be paid by the applicant or applicants for such roads.

Damages to be assessed, how.  
*Ib.* p. 63, §56.

## CHAPTER TWO.

### APPOINTMENT OF OVERSEERS.

	Article		Article
County shall be laid off into road precincts	4391	Persons not compelled to serve as overseers, when	4399
Overseers shall be appointed and hands apportioned	4392	Overseer not liable shall notify clerk of non-acceptance	4400
Appointment of overseers may be made at any time	4393	County judge shall thereupon appoint another	4401
Vacancy in ownership, how filled	4394	Unless overseer give notice of non-acceptance shall be considered as accepting	4402
Duty of clerk to make out copies of order of appointment, etc.	4395	Clerk shall insert what, on copies of appointment	4403
Order of appointment of overseer shall show what	4396	Clerk shall post list of overseers	4404
Service of order and return	4397		
Term of service of overseer	4398		

ARTICLE 4391. The commissioners' court of the several counties shall lay off their respective counties into convenient road precincts, and shall number each precinct; and in the order establishing the same shall specify as definitely as practicable the boundaries thereof.

County shall be laid off into road precincts. (Act July 29, 1876, p. 63, §5.)

ART. 4392. An overseer shall be appointed by said court for each road precinct at the time of establishing the same, and at the first regular term of the court in each year the said court shall appoint an overseer for each road precinct in the county, and shall at the same time designate all the hands liable to work on public roads, and apportion them to the several overseers.

Overseers shall be appointed and hands apportioned.  
*Ib.*

ART. 4393. If from any cause the said court should fail to perform the duties required of it by the preceding article, at its first regular term in each year, it shall be competent and legal for said court to perform said duties at any subsequent term, whether the same be a regular or called term.

Appointment of overseers, etc., may be made at any time.  
*Ib.*

ART. 4394. In case of the death, removal or other inability to act, of any road overseer, it shall be the duty of the county judge, immediately

Vacancy in overseership, how filled.  
*Ib.*

upon information of the fact to appoint an overseer to fill such vacancy, who shall be notified of his appointment as in other cases.

Duty of clerk to make out copies of order of appointment, etc.  
*Ib.* §14.

**ART. 4395.** It shall be the duty of the clerk of said court to make out copies of all orders appointing overseers of roads in duplicate, and deliver the same to the sheriff of the county, within ten days after any such order shall have been made, indorsing on such copies the date of the orders of appointment.

Order of appointment of overseer shall show, what.  
*Ib.*

**ART. 4396.** All orders appointing overseers shall embrace the designation of hands liable to work under such overseer, as far as known, and shall specify the boundaries of such overseer's road precinct as laid off by the court.

Service of order and return.  
*Ib.*

**ART. 4397.** The sheriff shall, within twenty days after the reception of the copies of any order appointing an overseer, deliver to, or leave at the usual place of abode of such overseer, one of such copies, and shall return the duplicate of such copy to the clerk of the county court, indorsing thereon the date and manner of service, and if not served the cause of his failure to serve the same.

Term of service of overseer.  
*Ib.* §5.

**ART. 4398.** The term of service of a road overseer shall be from the time of the service of the order of appointment until the first regular term of the commissioners' court in the succeeding year.

Persons not compelled to serve as overseers, when, etc.  
*Ib.* §23.

**ART. 4399.** No person shall be compelled to serve as an overseer who is lawfully exempt from road duty, nor shall any one be compelled to serve as overseer more than one year in every three successive years.

Overseer not liable shall notify clerk of non-acceptance.  
*I*

**ART. 4400.** It shall be the duty of every person appointed overseer of a road, who is lawfully exempt from road duty, to notify the clerk of the county court of his non-acceptance within ten days after his being notified of his appointment.

County judge shall there-upon appoint another.  
*Ib.*

**ART. 4401.** If any person appointed overseer of a road, who is lawfully exempt from road duty, shall notify the clerk of his non-acceptance as provided in the preceding article, the clerk shall forthwith report the same to the county judge, who shall immediately appoint another overseer for said road precinct.

Unless overseer give notice of non-acceptance shall be considered as accepting.  
*Ib.*

**ART. 4402.** Should any person appointed overseer, and who is lawfully exempted from road duty, fail to notify the clerk of his non-acceptance within ten days after being notified of his appointment, it shall be considered an acceptance of the appointment, and he shall not be permitted thereafter to plead his exemption from road duty as a defense against any neglect or failure to perform any of the duties of such overseer.

Clerk shall insert what on copies of appointment  
*Ib.*

**ART. 4403.** It shall be the duty of the clerk to insert on the copies of all orders of appointment of overseers issued by him the duties required of overseers in regard to their non-acceptance of such appointment.

Clerk shall post list of overseers, etc.  
*Ib.* §29.

**ART. 4404.** The clerks of the county courts of the several counties shall post up in their respective court-houses, on the first day of each term of the district court held in his county, a list of the names and the road precincts of all the overseers of roads in the county.

### CHAPTER THREE.

#### PERSONS LIABLE TO WORK ON ROADS AND THEIR RIGHTS AND DUTIES.

	Article		Article
Who are liable to work on roads, and who are exempt.....	4405	Payment of money will exempt.....	4408
Fifteen days' residence fixes liability to work on road.....	4406	Hand shall take working tool with him....	4409
Substitute may be furnished.....	4407	Duty of hand to work, etc.....	4410
		Ten days' work only, can be required.....	4411

Who are liable to work on roads, and who are exempt. (Act July 29, 1876, p. 65, §15.)

**ARTICLE 4405.** All male persons between eighteen and forty-five years of age shall be liable, and it is hereby made their duty, to work on, repair and clean out the public roads, under the provisions and regulations

of this title, except ministers of the gospel actually engaged in the discharge of their ministerial duties, invalids, and members of any company of voluntary guards organized under the provisions of the title "Militia," who shall be exempt.

ART. 4406. No person shall be compelled to work on a road who has not been residing in the county in which he is summoned to work for the space of fifteen days immediately preceding such summons.

Fifteen days' residence fixes liability to work on road.  
Ib. §5.  
Substitute may be furnished.

ART. 4407. Any person liable to road duty, and who has been summoned to do such duty, shall have the privilege to furnish an able-bodied substitute to work in his place, which substitute shall be accepted by the overseer if he be capable of performing a reasonable amount of work; otherwise he shall not be accepted.

ART. 4408. Every person liable to work on roads, by paying to his road overseer at any time before the day appointed to work on his road, the sum of one dollar for each day that he is summoned to work, shall be exempt from working for each day paid for, and also exempt from any penalties for failure to work for the time for which he has so paid.

Payment of money will exempt.  
Ib. §26.

ART. 4409. Each person summoned to work on a road shall take with him an axe, hoe, pick, spade or such tool as may be desired and directed by the overseer, or if he have no such tool as he is desired and directed by the overseer to take with him, he shall take such other suitable tool as he may have.

Hand shall take working tool with him.  
Ib. §17.

ART. 4410. It shall be the duty of each road hand to perform his duties as such, as required by law, and to do a reasonable amount of work, and in accordance with the directions of his overseer.

Duty of hand to work, etc.

ART. 4411. No person shall be compelled to work on any public road or roads more than ten days in each year.

Ten days' work can only be required.  
Ib. 6.

## CHAPTER FOUR.

### POWERS AND DUTIES OF OVERSEERS.

Article	Article
Roads shall be worked twice each year... 4412 Power to call out hands... 4413 Hands not designated shall be summoned. 4414 Mode of summoning hands. 4415 Summons in writing may be served, how... 4416 Overseer may appoint some one to summon hands... 4417 Overseer shall report defaulting road hands... 4418 Timber for causeways and bridges... 4419 Construction of causeways... 4420 Overseer may exchange labor for wagons, etc... 4421	Roads shall be measured and mile-posts set up... 4422 Index-boards shall be placed, where... 4423 Mile-posts and index-boards shall be replaced when removed, etc... 4424 Overseer may exchange labor for index-boards and mile-posts... 4425 Overseer shall apply money, how... 4426 Overseer shall report to commissioners' court, when... 4427 Compensation, etc., of overseers... 4428 Money shall be expended under order of court, etc... 4429

ARTICLE 4412. Every overseer shall cause the road through his precinct to be worked at least twice in each year.

Road shall be worked twice each year. (Act July 29, 1876, p. 68, §16.)

ART. 4413. Overseers of roads shall have power to call out all persons liable to work on public roads at any time such overseer may deem it necessary, to work on or repair the roads in their respective precincts, or any portion of such roads.

Power to call out hands.  
Ib.

ART. 4414. In case any person liable to work on roads shall not have been designated and apportioned by the commissioners' court, the overseer of the road nearest to which such person lives shall summon such person to work on such road the same as if such person had been designated and apportioned to such overseer.

Hands not designated shall be summoned.  
Ib. §5.

ART. 4415. It shall be the duty of the overseer to give three days' previous notice, by summons in person or in writing, to each person within his road-precinct liable to road duty in said precinct, of the time and place, when and where such person is required to appear to work on the road, and the number of days such person will be required to work.

Mode of summoning hands.  
Ib. §17.

ART. 4416. If the summons be in writing, it may be served by leaving the same at the usual place of abode of the person summoned, with

Summons in writing may be served, how.  
Ib.



some person residing at such place who is not less than ten years of age, or if no person ten years of age or over can be found at such place of abode, the overseer may serve the same by posting it on the door of such place of abode.

Overseer may appoint some one to summon hands.  
*Ib.*

ART. 4417. The overseer shall have power to appoint some one to summon the hands to work on the road, and such person shall be exempt from working on the road as many days as he was actually engaged in summoning the hands.

Overseer shall report defaulting road hands.

ART. 4418. It shall be the duty of the overseer within ten days after he has had his road worked, to file with the county attorney of his county a complaint in writing and under oath, against each person who has been summoned to work on the road and has failed to work, and has failed to furnish a substitute, and has failed to pay one dollar for each day he has so failed to work or furnish a substitute, and also against each person so summoned who has refused to do a reasonable amount of work on the road, or who has refused to perform the reasonable directions of the overseer.

Timber for causeways and bridges.  
*Ib.* §20.

ART. 4419. When to the overseer it may appear expedient to make causeways and build bridges, the timber most convenient therefor may be used; but in such case the owner of such timber shall be paid out of the county treasury a fair compensation for the same, to be determined by the commissioners' court upon the application of such owner.

Construction of causeways.  
*Ib.*

ART. 4420. The earth necessary to construct a causeway shall be taken from both sides, so as to make a drain on each side of such causeway.

Overseer may exchange labor for wagons, etc.  
*Ib.* §21.

ART. 4421. When it may be necessary to use a wagon for any purpose in working a road, or a plow or scraper, the overseer of such road is authorized to exchange the labor of any hand or hands bound to work on such road, for the use of a wagon or wagons, plows or scrapers, and the necessary teams to operate the same, at reasonable rates, to be employed as aforesaid.

Road shall be measured and mile-post set up.  
*Ib.* §22.

ART. 4422. It shall be the duty of all overseers of roads to measure such parts of roads as are within their respective precincts in continuation, and set up posts of good lasting timber or stone at the end of each mile leading from the court-house or some other noted place, and to mark on said posts in legible and enduring figures the distance in miles to said court-house or other noted place.

Index-boards shall be placed where.  
*Ib.*

ART. 4423. It shall also be the duty of overseers to place conspicuously and permanently at the forks of all public roads in their respective precincts, and at all roads crossing or leading away from such public roads, index-boards, with directions plainly marked thereon, stating the most noted place to which each of said roads leads.

Mile-posts and index-boards, shall be replaced, when removed, etc.  
*Ib.*

ART. 4424. When a mile-post or index-board shall be removed or defaced by any means whatever, the overseer shall cause the same to be replaced immediately by another marked as the original one.

Overseer may exchange labor for index-boards and mile-posts.  
*Ib.* §21.

ART. 4425. The overseer is authorized to exchange the labor of any hand or hands bound to work on his road for the making of index-boards or mile-posts, or either.

Overseer shall apply money, how.  
*Ib.* §27.

ART. 4426. Overseers of roads shall apply all money coming into their hands as such overseers to the improvement of their roads in an impartial manner, by repairing or building bridges, hiring hands or teams to work on the road, or in such other manner as he may deem best.

Overseer shall report to commissioners' court, when, etc.  
*Ib.* §28.

ART. 4427. It shall be the duty of each overseer to report in writing and under oath to the commissioners' court of his county, at the first regular term thereof in each year, giving the number of the hands and their names in his precinct liable to work on the roads; the number of days he has caused his road to be worked; the condition of such road; the amount of the funds received by him for his road; from whom received, and for what purpose, and to whom and for what purpose said funds have been paid out, and the amount of such funds, if any, that

remain in his hands; and he shall at the same time pay over to said court any such funds which may remain in his hands.

ART. 4428. Overseers shall retain out of money that may come to their hands as such overseers ten per cent. thereof as compensation for their services, and during their term of service they shall be exempt from serving upon juries. Compensation, etc., of owners *Id.* §81.

ART. 4429. All moneys appropriated by law, or by order of the commissioners' court for working public roads or building bridges, shall be expended under the order of the commissioners' court, except when otherwise herein provided, and said court shall from time to time make the necessary orders for utilizing such money and for utilizing convict labor for such purposes. Money shall be expended under order of court, etc. (Const., art. 16, §24.)

## CHAPTER FIVE.

### BRIDGES.

	Article		Article
Overseers shall have bridges built, when, etc. ....	4430	Shall take security from contractors to keep bridges in repair, etc. ....	4433
Commissioners' court power to have bridges built .....	4431	When stream forms dividing line of counties expense of building bridge to be joint, etc	4434
May contract for building of toll-bridges. . . .	4432	Tolls assessed to pay bonds .....	4435

ARTICLE 4430. Overseers of roads shall cause bridges to be erected across all such water courses and other places as may appear to them necessary and expedient; and should there be a water course or other place that requires a bridge, dividing any two road precincts, the overseer of each of such precincts, together with their hands, shall meet at the same time and place to construct such bridge, and the overseer chosen by a majority of the hands present shall superintend the building of such bridge until finished.

ART. 4431. The commissioners' court shall have full power and authority to cause all necessary bridges to be built and kept in repair in their respective counties, and to make appropriations of money of the county therefor, when necessary. Overseer shall have bridges built, when, etc. (Act July 29, 1876, p. 67, §20.)

ART. 4432. The commissioners' courts through whose county large creeks or water courses shall pass, over which it may be too burdensome for the overseers, with the hands apportioned to them to work on roads, to build bridges, may contract with a proper person or persons to build a toll-bridge, for which the court shall lay the toll to be levied on all persons, cattle, horses, carriages, etc., passing over the same; to be granted to the undertaker for such a number of years as the said court may think proper, not to exceed ten years; and the builder or builders and their successors shall keep the bridge in constant repair during the term of the contract, and in default thereof shall forfeit all right and claim to the toll of such bridges. Commissioners' court power to have bridges built, etc. (Act July 22, 1876, p. 51, §4.) May contract for building of toll-bridges. (Act Dec. 20, 1836.) P.D. 5244.

ART. 4433. The commissioners' court, before granting a license to any person to build a toll-bridge, shall take bond in the sum of one thousand dollars, with good and sufficient sureties, conditioned that the undertaker or undertakers shall build and keep in constant repair the bridges so contemplated for the term of years agreed upon between the undertaker or undertakers and the court; and if any person or persons shall sustain damages in consequence of the owner or keeper of any toll-bridge not having complied with the conditions of his bond, the person or persons so damaged may bring an action of debt against the owner or keeper of such toll-bridge, on his or their bond, in the county in which such license was granted, and recover judgment for the damages so sustained. Shall take security from contractor to keep bridges in repair, etc. *Id.* P.D. 5245

ART. 4434. Whenever any stream is the division line between counties, or when two or more counties are jointly interested in bridges, it shall be lawful for the counties so divided or interested to jointly erect bridges over said dividing stream, upon such equitable terms as the commissioners' court of each county interested may agree upon. When streams form dividing line of counties expense of bridge to be joint, etc. (Act Nov. 23, 1871, p. 43.) P.D. 5283.

Tolls assessed to pay bonds, etc.

*Ib.*  
P.D. 5884.

ART. 4435. Wherever any county bonds have been or may hereafter be issued for the purpose of building bridges, it shall be lawful for the commissioners' courts of the county or counties interested to assess and collect tolls on said bridges sufficient to pay the interest on bonds so issued; and, if thought proper, sufficient to pay the interest and create a sinking fund with which to pay the principal at maturity, all of which shall be done under such rules and regulations as the commissioners' courts of the counties interested may prescribe.

## CHAPTER SIX.

### FERRIES.

Article	Article
Who are entitled to license to keep.....	4436 Rates of, to be posted at the ferry.....
Shall not be kept for hire without license..	4437 Where ferryman delays or refuses, etc., to
When stream is part of state boundary.....	4438 pass persons.....
License, how obtained.....	4439 Duties of ferryman.....
Rates of ferriage shall be established.....	4440 Where ferryman charges more than, etc..
Change of rates.....	4441 Penalty for keeping, etc., without license..
When owner refuses to keep ferry at es-	4442 Proceedings against sureties of ferryman..
tablished rates.....	4442 Suit on bond.....
License and bond to be renewed annually	4443 Temporary license.....
License not to issue until.....	4444 License tax.....
Rates of, to be delivered to person obtain-	4445 Where stream is part of county boundary
ing license.....	4445 Charge on cattle, etc., swimming stream..

Who are entitled to license to keep.  
(Act Jan. 23 1850.)  
P.D. 3841

ARTICLE 4436. Every person owning the land fronting upon any water course, navigable stream, lake or bay, shall be entitled to the privilege of keeping a public ferry over or across such water course, stream, lake or bay; if he owns the lands on both sides or banks, he shall be entitled to the sole and exclusive right of ferriage at such place; if he owns the lands on one side only, he shall have the privilege of a public ferry from his own shore, with the privilege of landing his boat and passengers on the opposite shore, with the consent of the owner of the land on said shore; if such consent can not be obtained, he may apply to the commissioners' court for the establishment of a public road from said opposite shore, and said court shall act on such application as in other cases.

Shall not be for hire without license.  
*Ib.*  
P.D. 3842.

ART. 4437. No person shall keep any ferry over or across any water course, navigable stream, lake or bay, so as to charge any compensation for crossing the same, without first procuring a license from the commissioners' court of the county in which such ferry is situated.

Where stream is part of state boundary.  
*Ib.*  
P.D. 3843.

ART. 4438. When a water course, navigable stream, lake or bay, makes a part of the boundary line of this state, if any tax or charge shall be assessed or collected by any such adjoining state, for the privilege of a ferry landing on the shore or bank of such state from this state, then the same tax or charge may be assessed and collected by the commissioners' court for the like privilege of landing on the bank or shore of this state.

License, how obtained.  
*Ib.*  
P.D. 3844.

ART. 4439. Any person wishing to establish a ferry across any water course, navigable stream, lake or bay in this state, shall apply to the commissioners' court of the county in which such ferry site may be, and on the applicant showing that he is the lawful owner of such land as the ferry is sought to be established on, and also satisfying the court that the public convenience will be promoted thereby, such court shall grant such license.

Rates of ferriage shall be established, etc.  
(Act Jan. 5, 1854.)  
P.D. 3845.

ART. 4440. When a commissioners' court shall establish a ferry they shall state in their record the rates of toll or ferriage, which may be demanded for ferrying passengers, carriages, wagons, carts, beasts, and such other property as is usually transported by ferries; and the said courts may, at their first term in each year, and shall at any other term, upon the petition of twenty respectable citizens of the county, revise, and if deemed expedient, change the rates of toll or ferriage at all ferries that have been or may be established in their county.

Change of rates.  
*Ib.*

ART. 4441. All changes of the rates of ferriage shall be entered of record and notice thereof furnished by the county clerks to owners of

ferries affected by such change; *provided*, no change of rate shall take effect until the expiration of thirty days from the day on which said change may be made.

ART. 4442. Where any owner of a ferry shall refuse to keep up the same at the rates allowed by the commissioners' court, said court may issue a license to any one who will do so; but in all such cases the party receiving such license shall be bound to take the ferry-boat in use at said ferry, if desired by the owner, at such valuation as two respectable citizens of the vicinity, one to be chosen by each party, shall place upon it.

When owner refuses to keep ferry at the established rates.  
*Ib.*

ART. 4443. The owners of all ferries shall annually obtain a renewal of their license, and shall annually enter into bond, payable to the county judge of their county, in such sum as the commissioners' court shall direct, not less than one thousand dollars, with two or more good and sufficient sureties to be approved by such county judge, conditioned that the owner of such ferry will at all times keep good and sufficient boats for the use of such ferry, and will also keep the banks on each side of the ferry in good repair, and so graded and leveled that the rise shall not exceed one foot in every seven feet from the water's edge to the top of the bank; and that said ferry shall be well attended at all times, and that he will comply with all the requisitions of the law relating to or governing ferries; which bond shall be filed and recorded in the office of the clerk of the county court.

License and bond to be renewed annually.  
(Act Jan. 23, 1850.)  
P.D. 3846-7.

ART. 4444. Upon producing the receipt of the county treasurer for the payment of the tax assessed by the commissioners' court for the privilege of such ferry, and executing the bond required by the preceding article, such commissioners' court shall grant a license to such applicant for the term of one year from the date of such license, and no license for any ferry that has been or may hereafter be established shall be granted until such payment shall be made and bond executed.

License not to issue, until, etc.  
*Ib.*  
P.D. 3848.

ART. 4445. In all cases where any person shall obtain a license for a ferry, the clerk of the court shall make out and deliver to such person a copy of the rates of toll or ferriage established by the court for such ferry, which shall be under his hand and official seal.

Rates of, to be delivered to person obtaining license.  
*Ib.*  
P.D. 3849.

ART. 4446. Every owner of a ferry licensed shall keep a list of the rates of toll or ferriage established for his ferry posted up, either at the ferry or ferry-house, for the inspection of all persons. If any such owner shall fail or neglect to do so, he shall forfeit and pay the sum of four dollars for every such neglect, which may be recovered before any justice of the peace of the county on the complaint of any person, one-half of said amount to go to the county and the other half to the prosecutor; and every week that he shall so fail or neglect shall be deemed a separate offense, for which he shall be liable as aforesaid.

Rates of, to be posted at the ferry.  
*Ib.*  
P.D. 3850.

ART. 4447. If any person licensed to keep a ferry shall, on being tendered his lawful fees, refuse or neglect, without a reasonable cause, to cross any person, his horse or other property usually transported by such ferry, every such ferryman shall, for every delay of thirty minutes, forfeit and pay to the person injured the sum of two dollars, to be recovered by action before any justice of the peace for the county in which the ferry is situated, with costs of suit; and the oath of the party shall be received in evidence of the fact.

Where ferryman delays or refuses, etc., to cross person.  
*Ib.*  
P.D. 3851.

ART. 4448. Every licensed ferryman shall at all times keep good and sufficient boats for the use of such ferry, and shall keep the banks on each side of the ferry in good repair, and so graded and leveled that the rise shall not exceed one foot in every seven feet from the water's edge to the top of the bank; and shall give ready and due attendance on all passengers, horses, wagons and other property.

Duties of ferryman.  
*Ib.*  
P.D. 3852

ART. 4449. If any licensed ferryman shall charge and receive from any person a higher rate of toll or ferriage than has been established for his ferry by the commissioners' court, he shall forfeit and pay to such

Where ferryman charges more than, etc.  
*Ib.*  
P.D. 3853.

person five dollars for every such offense, to be recovered by action before any justice of the peace of the county in which the ferry is established, with costs of suit; and the oath of the complainant shall be received in evidence.

Penalty for  
keeping, etc.,  
without  
license.  
*Ib.*  
P.D. 3854.

ART. 4450. If any person shall keep any ferry over any water course, navigable stream, lake or bay, for which he shall charge any person any money or other valuable thing, without complying with the provisions of this chapter in relation to paying the tax, obtaining license and entering into bond, he shall forfeit and pay to every other person having a licensed ferry on the same water course, stream, lake or bay in the same county five dollars for every person so ferried, and the same sum for every wagon or other article so transported which may be subject to a separate charge, to be sued for and recovered before any justice of the peace of the county, with costs of prosecution; and shall, moreover, forfeit and pay a like sum in like manner to the county, which may be sued for and recovered in like manner by the county treasurer.

Proceedings  
against sure-  
ties of  
ferryman.  
*Ib.*  
P.D. 3855

ART. 4451. In all cases where a recovery shall be had against the ferryman for violation of this act, if after judgment execution shall be returned that no estate of such ferryman can be found whereon to levy and make the money demanded in such execution, the justice to whom such execution is so returned shall cite the sureties of such ferryman to appear and show cause why judgment should not be rendered against them for the amount of the execution that is not satisfied, and unless such cause is shown judgment shall be so entered and execution shall issue therefor.

Suit on bond.  
*Ib.*  
P.D. 3856.

ART. 4452. Any person injured by breach of the bond of any ferryman shall have the right to sue thereon in his own name; and no such bond shall be void on the first recovery, but may be sued on from time to time until the whole penalty is recovered.

Tempora  
license.  
*Ib.*  
P.D. 3857.

ART. 4453. Any person wishing to establish a public ferry between the regular terms of the commissioners' court may obtain a temporary license for such ferry from the county judge, which shall authorize him to keep such ferry until the next regular term of the commissioners' court for the county, and to charge and receive for such time such rates of toll or ferriage as are charged at other ferries on the same water course, stream, lake or bay.

License tax.  
*Ib.*  
P.D. 3858.

ART. 4454. The commissioners' courts of the several counties shall have power to assess and collect an annual tax for the privilege of each and every ferry in their county, which tax shall not exceed one hundred dollars per annum.

Where stream  
is part of  
county  
boundary  
*Ib.*  
P.D. 3859.

ART. 4455. If any water course, navigable stream, lake or bay shall form a portion of the boundary of any county, so that one bank shall be in one county and the other in a different county, at the place where it is proposed to establish a ferry, or where a ferry has been established, the application for a license shall be made to the commissioners' court of the county wherein the applicant resides or has his ferry-house, and upon the granting of such license by the said court, the person or persons so licensed shall have the right to own and operate a ferry upon the same terms and conditions and with the same rights and privileges as are provided by this chapter for the owners or keepers of ferries operated exclusively in one county, and no county tax shall be assessed and collected upon a ferry by any other commissioners' court than the one granting the license therefor.

Charges on  
cattle, etc.,  
swimming  
stream.  
(Act Jan. 9,  
1862.)  
P.D. 3862

ART. 4456. The commissioners' court shall not authorize a charge of more than one cent per head on cattle or horses swimming rivers at licensed ferries, including the use of pens and boats necessary for the control of such stock.

TITLE LXXXVIII.

SALARIES.

CHAPTER ONE.

EXECUTIVE AND DEPARTMENT OFFICERS.

	Article		Article
Governor.....	4457	Superintendents of the asylums.....	4463
Lieutenant-governor.....	4458	Oculist of the blind asylum.....	4464
Comptroller, treasurer, and commissioner of the general land office.....	4459	Commissioner of insurance, statistics and history.....	4465
Secretary of state.....	4460	Superintendent of public buildings.....	4466
Attorney-general.....	4461	Adjutant-general.....	4467
Chief clerks in certain departments, etc.....	4462		

ARTICLE 4457. The governor shall at stated times receive as compensation for his services an annual salary of four thousand dollars, and no more, and shall have the use and occupation of the governor's mansion, fixtures and furniture. Governor.  
(Const., art. 4,  
§.)

ART. 4458. The lieutenant-governor shall, while he acts as president of the senate, receive for his services the same compensation and mileage which shall be allowed to members of the senate, and no more; and during the time he administers the government, as governor, the same compensation which the governor would have received had he been employed in the duties of his office, and no more. Lieutenant-  
governor.  
Ib. §17.

ART. 4459. The comptroller of public accounts, treasurer of the state and the commissioner of the general land office shall each receive for their services an annual salary of two thousand and five hundred dollars, and no more. Comptroller,  
treasurer and  
commissioner  
of general land  
office.  
Ib. §23.

ART. 4460. The secretary of state shall receive for his services an annual salary of two thousand dollars, and no more. Secretary of  
state.  
Ib. §21.

ART. 4461. The attorney-general shall receive an annual salary of two thousand dollars, and no more, besides such fees as may be prescribed by law, not to exceed two thousand dollars annually. Attorney-gen-  
eral.  
(Const., art. 5,  
§22.)

ART. 4462. The chief clerk of the comptroller's office, the chief clerk and receiving clerk of the general land office, the chief clerk in the state department and the chief clerk in the treasurer's office, shall each receive an annual salary of fifteen hundred dollars, and no more. Chief clerks  
in certain  
departments,  
etc.

ART. 4463. The superintendent of the lunatic asylum, the superintendent of the blind asylum and the superintendent of the deaf and dumb asylum, shall receive an annual salary of two thousand dollars each, and no more. Superintend-  
ents of the  
asylums.  
(Acts Aug. 28,  
1856; Aug. 21,  
1876, p. 249.)  
P.D. 111

ART. 4464. The oculist of the blind asylum shall receive an annual salary of nine hundred dollars, and no more. Oculist of  
blind asylum.

ART. 4465. The commissioner of insurance, statistics and history, shall receive an annual salary of two thousand dollars, and no more. Commissioner  
of insurance,  
statistics and  
history.  
(Act Aug. 21,  
1876, p. 219, §5.)

ART. 4466. The superintendent of public buildings shall receive an annual salary of twelve hundred dollars, and no more. Superintend-  
ent of public  
buildings.  
(Act April,  
1874, p. 166, §6.)

ART. 4467. The adjutant-general shall receive an annual salary of two thousand dollars, and no more. Adjutant-gen-  
eral.  
(Act June 24,  
1870.)  
P.D. 7142.

CHAPTER TWO.

JUDICIAL OFFICERS.

Justices of the supreme court.....	Article 4468	Special judges elected by attorneys.....	Article 4473
Judges of court of appeals.....	4469	Assistant attorney-general.....	4474
District judges.....	4470	District attorneys.....	4475
Criminal district judge.....	4471	Librarian of supreme court.....	4476
Special judges commissioned by governor..	4472		

Justices of supreme court. (Const., art. 5, §2.)

ARTICLE 4468. The chief justice and associate justices of the supreme court shall each receive an annual salary of three thousand five hundred and fifty dollars, and no more.

Judges of court of appeals. *Ib.* §5.

ART. 4469. The judges of the court of appeals shall each receive an annual salary of three thousand five hundred and fifty dollars, and no more.

District judges. *Ib.* §7.

ART. 4470. The judges of the district court shall each receive an annual salary of two thousand five hundred dollars, and no more.

Criminal district judge.

ART. 4471. The judge of the criminal district court of the counties of Galveston and Harris shall receive an annual salary of two thousand five hundred dollars, and no more.

Special judges commissioned by the governor. (Act July 12, 1876, p. 45, §1.)

ART. 4472. Special judges, commissioned by the governor, in obedience to section eleven, article 5 of the constitution, shall receive the same pay as district judges for every day they may be necessarily occupied in going to and returning from the place where they may be required to hold court, as well as the time they are actually engaged in holding court.

Special judge elected by attorneys. (Act Aug. 15, 1878, p. 140, §4.)

ART. 4473. A special judge elected by the practicing lawyers or agreed upon by the parties as provided by law, shall receive the same pay as the district judge for every day that he may be occupied in performing the duties of judge.

Assistant attorney-general (Acts March 13, 1879, p. 90, §3; Aug. 23, 1876, p. 285, §3.)

ART. 4474. The assistant attorney-general shall receive an annual salary of two thousand dollars, and also for mileage and traveling expenses, one thousand dollars per annum, and no more.

District attorneys. Const., art. 5, §21.)

ART. 4475. District attorneys shall each receive an annual salary of five hundred dollars, and no more.

Librarian of supreme court. (Act April 2, 1874.) P.D. 6463m

ART. 4476. Each librarian of the supreme court shall receive an annual salary of two hundred dollars, and no more.

CHAPTER THREE.

OFFICERS OF PENITENTIARIES.

Directors of penitentiary. (Act Aug. 18, 1876, p. 194, §6.) (Acts 1879, ch. 52, §61, p. 54.)	Directors of penitentiary.....	Article 4477	Physician.....	Article 4479
Superintendent. P.C. 87. P.D. 1637. (Acts 1879, ch. 52, §62, p. 54.)	Superintendent.....	4478	Chaplain.....	4480

Directors of penitentiary. (Act Aug. 18, 1876, p. 194, §6.) (Acts 1879, ch. 52, §61, p. 54.)

ARTICLE 4477. The directors of the penitentiaries shall each receive an annual salary of two hundred and fifty dollars, and no more.

Superintendent. P.C. 87. P.D. 1637. (Acts 1879, ch. 52, §62, p. 54.)

ART. 4478. The superintendents of the penitentiaries shall each receive an annual salary of fifteen hundred dollars, and no more.

Physicians. *Ib.* (Acts 1879, ch. 52, §63, p. 54.)

ART. 4479. The physicians of the penitentiaries shall each receive an annual salary of five hundred dollars, and no more.

Chaplains. *Ib.*

ART. 4480. The chaplains of the penitentiaries shall each receive an annual salary of two hundred and fifty dollars, and no more.

CHAPTER FOUR.

GENERAL PROVISIONS.

	Article		Article
Salaries shall not be changed during term of office.....	4481	How special judge commissioned by governor shall obtain pay.....	4484
Salaries payable monthly.....	4482	Special judge elected by attorneys, how he may obtain his pay.....	4485
Salary of special judge, how ascertained..	4483		

ARTICLE 4481. The salaries of officers shall not be increased nor diminished during the term of office of the officers entitled thereto.

Salaries shall not be changed during term of office.

ART. 4482. Officers entitled to salaries may demand monthly payment of the same, and, upon filing with the comptroller of public accounts proper vouchers, the comptroller shall issue his warrant upon the treasurer for the amount of salary due to the officer applying therefor, and the treasurer shall pay such warrant out of the fund appropriated for the payment of the same.

Salaries payable monthly.

ART. 4483. The amount of salary due any special judge shall be ascertained by dividing the salary allowed a district judge by three hundred and sixty-five, and then multiplying the quotient by the number of days actually served by such special judge.

Salary of special judge, how ascertained. (Act July 12, 1876, p. 45, §2.)

ART. 4484. A special judge commissioned by the governor, in order to obtain his salary, shall present to the comptroller an account therefor, showing the number of days that such special judge was necessarily occupied in going to and returning from the place or places where such special judge presided under said appointment, which account shall be verified by the affidavit of such special judge, and certified to be correct by the judge of the district, or by the clerk of the court in which the services were performed, and shall be accompanied by evidence that he was duly commissioned as such special judge by the governor.

How special judge commissioned by the governor shall obtain pay. *Ib.* §3.

ART. 4485. A special judge elected by practicing lawyers or agreed upon by the parties, as provided by law, shall be paid for his services out of the state treasury on the certificate of the clerk of the court, in which such services were rendered, to the comptroller, of the record of such election or appointment and services, accompanied by the account of such special judge, verified by his affidavit, showing the number of days actually served by him as such special judge.

Special judge elected, etc., how he may obtain his pay. (Act Aug. 15, 1876, p. 140, §4.)



TITLE LXXXIX.  
Seals and Scrolls.

	Article		Article
Private seals and scrolls dispensed with....	4487	Unsealed instruments held to import consideration .....	4488
Private seals and scrolls dispensed with. (Acts April 23, 1873; Feb. 2, 1858.) .D. 5087.		ARTICLE 4487. No private seal or scroll shall be necessary to the validity of any contract, bond or conveyance, whether respecting real or personal property, or any other instrument of writing, whether official, judicial or private, except such as are made by corporations, nor shall the addition or omission of a seal or scroll in any way affect the force and effect of the same.	
Unsealed instruments held to import consideration, etc. (26 Tex., p. 333.)		ART. 4488. Every contract in writing hereafter made shall be held to import a consideration in the same manner and as fully as sealed instruments have heretofore done.	

TITLE XC.  
Sequestration.

	Article		Article
Writ of, may be issued by whom and for what causes.....	4489	Defendant may discharge judgment by re-	
Affidavit, and what it shall state.....	4490	turn of property, etc.....	4502
Petition must be filed, when ..	4491	When the property has been injured, etc..	4503
Bond for the writ.....	4492	Execution shall issue, when.....	4504
Writ may issue when claim is not due, when, etc.....	4493	Plaintiff may replevy, when, and his bond..	4505
Writ of, and its requisites.....	4494	Bond shall be returned, and the proceeding thereon, if forfeited.....	4506
Duty of officer while he retains custody of property.....	4495	Defendant not required to account for hire etc., when.....	4507
Compensation of officer.....	4496	Property likely to waste, etc., may be sold, when.....	4508
Officer expending money may retain property, until, etc.....	4497	Order of sale in such case.....	4509
Defendant may replevy by giving bond....	4498	Return of order of sale.....	4510
Bond in case of personal property.....	4499	When debt is not due property may be sold, when.....	4511
In case of real estate.....	4500	Purchaser shall give bond, etc.....	4512
Return of bond and judgment thereon.....	4501	Bond shall be returned and judgment, etc., thereon, when.....	4513

ARTICLE 4489. Judges and clerks of the district and county courts and justices of the peace shall, at the commencement or during the progress of any civil suit before final judgment, have power to issue writs of sequestration, returnable to their respective courts, in the following cases:

Writ of, may be issued by whom, and for what causes. (Act Nov. 9, 1866, p. 120.) P.D. 5095a.

1. When a married woman sues for a divorce, and makes oath that she fears her husband will waste her separate property, or their common property, or the fruits or revenue produced by either, or that he will sell or otherwise dispose of the same so as to defraud her of her just rights, or remove the same out of the limits of the county during the pendency of the suit.

2. When a person sues for the title or possession of any personal property of any description, and makes oath that he fears the defendant or person in possession thereof will injure, ill-treat, waste or destroy such property or remove the same out of the limits of the county during the pendency of the suit.

3. When a person sues for the foreclosure of a mortgage or the enforcement of a lien upon personal property of any description, and makes oath that he fears the defendant or person in possession thereof will injure, ill treat, waste or destroy such property or remove the same out of the county during the pendency of the suit.

4. When any person sues for the title or possession of real property, and makes oath that he fears the defendant or person in possession thereof will make use of his possession to injure such property, or waste or convert to his own use the fruits or revenue produced by the same.

5. When any person sues for the title or possession of any property from which he has been ejected by force or violence, and makes oath of such fact.

6. When any person sues for the foreclosure of a mortgage or the enforcement of a lien on real estate, and makes oath that he fears the defendant or person in possession thereof will make use of such possession to injure such property, or waste or convert to his own use the timber, rents, fruits or revenue thereof.

ART. 4490. No sequestration shall issue in any cause until the party applying therefor shall file an affidavit in writing stating—

Affidavit, and what it shall state. *Id.* §1. P.D. 5095a.

1. That he is the owner of the property sued for, or some interest

therein, specifying such interest, and is entitled to the possession thereof; or,

2. If the suit be to foreclose a mortgage or enforce a lien upon the property, the fact of the existence of such mortgage or lien, and that the same is just and unsatisfied, and the amount of the same still unsatisfied, and the date when due.

3. The property to be sequestered shall be described with such certainty that it may be identified and distinguished from property of a like kind, giving the value of each article of the property and the county in which the same is situated.

4. It shall set forth one or more of the causes named in the preceding article entitling him to the writ.

Petition must  
be filed, when.  
*Ib.* p. 122, §4.

ART. 4491. If the suit be in the district or county court no writ of sequestration shall issue unless a petition shall have been first filed therein, as in other suits in said courts.

Bond for the  
writ.  
(Act March 15,  
1848)  
P.D. 5096-7.

ART. 4492. Nor shall a writ of sequestration issue in any case until the party applying therefor has filed with the judge, clerk or justice of the peace to whom he applies, a bond payable to the defendant for a sum of money not less than double the value of the property to be sequestered, as stated in his affidavit, with two or more good and sufficient sureties, to be approved by such judge, clerk or justice of the peace, as the case may be, conditioned that the plaintiff or person suing out such writ will pay to the defendant all such damages as may be awarded against him, and all costs in case it shall be decided that such sequestration was wrongfully issued.

Writ may issue  
when claim is  
not due, when,  
etc.

*Ib.*  
P.D. 5098.

ART. 4493. When any person has a mortgage or lien upon personal property of any description, and makes affidavit and gives bond as required in the two preceding articles, the writ of sequestration may issue, although the right of action upon such mortgage or lien has not accrued; and the same proceeding shall be had thereon as in other cases of sequestration, except that no final judgment shall be rendered against the defendant, until the right of action on such mortgage or lien shall have accrued.

Writ and its  
requisites.  
(Act Nov. 9,  
1866.)  
*Ib.* p. 124, §4.

ART. 4494. The writ of sequestration may be directed to the sheriff or any constable of any county wherein the property is alleged to be situated, which allegation may be made either in the original or in a supplemental affidavit. It shall command the sheriff or any constable to take into his possession the property, describing the same as it is described in the affidavit, if to be found in the county, and keep the same subject to the future order of the judge, court or justice of the peace who issued the writ, unless the same is replevied according to law.

Duty of officer  
while he  
retains cus-  
tody of prop-  
erty  
(Act Nov. 9,  
1866, p. 121, §3.)  
P.D. 5101, 5106.

ART. 4495. The officer executing a writ of sequestration, while he retains custody of the property sequestered, shall take care of and manage the same in a prudent manner, and if he confides the same to the custody of other persons he shall be responsible for their acts in regard thereto, and shall be responsible to the party injured for any neglect or mismanagement by himself, or by those to whom he has confided the custody or management of the property.

Compensation  
of officer  
*Ib.*

ART. 4496. The officer retaining custody of property by virtue of a writ of sequestration shall be entitled to receive a just compensation and all reasonable charges therefor, to be determined by the judge or justice from whose court the writ issued, to be taxed in the bill of costs against the party cast in the suit, and collected in the same manner as the other costs in the case.

Officer expend-  
ing money may  
retain prop-  
erty until, etc.  
*Ib.*

ART. 4497. If the officer be compelled to expend any sum of money in the security, management or care of the property, he may retain possession of said property until said money be refunded by the party offering to replevy said property, his agent or attorney.

ART. 4498. When property has been sequestered, the defendant shall have the right to retain possession of the same, by delivering to the officer executing the writ his bond payable to the plaintiff, with two or more good and sufficient sureties, to be approved by such officer, for an amount of money not less than double the value of the property to be replevied.

Defendant may replevy by giving bond. (Act Feb. 8, 1860.) P.D. 5100.

ART. 4499. If the property to be replevied, as provided in the preceding article, be personal property, the condition of the bond shall be that the defendant will not remove the same out of the county, or that he will not waste, ill-treat, injure, destroy, sell or dispose of the same, according to the plaintiff's affidavit, and that he will have such property, with the value of the fruits, hire or revenue thereof, forthcoming to abide the decision of the court, or that he will pay the value thereof and of the fruits, hire or revenue of the same in case he shall be condemned so to do.

Bond in case of personal property. *Id.*

ART. 4500. If the property be real estate the condition of such bond shall be that the defendant will not injure the property, and that he will pay the value of the rents of the same in case he shall be condemned so to do.

In case of real estate. *Id.*

ART. 4501. The bond provided for in the three preceding articles shall be returned with the writ to the court from whence the writ issued, and in case the suit is decided against the defendant final judgment shall be entered against all the obligors in such bond, jointly and severally, for the value of the property replevied, and the value of the fruits, hire, revenue or rent thereof as the case may be.

Return of bond and judgment thereon. *Id.*

ART. 4502. The defendant shall have the right, at any time within ten days after the rendition of the judgment provided for in the preceding article, to deliver to the sheriff or constable of the court in which such judgment is rendered, the property, or any portion thereof, which he has bound himself to have forthcoming to abide the decision of the court, and the sheriff or constable to whom such possession is tendered shall receive such property, if the same has not been injured or damaged since the replevy, and receipt to the defendant therefor, and shall immediately deliver such property to the plaintiff, and the defendant in such judgment shall, upon filing with the papers in the cause the receipt of the sheriff or constable, be credited by the clerk or justice of the peace upon such judgment with the value of the property so returned.

Defendant may discharge judgment by return of property, etc.

ART. 4503. If the property tendered back by the defendant has been injured or damaged while in his possession under such bond, the sheriff or constable to whom the same is tendered shall not receive the same unless the defendant at the same time tenders the reasonable amount of such injury or damage, to be judged of by such sheriff or constable.

When the property has been injured, etc.

ART. 4504. If the property be not returned, and received as provided in the two preceding articles, execution shall issue upon said judgment for the amount due thereon, as in other cases.

Execution shall issue, when.

ART. 4505. When the defendant fails to replevy the property within ten days after the levy of the writ, if such defendant, his agent or attorney, if present in the county, or within twenty days if absent from the county at the time of such levy, the officer having the property in possession shall deliver the same to the plaintiff upon giving his bond payable to the defendant in a sum of money not less than double the value of such property, with two or more good and sufficient sureties, to be approved by such officer, conditioned for the forthcoming of such property, together with the fruits, hire, revenue and rent of the same, to abide the decision of the court.

Plaintiff may replevy, when, and his bond. (Act Nov. 9, 1866, p. 122, §3.) P.D. 5101a.

ART. 4506. The bond provided for in the preceding article shall be returned with the writ, and in case the suit is decided against the plaintiff, final judgment shall be entered against all the obligors in such bond, jointly and severally, for the value of the property replevied and for the value of the fruits, hire, revenue or rent thereof, as the case may be, and

Bond shall be returned and the proceedings thereon, if forfeited.

the same rules which govern the discharge or enforcement of a judgment against the obligors in the defendant's replevy bond, as hereinbefore provided, shall be applicable to and govern in case of a judgment against the obligors in the plaintiff's replevy bond.

Defendant not required to account for hire, etc., when.

P.D. 5100.

ART. 4507. In suits for the enforcement of a mortgage or lien upon property the defendant, should he replevy the property, shall not be required to account for the fruits, hire, revenue or rent of the same, but this exemption shall not apply to the plaintiff in case he shall replevy the property.

Property likely to waste, etc., may be sold, when.

*Ib.*  
P.D. 5099a.

ART. 4508. If, after the expiration of ten days from the levy of a writ of sequestration, the defendant has failed to replevy the same, if the plaintiff or defendant shall make affidavit in writing that the property levied upon, or any portion thereof, is likely to be wasted or destroyed or greatly depreciated in value by keeping, and if the officer having possession of such property shall certify to the truth of such affidavit, it shall be the duty of the judge or justice of the peace to whose court the writ is returnable, upon the presentation of such affidavit and certificate, either in term time or in vacation, to order the sale of said property, or so much thereof as is likely to be so wasted, destroyed or depreciated in value by keeping, but either party may replevy the property at any time before such sale.

Order of sale in such case.

*Ib.*

ART. 4509. The judge or justice granting the order, provided for in the preceding article, shall issue an order directed to the officer having such property in possession, commanding such officer to sell such property in the same manner as under execution.

Return of order of sale.

*Ib.*

ART. 4510. The officer making such sale shall, within five days thereafter, return the order of sale to the court from whence the same issued, with his proceedings thereon, and shall, at the time of making such return, pay over to the clerk or justice of the peace the proceeds of such sale.

Where debt is not due, property may be sold, when, etc.  
(Act March 15, 1848.)

P.D. 5098.

ART. 4511. If the suit in which the sequestration issued be for a debt or demand not yet due, and the property sequestered be likely to be wasted, destroyed or greatly depreciated in value by keeping, the judge or justice of the peace shall, under the regulations hereinbefore provided, order the same to be sold, giving credit on such sale until such debt or demand shall become due.

Purchaser shall give bond, etc.

*Ib.*

ART. 4512. In the case of a sale, as provided for in the preceding article the purchaser of the property shall execute his bond, with two or more good and sufficient sureties, to be approved by the officer making the sale, and payable to such officer, in a sum not less than double the amount of the purchase money, conditioned that such purchaser shall pay such purchase money at the expiration of the time given.

Bond shall be returned and judgment, etc., thereon, when.

*Ib.*

ART. 4513. The bond provided for in the preceding article shall be returned by the officer taking the same to the clerk or justice of the peace from whose court the order of sale issued, with such order, and shall be filed among the papers in the cause, and in case the purchaser does not pay the purchase money at the expiration of the time given, judgment shall be rendered against all the obligors in such bond for the amount of such purchase money, interest thereon, and all costs incurred in the enforcement and collection of the same, and execution shall issue thereon in the name of the plaintiff in the suit, as in other cases, and the money when collected shall be paid to the clerk or justice of the peace to abide the final decision of the cause.

TITLE XCI.

Sheriffs and Constables.

CHAPTER ONE.

OF SHERIFFS.

	Article		Article
<i>1. Election and qualification.</i>			
Their election and term of office .....	4514	Responsible for their acts .....	4521
Vacancies, how filled .....	4515	May employ guards .....	4522
Oath and bond .....	4516	Shall receive prisoners from constables, etc .....	4523
May act without a commission .....	4517	To attend upon the courts .....	4524
Neglect to qualify in twenty days .....	4518	Shall execute all legal process .....	4525
Failure to give new bond when required .....	4519	And all legislative process .....	4526
		And discharge all other legal duties .....	4527
<i>2. Powers, duties and liabilities.</i>			
May appoint deputies .....	4520	Shall indorse all process .....	4528
		May summon <i>posse committatus</i> .....	4529
		Unfinished business .....	4530

I. ELECTION AND QUALIFICATION.

ARTICLE 4514. There shall be elected by the qualified voters of each county one sheriff, who shall hold his office for two years, and until his successor shall be elected and qualified.

ART. 4515. Should a vacancy occur in the office of sheriff, the commissioners' court of the county shall fill such vacancy by appointment; and the person appointed, after qualifying in the manner prescribed by law for persons elected to said office, shall discharge the duties of sheriff for the unexpired term and until the election and qualification of his successor.

ART. 4516. Every person elected to the office of sheriff shall, before entering upon the duties of his office, give a bond with two or more good and sufficient sureties, to be approved by the commissioners' court of his county, for such sum as may be directed by such court, not less than five nor more than thirty thousand dollars, payable to the governor and his successors in office, conditioned that he will account for and pay over to the persons authorized by law to receive the same, all fines, forfeitures and penalties that he may collect for the use of the state or any county; and that he will well and truly execute and due return make of all process and precepts to him lawfully directed, and pay over all sums of money collected by him by virtue of any such process or precept to the persons to whom the same are due or their lawful attorney; and that he will faithfully perform all such duties as may be required of him by law; and shall also take and subscribe the oath of office prescribed by the constitution, which shall be indorsed on said bond, together with the certificate of the officer administering the same; which bond and oath shall be recorded in the office of the clerk of the county court and deposited in said office. Said bond shall not be void on the first recovery, but may be sued on from time to time in the name of any person injured, until the whole amount thereof is recovered.

ART. 4517. When any person elected or appointed sheriff in accordance with the preceding article shall have given bond and taken the oath of office, he may enter at once upon the discharge of his duties; and his acts shall be as valid in law before receiving his commission from the governor as afterward.

ART. 4518. Whenever any person elected sheriff shall neglect or refuse to give bond and take the oath of office within twenty days after notice of his election, the office shall be deemed vacant, and the commissioners' court of the county shall appoint a sheriff as in other cases of vacancy.

Election and term of office. (Const., art. 5, §23.) (Act May 12, 1846, p. 265, §1.) P.D. 5108.

Vacancies, how filled. *Ib.*

Oath and bond. (Act May 12, 1846, p. 265, §2.) P.D. 5109.

May act without a commission. (Act Dec. 20, 1836, p. 179, §2.) P.D. 5102.

Neglect to qualify in twenty days. (Act May 12, 1846, p. 265, §4.) P.D. 5111.

Failure to give new bond when required.

*Ib.* §3.  
P.D. 5110.

ART. 4519. Whenever any of the sureties of a sheriff shall die, remove permanently from the state, become insolvent, or be released from liability in accordance with law, or whenever the commissioners' court shall deem the sheriff's bond insufficient, said court shall cite said sheriff to appear at a time to be named in such citation, not less than ten nor more than thirty days after issuing such citation, and give a new bond with good and sufficient security; and if such sheriff shall neglect or refuse to appear and give such bond on or before the designated time, he shall cease to exercise the functions of his office and shall be removed from office by the judge of the district court in the mode prescribed by law for the removal of county officers.

#### II. POWERS, DUTIES AND LIABILITIES.

May appoint deputies.  
(Act May 12, 1846, p. 265, §5.)  
P.D. 5112.

ART. 4520. Sheriffs shall have power by writing to appoint one or more deputies for their respective counties, to continue in office during the pleasure of the sheriff, who shall have power and authority to perform all the acts and duties required of their principals; and every person so appointed shall, before he enters upon the duties of his office, take and subscribe the oath of office prescribed by the constitution, which shall be indorsed on his appointment, together with the certificate of the officer administering the same; and such appointment and oath shall be recorded in the office of the county clerk and deposited in said office.

Responsible for their acts.  
*Ib.* §6.  
P.D. 5113.

ART. 4521. Sheriffs shall be responsible for the official acts of their deputies, and they shall have power to require from their deputies bond and security; and they shall have the same remedies against their deputies and sureties as any person can have against a sheriff and his sureties.

May employ guards.  
*Ib.*

ART. 4522. Whenever in any county it may become necessary to employ guards for the safe-keeping of prisoners and the security of jails, the sheriff may, with the approval of the commissioners' court, or in cases of emergency, with the approval of the county judge, employ such number of guards as may be necessary, and his account therefor, duly itemized and sworn to, shall be allowed by said commissioners' court and paid out of the county treasury.

Shall receive prisoners from constables, etc.  
(Act Dec. 20, 1836, p. 173, §14.)  
P.D. 5104.

ART. 4523. It shall be the duty of sheriffs to receive from constables and other officers all persons who shall be apprehended by such constables or other officers for offenses against the state, and them safely keep, subject to the order of the proper court.

To attend upon courts.  
(Act May 12, 1846, p. 265, §13.)  
P.D. 51.

ART. 4524. Each sheriff shall attend upon all district, county and commissioners' courts for his county; and in counties where the supreme court and court of appeals shall hold their sessions, the sheriffs of such counties shall attend upon such court.

Shall execute all legal process.  
*Ib.* §8.  
P.D. 5115.

ART. 4525. Each sheriff shall execute all process and precepts directed to him by legal authority, and make return thereof to the proper court, on or before the day to which the same is returnable; and any sheriff who shall fail so to do, or who shall make a false return on any process or precept shall, for every such offense, be liable to be fined by the court to which such process is returnable, as for a contempt, not exceeding one hundred dollars, at the discretion of the court; which fine shall go to the county treasury; and such sheriff shall also be liable to the party injured for all damages he may sustain.

And all legislative process.  
(Act March 28, 1873, p. 19.)  
P.D. 7102a et seq.

ART. 4526. Sheriffs are required also to execute all subpoenas and other process issued by the speaker of the house of representatives, or the president of the senate or chairman of a committee of either house of the legislature, to them directed, under like pains and penalties as are incurred by failure to execute process issued by a court, and for such services they shall receive the fees prescribed by law for similar services in the courts, to be paid on the certificate of the authority issuing such process.

ART. 4527. Sheriffs shall also do and perform all such duties as may be imposed upon them by the Penal Code and Code of Criminal Procedure or other laws. To discharge all duties imposed by law.

ART. 4528. Every sheriff and deputy sheriff shall indorse on all process and precepts coming to their hands the day and hour on which they received them, the manner in which they executed them, and the day when they executed them, and shall sign their return officially. Shall indorse all process. (Act May 12, 1846, p. 265, §14.) P.D. 5121.

ART. 4529. Whenever a sheriff or any of his deputies shall meet with resistance in the execution of any legal process, they shall call to their aid the power of the county, and any person who shall neglect or refuse to aid and assist any sheriff or deputy in the execution of any legal process when summoned so to do shall be deemed guilty of a contempt of court, and shall be fined in a sum not exceeding ten dollars, to be recovered on motion of such sheriff or his deputy and proof of such neglect or refusal before the court from which such process issued, three days' notice of such motion being given to the party accused; and in addition thereto may be punished criminally as prescribed in the Penal Code. May summon posse comitatus. *Ib.* §10. P.D. 5117.

ART. 4530. When any sheriff shall, from any cause, vacate his office, all unfinished business whatsoever in his hands shall be transferred to his successor, and be completed by him in the same manner as if commenced by himself. Unfinished business. (Act May 12, 1846, p. 265, §15.) P.D. 5122.

## CHAPTER TWO.

### OF CONSTABLES

	Article		Article
<i>1. Election, qualification, etc.</i>			
Election and term of office.....	4531	Failure to give new bond.....	4536
Appointed, how, in unorganized counties.....	4531—Note	<i>2. Powers, duties and liabilities.</i>	
Vacancies, how filled.....	4532	Duties in general.....	4537
Bond and oath.....	4533	May summon <i>posse comitatus</i> .....	4538
May act without commission.....	4534	Failure to execute or return process.....	4539
Neglect to qualify.....	4535	Failure to pay over collections.....	4540
		May execute process, where.....	4541
		Unfinished business.....	4542

#### I. ELECTION, QUALIFICATION, ETC.

ARTICLE 4531. There shall be elected at each general election, by the qualified voters of each justice's precinct, a constable for such precinct, who shall hold his office for the term of two years and until his successor is elected and qualified. Election and term of office. (Const., art. 5, §18.) P.D. 980.

NOTE.—Section 3, chapter 79, acts 1879, provides:

“Section 3. The commissioners' courts of the several counties, to which unorganized counties are attached for judicial purposes, shall have power to appoint a constable for each of the unorganized counties attached to said counties for judicial purposes, in accordance with the provisions of the law now in force authorizing such appointments in organized counties.”—L. Appointed, how, in unorganized counties.

ART. 4532. Vacancies in the office of constable shall be filled by the commissioners' court until the next succeeding general election. Vacancies, how filled.

ART. 4533. Every person who may be elected to the office of constable shall, before entering upon the duties of the office, give a bond with two or more good and sufficient sureties, to be approved by the commissioners' court of his county, for such sum as may be directed by said court, not less than five nor more than fifteen hundred dollars, payable to the governor and his successors in office, conditioned for the faithful performance of all the duties required of him by law; and shall also take and subscribe the oath of office prescribed by the constitution, which shall be indorsed on said bond, together with the certificate of the officer administering the same; which bond and oath shall be recorded in the office of the clerk of the county court, and deposited in said office; said bond shall not be void on the first recovery, but may be sued on from time to time in the name of the party injured, until the whole amount thereof is recovered. Bond and oath. (Acts May 12, 1846, p. 251, §2.) P.D. 981.



May act without commission.

ART. 4534. Whenever any person is elected or appointed to the office of constable, and has given bond and taken the oath prescribed in the preceding article, he may enter at once upon the duties of the office, and his acts shall be as valid in law as if he had been duly commissioned.

Neglect to qualify.  
(Act May 12, 1846, p. 261, §4.)  
P.D. 983.

ART. 4535. Whenever any person elected constable shall neglect or refuse to give bond and take the oath of office, as required in the preceding articles, within twenty days after notice of his election, the office shall be deemed vacant, and the commissioners' court of the county shall fill the same, as in other cases of vacancy.

Failure to give new bond.  
Ib. §3.  
P.D. 982.

ART. 4536. Whenever any of the sureties of a constable shall die, remove permanently from the state, or become insolvent, or are released from liability in accordance with law, or whenever the commissioners' court shall deem the bond of any constable to be insufficient, said court shall cite said constable to appear at a time to be named in such citation, not less than ten nor more than thirty days after issuing such citation, and give a new bond, with good and sufficient security; and if such constable shall neglect or refuse to appear and give such bond at the designated time, he shall cease to exercise the functions of his office, and shall be removed from office by the judge of the district court, in the mode prescribed by law for the removal of county officers.

## II. POWERS, DUTIES AND LIABILITIES.

Duties in general.  
Ib. §8.  
P.D. 987.

ART. 4537. Each constable shall execute and return according to law all process, warrants and precepts to him directed and delivered by any lawful officer, and shall attend upon all justices' courts held in his precinct, and shall perform all such other duties as may be required of him by law.

May summon *posse comitatus*.  
Ib. §7.  
P.D. 986.

ART. 4538. When any constable shall meet with resistance in the execution of any lawful process, or in the arrest of offenders, he may call to his aid any citizen of the county who may be convenient; and any person who shall fail or refuse to obey such call, may be fined as for a contempt by any justice of the peace, in a sum not exceeding ten dollars on motion of such constable, three days' notice thereof having been given to the party accused, and may also be punished criminally as prescribed in the Penal Code.

Failure to execute or return process.  
Ib. §11.  
P.D. 990.

ART. 4539. If any constable shall fail or refuse to execute and return, according to law, any process, warrant, or precept to him lawfully directed and delivered, he shall be fined for a contempt, on motion of the party injured, before the court from which such process, warrant or precept, issued in any sum not less than ten dollars, nor more than one hundred, with costs, which fine shall be for the benefit of the party injured; and said constable shall have ten days' notice of such motion.

Failure to pay over collections.  
Ib. §12.  
P.D. 991.

ART. 4540. If any constable shall receive from any person any bonds, bills, notes or accounts for collection, and shall give his receipt therefor, in his official capacity, and shall fail to pay to such person, on demand, any amount he may have collected on the same, such constable and his sureties shall be responsible on his official bond for all such amounts as he may have collected on such bonds, bills, notes or accounts not paid over.

May execute process, where.  
Ib. §14.  
P.D. 993.

ART. 4541. Every constable may execute any process, civil or criminal, throughout his county and elsewhere, as may be provided for in the Code of Criminal Procedure or other law.

Unfinished business.  
Ib. §13.  
P.D. 992.

ART. 4542. Whenever any constable shall vacate his office all unfinished business remaining in his hands shall be transferred to his successor, and be completed by him in the same manner as if commenced by himself.

TITLE XCII.

Statistics and History.

Article	Article
Statistics, duty of commissioner of, etc., in relation to.....	4543
Commissioner may cause officers, etc., to furnish, etc.....	4544
Statistics, etc., to be embodied and reported, etc.....	4545
Commissioner shall solicit and distribute seeds, etc., from department of agriculture of the United States.....	4546
Shall report to department of agriculture..	4547
History—duties of commissioner relative to information shall be revised, etc., and recorded, etc.....	4548 4549
Names of persons furnishing information, etc., shall be entered in a book.....	4550
Commissioner shall demand and receive of departments and officers historical books, papers, etc.....	4551
In case of disagreement as to books, etc., attorney-general shall decide.....	4552
Relics, mementoes, etc., shall be preserved	4553
Commissioner shall correspond with statistical, historical and agricultural societies, etc.....	4554
Shall endeavor to procure archives from Mexico, etc.....	4555

ARTICLE 4543. It shall be the duty of the commissioner of insurance, statistics and history to obtain from every available source all reliable information and statistics relating to the population, wealth and general resources of the state, and particularly in regard to agriculture, stock raising, manufactures, mining and other industries; also relating to commerce, exports and imports; also relating to internal improvements of all kinds, public and private, and such other objects as may be of general interest or benefit to the state.

Statistics, duty of commissioner of, etc., in relation to. (Act Aug. 21, 1876, p. 224, §16.)

ART. 4544. To enable the commissioner to obtain such information and statistics he is authorized to call on all state and county officers for such data, statistics and information as they may be able from their official position to afford; and it is hereby made the duty of such officers to fill up such blank forms as the commissioner may furnish to them, as far as it is possible for them to do so, and to return the same to the department of insurance, statistics and history within a reasonable time.

Commissioner may cause officers, etc., to furnish, etc. *Ib.*

ART. 4545. The commissioner shall embody all such reliable information and statistics as he may be able to obtain, in tabulated or other convenient form, and report the same to the governor, annually, who shall cause the same to be printed and distributed in such numbers as he and the commissioner may determine.

Statistics, etc., shall be embodied and reported, etc. *Ib.* §17

ART. 4546. The commissioner shall also keep in constant communication with the department of agriculture of the United States, and shall ask and solicit from the chief officer thereof a due proportion of the seeds and plants annually distributed from said department, and when received the commissioner shall distribute the same among the most experienced, skillful and scientific farmers in different portions of the state, who will promptly and carefully report to the commissioner the results of their practical experience with said seeds and plants.

Commissioner shall solicit and distribute seeds, etc., from department of agriculture of the United States. *Ib.* §18.

ART. 4547. Whenever the chief officer of the department of agriculture of the United States shall so request, the commissioner shall transmit to said department a report of the results of such agricultural experiments and such other information concerning agriculture in this state as may be accessible.

Shall report to department of agriculture, etc. *Ib.* §18.

ART. 4548. It shall be the duty of the commissioner to correspond with persons well informed in the history of Texas, and to solicit and invite, by printed circular or otherwise, any reliable information, in the form of narrative or otherwise, respecting the incidents of the early history and settlement of the different portions of the State of Texas, for future use of the historian.

History—duties of commissioner relative to. *Ib.* §19.

Information shall be revised, etc., and recorded, etc.  
*Ib.* §19.

ART. 4549. The commissioner shall revise and digest such information in proper form, as near as practicable in chronological order, and shall record said revised and digested information in a properly bound book, and carefully index the same, and shall carefully number and file the original documents in his office.

Names of persons furnishing information, etc., shall be entered in a book.  
*Ib.*

ART. 4550. The commissioner shall also keep a book in which he shall enter the names of persons furnishing information of incidents of early history, with a condensed statement of each narrative or communication.

Commissioner shall demand and receive of departments and officers historical books, papers, etc.  
*Ib.*

ART. 4551. The commissioner shall demand and receive from the secretary of state, the comptroller of public accounts, the commissioner of the general land office, and from such other departments or officers as may have them in charge, all books, maps, papers, documents, memoranda and data, not connected with or necessary to the current duties of said departments or officers, as relates to the history of Texas, as a province, colony, republic or state, and carefully classify, catalogue, number and preserve the same.

In case of disagreement as to custody of books, etc., attorney-general shall decide.

ART. 4552. Should the officer having the custody of any of the books, maps, papers, documents, memoranda or data named in the preceding article, and the commissioner not agree in regard to the possession and custody thereof, it shall be the duty of the attorney-general to examine, or cause to be examined by some competent person, the books, maps, papers, documents, memoranda or data in regard to which any such disagreement may exist, and to adjudge the custody thereof in accordance with the intent of the preceding article.

Relics, mementoes, etc., shall be preserved.  
*Ib.*

ART. 4553. The commissioner shall also receive and preserve all historical relics, mementoes, antiquities and works of art connected with and relating to the history of Texas which may be presented to the state or otherwise come into his possession.

Commissioner shall correspond with statistical, historical, etc., and agricultural societies, etc.  
*Ib.* §20.

ART. 4554. The commissioner shall also correspond with statistical, historical and agricultural societies beyond the state, and the departments of other states, with the view of exchanging documents and data relating to the various interests sought to be fostered and advanced by the provisions of this title.

Shall endeavor to procure archives from Mexico, etc.  
*Ib.*

ART. 4555. The commissioner shall endeavor to procure from Mexico the original archives which have been removed from Texas and relate to the history and settlement thereof; and in case he can not procure the originals he shall endeavor to secure authenticated copies thereof; also, any and all papers in Mexico or elsewhere relating to the early history of Texas.

TITLE XCIII.

Stock Laws.

CHAPTER ONE.

OF MARKS AND BRANDS.

NOTE.—Chapter 71, acts of 1879, requires persons engaged in floating or rafting timber to have “log-brands” to brand logs or timber cut and floated for sale or market See appendix.—L.

	Article		Article
Owners of stock to have mark and brand.....	4556	Marks and brands to be recorded.....	4560
Brands of minors.....	4557	Log-brands to be recorded.....	4560—Note
When stock to be branded.....	4558	Unrecorded brands no evidence.....	4561
Disputes, how settled.....	4559		

ARTICLE 4556. Every person who has cattle, hogs, sheep or goats, shall have an ear-mark and brand differing from the ear-mark and brand of his neighbors, which ear-mark and brand shall be recorded by the clerk of the county court where such cattle, hogs, sheep or goats shall be; and no person shall use more than one brand, but may record his brand in as many counties as he may think necessary.

Owners of stock to have mark and brand.  
(Act March 20, 1848, p. 156, §1.)  
P.D. 4655.

ART. 4557. Minors owning cattle or hogs separate from that of the father or guardian, may have a brand and mark, which shall be recorded; the father or guardian shall be responsible for the proper use of such mark and brand of any such minor.

Brands of minors.  
Ib. §6.  
P.D. 4660.

ART. 4558. Cattle shall be marked with the ear-mark or branded with the brand of the owner on or before they are twelve months old; hogs, sheep and goats shall be marked with the ear-mark of the owner on or before they are six months old.

When stock to be branded.  
Ib. §2.  
P.D. 4656.

ART. 4559. If any dispute shall arise about any ear-mark or brand, it shall be decided by reference to the book of marks and brands kept by the clerk of the county court; and the ear-mark and brand of the oldest date shall have the preference.

Disputes, how settled.  
Ib. §3.  
P.D. 4657.

ART. 4560. It shall be the duty of the clerks of the county courts in the respective counties to keep a well-bound book, in which they shall record the marks or brands of each individual who may apply to them for that purpose, noting in every instance the date on which the brand or mark is recorded; which record shall be subject to the examination of every citizen of the county, at all reasonable office hours, free of charge for such examination.

Marks and brands to be recorded.  
Ib. §4.  
P.D. 4658.

NOTE.—Section 2, chapter 71, acts of 1879, requires that they keep a book in which to record “log-brands” of persons engaged in floating or rafting timber. For recording such brands they are to receive the same fee as is by law allowed for recording stock brands. See appendix for the act in full.—L.

Log brands to be recorded.

ART. 4561. No brands, except such as are recorded by the officers named in this chapter, shall be recognized in law as any evidence of ownership of the cattle, horses or mules upon which the same may be used.

Unrecorded brands no evidence.  
Ib. §5.  
P.D. 4659.

CHAPTER TWO.

OF THE SALE, SLAUGHTER AND SHIPMENT OF ANIMALS.

	Article		Article
Bill of sale to be always taken.....	4562	Bill of sale and description to be recorded before driving.....	4566
Possession <i>prima facie</i> illegal without.....	4563	Owner to file sworn descriptive lists.....	4567
Stock animals sold by mark and brand, etc.....	4564	Register of cattle shipped or slaughtered to be kept.....	4568
Butchers to report to the commissioners' court.....	4565	County clerk to make a copy.....	4569

Bill of sale to be always taken.  
(Act Nov. 13, 1866, p. 223, §1.)  
P.D. 7445.

Possession *prima facie* illegal, without  
*Ib.*

Stock animals sold by mark and brand, etc.  
*Ib.*

Butchers to report to commissioners' court.  
*Ib.* p. 224, §3.  
P.D. 6557.

Bill of sale and description to be recorded before driving.  
*Ib.* pp. 223-4, §2  
P.D. 6556.

Owners to file sworn descriptive lists.  
*Ib.* p. 224, §2.

Register of cattle shipped or slaughtered to be kept.  
(Act Sept. 5, 1850, p. 27, §1.)  
P.D. 460.

ARTICLE 4562. Upon the sale, alienation or transfer of any horse, mare, mule, gelding, colt, jack, jennet, cow, calf, ox or beef steer by any person in this state, the actual delivery of such animals shall be accompanied by a written transfer from the vendor, or party selling, to the purchaser, giving the number, marks and brands of each animal sold and delivered.

ART. 4563. Upon the trial of the right of property of any animal, such as is mentioned in the preceding article, in any court of this state, the possession of such animal without the written transfer therein specified shall be deemed *prima facie* illegal.

ART. 4564. Persons may dispose of stock animals of the kind mentioned in article 4562, as they run in the range, by the sale and delivery of the brands and marks; but in every such sale the purchaser, in order to acquire title thereto, shall have his conveyance or bill of sale of such stock recorded in the county clerk's office, in a book to be kept by him for that purpose, and such sale or transfer shall be noted on the record of original marks and brands in the name of the vendee or purchaser.

ART. 4565. Every person in this state, engaged in the slaughter and sale of animals for market, shall make a regular report to the county commissioners' court of the county, under oath, giving the number, color, age, marks and brands of every animal slaughtered; which report shall be made to each regular meeting of the court, and be recorded by the clerk for the inspection of any one interested. Each report made shall be accompanied by the bill of sale or written conveyance to the butcher for every animal that he has purchased for slaughter; and if any of the animals slaughtered have been raised by himself, it shall be so stated in the report.

ART. 4566. Any person who shall purchase animals of any class named in article 4562, for the purpose of driving to market out of the county where purchased, or out of the state, shall, before moving the animals out of the county where purchased, deposit with the clerk of the county court, for record, a bill of sale and correct list of the number, marks, brands, and kind of animals, signed and acknowledged by the vendor or vendors, which, together with the post-office or place of abode of the vendee, shall be recorded in the book kept by the clerk for that purpose, and with his certificate of record, under seal attached, shall be returned to the purchaser upon payment of the recording fees.

ART. 4567. Persons intending to drive stock raised by themselves to market out of the county where raised, or out of the state, shall, before driving, deposit with the clerk of the county court for record a correct list of such animals with a particular description of their marks and brands, verified by their own affidavit, which list the county clerk shall record and certify, as in other cases of registration, and return to the owner.

ART. 4568. The commanders, or agents of all vessels, and the agents of all railroads on which cattle are exported from the state, and the proprietors or agents of all establishments for the slaughter of cattle within the state, shall keep a register of all cattle shipped or slaughtered, with the marks, brands and general description of such animals, and the names of the persons shipping or selling the same, the dates of their shipment or purchase, and the county from which they were driven.

ART. 4569. Such register shall be deposited with the clerk of the county court of the county where the cattle were shipped or slaughtered on the first day of each month, and such clerk shall at once copy the same in a well-bound book to be kept for that purpose, and return the original to the party depositing it. The record kept by the county clerk shall be open at all times to public inspection without charge.

County clerk to make a copy. *Ib.* §2. P.D. 461.

## CHAPTER THREE.

### OF ESTRAYS.

Articles	Articles
Who may take up stray animals, etc..... 4570	Return of sale..... 4581
Oath, appraisalment and bond..... 4571	Sale made on first Monday..... 4582
Ownership, how proved, etc..... 4572	Hogs, sheep, etc., how estrayed, etc. .... 4583
Proof of respectability, when required..... 4573	Not to be estrayed until after twelve months 4584
When taker-up not entitled to compensation..... 4574	Names of bidders to be given..... 4585
Estray not to be used until, etc..... 4575	Taker-up liable to damages, when..... 4586
When county commissioner to return estray 4576	Taker-up may use, when..... 4587
County clerk to record papers..... 4577	Death, etc., of estray to be reported.... 4588
Two or more animals to be in one entry.... 4578	Proceeds of sale, how disposed of..... 4589
Clerk to advertise, etc..... 4579	If taker-up refuse to deliver, liable for damages..... 4590
Property in estrays, etc.—sale, etc..... 4580	Owner may reclaim money in twelve months 4591

ARTICLE 4570. Hereafter when any stray horse, mare, gelding, filly, colt, mule, jack, jennet, or work-ox, shall be found on the plantation or land of any citizen, or his lessee for one year or more, such citizen or lessee may forthwith advertise the same [*describing the animal's color, and specifying the marks and brands, if any; also, giving the age and flesh-marks of every kind*] at three public places in the county in which such citizen resides; one of which notices shall be at the court-house door for at least twenty days, and shall also deliver to the clerk of the county court a copy of said notice, which shall be by him securely posted up in his office; after the expiration of which time, if no owner apply, it shall be the duty of the taker-up of said animal or animals to appear before some justice of the peace in said county and estray the same.

Who may take up stray animal, etc. (Act Oct. 26, 1866, p. 54.) P.D. 6810.

ART. 4571. Any citizen entitled to estray any animal, as provided in the preceding article, shall make oath that the animal which he proposes to estray was taken up on his plantation, or on his lands adjoining the same; that the marks and brands thereof have not been altered or disfigured since the same was taken up; that notice has been given as the law requires, and that no owner has been found; which affidavit shall be sworn to and subscribed by the person estraying, and attested by the justice and filed; whereupon the said justice shall cause to appear before him, by summons or otherwise, two disinterested householders of his county, who are in no way related to the person estraying, commanding them, after being sworn, to value and appraise the same, and certify the valuation, together with a particular description of the animal, including stature, marks, brands, color and age, under oath, which shall be attested by said justice, who shall thereupon require of the taker-up a bond, with two or more good and sufficient sureties, in double the value of such animal or animals, payable to the county judge of the county and his successors in office, conditioned that the taker-up shall comply with the provisions of this chapter, which bond, affidavit and appraisalment shall be transmitted by such justice to the clerk of the county court within twenty days thereafter, for which said justice shall receive the same fees that are allowed for similar services by law.

Oath, appraisalment and bond (Act Oct. 26, 1866.) P.D. 6811.

ART. 4572. At any time within twelve months, and before the sale of any estrays, it shall be lawful for the owner of any stray animal enumerated in the first article of this chapter, to prove his property by the affidavit of any respectable witness, which shall specify a particular description of the animal claimed, including the kind, marks, brands, stature, color and age of the same, which certificate may be sworn to and sub-

Ownership, how proven, etc. *Ib.* P.D. 6812.

scribed before any officer authorized by law to administer oaths in the county where such animal may have been estrayed, which certificate shall be delivered to the taker-up and by him filed in the office of the county clerk of such county, and on the delivery of such certificate and the payment of all costs incurred in posting such stray or estrays, to the taker-up, such owner shall be entitled to demand and receive the animal.

Proof of respectability, when required.  
*Ib.*

ART. 4573. When the respectability of the witness named in the preceding article is not known to the officer administering the oath, the party claiming the stray shall produce satisfactory evidence of the respectability of such witness, certified to by a notary public, county clerk or county judge of the county in which the witness resides.

When taker-up not entitled to compensation.  
*Ib.*

ART. 4574. If the owner of any animal which has been estrayed in accordance with the provisions of this chapter be a resident citizen of the county in which such animal has been estrayed, and shall have had his mark and brand recorded in said county, and the animal so estrayed shall be in the mark and brand of the owner at the time it was taken up, then and in that case the taker-up shall not be entitled to receive any compensation for expense incurred in estraying said animal.

Estray not to be used until, etc.  
*Ib.*  
P.D. 6810.

ART. 4575. Any animal taken up as an stray, according to the provisions of the preceding articles, shall not be used for any purpose whatsoever until the party taking up such animal shall have given bond as required by article 4571.

When county commissioner to return estrays.  
*Ib.*  
P.D. 6813.

ART. 4576. If any stray of any kind shall be found running at large and not estrayed, and the owner of the same be unknown, it shall be the duty of the county commissioners, or any of them, to return the same with a full description thereof to the county clerk of their respective counties, who shall advertise the same in the manner specified in this chapter; and if such animal shall not be proven away by the owner within the time allowed by law, the commissioner returning the same, or his successor in office, shall proceed to sell such animal and report the sale thereof to the clerk of the county court; and after paying the clerk's fee and retaining twenty per cent. of the proceeds of such sale, he shall pay the remaining sum into the county treasury.

County clerk to record papers.  
*Ib.*  
P.D. 6814.

ART. 4577. It shall be the duty of the clerk of the county court to record the papers transmitted to him, as provided in article 4571, in a separate book, to be kept by him for that purpose, for which he shall be entitled to demand and receive the same fees that are allowed by law for similar services, to be paid in all cases by the taker-up.

Two or more animals to be in one entry.  
*Ib.*

ART. 4578. When two or more animals are taken up at the same time by the same person, they shall be included in the same entry, and no more fees (including fees for posting and advertising hereinafter mentioned) shall be charged than is allowed by law for one such animal.

Clerk to advertise, etc.  
*Ib.*

ART. 4579. The clerk of the county court shall cause a statement of the appraisement and a description of the animal so estrayed to be advertised at least three times in some newspaper published in the county where such animal was estrayed, if there be one; and if there be no newspaper published in the county, then the clerk shall cause the same to be advertised in the newspaper nearest to the county, and also by posting up notices at three public places in the county, one of which shall be at the court-house door thereof; and the printer of such notice shall furnish the said clerk with a copy of the paper containing said notice, and it shall be the duty of the said clerk to file and preserve the same in his office for the inspection of all persons who may be interested; and for such publication the printer shall be entitled to receive from the party estraying the same the sum of two dollars, to be collected by the county clerk and paid to the order of the printer.

Property in estrays, etc., sale, etc.  
*Ib.*  
P.D. 6815.

ART. 4580. The property of every stray horse, mare, gelding, filly, colt, mule, jack, jennet or work-ox taken up as aforesaid and not proven away within twelve months after such appraisement, shall be deemed

vested in the county wherein such estray or estrays may have been posted, and the taker-up shall immediately thereafter proceed to sell the same for cash to the highest bidder at the court-house door of the county, after giving notice of the same as required in the case of sheriffs' sales; and within ten days after such sale, he shall, after deducting the expenses incurred in estraying said animals, pay into the county treasury seventy-five per cent. of the proceeds of the same, and retain the other twenty-five per cent. for his own use and benefit.

ART. 4581. Whenever a sale of an estray shall be made according to the provisions of the preceding article, the taker-up shall make a return of such sale, duly sworn to by him, to the clerk of the county court of the county in which the sale was made, who shall file the same in his office.

Return of sale.  
*Ib.*

ART. 4582. All sales of estrays, horses, mares, fillies, geldings, colts, mules, jacks, jennets or work-oxen shall be made on the first Monday in the month, and between the hours of one and three o'clock P. M. of said day.

Sales made on first Monday.  
*Ib.*

ART. 4583. Any citizen taking up any stray hogs, sheep, goats, or cattle, other than work-oxen, shall proceed in the same manner as is required in the case of horses, etc., except advertising in a newspaper; and any person estraying the same, at the expiration of six months from the day of appraisalment, shall proceed to give notice as in the case of sheriffs' or constables' sales, and sell such estrays where they were taken up; *provided*, there be not less than three adult bidders in attendance at said sale, beside the family of the taker-up.

Hogs, sheep, etc, how estrayed, etc.  
*Ib.*  
P.D. 6816.

ART. 4584. No animal of the kind enumerated in the preceding article, except work-oxen, shall be subject to be estrayed unless the same shall have been known to the taker-up as being an estray for at least twelve months previous to the time of estraying the same.

Not to be estrayed until after twelve months.  
*Ib.*

ART. 4585. In making the returns of sales under this title, when the sale has been made at the residence of the taker-up or other place than at the court-house door of the county, the taker-up shall, in all cases, give the names of at least three of the bidders who were present at said sale, who were not members of his family.

Names of bidders to be given.  
*Ib.*  
P.D. 6817.

ART. 4586. If any person estraying any animal, enumerated in this chapter, shall send or take away the same out of the county in which the same was taken up and estrayed, or sell or otherwise dispose of the same, he and his sureties shall be liable upon their bond in an action for damages in favor of the party injured.

Taker-up liable for damages, when.  
*Ib.*  
P.D. 6818.

ART. 4587. The taker-up of an estray may use the same in moderation, after having executed bond as provided in article 4571, but should he abuse or injure the same he and his sureties shall be liable upon his bond in damages for such abuse or injury, and may be sued therefor by the owner for his own use, or by the county judge for the use of the county.

Taker-up may use, when.

ART. 4588. Whenever an estray animal shall be found dead, or shall escape, the taker-up shall, without delay, make report thereof in writing, to the clerk of the county court, under oath, which report shall be recorded by said clerk in a book to be kept by him for that purpose; and any person who shall make a false report shall be liable on his bond, together with his sureties, for the value of the animal or animals estrayed; and shall also be liable to be indicted and punished as for perjury.

Death, etc., of estray to be reported.  
*Ib.*  
P.D. 6819.  
P.C. 188.

ART. 4589. All moneys arising from the sales of estrays, under the provisions of this chapter, shall be paid to the county treasurer, and shall be by him applied exclusively to the jury fund of the county.

Proceeds of sale, how disposed of. *Ib.*  
P.D. 6820.

ART. 4590. If any person having in charge an estray shall refuse to deliver the same to the owner thereof, on his complying with the requisitions of this chapter, such owner shall be entitled to his action therefor with damages.

If taker-up refuse to deliver liable for damages. *Ib.*  
P.D. 6821.



Owner may re-claim money in twelve months. *Ib.*  
P.D. 6822.

ART. 4591. At any time within twelve months after the sale of any estray made under the provisions of this chapter, the owner of such estray may apply to the county treasurer of the county in which such estray has been sold, and upon proof of such ownership shall be entitled to receive from said treasurer the amount deposited on account of such sale, after paying such costs as may be necessary to establish his right thereto.

CHAPTER FOUR.

OF THE MODE FOR PREVENTING CERTAIN ANIMALS FROM RUNNING AT LARGE IN COUNTIES AND SUBDIVISIONS.

	Article		Article
County judge to order election.....	4592	Proclamation of the result.....	4603
Requisites of petition.....	4593	Stock may be impounded.....	4604
Election, how ordered and conducted.....	4594	Owner to be notified.....	4605
Notice, how given.....	4595	To have possession on payment of ex-	
Requisites of the order.....	4596	penses of impounding.....	4605—Note
Voting places.....	4597	Fees and damages.....	4606
Managers to be appointed, when.....	4598	Stock may be sold, when, etc.....	4607
Freeholders only to vote.....	4599	And estrayed, if no owner found.....	4608
Manner of voting.....	4600	Lawful fence.....	4609
Returns of election.....	4601	Subsequent election in case of defeat.....	4610
Returns, how opened.....	4602		

County judges to order election. (Const., art. 16, §22.) (Act Aug. 15, 1876, p. 150, §1.)

ARTICLE 4592. Upon the written petition of fifty freeholders of any county, or upon the petition of twenty freeholders of any subdivision of a county, the commissioners' court of such county shall order an election to be held in said county, or subdivision, on some day named in the order, for the purpose of enabling the freeholders of such county or subdivision to determine whether hogs, sheep or goats shall be permitted to run at large in such county or subdivision.

Requisites of petition. *Ib.*

ART. 4593. Such petition shall set forth clearly the class or classes of animals enumerated in the preceding article, which the petitioners desire shall not run at large in such county or subdivision, as the case may be; and if the petition be from the freeholders of a subdivision of any county, such subdivision shall be particularly described, and the boundaries thereof designated.

Election, how ordered and conducted. *Ib.*

ART. 4594. Upon the filing of such petition the commissioners' court, at its next regular term thereafter, shall pass an order directing an election to be held throughout the county, or the particular subdivision thereof, as the case may be, on a day to be designated in the order, not less than thirty days from the date of such order; which election shall be held and conducted, and the returns thereof made in accordance with the laws regulating general elections, in so far as the same are applicable.

Notice, how given. *Ib.*

ART. 4595. Immediately after the passage of an order for election by the commissioners' court, the county judge shall issue an order for such election, and cause public notice thereof to be given for at least thirty days before the day of election, by publication of the order therefor in some newspaper published in the county, if there be one; but if no newspaper be published in the county, then by posting copies of such order at the court-house door, and at some public place in each justice's precinct, if the election be ordered for the whole county, or at three public places in the subdivision, if the election be ordered for a subdivision.

Requisites of the order. *Ib.*

ART. 4596. The order of the county judge shall specify—  
 1. The petition and the action of the commissioners' court.  
 2. The class of animals it is proposed shall not run at large.  
 3. The territorial limits to be affected.  
 4. The day of election.  
 5. The places at which polls are to be opened.

Voting places. *Ib.* §3.

ART. 4597. If the election is ordered for the whole county, the same shall be held at the usual voting places in the several election precincts; but if the election is ordered for any particular subdivision the county

judge shall designate the particular places in such subdivision at which the polls shall be opened.

ART. 4598. If the election be for a subdivision of the county the county judge shall, at the time he issues the order for such election, appoint proper persons as managers of said election, all of whom shall be freeholders of the county and qualified voters, and such managers may appoint their own clerks.

Managers to be appointed, when.  
*Ib.* pp. 150-1, §4

ART. 4599. No person shall vote at any election under the provisions of this chapter unless he be a freeholder and is also a qualified voter under the constitution and laws.

Freeholders only to vote. (Const., art. 16, §23.)  
*Ib.* p. 150, §2.

ART. 4600. All votes at any election in pursuance of this chapter shall be by ballot; and voters desiring to prevent the animals designated in the order from running at large shall place upon their ballots the words "For the stock law," and those in favor of allowing such animals to run at large shall place upon their ballots the words "Against the stock law."

Manner of voting.  
*Ib.* §3.

ART. 4601. On or before the tenth day after any election under the provisions of this chapter, the persons holding such election shall make due return of all the votes cast at their respective voting places, for and against said proposition, to the county judge of the county who shall tabulate and count said returns and ascertain the result of said election.

Returns of election.  
*Ib.* p. 151, §4.

ART. 4602. The returns shall be opened, tabulated and counted by the county judge in the presence of the county clerk and at least one justice of the peace of the county, or of two respectable freeholders of the county.

Returns, how opened.  
*Ib.* §4.

ART. 4603. If a majority of the votes cast at such election shall be "For the stock law," the county judge shall immediately issue his proclamation declaring the result, which proclamation shall be posted at the court-house door, and after the expiration of thirty days from its issuance it shall be unlawful to permit to run at large within the limits designated any animal of the class mentioned in said proclamation.

Proclamation of the result, and its effects.  
*Ib.*

ART. 4604. If any stock forbidden to run at large shall enter the inclosed lands of any person other than the owner of such stock, without his consent, in any county or subdivision in which the provisions of this chapter have become operative in the manner provided in the preceding articles, the owner, lessee or person in lawful possession of such lands may impound said stock and detain the same until his fees and all damages occasioned by said stock are paid to him.

Stock may be impounded.  
*Ib.* §6.

ART. 4605. No animals shall be impounded unless they have entered the inclosed lands of another, and whenever any stock is impounded notice thereof shall at once be given to their owner, if known, and such owner shall be entitled to their possession upon payment of fees and damages.

Owner to be notified.  
*Ib.* §§6, 7.

NOTE.—Section, 1, chapter 101, acts of 1879, amends section 6 of the act of August 15, 1876, and the latter as amended provides as follows:

"Sec. 6. Should any stock, not permitted to run at large, enter within the inclosure of any owner or lessee of land, entitled to the benefit of this act, without his or their consent, it shall be lawful for the owner or lessee of said inclosure to impound said stock, and it shall be the duty of the owner or lessee of said land to give notice immediately to the owner of said stock of their impounding and detention, and the owner of said stock shall be entitled to the possession of his or her stock on the payment of the expenses incurred in impounding and keeping said stock; *provided*, that in such county or subdivision (where the fence law is in force), said owner or lessee shall not be required to fence against stock not permitted to run at large." See appendix for the law in full.—L.

To have possession on payment of expenses of impounding.

ART. 4606. Any owner, lessee or person in lawful possession of inclosed lands, shall be entitled to the following fees for impounding stock, to wit: Ten cents per day per head for hogs, ten cents per day per head for goats, and five cents per day per head for sheep. The damages done by such stock, if any, may be assessed by any three disinterested freeholders of the county, and their assessment shall be final.

Fees and damages.  
*Ib.* §7, 8.

Stock may be sold, when, etc  
*Ib.* pp. 151-2, §7

ART. 4607. If the owner or agent of stock impounded, after being notified thereof, shall fail or refuse to pay the fees and damages for the same, the taker-up may sell such stock at public auction for cash, after having given notice of such sale as in constables' sales of personal property, and apply the proceeds of such sale, after deducting expenses thereof; to the satisfaction of his fees and damages, and shall pay the balance, if any remains, to the owner of such stock.

And estrayed if no owner found.  
*Ib.* p. 151, §7.

ART. 4608. If no owner can be found of stock so impounded, the taker-up shall, after the expiration of five days, stray such stock according to the laws regulating estrays in this state.

Lawful fence.  
*Ib.* §6.

ART. 4609. After the adoption of the stock law in any county or subdivision, any fence within such county or subdivision shall be deemed a lawful fence if it be sufficient to keep out the classes of stock not affected by the provisions of this chapter; and no person within such county or subdivision shall be required to fence against stock not permitted to run at large.

Subsequent elections in case of defeat.  
*Ib.* §5

ART. 4610. Whenever an election is held under the provisions of this chapter for any county or subdivision, and the proposition for a stock and fence law as herein provided is defeated, no other election for such purpose shall be held within that locality for the space of twelve months thereafter. But the defeat of the proposition for a county shall not prevent another election from being held immediately thereafter for any subdivision of such county; nor shall a defeat of the proposition for any subdivision prevent an election from being held immediately thereafter for the entire county.

## CHAPTER FIVE

### REGULATIONS FOR THE PROTECTION OF STOCK-RAISERS IN CERTAIN LOCALITIES.

NOTE.—Chapter 57, acts of 1879, provides especially for the protection of the wool-growing interests of the state. It provides for the appointment, by the commissioners' courts, of inspectors of sheep, on petition of twenty sheep owners of the county. It fixes the duties of such inspectors, and makes provisions for the protection of flocks from diseased sheep. See appendix for act in full.—L.

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Fees, how paid.....	4635		

Inspector to be elected.  
(Const., art. 16, §23.)  
(Act Aug. 23, 1876, p. 265, §1.)

ARTICLE 4611. Each organized county, not expressly excepted herein, shall constitute an inspection district for the inspection of hides and animals, and at each general election an officer to be styled "Inspector of hides and animals" shall be elected by the qualified voters of such county in the same manner as other county officers are elected.

NOTE.—Section 2, chapter 79, acts of 1879, provides as follows:

“Sec. 2. The governor is hereby authorized to appoint, with the advice and consent of the senate, one notary public and one cattle and hide inspector in each of the unorganized counties of the state.”—L.

Governor to  
appoint in un-  
organized  
counties.

ART. 4612. Inspectors of hides and animals shall hold their offices for the term of two years and until the election and qualification of their successors in office.

Term of office.  
(Act Aug. 23,  
1876, p. 295, §2.)

ART. 4613. In case of a vacancy in such office the commissioners' court shall fill the same by appointment for the unexpired term, and until such vacancy is filled by such appointment the sheriff of the county shall discharge the duties of the office.

Vacancies, how  
filled.  
(Act Aug. 19,  
1876, p. 217, §1.)

ART. 4614. Every person elected to the office of inspector of hides and animals, before entering on the duties of his office, shall enter into a bond with two or more good and sufficient sureties, to be approved by the county commissioners' court of the county constituting his district, which bond shall be in a sum to be fixed by said court, not less than one thousand dollars nor more than ten thousand dollars, payable to the county judge, conditioned that he shall well and truly perform the duties of his office in accordance with the provisions of this chapter; and he shall also take and subscribe the oath of office prescribed by the constitution, which shall be indorsed on or attached to said bond, together with the certificate of the officer administering the same—which bond and oath shall be deposited and recorded in the office of the clerk of the county court of the county. The bond herein provided for shall not be void for want of form or on the first recovery, but may be sued on from time to time, in the name of any person injured by a breach thereof, until the whole penalty shall have been recovered.

Bond and oath.  
§3.

ART. 4615. Persons appointed to fill vacancies in the office of inspector shall give bond, and take the oath in like manner as prescribed in the preceding article, and shall not enter upon the duties of the office until such bond is given and approved and such oath is taken; but a sheriff acting temporarily as inspector, pending a vacancy in such office, shall not be required to give additional bond, but his official bond as sheriff shall extend to and include the faithful and proper performance of his duties as inspector *ad interim*.

Appointees  
also to give  
bond.  
(Act Aug. 19,  
1876, p. 217, §1.)

ART. 4616. The county commissioners' court of each county shall furnish to the inspector for such county a seal of office, having upon it the words “Inspector of Hides and Animals, ..... county, Texas,” [*the blank to be filled with the name of the county*], and each inspector and his deputy shall certify their official acts with the impress of such seal. Upon his retirement from office the inspector shall deliver such seal, together with the books, papers and records of his office, to his successor.

Seal of office.  
(Act Aug. 23,  
1876, p. 296, §6.)

ART. 4617. Every inspector shall have power to appoint as many deputies as shall be necessary to perform the duties imposed on them by this chapter, and such deputies shall have the same power and authority to perform the duties of their office as their principal; and the inspector shall require bond and security of their deputies for the faithful performance of their duties; and the said deputies shall, before entering upon their duties, take and subscribe the oath prescribed by the constitution, which, together with the certificate of the officer administering the same, shall be indorsed upon the bonds.

Deputies may  
be appointed.  
Ib. p. 295, §4.

ART. 4618. The appointment of each deputy shall be in writing, with the seal of the inspector thereon, and shall, with their bonds and oaths of office, be recorded by the clerk of the county court of the county constituting their district, and the inspector shall be responsible to any persons injured thereby, for the official acts of each of their deputies, and they shall have the same remedies against their deputies and their sureties as any person can have against the inspectors and their sureties.

Appointment  
to be recorded.  
Ib. pp. 295-6, §5

Meaning of  
"terms."  
*Ib.* p. 301, §27.

ART. 4619. Whenever in this chapter the word "inspector" is used, it shall be taken and deemed to be "the inspector of hides and animals," the words "deputy inspector" shall be taken to mean the "deputy inspector of hides and animals," and the words, "county, district or inspection district," shall be held to include each organized county in this state not herein excepted, together with any unorganized county that may be attached for judicial purposes to any such county.

May authenti-  
cate instru-  
ments.  
*Ib.* p. 302, §30.

ART. 4620. Every inspector shall have authority to authenticate bills of sale of animals, and give certificates of acknowledgment of the same under his hand and seal.

Inspections  
and record  
thereof.  
*Ib.* p. 296, §7.

ART. 4621. It shall be the duty of the inspector, in person or by deputy, 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, and the inspector shall keep a record, in a well-bound book, in which he shall record a correct statement of the number, ages, marks and brands of all animals inspected by him, and the number, mark and brand of all hides inspected by him, and whether the same are dry or green, and the name or names of the vendor or vendors, and of the purchaser or purchasers thereof.

Monthly  
returns to  
county clerk.  
*Ib.*

ART. 4622. He shall return a certified copy of all entries made in such record during each month to the clerk of the county court of the county on the last day of each month, which report shall be filed among the records of the county court. The book of records herein provided for shall at all times be open for the inspection of any person interested therein.

Exemptions  
from  
inspection.  
*Ib.*

ART. 4623. The provisions of this chapter shall not be so construed as to include sheep, goats, swine, or hides of either, nor to involve the re-inspection of salted hides in packeries or other slaughter-houses taken from animals previously inspected and returned, as provided in the preceding articles.

Shall not  
certify  
unbranded  
animals, etc.  
*Ib.* §8.

ART. 4624. No inspector shall grant any certificate of inspection of any unbranded hides or animals, or of hides or animals upon which the marks or brands can not be ascertained; and he shall prevent the same from being taken or shipped out of the county unless they are identified by proof or by a bill of sale signed by the owner of such hides or animal, and acknowledged before some officer authorized to authenticate instruments for record in this state.

May seize  
certain  
animals, etc.  
*Ib.* §9.

ART. 4625. Every inspector shall have power to, and may seize and sequester all unmarked or unbranded calves or yearlings; and all calves or yearlings freshly marked or branded, and on which the fresh marks or brands are unhealed, which are about to be slaughtered, or driven or shipped out of the county, unless such animals are accompanied by the mothers thereof, or are identified by the presentation of a bill of sale from the person proved to be the owner thereof, signed by him or his legally authorized agent, and acknowledged before some officer authorized to authenticate instruments for record in this state.

Also un-  
branded hides  
and animals.  
*Ib.* §10.

ART. 4626. Every inspector shall have power to, and may seize and sequester all unbranded animals or hides, and animals or hides upon which the mark or brand can not be ascertained, which are about to be taken or shipped out of the county, or which animals are about to be slaughtered, unless such animals or hides are identified as provided in the preceding article.

Procedure in  
cases of  
seizure.  
*Ib.* p. 304, §44.

ART. 4627. When the inspector has seized any hides or animals, as provided for in the two preceding articles, he shall report the fact to some judge of the district or county court or justice of the peace, according as the value of the property seized may come within the jurisdiction of either of said courts, and it shall be the duty of said judge or justice to issue or cause to be issued a citation addressed: "To all whom it may

concern," setting forth a seizure of said property, with a description of the same, commanding them to appear at a day named in said citation to show cause why the said property should not be forfeited to the county wherein the same was seized and sold for the benefit of said county; said citation shall be directed to the sheriff or any constable of said county, who shall cause certified copies of the same to be posted in three public places in said county for a period of ten days before the day mentioned in said citation. Upon the proof of the posting of said citation, as herein required, it shall be the duty of the judge or justice of the peace issuing said citation, to proceed to condemn the property mentioned in said citation, unless satisfactory proof should be made of the ownership of said property, or other sufficient cause be shown why the same should not be condemned; and in case of condemnation he shall order the same to be sold by the inspector at public auction to the highest bidder. The inspector shall be entitled to retain one-fourth of the net proceeds of such sale, after deducting therefrom all expenses connected therewith, and he shall immediately pay the remaining three-fourths thereof into the county treasury; and all sums so paid in shall be placed to the credit of the general fund of such county.

ART. 4628. Every person who shall buy or drive any animal or animals for sale or shipment out of any county, or who shall buy or drive any animal or animals for slaughter, shall, at the time of purchasing and before driving the same, procure a bill of sale from the owner or owners thereof, or from his or their legally authorized agent, which bill of sale shall be in writing, properly signed and acknowledged before some officer authorized to authenticate instruments for record in this state. Such bill of sale shall distinctly enumerate the number, kind and age of animals sold, together with all the marks and brands discernable on said animals; and said animals shall, before leaving the county in which they have been gathered, be inspected by the inspector of such county or his deputy.

Bill of sale to  
be taken.  
Ib. p. 297, §11.

ART. 4629. Every person who shall purchase any hides of cattle shall, at the time of purchasing the same, obtain from the owner thereof, or from his legally authorized agent, a bill of sale in writing, certified to by the inspector or by any officer authorized to take acknowledgments, which bill of sale shall recite in full the marks and brands of each hide, the weight thereof, and whether the same is dry or green.

Also in sale of  
hides.  
Ib. §12.

ART. 4630. Whenever an inspector shall have inspected any animal or animals, as herein provided, he shall, on the presentation of a bill of sale or power of attorney from the owner or owners of such animal or animals, or his or their agent, duly authorized in writing, which bill of sale, power of attorney or authority shall be in writing, duly signed and acknowledged by the person executing the same before some officer authorized to authenticate instruments for record in this state, and on payment to said inspector of his legal fees, deliver to the purchaser of the animals mentioned in such bill of sale or power of attorney, or his agent, a certificate setting forth that he has carefully examined and inspected such animal or animals, and that said purchaser has in all respects complied with the provisions of this chapter, which certificate shall not be complete until the same and bill of sale herein provided for shall be recorded in the office of the clerk of the county court of the county and be certified to by said clerk under his hand and seal. Such certificate shall be then delivered to the purchaser or purchasers, and shall protect him or them from the payment of inspection fees in any other district for the animals therein described, except the county from which the same may be exported.

Certificate of  
inspection to  
be given.  
Ib. §13.

ART. 4631. Any person or persons driving cattle in his or their own mark and brand shall be entitled to the certificate of inspection provided for in the preceding article, on payment of fees to the inspector, and on presentation to the inspector of the certificate of the clerk of the county court of the county where such mark and brand is recorded, to the effect

Same subject  
Ib. §14.

that the mark and brand named therein is duly recorded in his office as the mark and brand of the person so driving such cattle.

Road brand,  
*Ib.* pp. 297-8,  
§18.

ART. 4632. Any person or persons who shall drive any cattle to market beyond the limits of this state shall, before removing such cattle from the county where the same are gathered, place upon each and every animal so to be driven, a large and plain road brand, composed of any device he may choose; which brand shall be branded on the left side of the back behind the shoulder; and every person or persons using or causing to be used any road brand, shall place the same on record as in the case of other brands, in the county from which the animals are to be driven, and before their removal from such county.

Exportation of  
cattle to  
Mexico.  
*Ib.* p. 298, §16.

ART. 4633. Any person intending to drive or ship any animals to the Republic of Mexico, may ship the same from any point on the coast of Texas, or may drive or ship them across the Rio Grande river at any point where a custom-house of the United States is located; and shall not drive or ship such animals across the Rio Grande at any other point or points; and he shall cause all such animals to be inspected by the inspector of the district in which the point of shipment or place at which they are to be driven across said river is situated; such inspection shall be made before shipment from the state or passage across said river of said animals.

Herds in  
transit may be  
inspected.  
*Ib.* §18.

ART. 4634. Whenever a drove of cattle may be passing through any county it shall be the duty of the inspector, if called upon so to do by any person, to stop and inspect said drove without any unnecessary detention of the same; and he shall exercise the same powers and perform the same duties in the inspection of said cattle as are prescribed in articles 7, 9 and 10.

Fees, how paid  
*Ib.*

ART. 4635. If any cattle be found in said drove not included in the certificate of the inspector of the county in which the drove may have been gathered, the fees of the inspector shall be paid out of the proceeds of the sale of said cattle; but if no cattle shall be found in said drove except those covered by the inspector's certificate, then the inspector's fees shall be paid by the person at whose instance and request said drove was inspected.

Hides im-  
ported from  
Mexico.  
*Ib.* §19.

ART. 4636. The hides of all cattle imported into this state from Mexico shall be inspected by the inspector of hides and animals of any county or district into which the same may be introduced or imported; and should the importer of said hides fail or refuse to pay the inspection fees as provided by law, the inspector is hereby authorized to retain possession of said hides and sell a sufficient number thereof, after public notice of three days, to the highest and best bidder, to pay said inspection fees and all necessary expenses incurred in connection therewith.

Horses and  
mules.  
*Ib.*

ART. 4637. Horses and mules imported from Mexico into this state shall be inspected in accordance with the provisions of the preceding article and with like authority to retain and sell as therein provided for a failure to pay inspection fees.

Suspicious  
hides to be  
seized.  
*Ib.* pp. 298-9,  
§19.

ART. 4638. Should an inspector of hides and animals find among hides imported from Mexico any hides which, from the brand or from other evidence, he has reason to believe have been stolen from the lawful owner, it shall be his duty to separate said hides from the others undergoing inspection, and to notify any person he believes to be interested therein to come forward and institute suit for the recovery of the same.

Procedure  
upon seizure.  
*Ib.* p. 299, §19.

ART. 4639. Should no person appear to claim said hides, the inspector shall within twenty-four hours make oath before the county judge of the county or before a justice of the peace of the county, that he has reason to believe that said hides have been stolen; whereupon said county judge or justice of the peace shall issue a citation, directing the importer or party claiming the same to appear before him at his office within a time

specified, not to exceed twenty-four hours, to show cause why said hides should not be condemned.

ART. 4640. Should said importer or claimant make proof that he is the lawful owner of said hides by showing a bill of sale from the owner of the same or his legally authorized agent, and by showing a complete chain of transfer or title from the original owner of the brand to himself or his firm, as the case may be, the county judge or justice of the peace shall direct that the same be delivered to said importer or claimant upon his paying the inspection fees.

Importer to recover on proof.  
Ib.

ART. 4641. Should the importer or claimant of said hides fail to establish his claim as the lawful owner of the same, or to any number of said hides so seized, it shall be the duty of the county judge or the justice of the peace to direct that said hides be sold at public auction by the inspector of hides and animals, or his deputy, after a notice of ten days, published in a newspaper, should there be one published in said county; or, if no newspaper be published in the county, then by notice in writing, posted at the court-house and two or more other places in said county, and the said hides shall be sold to the highest and best bidder.

Hides to be sold, if not proven away.  
Ib.

ART. 4642. The inspector of hides and animals shall retain twenty-five per cent. of the purchase money, after having deducted and paid all necessary expenses incurred by reason of said sale, and he shall deposit the remainder of said purchase money with the county treasurer and take his receipt therefor; and said county treasurer shall place one-half of said sum of money to the credit of the school fund and the other half to the credit of the jury fund of said county.

Fees of inspector in such cases.  
Ib.

ART. 4643. Should any person appear either by himself, his agent or attorney, and claim any hides imported from Mexico at any time before said hides shall have been sold as above directed, and should said claim be established before the county judge or a justice of the peace of said county, such hides shall be delivered to the claimant, and all costs accruing therein shall be paid by the importer; *provided*, that at any time before proceedings shall have been commenced as above directed, the importer may be permitted to pay the lawful owner, his agent or attorney, for any hides imported by him from Mexico and presented in any county of this state for inspection, and upon such payment, and the fees for inspection, such hides shall be released.

Hides to be delivered to true owner, etc.  
Ib.

ART. 4644. The clerk of the county court in each county shall transcribe the list of all recorded marks and brands in his county and revise the same. Such revised list shall be written in a well-bound book, kept for that purpose only, and shall be arranged as follows, viz.: All brands of the letter class shall be placed in alphabetical order, following which shall be the numeral, character and device brands in the order of the date of their registration. Opposite each brand shall be stated the marks corresponding to said brand, the name of the owner of the brand, his place of residence; if the same be sold, the name of the person to whom sold, and his residence; the date of registration of the brands and marks, particulars relating thereto. Before each brand shall be placed its number, commencing at one for the first brand on the revised list; and the name of the owner of each brand shall be indexed, reference being had in such index to the list number of the brand or brands of such owner; and all new brands and marks placed on record shall be immediately recorded and indexed in said book, which shall at all times be open to the inspection of all persons; *provided*, that the provisions of this article shall apply only to counties in which the work of transcribing the records has not already been done in accordance with law.

Revised list of marks and brands, etc.  
Ib. p. 300, §23.

ART. 4645. In all cases where application for registration of any mark or brand shall be made, the clerk of the county court shall receive and record the same, unless an examination of the recorded list of marks and

Same brand, etc., not to be recorded twice, etc.  
Ib. §24.



brands shows that a similar mark and brand is already upon record in such county, in which event he shall refuse to register or give any certificate for the same; *provided*, that if such applicant shall have previously had such mark and brand recorded in some other county, and shall have a certificate from the clerk of the county in which said brand had been recorded, stating that said brand and mark had been recorded in said county at some time anterior to the time of the registration of the similar mark and brand in the county in which the applicant may desire to have his brand recorded, then said brand and mark shall be recorded and the clerk shall, on the record, make a minute setting forth said facts.

In the county where cattle range.  
*Ib.* p. 301, §28.

ART. 4646. All marks and brands of cattle shall be recorded in the county or counties in which they usually range; *provided*, that when cattle are gathered near the county line the bills of sale of the same shall be recorded in both counties; and when any stock of cattle is sold the fact shall be noted on the record opposite or near the record of its mark and brand, giving the name of the vendor and vendee and date of sale, and this shall be done as often as there may be a sale. It is made the duty of the inspector to procure certified copies of the marks and brands of his county for himself and his deputies, and monthly to have added thereto the marks and brands that may be recorded.

Only one mark and brand to be used.  
*Ib.* p. 300, §22.

ART. 4647. No person owning and claiming stock shall in originally marking and branding animals make use of more than one mark and brand; *provided*, that any person may own and possess animals in many marks and brands, the same having been by him acquired by purchase, and bills of sale in writing, properly acknowledged, from the previous owner or owners, or his or their legally constituted agent, shall be sufficient evidence of such purchase; but the increase of such animals, or of any animals counter-branded by such person from other stocks of cattle owned by him shall be branded or counter-branded by one and the same brand, and when marked by such person shall be marked in one and the same mark.

Counter-branding.  
*Ib.* §21.

ART. 4648. In all cases where the counter-branding of any cattle shall be deemed necessary or expedient, the person so counter-branding shall counter-brand the existing brand of the animal by which the owner thereof is then known, or by which it is then claimed and owned, by branding below the said brand its *fac-simile*, that is, similar letters, characters or numbers, as the case may be; and he shall also place on said animals the brand of the then owner thereof; but no person shall change or alter the ear-marks of any animal, but in counter-branding shall leave the ears bearing the same mark or marks as before counter-branding.

Authority to gather, etc.  
*Ib.* p. 299, §20.

ART. 4649. Any person having marks and brands recorded in the office of the clerk of the county court may file with the inspector a list of his recorded marks and brands, certified by the clerk under his seal, to which certified list shall be attached the names of any person or persons whom the owner of said stock may wish to authorize to gather, drive or otherwise handle his stock; and the filing of said list with the inspector shall be deemed sufficient authority to the person or persons named in such list to gather, drive or otherwise handle any animals of the marks and brands therein described.

Inspections to be personal.  
*Ib.* p. 301, §29.

ART. 4650. In making inspections the inspector shall not trust to the statements or representations of any person, but he shall in person carefully inspect and examine each animal or hide separately, so as to identify the marks and brands and, in case of animals, the ages and sexes.

Certificate of inspection.  
*Ib.*

ART. 4651. He shall also carefully examine the bills of sale and lists of brands and marks for the cattle inspected by him, and if satisfied that the person claiming the cattle inspected has correct bills of sale or chain of transfer in writing from the recorded owner, or is the owner himself in whole or part of the mark and brand of each animal in his drove or herd which should be inspected, and that he has none other in said herd

or under his control to be carried with it, he will then, and not until then, make out a certificate, which he shall first enter in his record, under his hand and seal, containing the number of cattle in each mark and brand, with their respective ages and sexes, thus inspected, and that they appear to be the property of the person for whom they were inspected, naming him or her, as appears by bills of sale from the recorded owner of the marks and brands on the cattle inspected by him, or the owner of the brand and mark himself or herself, and that he has none other in his herd or under his control that should be inspected; and that he intends to drive or ship them, naming the place in the state, for sale or slaughter; or, if out of the state, he shall then name the place on the border of the state through which it is proposed to drive or ship such stock.

ART. 4652. Whenever any person shall be about to drive or ship any stock out of the state, if the inspector shall believe, or is informed by any credible person, that said person has other stock in his herd than those covered by his original certificate of inspection, or by subsequent purchase duly attested by proper bill of sale, the inspector at said point of shipment, or border county where said person leaves the state, shall be authorized to inspect said stock in the same manner as in the original inspection; and if any stock is found in said herd other than those covered by his original certificate of inspection, or by subsequent purchase duly and properly authenticated by bill of sale, the fees of said inspection shall be paid as provided in article 4635 of this chapter (*provided*, that the said inspector shall in no case be authorized to receive or demand more than three cents per head for each head of cattle inspected); but if not, then said fees shall be paid by the person at whose instance said inspection was made; and if said inspection is made by the inspector, at his own instance, and no stock is found in said herd except those properly accounted for under the provisions of this article, then said inspector shall receive no fees for said inspection.

Inspection before exportation. (Acts 1879, extra session, ch. 22.)

ART. 4653. One of these certificates the inspector shall immediately remit by mail, postage paid, to the first inspector, and the party owning the cattle shall deposit the other with him in two months from the date of the original inspection, both to be kept by him in his office.

Certificate, where filed. *Ib.*

ART. 4654. But if the inspector at the point of destination shall find, upon inspection, that the owner of the herd or person in charge has in his herd other cattle besides those inspected originally in the county from which said herd was driven, he shall seize said cattle and take them into possession, and thereupon the same proceedings shall be had as are prescribed in article 4627.

Seizure of cattle not inspected originally. *Ib.*

ART. 4655. If the person in charge of any such cattle shall refuse to deliver the same into the possession of the inspector, such inspector may apply for and obtain a writ of sequestration from any justice of the peace, county judge or district judge, according as the value of such cattle may come within the jurisdiction of either. Such writ may be obtained upon the affidavit of the inspector, stating that he believes such cattle have been unlawfully acquired, and shall issue without bond, and be forthwith executed by the sheriff or any constable of the county; and thereupon the proceedings referred to in the preceding article shall be had before the officer issuing the writ, either in term time or in vacation.

Writ of sequestration, if necessary. *Ib.*

ART. 4656. The net proceeds of the sale of cattle condemned under the two preceding articles, save one-fourth of such proceeds retained by the inspector for his compensation, shall be paid into the county treasury, subject to the claim of the true owner of such cattle; and if no claim be set up and established thereto within one year from the date of its deposit, such proceeds shall pass into the general fund of the county, and all claims thereto shall thereafter be barred.

Proceeds paid into county treasury subject to claims. *Ib.*

ART. 4657. At the time such proceeds are originally deposited in the county treasury, the inspector shall accompany such deposit with a certi-

Description, etc., of cattle also filed. *Ib.*

ried statement, under his hand and seal, of the number of cattle sold, the mark and brand of each animal, and the amount for which each sold.

Change of  
destination.  
7b.

ART. 4658. If the owner of the inspected herd should desire to sell, slaughter or ship the cattle, or any of them, at any other place than the destination named in the original certificate of inspection, he may do so by first having his herd inspected at the point of destination therein named, and a new certificate of inspection issued to him at that point, naming the new point of destination or shipment; and upon his arrival at such new point of destination like proceedings shall be had, in the way of inspection, comparison and return of the certificates of inspection as are prescribed for the original point of destination.

Counties  
excepted from  
these regula-  
tions.  
7b. pp. 304-5,  
§46.

ART. 4659. The counties of Grimes, Madison, Walker, Trinity, Dallas, Ellis, Hopkins, Franklin, Titus, Red River, Grayson, Cooke, Rockwall, Hunt, Rains, Wood, Van Zandt, Kaufman, Limestone, Freestone, Navarro, McLennan, Anderson, Henderson, Cherokee, Fannin, Lamar, Delta, Rusk, Panola, Shelby, Brazos, Leon, Robertson, San Jacinto, Polk, Tyler, Jasper, Newton, Hardin, Nacogdoches, Houston, Angelina, Sabine, San Augustine, Smith, Upshur, Gregg, Camp, Denton, Collin, Bowie, Cass, Marion, Morris, Hill, Johnson, Fayette, Austin, Washington, Burleson, Bastrop and Harrison, are hereby excepted from the operation of this chapter, and the provisions of the same shall in no wise relate or apply to the same; but in counties upon the borders of the state, and in counties in the interior where there is a depot or place for the shipment of cattle, the governor may appoint an inspector, whose duty it shall be, under the provisions of this chapter, to inspect all hides or stock about to be shipped or driven out of the state, notwithstanding such counties may be included within the above enumeration of excepted counties.

Same subject.

NOTE.—Chapter 130, acts 1879, without referring to article 4659, amends section 46 of the act of August 23, 1876, so as to read as follows:

“Sec. 46. That the counties of Anderson, Angelina, Austin, Bastrop, Bowie, Brazos, Burleson, Camp, Cass, Chambers, Cherokee, Collin, Colorado, Cooke, Dallas, Delta, Denton, Ellis, Fannin, Fayette, Fort Bend, Franklin, Freestone, Galveston, Grayson, Gregg, Grimes, Hardin, Harris, Harrison, Henderson, Hill, Hopkins, Houston, Hunt, Jasper, Jefferson, Johnson, Kaufman, Lamar, Lee, Leon, Liberty, Limestone, Madison, Marion, Montgomery, Morris, Nacogdoches, Newton, Panola, Parker, Polk, Rains, Red River, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Tarrant, Titus, Trinity, Tyler, Upshur, Van Zandt, Walker, Waller, Washington and Wood, are hereby exempted from the operation of this act, and the provisions of the same shall in no wise relate or apply to the aforesaid counties, *provided*, that in those counties bordering on the lines of the state, except those bordering on Red river, whether organized or unorganized, the governor shall appoint an inspector, whose duty it shall be to inspect, under the provisions of this act, all stock about to be driven or shipped out of the state, or in any other county exempt from the operations of this act, where there is a depot or place for the shipment of cattle; *provided*, that such cattle shall not be subject to inspection on board of any railroad train, unless the same have been placed on board of such train for the purpose of evading the provisions of this act.”—L.

TITLE XCIV.

Stolen Property.

Article	Article
Treble value of stolen property recover- able, when .....	Criminal prosecution not affected by this title .....
4660	4661

ARTICLE 4660. If any person shall purchase, trade or barter for any personal property after nightfall, and the same shall afterward be proved to be stolen property, such person so purchasing, trading or bartering for said property, shall be hable to the true owner thereof in three times the value of the same, to be recovered in any court having jurisdiction of the case.

Treble value of stolen property recoverable, when. (Act June 23, 1876, p. 26)

ART. 4661 Nothing in this title shall be so construed as to relieve any person so offending from prosecution under the criminal laws.

Criminal prosecution not affected by this title.

TITE XCV.

Taxation.

CHAPTER ONE.

OF THE LEVY OF TAXES AND PAYMENT OF OCCUPATION TAXES.

	Article	Article
Direct <i>ad valorem</i> tax . . . . .	4662	Tax to be paid before engaging in occupation. . . . . Sup., sec. 8
Poll tax . . . . .	4664	Tax a lien upon property of person or firm. . . . . Sup., sec. 8
Occupation tax . . . . .	4665	Collector to sell after notice. . . . . Sup., sec. 8
Retail liquor tax to cease, when . . . . .	4665	Comptroller to furnish occupation tax receipts to collector. . . . . Sup., sec. 9
License may issue for less than a year, and county may levy half state tax. . . . . 4666 and	4668	Receipt shall contain, what. . . . . Sup., sec. 9
Taxes payable in coin or currency. . . . .	4667	Collector to account for receipts furnished him. . . . . Sup., sec. 9
Comptroller to keep in book the amount of occupation tax each person is liable for. . . . .	Sup., sec. 6	How blank receipt to be filled. . . . . Sup., sec. 9
To furnish comptroller with duplicate. . . . .	Sup., sec. 6	License to be posted up in place of business. . . . . Sup., sec. 9
Penalty for failure. . . . .	Sup., sec. 6	
Comptroller to furnish books and blanks. . . . .	Sup., sec. 7	

Direct *ad valorem* tax. (Const., art. 8.) (Act Aug. 19, 1876, pp. 242-3, §1.) (Acts 1879, ch. 134, p. 143.)

ARTICLE 4662. There shall be levied and collected an annual direct *ad valorem* state tax of one-half of one per centum of the cash value thereof, estimated in lawful currency of the United States, on all real property situated and all movable property owned in this state, on the first day of January of each and every year, except so much thereof as may be exempted by the constitution and laws of this state, which cash value shall be estimated in the lawful currency of the United States.

NOTE.—Article 4663, and so much of chapter 134, acts of 1879, regular session, as amended it, repealed by section 2, chapter 6, acts of 1879, extra session.—L.

Poll tax. *Ib.* §2. (Acts 1879, ch. 134, p. 143.)

ART. 4664. There shall be levied and collected from every male person between the ages of twenty-one and sixty years, resident within this state on the first day of January of each year (Indians not taxed, and persons insane, blind or those who by amputation or otherwise have lost the use of both hands, or both feet, or one hand and one foot, excepted), an annual poll tax of two dollars each; one dollar for the benefit of public schools, and one dollar for general revenue purposes.

Occupation taxes. *Ib.* §3. (Acts 1879, ch. 134, pp. 143-8.)  
Liquor dealers.

ART. 4665. There shall be levied on and collected from every person, firm, company, or association of persons pursuing any of the following named occupations, an annual tax (except when herein otherwise provided) on every such occupation, or separate establishment, as follows. For selling spirituous, vinous or other intoxicating liquors or medicated bitters in quantities less than a quart, two hundred and fifty dollars; for selling in quantities of one quart and less than five gallons, one hundred and fifty dollars; for selling in quantities of five gallons or more, two hundred dollars.

Lager beer. (See "bell-punch bill," ch. 66, acts 1879.—L.)  
Merchants.

From every person, firm or association of persons selling beer exclusively, an annual tax of fifty dollars.

From every merchant whose purchases amount to one hundred thousand dollars annually, two hundred dollars; from every merchant whose annual purchases amount to fifty thousand dollars, one hundred dollars; from every merchant whose annual purchases amount to twenty-five thousand dollars, fifty dollars; from every merchant whose annual purchases

amount to fifteen thousand dollars, thirty dollars; from every merchant whose annual purchases amount to ten thousand dollars, twenty dollars; from every merchant whose annual purchases amount to five thousand dollars, ten dollars; from every merchant whose annual purchases amount to two thousand dollars or less, five dollars.

From every commercial traveler, drummer, salesman or solicitor of trade by sample or otherwise, an annual occupation tax of two hundred dollars; *provided*, that such person shall not be required to pay the same if the person, firm or association of persons represented by him or for whom he is soliciting trade shall have paid a merchant's occupation tax, as provided in this section, of two hundred dollars, and any firm, person or association of persons desiring to be represented or solicit trade by such commercial traveler or travelers shall have the right to do so by paying to the comptroller of the state a state tax of two hundred dollars, payable annually in advance, and such person, firm or association of persons paying such tax shall be exempt from the payment of any other state occupation tax as a merchant; *and provided further*, that the tax herein required to be paid by such commercial traveler, drummer, salesman or solicitor shall be paid to the comptroller of public accounts, whose receipt under seal shall be evidence of the payment of such tax; *and provided further*, that no county, city or town shall levy or collect any occupation tax upon such commercial traveler, drummer, salesman or solicitor; *provided*, that nothing herein contained shall apply to any one soliciting subscriptions for religious, literary or historical books, or maps. A merchant in the meaning of this act is any person, firm or association of persons engaged in buying and selling goods, wares and merchandise of any kind whatever.

Drummers.

"Merchant" defined.

From every traveling person selling patent or other medicines, two hundred dollars, and no traveling person shall so sell until said tax is paid.

Patent medicine peddlers.

From every fortune-teller, two hundred dollars.

Fortune-teller.

From every clairvoyant or mesmerist, who plies his or her vocation for money, five dollars for each and every county in which such vocation is carried on.

Clairvoyant.

From every person, firm or association of persons engaged in discounting and shaving paper, or engaged in business as money-brokers or bankers, or in buying and selling bonds, state or county warrants, or other claims against the state, an annual tax of twenty dollars, in a city or town of not more than two thousand inhabitants; in a city or town of five thousand and not less than two thousand inhabitants, an annual tax of fifty dollars; in a city or town of ten thousand and not less than five thousand inhabitants, an annual tax of one hundred dollars; in a city or town of twenty thousand and not less than ten thousand inhabitants, an annual tax of one hundred and fifty dollars; in a city or town of forty thousand and not less than twenty thousand inhabitants, an annual tax of two hundred dollars.

Paper-shavers, brokers and bankers.

From every operator or owner of any daguerrean, photograph or other such like gallery by whatever name called, if in any incorporated city or town of less than five thousand inhabitants, ten dollars; if more than five thousand inhabitants, twenty dollars; and if elsewhere, five dollars; and from every person soliciting work for any daguerrean, photograph or such like gallery, where such gallery is not situated in the county in which he solicits such work, ten dollars.

Photographers, etc.

From every auctioneer doing business in a city of ten thousand inhabitants or more, an annual tax of seventy-five dollars; from every auctioneer in a city or town of five thousand and not more than ten thousand inhabitants, fifty dollars; from every auctioneer in a city or town of two thousand inhabitants and not more than five thousand, thirty dollars; from auctioneers in all other towns or villages, twenty dollars.

Auctioneers.

- Ship merchants.** From every person, firm or association of persons following the occupation of ship merchandising, if in a city or town of ten thousand inhabitants or more, twenty-five dollars; if in a city or town of less than ten thousand inhabitants, ten dollars.
- Toll bridge.** From every keeper of a toll bridge, an annual tax of ten dollars.
- Commission merchants.** From every person, firm or association of persons selling upon a commission, an annual tax of ten dollars.
- Land agents.** From land agents there shall be collected an annual tax of ten dollars; the term "land agent" shall be construed to mean any person, firm or association of persons, performing for compensation any of the following services: purchasing or selling real estate for others; purchasing or selling land certificates for others; examinations into land claims for others. But this term "land agent" shall not be so construed as to levy any tax upon attorneys in addition to the one hereinafter levied, when pursuing the occupation of an attorney strictly as such.
- Attorneys at law.** From every person practicing law, ten dollars; *provided*, that attorneys at law shall only pay county occupation tax in the county of his or their residence.
- Physicians.** From every practicing physician, having a permanent home in this state ten dollars; *provided*, that physicians shall only pay county occupation tax in the county of their residence; for every physician, surgeon, oculist or medical specialist of any kind, traveling from place to place in the practice of his profession, an annual tax of fifty dollars in each county where he may practice his profession.
- Traveling doctors.**
- Dentists.** From every dentist in a city or town of ten thousand inhabitants or more, twelve dollars; from every [other] dentist, ten dollars, but a dentist shall be liable for county occupation tax only in the county of his residence.
- Bill-posters.** From every person, firm or association of persons pursuing the occupation of posting up advertising bills or notices, tacking up advertising cards or notices, of tin, wood or other material, printing or lettering words or pictures on fences or other places as a means of advertising, the sum of twenty-five dollars per annum for the state, and in each county in which the occupation may be pursued, an annual tax of five dollars.
- Shooting galleries.** From every person or firm keeping a shooting gallery at which a fee is paid or demanded, an annual tax of twenty dollars in each county.
- Billiard and other tables.** For every billiard, bagatelle, pigeon-hole, devil-among-the-tailors or jenny lund table, or anything of the kind used for profit, fifty dollars.
- Horse races.** (Acts 1879, extra session, ch. 32.) For every horse race on which money or anything of value is bet, where the distance ran does not exceed four hundred and forty yards, twenty-five dollars for each horse entered, to be paid to the tax collector before the race is run by the person entering the horse.
- Pool-sellers.** From every person or persons who sell pools on horse races, five dollars for each and every day they may so sell said pools.
- Ten-pin alleys.** For every nine or ten-pin alley, without regard to the number of pins, used for profit, one thousand dollars; any such alley used in connection with any drinking saloon or any drug store, or upon which any money or thing of value is paid, where intoxicating liquors are sold or given away, shall be regarded as used for profit.
- Flying Dutchman.** On all persons keeping or using for profit any hobby-horse or flying-jenny, or device of that character with or without name, twenty dollars for each county wherein the same are kept or used.
- Peddlers.** For every foot-peddler, ten dollars in each county where he peddles; for every peddler with one horse or one pair of oxen, the sum of twenty-five dollars in each county where he peddles; for every peddler with two horses or two pairs of oxen, forty dollars in each county in which he may pursue such occupation; *provided*, nothing herein contained shall be so construed as to include traveling vendors of tin or earthenware.

For every theater or dramatic representation for which pay for admission is demanded or received, five dollars for each day they may perform or one hundred and twenty-five dollars per quarter; *provided*, that theatrical or dramatic representations given by performers for instruction only, or for charitable purposes, shall not be herein included. Theaters, etc.

For every circus where equestrian or acrobatic feats and performances are exhibited, for which pay for admission is demanded or received, for each performance thereof, fifty dollars, notwithstanding more than one such performance may take place daily; for every exhibition where acrobatic feats are performed for profit, not connected with a circus, ten dollars for each performance. Circuses and acrobatic feats.

For every sleight of hand performance or exhibition of legerdemain, ten dollars. Sleight of hand.

For every fight between men and bulls, or between dogs and bulls, or between bears and dogs, or between bulls and any other animal, five hundred dollars for each performance, if exhibited for pay; for every cock-fight, when exhibited for profit, or upon which any money or thing of value is bet or paid, five dollars. Bull-fights.  
Cock-fights.

For every menagerie, wax-work exhibition of any kind, where a separate fee for admission is demanded or received, ten dollars for every day on which fees for such admission are received. Menagerie and wax-work.

For every concert where a fee for admission is demanded or received, five dollars; *provided*, that entertainments when given by the citizens for charitable purposes, or for the support or aid of literary associations, are excepted. Concerts.

For every livery or feed stable, fifty cents for each stall, and fifty cents on each hack, buggy or other vehicle; for every hack, buggy or other vehicle let for hire, not connected with a livery stable, three dollars; for every wagon-yard not connected with a livery, feed or sale stable, ten dollars. Livery stables

From every person, firm or association of persons dealing in stocks or bills of exchange, in a city or town exceeding ten thousand inhabitants, an annual tax of seventy-five dollars; in a city or town of five thousand inhabitants and less than ten thousand, an annual tax of fifty dollars; in a city or town of one thousand and less than five thousand inhabitants, an annual tax of twenty dollars; in any city or town of less than one thousand inhabitants, an annual tax of ten dollars. Stock brokers.

From every life insurance company doing business in this state, an annual tax of three hundred dollars, and in every county in which they may do business, ten dollars as county tax. Life insurance companies.

From every fire and marine insurance company doing business in this state, an annual tax of two hundred dollars, and in every county in which they may do business, ten dollars as county tax. The state tax due from insurance companies shall be paid by such companies to the comptroller of public accounts, whose receipt, under seal, shall be issued to the company or companies, certified copies of which shall be evidence of payment of state tax, and the county collector's receipt shall be authority to work in any county of this state for which such company has a receipt. Fire and marine insurance companies.

From every person, firm or association of persons dealing in lightning-rods, an annual tax of fifty dollars to the state on every wagon, and ten dollars each to the several counties in which such business may be done on each and every wagon run or used in said lightning-rod business by any person, firm or association of persons. Lightning-rod men.

From every person, firm or association of persons following the occupation of cotton brokers, cotton factors and commission merchants, in a city of more than five thousand inhabitants, an annual tax of fifty dollars, and in all other cases an annual tax of twenty-five dollars; *provided*, that a merchant who pays an occupation tax as under [this article] section three of this act shall not be considered as a "cotton broker." Cotton brokers and commission merchants



Pawnbrokers.  
Sewing machine men.

From every pawnbroker, an annual tax of one hundred dollars.

From every person, firm or association of persons canvassing for the sale of sewing machines or peddling clocks, an annual tax of twenty dollars to the state, and ten dollars as county tax in every county where such business may be carried on; *provided*, that a merchant who pays an occupation tax as required by this section [article] shall not be required to pay this special tax for selling sewing machines or clocks. The state tax herein levied shall be paid to the comptroller of public accounts, whose receipt, under seal, shall be issued to such person, firm or association of persons selling sewing machines or clocks, certified copies of which shall be evidence of payment of state tax.

Express companies.

From every person, firm or association of persons doing any express business in this state, an annual tax of seven hundred and fifty dollars shall be levied and collected; this tax to be paid by such person, firm or association of persons doing an express business, to the comptroller of public accounts, whose receipt, under seal, shall be issued to the company or companies, certified copies of which shall be evidence of the payment of the state, county and municipal occupation tax; *provided*, that two hundred and fifty dollars of said annual tax shall be apportioned pro rata, according to the business done in each, among the counties in which said company or companies may have offices and agents representing and doing business for the same, by the comptroller of public accounts, and paid in accordance therewith to each county, or passed to its credit.

Sleeping cars.

NOTE.—Chapter 43, acts of 1879, extra session, repeals the occupation tax on sleeping, palace and dining-room car companies embodied in this article, as amended and re-enacted in chapter 134, acts of 1879, regular session, and levies an annual direct *ad valorem* tax of one-half of one per cent. upon the value of such cars.—L.

Passenger travel.

From every person, firm or association of persons owning or running any railroad cars, steamboats or stage-coaches in this state, there shall be collected, quarterly, on the first days of January, April, July and October of each year, a tax of one per centum upon their gross receipts from all passenger travel within this state, the same gross receipts to be returned under oath by said owner, agent or manager of said company to the comptroller, and said tax to be collected by the comptroller under such regulations as he may prescribe; *provided*, that nothing herein contained shall authorize the levy of any county or municipal tax upon such person, firm or association of persons.

Telegraph messages.

From every chartered telegraph company doing business within this state, there shall be collected one cent for every full-rate message, and one-half that for every message less than a full-rate message sent, this tax to be paid quarterly to the comptroller on the sworn statement of the chief manager of said company or companies, who shall keep a record of such messages, and the receipt of the comptroller, under seal, shall be issued to said company or companies, certified copies of which shall be evidence of the payment of the state tax; *provided*, railroad messages for running their trains and for company use shall not be taxed; *provided further*, that nothing herein contained shall authorize the levy or collection of any county or municipal tax upon any such chartered company for messages sent.

Gas companies

On each gas company manufacturing gas, fifty dollars.

Retail liquor tax to cease, when.

*Provided further*, that the tax herein levied upon retail dealers in spirituous, vinous or other intoxicating liquors, or medicated bitters in quantities less than a quart, and upon the retail of beer, shall cease and be inoperative from and after the first day of October, 1879; *provided further*, that the payment of the tax hereafter [heretofore] imposed by law shall not authorize any person or firm to pursue an occupation upon which a tax is imposed by this act [article], except on compliance with the provisions of this act [article], and such person or firm shall have credit on the amount of tax levied by this act [article], for the amount already paid by him or

them, on so much of the term paid for as shall not have expired at the time this act [article] shall take effect.

ARTS. 4666 and 4668. The commissioners' courts of the several counties of this state shall have the power to levy taxes equal to one-half of the state tax herein levied, except on occupations in which there is a specific rate of taxation payable to the county as fixed in this act [chapter]; *provided*, that any one wishing to pursue any of the vocations named in this act [chapter], upon which the annual state tax is more than ten dollars, for a less period than one year, may do so by paying pro rata of such occupation for the period he may desire; *provided further*, that no such occupation license shall issue for a less period than three months; *and provided further*, that the receipt of the proper officer shall be *prima facie* evidence of the payment of such tax; *and provided further*, that the provisions of this act [chapter] shall not be deemed to affect the provisions of any law specially authorizing any commissioners' court to levy a different rate of tax; *and provided further*, that the tax herein authorized to be levied by the county commissioners' court shall not be construed to authorize said courts to levy a higher rate of tax than ten dollars each on life, and on fire and marine insurance companies, and ten dollars each on lightning-rod wagons, and twenty dollars on each person, firm or association of persons selling sewing machines or clocks in any of the counties; *provided further*, no person shall be allowed license for selling intoxicating or spirituous liquors, or for keeping any nine or ten-pin alley, or billiard, bagatelle, pigeon-hole, jenny lind, devil-among-the-tailors' table, or any thing of the kind used for profit, for a period of less than twelve months; *provided further*, that the mayor and board of aldermen of any incorporated city or town shall in no case levy a greater tax on any occupation than that authorized by this section [chapter] to be levied by the county commissioners' court.

Counties may levy half state tax. (Acts 1879, ch. 134, p. 148.)

License may issue for less than a year, when.

ART. 4667. The taxes herein levied by this act [chapter] are hereby made payable in the currency or coin of the United [States]; *provided*, that all county *ad valorem* taxes may be paid in the jury and county scrip of their respective counties.

Taxes payable only in money. *Tb. 86.* (Acts 1879, ch. 134, p. 148.)

NOTE.—Chapter 134, acts of 1879 (an act to amend and *supplement* the articles contained in this chapter of the Revised Civil Statutes), blends articles 4666 and 4668 into one article, as above, and contains, coming immediately after article 4667, the following sections, which are here inserted as the *supplement* to this chapter contemplated in the act.—L.

#### SUPPLEMENT TO CHAPTER ONE.

SEC. 6. That 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, commencing on July 1, 1879, in which to require the returns to be made under the provisions of this act, 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 [article 4665] section three of 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 amount 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 act [section] is intended to affect

Collectors to keep in book the amount of occupation tax each person is liable for. (Acts 1879, ch. 134, p. 148.)

To furnish comptroller with duplicate.

Penalty for failure.

the liability, which in the absence of this statute, would be incurred under any penal enactment of this state.

Comptroller to furnish books and blanks. (Acts 1879, ch. 134, p. 149.)

SEC. 7. That the comptroller of public accounts shall be authorized and required to furnish tax collectors the necessary books and blanks required to be used by such collectors under the provisions of this act [supplement].

Tax to be paid before engaging in occupation. (Acts 1879, ch. 134, p. 149.)

SEC. 8. That the payment of the specific tax herein provided for shall be required by the collector of taxes to be made before any person, firm or association of persons shall be allowed to engage in any occupation requiring a license under the provisions of this act [chapter], this payment to be made for a period not less than three months; that all arrearages of taxes that may be due by reason of any such business having been carried on, shall be a lien upon all the stock and fixtures owned or used in, or making a part of any business or vocation liable to such tax under the provisions of this act [chapter], and which lien shall authorize the collector to sell, after due notice, so much of such stock or other personal property of any person, firm or association of persons owing taxes under the provisions of this act [chapter], as will satisfy such claim, together with the costs of such proceeding.

Tax a lien upon property of person or firm.

Collector to sell after notice.

Comptroller to furnish occupation tax receipts to collectors. *Id.*

SEC. 9. The comptroller shall cause occupation tax receipts for each occupation to be printed, with his signature, for all occupations payable to the collectors, annual receipts for those that are paid annually, and quarterly receipts for all that can be paid quarterly; said receipt shall state the name of the occupation, and the amount of the tax, and have blanks for the year, month and name of licenses, and also have a blank space for signature of the collector; these receipts shall each have a stub attached stating briefly the substance of the attached receipt, and shall be bound in books; and he shall forward to each collector a proper number of said receipts, and charge him with the amount represented therein, and cause him to account therefor. The collector whenever collecting any occupation tax shall fill the blanks in the receipt and stub, by writing thereon the time for which he collects and the name of the license, and shall sign the receipt and stub officially; and no person shall pursue any occupation unless he has a receipt, signed as herein provided by the comptroller and collector; and every person, firm or corporation keeping an office, or having a local place of business, shall keep posted up in a conspicuous place his or their said licenses.

Receipt shall contain, what.

Collector to account for receipts furnished him.

How blank receipt to be filled.

Licenses to be posted up in place of business.

## CHAPTER TWO.

### OF THE PROPERTY SUBJECT TO TAXATION AND THE MODE OF RENDERING THE SAME.

	Article		Article
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Real property includes, what.....	4670	Certain credits and stocks not to be listed..	4682
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Listing to be under oath.....	4680		

All property to be taxed. (Act Aug. 21, 1876, p. 275, §1.)

Real property includes what. *Id.* §2.

ARTICLE 4669. All property, real, personal or mixed, except such as may be hereinafter expressly exempted, is subject to taxation, and the same shall be rendered and listed as herein prescribed.

ART. 4670. Real property, for the purpose of taxation, shall be construed to include the land itself, whether laid out in town lots or otherwise, and all the buildings, structures and improvements or other fixtures

of whatsoever kind thereon, and all the rights and privileges belonging or in any wise appertaining thereto, and all mines, minerals, quarries and fossils in and under the same.

ART. 4671. Personal property shall, for purposes of taxation, be construed to include all goods, chattels and effects, and all moneys, credits, bonds and other evidences of debt owned by citizens of the state, whether the same be in or out of the state; all ships, boats and vessels belonging to inhabitants of this state, if registered in this state, whether at home or abroad, and all capital invested therein; all moneys at interest, either within or without this state, due the person, to be taxed over and above what he pays interest for, and all other debts due such persons over and above their indebtedness; all public stock and securities; all stock in turnpikes, railroads, canals and other corporations (except national banks) out of the state, owned by inhabitants of this state; all personal estate of moneyed corporations, whether the owners thereof reside in or out of this state, and the income of any annuity, unless the capital of such annuity be taxed within the state; all shares in any bank organized or that may be organized under the law of the United States; all improvements made by persons upon lands held by them, the title to which is still vested in the State of Texas, or in any railroad company, or which have been exempted from taxation for the benefit of any railroad company or any other corporations, or any other corporation whose property is not subject to the same mode and rule of taxation as other property.

Personal property includes what. *Ib.* §3. (Acts 1879, ch. 40, p. 39.)

ART. 4672. The term "money" or "moneys," wherever used in this title shall, besides money or moneys, include every deposit which any person owning the same or holding in trust and residing in this state, is entitled to withdraw in money on demand.

Definition of terms. *Ib.* §4.

The term "credits" wherever used in this title shall be held to mean and include every claim and demand for money or other valuable thing, and every annuity or sum of money receivable at stated periods, due or to become due, and all claims and demands secured by deed or mortgage, due or to become due.

"Credits."

The terms "tract or lot" and "piece or parcel" of real property, and piece and parcel of land, wherever used in this title, shall each be held to mean any quantity of land in possession of, owned by or recorded as the property of the same claimant, person, company or corporation.

"Tract or lot"

Every word importing the singular number only may extend to and embrace the plural, and every word importing the plural number may be applied and limited to the singular number; and every word importing the masculine gender only may be extended and applied to females as well as males.

"Singular and plural."

Whenever the word "oath" is used it shall be held to mean oath or affirmation; and the word "swear" may be held to mean affirm.

"Oath."

The words "town or district" wherever used shall be construed to mean village, city, ward or precinct, as the case may be.

"Town or district."

The term "true and full value" wherever used shall be held to mean the fair market value, in cash, at the place where the property to which the term is applied shall be at the time of assessment, being the price which could be obtained therefor at private sale, and not at forced or auction sale.

"Value."

The term "person" shall be construed to include firm, company or corporation.

"Person."

ART. 4673. The following property shall be exempt from taxation, to wit:

Exemptions from taxation. (Const., art. 8, §§1, 2; art. 11, §9.) *Ib.* p. 276, §5.

1. Public school-houses and houses used exclusively for public worship; the books and furniture therein and the grounds attached to such buildings necessary for the proper occupancy, use and enjoyment of the same, and not leased or otherwise used with a view to profit; all public colleges,

Schools and churches.

public academies, all buildings connected with the same, and all the lands immediately connected with public institutions of learning; and all endowment funds of institutions of learning not used with a view to profit; and all buildings used exclusively and owned by persons, or associations of persons, for school purposes. This provision shall not extend to leasehold estates of real property held under the authority of any college or university of learning.

**Cemeteries.**

2. All lands used exclusively for graveyards, or grounds for burying the dead, except such as are held by any person, company or corporation with a view to profit, or for the purpose of speculation in the sale thereof.

**Public property.**

3. All property, whether real or personal, belonging exclusively to this state or any political subdivision thereof, or the United States.

**County buildings.**

4. All buildings belonging to counties used for holding courts, for jails or for county offices, with the land belonging to and on which such buildings are erected.

**Poor-houses.**

5. All lands, houses and other buildings belonging to any county, precinct or town, used exclusively for the support or accommodation of the poor.

**Public charities.**

6. All buildings belonging to institutions of purely public charity, together with the lands belonging to and occupied by such institutions, not leased or otherwise used with a view to profit, and all moneys and credits appropriated solely to sustaining such institutions.

**Fire engines.**

7. All fire engines and other implements owned by towns and cities, used for the extinguishment of fires, with the buildings used exclusively for the safe-keeping thereof.

**Market houses, etc.**

8. All market houses, public squares or other public grounds, town or precinct houses or halls, used exclusively for public purposes, and all works, machinery or fixtures belonging to any town and used for conveying water to such town.

**Public libraries.**

9. All public libraries and personal property belonging to the same.

**Furniture.**

10. Household and kitchen furniture, not exceeding at their true and full value two hundred and fifty dollars to each family, in which may be included one sewing machine.

**Pensions.**

11. All annual pensions granted by the state.

**When property to be rendered.**

*Ib.* p. 277, §6.

ART. 4674. All property shall be listed for taxation between January 1 and June 1 of each year, when required by the assessor, with reference to the quantity held or owned on the first day of January in the year for which the property is required to be listed or rendered. Any property purchased or acquired on the first day of January shall be listed by or for the person purchasing or acquiring it.

**How to be rendered.**

*Ib.* §7.

**By the owner.**

ART. 4675. All property shall be listed or rendered in the manner following:

1. Every person of full age and sound mind, being a resident of this state, shall list all of his real estate, moneys, credits, bonds or stock of joint stock or other companies (when the property of such company is not assessed in this state), moneys loaned or invested, annuities, franchises, royalties and all other property.

**As agent.**

2. He shall also list all lands or other real estate, all moneys and other personal property invested, loaned or otherwise controlled by him as the agent or attorney, or on account of any other person, company or corporation whatsoever, and all moneys deposited subject to his order, check, or drafts and credits due from or owing by any person, body corporate or politic.

**Minor.**

3. The property of a minor child shall be listed by his guardian, or by the person having such property in charge.

**Wife.**

4. The property of a wife, by her husband, if of sound mind; if not, by herself.

**Idiot.**

5. The property of an idiot or lunatic, by the person having charge of such property.

6. The property of a person for whose benefit it is held in trust by the trustee of the estate; of a deceased person, by the executor or administrator. *Cestui que trust*
7. The property of corporations whose assets are in the hands of receivers, by such receivers. Receivers.
8. The property of a body politic or corporate, by the president or proper agent or officer thereof. Corporations.
9. The property of a firm or company, by a partner or agent thereof. Copartnership
10. The property of manufacturers and others in the hands of an agent, by such agent, in the name of his principal, as real, personal and merchandise. Manufactories
11. The stock of nurseries, growing or otherwise, in the hands of nurserymen, shall be listed and assessed as merchandise. Nurseries
- ART. 4676. All property, real and personal, except such as is required to be listed and assessed otherwise, shall be listed and assessed in the county where it is situated. Where to be rendered. *Ib.* §8.
- NOTE —Chapter 141, acts of 1879, provides that lands lying on county boundaries, which have not been accurately and legally surveyed, determined or fixed, shall not be assessed or taxed in more than one county; and that lands which may have been assessed in any county, according to the abstract of land titles, and the taxes paid thereon, shall not be subject afterward to the payment of taxes for the same period in a different county, although a subsequent determination of the county boundaries may show the land to be in another county than that in which the assessment was originally made; and any sales of such lands for alleged delinquency shall be illegal and void.—L. To be rendered in but one county.
- ART 4677. All persons, companies and corporations in this state owning steamboats, sailing vessels, wharf-boats and other water crafts, shall be required to list the same for assessment and taxation in the county in which the same may be enrolled, registered or licensed, or kept when not enrolled, registered or licensed. Vessels where listed. *Ib.* §10.
- ART. 4678. All railroad, telegraph, plank-road and turnpike companies shall list all of their real and personal property, giving the number of miles of road-bed and line in the county where such road-bed and line is situated, at the full and true value, except when such company may own personal property or real estate in an unorganized county or district, then they shall list such property to the comptroller. Railroads, telegraphs, etc. *Ib.* §11.
- ART. 4679. Persons required to list property on behalf of others shall list it in the same manner in which they are required to list their own, but they shall list it separately from their own, specifying in each case the name of the person, estate, company or corporation to whom it belongs. Listing for others *Ib.* p 278, §12.
- ART. 4680. Each person required by law to list property shall make and sign a statement, verified by his oath, as required by law, of all property, both real and personal, in his possession or under his control, and which he is required to list for taxation, either as owner or holder thereof, or as guardian, parent, husband, trustee, executor, administrator, receiver, accounting officer, partner, agent or factor. Shall list under oath. *Ib.* §13.
- ART. 4681. Such statement shall truly and distinctly set forth— The statement and its requisites. *Ib.* §14.
1. The name of the owner.
  2. The abstract number.
  3. The number of the survey.
  4. The name of the original grantee and the number of the certificate.
  5. The number of acres.
  6. The value of the land.
  7. The number of the lot or lots.
  8. The number of the block.
  9. The value of town lots.
  10. The name of the city or town.
  11. The number of miles of railroad in the county.
  12. Value of railroads and appurtenances.

13. Number of miles of telegraph in the county.
14. Value of telegraph and appurtenances in the county.
15. Number and amount of land certificates and value thereof.
16. Number of horses and mules and the value thereof.
17. Number of cattle and value thereof.
18. Number of jacks and jennets and value thereof.
19. Number of sheep and value thereof.
20. Number of goats and value thereof.
21. Number of hogs and dogs and value thereof.\*
22. Number of carriages, buggies or wagons, of whatsoever kind, and value thereof.
23. Number of sewing machines and knitting machines and value thereof.
24. Number of clocks and watches and value thereof.
25. Number of organs, melodeons, piano-fortes, and all other musical instruments of whatsoever kind, and value thereof.
26. The value of household and kitchen furniture over and above the amount of two hundred and fifty dollars.
27. Office furniture and the value thereof.
28. The value of gold and silver plate.
29. The value of diamonds and jewelry.
30. Every annuity or royalty, the description and value thereof.
31. Number of steamboats, sailing vessels, wharf-boats, barge or other water craft, and the value thereof.
32. The value of goods, wares and merchandise, of every description, which such person is required to list as a merchant (in hand on the first day of January of each year).
33. Value of materials and manufactured articles which such person is required to list as a manufacturer.
34. Value of manufacturers' tools, implements and machinery, other than boilers and engines, which shall be listed as such.
35. Number of steam engines, including boilers, and the value thereof.
36. Amount of moneys of bank, banker, broker or stock jobber.
37. Amount of credits of bank, banker, broker or stock jobber.
38. Amount of moneys other than of bank, banker, broker or stock jobber.
39. Amount of credits other than of bank, banker, broker or stock jobber.
40. Amount and value of bonds and stocks (other than United States bonds).
41. Amount and value of shares of capital stock companies and associations not incorporated by the laws of this state.
42. Value of all property of companies and corporations other than property hereinbefore enumerated.
43. Value of stock and furniture of saloons, hotels and eating-houses.
44. Value of every billiard, pigeon-hole, bagatelle or other similar tables, together with the number thereof.
45. Every franchise, the description and value thereof.
46. Value of all other property not enumerated above.

Certain credits and stocks not to be listed.  
*Id.* §14.

ART. 4682. No person shall be required to list or render a greater portion of his credits than he believes will be received or can be collected, or to include in his statement as a part of his personal property, which is required to be listed, any share or portion of the capital stock or property of any company or corporation which is required to list or return its capital and property for taxation.

\*NOTE.—Chapter 9, acts of 1879, repeals the tax for the privilege of keeping or harboring dogs, but makes no reference to the *ad valorem* tax on the same animals provided in this article, and it is left standing.—L.

ART. 4683. Persons listing or rendering real estate shall make a statement, duly signed and under oath, which shall truly and distinctly set forth—

Rendition of  
real estate.  
Ib. p. 279, §15.

1. The name of the owner, abstract number, number of survey, the number of the certificate, the name of the original grantee, the number of acres and the true and full value thereof.

2. The number of the lot and block and the true and full value thereof, together with the name of the town or city.

3. When the name of the original grantee, or abstract number, or number of certificate, or number of survey is unknown, say "unknown," and give such description so that land or lot can be identified and the true and full value thereof can be determined.

ART. 4684. Every bank, whether of issue or deposit, banker, broker, dealer in exchange or stock-jobber shall, at the time fixed by this chapter for listing personal property, make out and furnish the assessor of taxes a sworn statement, showing—

Banks, brokers  
and stock-  
jobbers.  
Ib. §16.

1. The amount of money on hand or in transit.

2. The amount of funds in the hands of other bankers, brokers or others subject to drafts.

3. The amount of checks or other cash items, the amount thereof not being included in either of the preceding items.

4. The amount of bills receivable, discounted or purchased, and other credits due or to become due, including accounts receivable, interest accrued but not due, and interest due and unpaid.

5. The amount of bonds and stocks of every kind, and shares of capital stock or joint stock of other companies or corporations held as an investment or in any way representing assets.

6. All property appertaining to said business other than real estate (which real estate shall be listed and assessed as other real estate is listed and assessed under this chapter).

7. The amount of all deposits made with them by other parties.

8. The amount of all accounts payable other than current deposit accounts.

9. The amount of bonds or other securities exempt by law from taxation, and the amount of shares of stock of any company or corporation which is required to list its capital for taxation, specifying the amount and kind of each, the same being included in the preceding fifth item.

The aggregate amount of the first, second and third shall be listed as money; the amount of the sixth item shall be listed the same as other similar personal property is listed under this chapter. The aggregate amount of the seventh and eighth items shall be deducted from the aggregate amount of the first, second, third and fourth items of said statement, and the amount or the remainder, if any, shall be listed as credits. The aggregate amount of the ninth item shall be deducted from the aggregate amount of the fifth item of such statement, and the remainder shall be listed as bonds or stocks.

ART. 4685. No person, company or corporation shall be entitled to any deduction on account of any bond, note or obligation of any kind given to any mutual insurance company, nor on account of any unpaid subscription to any religious, literary, scientific or charitable institution or society, nor on account of any subscription to or installment payable on the capital stock of any company, whether incorporated or unincorporated.

No deductions  
in certain  
cases.  
Ib. p. 280, §17.

ART. 4686. It shall be the duty of every railroad corporation in this state to deliver a sworn statement, on or before the first day of June in each year, to the assessor of each county and corporated town into which any part of their road shall run, or in which they own or are in possession of real estate, a classified list of all real estate owned or in the possession of said company in said county or town, specifying—

Rendition by  
railroads.  
Ib. §18



1. The whole number of acres of land owned, possessed or appropriated for their use, with a valuation affixed to the same.

2. The whole length of their superstructure and value thereof; and construing "superstructure" to mean the ties, chairs, rails, spikes, frogs and switches, whether such superstructure be laid on land or on artificial foundations.

3. The buildings, machinery and tools therein belonging to the company or in their possession, describing them by location, with the estimated value.

Rolling stock,  
how listed.  
(Const., art. 8,  
§8.)  
(Act Aug. 21,  
1876, p. 280,  
§19.)

ART. 4687. It shall be the duty of every railroad corporation in this state to deliver a sworn statement, on or before the first day of April in each year, to the assessor of the county in which its principal office is located, setting forth the true and full value of the rolling stock of such railroad, together with the names of the different counties through which the road may run, and the number of miles of road-bed in each county. Such statement shall be made in duplicate, and one copy thereof shall be forwarded immediately by the assessor to the comptroller of public accounts, who shall proceed at once to apportion the tax upon such rolling stock among the several counties according to the amount of road-bed in each, and to certify such apportionment to the assessors of such counties, who shall list and enter the same upon the rolls for taxation as other personal property situated in the county.

Assessments  
and collections  
of corporate  
property.  
*Id.* §§20, 21.

ART. 4688. All property of private corporations, except in cases where some other provision is made by law, shall be assessed in the name of the corporation, and in collecting the taxes on the same all the personal property of such corporation shall be liable to be seized whenever the same may be found in the county, and sold in the same manner as the property of individuals may be sold for taxes. All statements and lists made by corporations that are required to be sworn to shall be verified by the affidavit and signature of the secretary of said corporation, and if they have no secretary, the officer who discharges the duties of secretary of said corporation.

Assessments in  
owner's name.  
*Id.* §21.

ART. 4689. All real property subject to taxation shall be assessed to the owners thereof in the manner herein provided, but no assessment of real property shall be considered illegal by reason of the same not being listed or assessed in the name of the owner or owners thereof.

Lien for taxes.  
*Id.* §22.

ART. 4690. All taxes upon real property shall be a lien upon such property until the same shall have been paid. And should the assessor fail to assess any real estate for any one or more years the lien shall be good for every year that he should fail to assess for, and he may, in listing property for taxes any year thereafter, assess all the back taxes due thereon, according to the provisions of this title.

Leasehold  
interests in  
public lands.  
*Id.* p. 281, §23.

ART. 4691. Property held under a lease for a term of three years or more, or held under a contract for the purchase thereof, belonging to this state, or that is exempt by law from taxation in the hands of the owner thereof, shall be considered for all purposes of taxation as the property of the person so holding the same, except as otherwise specially provided by law.

Valuation of  
property for  
taxation.  
*Id.* §24.

ART. 4692. Each separate parcel of real property shall be valued at its true and full value in money, excluding the value of crops growing or ungathered thereon.

2. In determining the true and full value of real and personal property the assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation, nor shall he adopt as a criterion of value the price for which such property would sell at auction or a forced sale, or in the aggregate with all the property in his county; but he shall value each tract or lot by itself, and at such sum or price as he believes the same to be fairly worth in money at the time such assessment is made.

3. In valuing any real property on which there is a coal or other mine, or stone or other quarry, or springs possessing medicinal properties, the same shall be valued at such a price as such property, including a mine or quarry or spring, would probably sell at a fair voluntary sale for cash.

4. Taxable leasehold estates shall be valued at such a price as they would bring at a fair voluntary sale for cash.

5. Personal property of every description shall be valued at its true and full value in money.

6. Money, whether in possession or on deposit, or in the hands of any member of the family, or any other person whatsoever, shall be entered in the statement at the full amount thereof.

7. Every credit for a sum certain, payable either in money or property of any kind, shall be valued at the full value of the same so payable. If for a specific article, or for a specific number or quantity of property of any kind, it shall be valued at the current price of such property at the place where payable. Annuities or moneys payable at stated periods shall be valued at the price that the person listing the same believes them to be worth in money.

CHAPTER THREE.

OF THE ASSESSMENT OF TAXES—ELECTION AND QUALIFICATION OF THE ASSESSOR.

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ARTICLE 4693. There shall be elected by the qualified electors of each county within this state, at the same time and under the same law regulating the election of state and county officers, an assessor of taxes, who shall hold his office for two years, and until his successor is elected and qualified.

Election and term of assessor. (Const., art. 5, §14.) (Act Aug. 21, 1876, p. 265, §1.)

ART. 4694. In case of a vacancy in the office of assessor of taxes, the same shall be filled by the county commissioners' court, for the unexpired term only, and until the election and qualification of an assessor at the succeeding general election; and he person appointed to fill such vacancy shall qualify in the same manner as is prescribed by law for assessors of taxes, and shall have all the rights and perform all the duties required by law of the assessor elected.

Vacancies, how filled.

ART. 4695. Every assessor of taxes, within twenty days after he shall have received notice of his election or appointment, and before entering upon the duties of his office, shall execute a bond, payable to the governor and his successors in office, in a sum which shall be equal to one-fourth the amount of the state tax of the county, as shown by the last preceding assessment, but not to exceed ten thousand dollars, with at least three good and sufficient sureties, to be approved by the commissioners' court of his county, conditioned that he will faithfully discharge all the duties of said office; and shall take and subscribe the oath prescribed by the

Oath and bond. I. b. p. 266, §2.

constitution, which oath, together with said bond, shall be recorded in the office of the clerk of the county court of said county, and be forwarded by the county judge of the county to the comptroller, to be deposited in his office.

Purview of the bond.  
*Ib.*

ART. 4696. Said bond shall be deemed to extend to the faithful performance of the duties of his office as assessor of taxes for and during the full term for which he was elected or appointed, and shall not become void upon the first recovery, but suit may be maintained thereon until the whole amount thereof be recovered.

New bond  
*Ib.*

ART. 4697. Assessors of taxes may be required to furnish a new bond and additional security whenever, in the opinion of the commissioners' court, it may be advisable; and should any assessor of taxes fail to give a new bond and additional security when required, he shall be suspended from the further discharge of his duties by the commissioners' court of his county, and be removed from office in the mode prescribed by law for the removal of county officers.

Bond for county taxes.  
*Ib.* §3.

ART. 4698. The assessor of taxes shall give a like bond, with like conditions, to the county judges of their respective counties and their successors in office, in a sum not less than one-fourth of the amount of the county tax of the county, as shown by the last preceding assessment, but not to exceed five thousand dollars, with at least three good and sufficient sureties, to be approved by the commissioners' court of his county; which bond shall be recorded and deposited in the county clerk's office of the county. A new bond and additional security may be required, and the assessor of taxes may be removed from office for a failure to furnish a new bond or additional security in the manner prescribed by law.

May appoint deputies.  
*Ib.* p. 267, §7.

ART. 4699. Each assessor of taxes may appoint one or more deputies to assist him in the assessment of taxes, and may require such bond and security from the person so appointed as he deems necessary for his indemnity; and the assessor of taxes shall in all cases be liable and accountable for the proceedings and misconduct of his deputies.

Authority of deputies.  
*Ib.* §8.

ART. 4700. The deputies, appointed in accordance with the provisions of the preceding article, shall do and perform all the duties imposed and required by law of assessors of taxes, and all acts of such deputies done in conformity with law shall be as binding and valid as if done by the assessor of taxes in person.

May administer oaths.  
*Ib.* p. 266, §4.

ART. 4701. Assessors of taxes are hereby authorized and empowered to administer all oaths necessary to obtain a full, complete and correct assessment of all taxable property situated in their respective counties.

The oath.  
*Ib.* p. 267, §5.

ART. 4702. The assessor of taxes shall also require each person rendering a list of taxable property to him for taxation under the assessment laws, to subscribe to the following oath or affirmation, which shall be written or printed at the bottom of each inventory, to wit; "I,..... [filling the blank with the name of the person subscribing], do solemnly swear (or affirm) that the above inventory rendered by me contains a full, true and complete list of all taxable property owned or held by me in my own name [or for others, as the case may be, naming the person or firm for whom he rendered the list] in this county subject to taxation by the laws of this state, on the first day of January, A. D. 18..... [filling the blank with the year]; and that I have true answers made to all questions propounded to me touching the same, so help me God."

Where and how the oath may be made.  
*Ib.*

ART. 4703. The owner or agent who is required under the laws of this state to render any property for taxation, may render the same in the county where the same is situated by listing the same and making oath thereto, as required in this title, before any officer authorized to administer oaths in this state, or any officer out of this state that is authorized by law to take acknowledgments of instruments for record in this state, and may forward the same to the assessor of the county by mail or otherwise, and the assessor shall enter the said property on his tax rolls. If

the assessor is satisfied with the valuation as rendered in said list he shall so enter the same; if he is not satisfied with the valuation he shall refer the same to the board of equalization of the county for their action, and shall immediately notify, by mail or otherwise, the person from whom he received said list that he has referred said valuation to the board of equalization.

ART. 4704. The assessor of taxes, for every failure or neglect to administer the oath or affirmation, prescribed in article 4702, to each person rendering a list of taxable property to him, unless the person refuses to qualify, shall forfeit fifty dollars, to be deducted out of his commissions upon full and satisfactory information furnished the county judge; and for each and every failure or neglect to attest the oath subscribed to as provided in said article, shall forfeit the sum of fifty dollars upon satisfactory information furnished the county judge. The forfeitures imposed by this article shall be deducted from the assessor's commissions on the assessment for county taxes.

Penalty for failure to attest oath, etc.  
*Ib.* §6.

ART. 4705. Assessors of taxes shall, between the first day of January and the first day of June of each year, proceed to take a list of taxable property, real and personal, in his county, and assess the value thereof in the manner following, to wit: By calling upon the person, or by calling at the office, place of business or the residence of the person, and listing the property required by law in his name, and requiring the person to make a statement under oath, as prescribed in article 4702, of such property in the form hereinafter prescribed.

When assessments to be made.  
*Ib.* §9.

NOTE.—Section 1, chapter 133, acts 1879, provides: "That all lands and other property, situated in the unorganized counties of this state, owned by residents of such unorganized counties, shall be assessed by the assessor of the organized county to which such unorganized county is attached for judicial purposes. The same remedies for the enforcement of the assessment of such taxes shall apply as the law directs for the assessment of taxes in organized counties." And see appendix.—L.

Assessment of property in unorganized counties.

ART. 4706. Should any property be listed or assessed for taxation after the first day of June of any year, or should the assessor of taxes or his deputy fail to administer the requisite oath or attest the same in the mode prescribed by law, or should the person rendering property for taxation fail to subscribe to the list, yet the assessment shall nevertheless be as valid and binding to all intents and purposes as if made in strict pursuance of law.

Irregular assessments valid.  
*Ib.*

ART. 4707. If any person, who is required by this title to list property, shall be sick or absent when the assessor calls for a list of his property, the assessor shall leave at the office or usual place of residence or business of such person, a written or printed notice requiring such person to meet him and render a list of his property at such time and place as the assessor of taxes may designate in said notice. The assessor of taxes shall carefully note in a book the date of leaving such notice.

If taxpayer is absent, etc.  
*Ib.* p. 203, §10.

ART. 4708. In every case where any person whose duty it is to list any property for taxation has refused or neglected to list the same when called on for that purpose by the assessor of taxes, or has refused to subscribe to the oath in regard to the truth of his statement of property or any part thereof when required by the assessor of taxes, the assessor shall note in a book the name of such person who refused to list or to swear; and in every case where any person required to list property for taxation has been absent or unable from sickness to list the same, the assessor of taxes shall note in a book such fact, together with the name of such person.

Or refuses to list.  
*Ib.* §11.

ART. 4709. In all cases of failure to obtain a statement of real and personal property from any cause, it shall be the duty of the assessor of taxes to ascertain the amount and value of such property and assess the same as he believes to be the true and full value thereof, and such assess-

Duty of assessor in such cases.  
*Ib.* §12.

ment shall be as valid and binding as if such property had been rendered by the proper owner thereof.

NOTE.—As to further duties of assessors in assessing real estate, see chapter 27, acts of 1879.—L.

Manner and  
form of  
assessing.  
Ib. §18.

ART. 4710. The manner and form of assessing property rendered for taxation shall be substantially as follows, to wit:

1. The name of the owner.
2. Abstract number.
3. Number of the survey.
4. The name of the original grantee and the certificate number.
5. The number of acres.
6. The value of the land.
7. The number of the lot or lots
8. The number of the block.
9. The value of town lots.
10. The name of the city or town.
11. Number of miles of railroad in the county.
12. Value of railroads and appurtenances, including the proportionate amount of rolling stock to the county after the assessment of such rolling stock and its apportionment among the several counties by the comptroller, as hereinbefore provided.
13. Number of miles of telegraph in the county.
14. Value of telegraph and appurtenances in the county.
15. Number and amount of land certificates and value thereof
16. Number of horses and mules and value thereof.
17. Number of cattle and value thereof.
18. Number of jacks and jennets and value thereof
19. Number of sheep and value thereof.
20. Number of goats and value thereof.
21. Number of hogs and dogs and value thereof.
22. Number of carriages, buggies or wagons of whatsoever kind and value thereof.
23. Number of sewing machines and knitting machines and the value thereof.
24. Number of watches and clocks and value thereof.
25. Number of organs, melodeons, piano-fortes and all other musical instruments of whatsoever kind and value thereof.
26. The value of household and kitchen furniture over and above the amount of two hundred and fifty dollars.
27. Office furniture and value thereof.
28. The value of gold and silver plate.
29. The value of diamonds and jewelry.
30. Every annuity or royalty, the description and value thereof.
31. Number of steamboats, sailing vessels, wharf-boats, barge or other water craft and the value thereof.
32. The value of goods and merchandise of every description, which such person is required to list as a merchant, in hand on the first day of January of each year.
33. The value of materials and manufactured articles which such person is required to list as a manufacturer.
34. The value of manufacturers' tools, implements and machinery, other than boilers and engines, which shall be listed as such.
35. Number of steam engines, including boilers, and the value thereof.
36. The amount of moneys (except legal tender notes of the United States treasury) of bank, banker, broker or stock-jobber.
37. The amount of solvent credits of bank, banker, broker or stock-jobber and any other person.
38. The amount of moneys (except legal tender notes of the United States treasury) other than of bank, banker, broker or stock-jobber.

(See note to  
art. 4681.)

39. The amount of credits other than of bank, banker, broker or stock-jobber.

40. The amount and value of bonds and stocks (other than United States bonds).

41. The amount and value of shares of capital stock companies and associations not incorporated by the laws of this state.

42. The value of property of companies and corporations other than property hereinbefore enumerated.

43. The value of stock and furniture of saloons, hotels and eating-houses.

44. The value of every billiard, pigeon-hole, bagatelle and other similar tables, together with the number thereof.

45. Every franchise, the description and value thereof.

46. The value of all other property not enumerated above.

ART. 4711. If the assessor of taxes discover any real property in his county subject to taxation which has not been listed to him, he shall list and assess such property in the manner following, to wit:

Assessment of property not rendered.  
*Ib.* p. 269, §14.

1. The name of the owner; if unknown, say "unknown."

2. Abstract number and number of certificate.

3. Number of the survey.

4. Name of the original grantee.

5. Number of acres.

6. The true and full value thereof.

7. The number of lot or lots.

8. The number of the block.

9. The true and full value thereof.

10. The name of the city or town, and give such other description of the lot or lots or parcels of land as may be necessary to better describe the same; and such assessment shall be as valid as if rendered by the owner thereof.

ART. 4712. If the assessor of taxes shall discover in his county any real property which has not been assessed or rendered for taxation for any year since 1870, he shall list and assess the same for each and every year thus omitted, in the manner prescribed in the preceding article, and such assessment shall be as valid and binding as though it had been rendered by the owner thereof; but no such real property shall be assessed by the assessor unless he has ascertained by the certificate of the comptroller of public accounts the fact that the records of his office do not show that the property has been rendered or assessed for the year in which he assesses it.

Assessment of real property for previous years.  
*Ib.* §15.

ART. 4713. The assessors of taxes, in the execution of their duties, shall use the forms and follow the instructions which shall from time to time be prescribed by the comptroller of the state, and furnished to them by the county judge in pursuance to law.

Assessor to follow instructions.  
*Ib.* §16.

ART. 4714. In case the person listing property makes oath, and the assessing officer is satisfied that it is correctly valued, he shall list the same accordingly; but if the assessor is satisfied that the value is too low, he shall list the same at such value as he, as a sworn officer, deems just; and if the person listing makes oath that the assessment is excessive, the value shall be decided by the board of equalization, whose valuation shall be final.

Equalization of assessments.  
*Ib.* p. 270, §17.

ART. 4715. The boards of equalization shall have power, without complaint from any one, to supervise the assessments of their respective counties, and if satisfied that the valuation of any property is not just and fair, to increase or diminish the same, and to affix a proper valuation thereto; and their action in such cases shall be final and not subject to revision by said board or any other tribunal thereafter.

Boards may equalize with out complaint.  
(See acts 1879, ch. 47.)

ART. 4716. The assessor of taxes shall furnish the board of equalization on the first Monday in June of each year, or as soon thereafter as practicable, a certified list of names of all persons who either refused to

Assessor to furnish list of delinquents.  
*Ib.* §18.

(See acts 1879,  
ch. 47.)

swear or to qualify, or to sign the oath or affirmation, as prescribed in this title; also a list of the names of those persons who refused to render a list of taxable property as required by this title. And should any person so failing or refusing to take the oath prescribed, or to render a list of their property, or to subscribe to the oath, as required by the provisions of this title, fail to give satisfactory reasons for such failure or refusal to the board of equalization within one month from the date of the filing of said list by the assessor, as required by this article, the board of equalization shall return a list of all persons who have failed to give satisfactory reasons for such failure or refusal to render, qualify, or subscribe to the oath, or affirmation, as the case may be, to the assessor of taxes, who shall present the said list to the grand jury of his county next impaneled after the board of equalization has furnished him with the list above required.

And submit  
lists to board  
of equalization  
*Ib.* §20.  
(See acts 1879,  
ch. 47.)

ART. 4717. The assessor of taxes shall submit all the lists of property rendered to him, prior to the first Monday in June, to the board of equalization of his county on the first Monday in June, or as soon thereafter as practicable, for their inspection, approval, correction or equalization; and after the board of equalization shall have returned the corrected and approved lists of taxable property, the assessor of taxes shall proceed to assess all the unrendered property of his county as provided for in this title, and shall proceed to make out and prepare his rolls or books of all the real and personal property listed to him, in the form and manner prescribed by the comptroller of the state.

Shall make out  
rolls in trip-  
licate.  
*Ib.* §19.  
(See acts 1879,  
ch. 47.)

ART. 4718. As soon as the board of equalization shall have examined, corrected and approved the assessor's list, the assessor of taxes shall prepare and make out a roll or book, as may be required by the comptroller, from the list so corrected and approved, and three exact copies of the same, the original to be furnished to the collector of taxes, the second to the comptroller of public accounts, and the third to be filed in the county clerk's office for the inspection of the public. He shall also prepare a roll or book, and two exact copies thereof, to be distributed, the first to the collector of taxes, the second to the comptroller, the third to be filed in the county clerk's office, of all the real and personal property which has not been listed to him.

Also rolls of  
unrendered  
property.  
*Ib.* p. 271, §21.

ART. 4719. The assessor of taxes shall, after his list of unrendered real and personal property shall have been examined, corrected and approved by the board of equalization as provided by law, prepare and make out his rolls or books of all unrendered real and personal property listed by him in the manner and form prescribed by the comptroller of the state.

And add up  
columns.  
*Ib.* §22.

ART. 4720. The assessor of taxes shall add up and note the aggregate of each column on his roll or book, and he shall also make in each book or roll, under proper headings, a tabular statement showing the footings of the several columns upon each page, and he shall add up and set down under the respective headings the total of the several columns.

Return and  
oath.  
*Ib.* §23.

ART. 4721. The assessor of taxes shall, on or before the first day of August of each year for which the assessment is made, return his rolls or assessment books of the taxable property rendered to him or listed by him for that year, after they have been made in accordance with the provisions of this title, to the county board of equalization, verified by his affidavit, substantially in the following form:

"STATE OF TEXAS, }  
"..... County. } ss.

"I, ....., assessor of ..... county, do solemnly swear that the rolls (or books), to which this is attached, contain a correct and full list of all the real and personal property subject to taxation in ..... [fill the blank with the name of the county] county, so

far as I have been able to ascertain the same, and that the assessed value set down in the proper column opposite the several kinds and descriptions of property is the true and correct valuation thereof as ascertained by law, and that the footings of the several columns in said books, and the tabular statement returned is correct, as I verily believe.”

To be signed and sworn to before some officer authorized to administer oaths, and attested with his signature and seal of office.

ART. 4722. The assessor of taxes shall at the same time deliver to the board of equalization all the lists, statements of all property which shall have been made out or received by him, and arranged in alphabetical order, together with the roll withdrawn to aid him in the past assessment. The lists and statements shall be filed in the county clerk's office, and remain there for the inspection of the public.

All lists, etc.,  
filed in county  
clerk's office.  
Ib. §24.

ART. 4723. After the board of equalization shall have examined the rolls or assessment books, and made all corrections, if any be necessary, the assessor shall send one copy of each to the comptroller of public accounts, one copy of each to the collector of his county, and he shall file the other copies in the county clerk's office until the next assessment, when the assessor shall have the right to withdraw them and use as provided in this title.

Rolls, how  
distributed.  
Ib. §25.

ART. 4724. Each assessor of taxes shall receive the following compensation for his services:

Compensation  
of assessors  
Ib. §26.

1. For assessing the state tax, five per cent. on the first twenty thousand dollars of such taxes so assessed by him, and two per cent. on all such taxes assessed over that sum.

2. For assessing the county tax, three per cent. on the first ten thousand dollars of such taxes so assessed by him, and two per cent. on all such taxes assessed over that sum.

ART. 4725. The comptroller, on receipt of the rolls, shall give the assessor an order on the collector of his county for the amount due him by the state for assessing the state taxes, to be paid out of the first money collected for that year.

How paid by  
the state.  
Ib. §27.

ART. 4726. The commissioners' court shall issue an order on the county treasurer of their county to the assessor for the amount due him for assessing the county tax of their county, to be paid out of the first money received from the collector on the rolls of that year.

By the county.  
Ib. §28.

ART. 4727. Should any assessor of taxes fail or neglect to make out and return his rolls or books to the commissioners' court in the time and manner provided for in this chapter, it shall be competent for the commissioners' court to deduct from his compensation such amount as they may deem proper and right for such neglect or failure; and should his rolls or books, when presented for approval to the commissioners' court, prove to be imperfect or erroneous, the court shall have the same corrected or perfected, either by the assessor or some other person than the assessor of taxes. Such person so employed by the commissioners' court shall be entitled to such part of the commissions to which such assessor is entitled as the court may allow; and said court shall so certify to the comptroller, who shall pay such person in the same manner as the assessor of taxes is paid, and the amount so paid shall be deducted by the comptroller from the commissions of the assessor of taxes whose duty it was to have performed such work.

Penalties for  
neglect of  
duty.  
Ib. §29.  
(See acts 1879,  
ch. 47.)

ART. 4728. Lands lying in and owned by non-residents of unorganized counties, and lands lying in the territory not laid off into counties, shall be assessed by the comptroller of public accounts in accordance with such regulations as he may adopt and establish for that purpose.

Lands of  
non-residents  
in unorganized  
counties, etc.  
(Const., art. 8,  
§12.)

NOTE.—For regulations as to the assessment by the comptroller of lands in unorganized counties, owned by non-residents thereof, see chapter 135, acts of 1879. See also appendix.—L.



## CHAPTER FOUR.

## OF THE COLLECTION OF TAXES—ELECTION AND QUALIFICATION OF THE COLLECTOR.

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Vacancies, how filled. *Id.*

Sheriff a collector, when. (Const., art. 8, §16.) *Id.* §2.

Bond and oath. *Id.* §3.

ARTICLE 4729. In each county having ten thousand inhabitants, to be determined by the last preceding census of the United States, there shall be elected by the qualified voters, at the same time and under the same law regulating the election of state and county officers, a collector of taxes, who shall hold his office for two years and until his successor is elected and qualified.

ART. 4730. Should the office of collector of taxes from any cause become vacant before the expiration of said term, it shall be the duty of the commissioners' court in the county in which such vacancy shall occur, to appoint a collector of taxes, who shall be qualified in the same manner and subject to like bonds as the collector of taxes elected, and the collector of taxes so appointed shall hold his office for and during the unexpired term of his predecessor and until his successor shall have been qualified; and the collector of taxes so appointed shall have all the rights and perform all the duties required by law of the collector of taxes elected.

ART. 4731. In each county having less than ten thousand inhabitants the sheriff of such county shall be the collector of taxes, and shall have and exercise all the rights, powers and privileges, be subject to all the requirements and restrictions, and perform all the duties imposed by law upon collectors; and he shall also give the same bonds required of a collector of taxes elected.

ART. 4732. Every collector of taxes, within twenty days after he shall have received notice of his election or appointment, and before entering upon the duties of his office, shall give a bond based upon unencumbered real estate of the sureties subject to execution, payable to the governor and his successors in office, in a sum which shall be equal to the whole amount of the state tax of the county, as shown by the last preceding assessment, with at least three good and sufficient sureties, to be approved by the commissioners' court of his county, which shall be further subject to the approval of the comptroller, and shall take and subscribe the oath

prescribed by the constitution, which, together with said bond, shall be recorded in the office of the clerk of the county court of said county and be forwarded by the county judge of the county to the comptroller to be deposited in his office. Said bond shall be conditioned for the faithful performance of the duties of his office as collector of taxes for and during the full term for which he was elected or appointed, and shall not become void upon the first recovery, but suit may be maintained thereon until the whole amount thereof be recovered.

NOTE.—Section 8, chapter 105, acts of 1879, makes collectors liable for damages on their official bonds, at the suit of any person holding the “compromise” bonds of the county, authorized in the act, for neglecting or refusing to collect the taxes levied to pay interest thereon and provide a sinking fund for their payment; and if any one elected or appointed collector fails to give bond for the collection of such taxes, and if the commissioners’ court neglects to appoint some one who will give said bond and collect said taxes, the governor shall appoint some suitable person to collect said taxes, who shall perform all the duties required by the act until the next general election. See appendix.—L.

Liability for refusing to collect certain taxes.

Governor to appoint collector of certain taxes, when.

ART. 4733. The collector of taxes may be required to furnish a new bond or additional security whenever, in the opinion of the commissioners’ court or comptroller of public accounts, it may be advisable. Should any collector of taxes fail to give a new bond and additional security when required, he shall be suspended from office by the commissioners’ court of his county, and immediately thereafter be removed from office in the mode prescribed by law.

New bond.  
*Id.*

ART. 4734. Collectors of taxes shall give a like bond, with like conditions, to the county judge of their respective counties and their successors in office, in a sum not less than the whole amount of the county tax of the county, as shown by the last preceding assessment, with at least three good and sufficient sureties, to be approved by the commissioners’ court of his county, which bond shall be recorded and deposited in the office of the clerk of the county court. A new bond and additional security may be required, and for a failure to give such new bond or additional security the collector of taxes may be removed from office in the manner prescribed by law.

Bond for county taxes.  
*Id.* p. 380, §4.

ART. 4735. No collector of taxes shall enter upon the discharge of the duties of the office until all the bonds required of him by law for the collection of any taxes, state, county or special, shall have been given and approved.

All bonds to be first approved.

ART. 4736. Each collector of taxes may appoint one or more deputies to assist him in the collection of taxes, and may take such bond and security from the person so appointed as he deems necessary for his indemnity, and the collectors, in all cases, shall be liable and accountable for his proceedings and misconduct in office.

May appoint deputies.  
*Id.* §9.

ART. 4737. When the collector of taxes of any county shall have received the assessment rolls or books of the county, he shall receipt to the commissioners’ court for the same, and said rolls or books shall be full and sufficient authority for the county collector of taxes to receive and collect the taxes therein levied.

Rolls to be a warrant.  
*Id.* §5.

NOTE.—Sections 4 and 5, chapter 92, acts of 1879, make it the duty of the collector of taxes, on receiving a list thereof from the commissioners’ court, to collect the rents for public school lands inclosed by persons in his county, and pay the money into the state treasury. He collects this money “under the same provisions and penalties as are imposed by law for the collection of taxes.” See appendix.—L.

To collect rent for public school lands.

ART. 4738. The collector of taxes shall be the receiver and collector of all taxes assessed upon the tax list in his county, whether assessed for the state or county, school, poor-house or other purpose, and he shall proceed to collect the same according to law, and place the same when collected to the proper fund, and pay the same over to the proper authorities, as hereinafter provided.

Collector for all taxes.  
*Id.* §6.

To collect taxes in unorganized counties.

NOTE.—Section 1, chapter 133, acts of 1879, makes him the receiver and collector of all taxes assessed upon land and other property situated in unorganized counties, owned by residents thereof, attached to his county for judicial purposes. See appendix.

To receive state and county tax, when payment of subsidy tax is refused.

And chapter 146, acts of 1879, provides that in counties wherein taxes have been levied for the payment of subsidies granted to railroads and other works of internal improvement, collectors shall not refuse to receive and receipt for state and county taxes on account of any refusal or failure of the taxpayer to pay such subsidy tax, and shall be liable for such damages as may result to any one by reason of their violation of the act.—L.

Liable for damages.

Collections, when to begin.  
Ib. §7.

ART. 4739. The collector of taxes of each county shall begin the collection of the taxes annually on the first day of October, or so soon thereafter as he may be able to obtain the proper assessment rolls, books or data upon which to proceed with the business; and he shall post up notices—not less than three—at public places in each voting or magistrate's precinct in his county, at least twenty days previous to the day said taxpayers are required to meet him for the purpose of paying their taxes, stating in said notice the times and places the same are required to be paid; and it shall be the duty of said collector, or his deputy, to attend at such times and places for the purposes aforesaid, and shall remain at each place at least two days; and if the collector shall, from any cause, fail to meet the taxpayers at the time and place specified in the first notice, he shall, in like manner, give a second notice.

Taxes may be paid at office.  
Ib. §8.

ART. 4740. The collector of taxes shall keep his office at the county seat of his county, and it shall be the duty of every person who has failed to attend and to pay his taxes at the times and places in his precinct named by the collector, as provided in the preceding article, to call at the office of the collector and pay the same before the last day of February of the next succeeding year after the assessment is made.

Tax receipt and its requisites.  
Ib. p. 261, §10.

ART. 4741. The collector of taxes or his deputy, whenever any tax is paid shall give to the person paying the same a receipt therefor, specifying the amount of state *ad valorem* tax, amount of state poll tax, the amount of county *ad valorem* tax, the amount of county poll tax, and the year or years for which such tax was levied; said receipt shall also show the number of acres of land in each separate tract, number, abstract, and name of original grantee; the said receipt shall have a duplicate stub showing the name of the person, the date, the amount of each separate tax and the date of payment. The collector of taxes shall provide himself with a seal, on which shall be inscribed a star with five points, surrounded by the words "Collector of taxes.....county" [*the blank to be filled with the name of the county*], and shall impress said seal to each receipt given by him for taxes collected on real estate; and said receipt, having the seal attached, shall be admissible to record in the county in which the property is situated in same manner as deeds duly authenticated, and when so recorded shall be full and complete notice to all persons of the payment of said tax.

Quarterly reports of collectors.  
Ib. §11.

ART. 4742. The collector of taxes shall, on forms to be furnished for that purpose by the comptroller of public accounts, make a report under oath to the comptroller of all taxes collected by him for the state every three months. The first report shall include the months of October, November and December; the second shall include the months of January, February and March; the third shall include the months of April, May and June; the fourth shall include the months of July, August and September of each year; and he shall also make a like report to the commissioners' court of all taxes collected for the county.

Examination of reports by county clerk.  
Ib. §12.

ART. 4743. The collector of taxes shall file his reports, together with the tax receipt, stubs, in the office of the county clerk of his county for examination. The clerk shall have three days (Sundays excepted) for the examination of the same. The reports and stubs must agree in every particular as regards dates, names and amounts. The clerk shall, after

the examination, certify to the reports as to their correctness or incorrectness, as the case may be, and if incorrect state where the incorrectness appears in said reports; he shall then forward the report prepared for the comptroller to that officer, and shall file the tax receipt stubs in his office for reference and safe-keeping.

ART. 4744. The collector of taxes shall make out, on forms to be furnished for that purpose by the comptroller of public accounts, on and after the first day of June of each year, triplicate lists of delinquent or insolvent taxpayers, the caption of which shall be the "List of delinquent or insolvent taxpayers." In this list he shall give the name of the person, firm, company or corporation from whom the taxes are due, together with the amount of the state and county taxes due, in separate columns, and he shall post one copy of these delinquent or insolvent lists at the court-house door, and one copy at two other public places in his county. And the collector of taxes, upon the certificate of the commissioners' court that the persons appearing on the insolvent or delinquent lists have no property out of which to make the taxes assessed against them, or that they have moved out of the county and that no property can be found in the county belonging to such persons out of which to make the taxes due, shall be entitled to a credit, on final settlement of his accounts, for the amounts due by the persons, firms, companies or corporations, certified to by the commissioners' court as above provided for.

Delinquent lists.  
*Ib.* §13.

ART. 4745. The allowance of an insolvent list to the collector, in accordance with the provisions of the preceding article, shall not absolve any taxpayer or property thereon from the payment of taxes, but it shall be the duty of the collector to use all necessary diligence to collect the amounts due on the insolvent list after it is allowed, and report and pay over to the proper officers all amounts collected on the same.

Collector to endeavor to collect delinquent list.  
*Ib.* p. 263, §13.

ART. 4746. If any person shall fail or refuse to pay the taxes imposed upon him or upon his property by law, until the first day of March next succeeding the return of the assessment roll of the county to the comptroller, the collector of taxes shall, by virtue of his tax roll, seize and levy upon and sell so much personal property belonging to such person, whether resident or non-resident, as may be sufficient to pay his taxes, together with all costs accruing thereon.

Forced collections, to begin when.  
*Ib.* §14.

NOTE.—Section 1, chapter 50, acts of 1879, is as follows:

"Section 1. All real and personal property held or owned by any person in this state shall be liable for all state and county taxes due by the owner thereof, including taxes on real estate, personal property and poll tax; and the collector of taxes shall levy on any personal or real property to be found in his county to satisfy all delinquent taxes, any law to the contrary notwithstanding."—L.

ART. 4747. If any person shall point out to the collector of taxes sufficient personal property belonging to him to pay all taxes assessed against him before the first day of March of any year, the collector shall immediately levy upon and sell such property so pointed out in accordance with the laws regulating tax sales of a similar class of property.

Or sooner, at option of owner.  
*Ib.*

ART. 4748. If it comes to the knowledge of the collector that any personal property assessed for taxes on the rolls is about to be removed from the county, and the owner of such property has not other property in the county sufficient to satisfy all assessments against him, the collector shall immediately levy upon a sufficiency of such property to satisfy such taxes and all costs, and the same sell in accordance with the law regulating sales of personal property for taxes, unless the owner of such property shall give bond with sufficient security, payable to and to be approved by the collector, and conditioned for the payment of the taxes due on such property on or before the first day of March, next succeeding.

May levy upon personal property leaving the county.

ART. 4749. In making sales of personal property for taxes, the collector shall give notice of the time and place of sale, together with a brief

Sales of property, how made.  
*Ib.* §15.

description of the property levied on and to be sold, for at least ten days previous to the day of sale, by advertisements in writing to be posted at the court-house door, and at two other public places in the county; and such sale shall take place at the court-house door of the county in which the assessment is made, by public auction.

If property is insufficient.  
*Ib.*

ART. 4750. If personal property levied upon prove insufficient to satisfy the taxes and penalties due and costs accrued thereon, the collector shall levy upon and sell so much other personal taxable property belonging to the person as will be sufficient to satisfy such taxes, penalties and, costs in the same manner as an original levy and sale; and in all cases of sales for taxes, if there be an excess remaining in the hands of the collector, after satisfying all taxes, penalties and costs, the same shall be paid over to the original owner by the collector, or deposited in the hands of the county treasurer subject to the order of such owner.

Sales of real property, when made.  
*Ib.* §16.

ART. 4751. If the delinquent is not possessed of a sufficiency of personal property in, the county, subject to seizure and sale, to satisfy all taxes due by him, the collector of taxes shall seize so much of the real estate of such delinquent, situate in the county, as will be sufficient to satisfy such taxes and all costs, and the same sell in accordance with the provisions of the succeeding article.

How made and advertised.  
*Ib.*

ART. 4752. In making sales of real property for taxes the collector shall advertise the same for sale in some newspaper published in the county, for three successive weeks, if there be one; and if there be no newspaper in the county, then by posting said advertisement for thirty days at the court-house door and three other public places in the county where the land or lots are situated; giving in said advertisement such description as is given to the same on the tax roll in his hands, stating the name of the owner if known, and if unknown, say "unknown," together with time, place and terms of sale; said sale to be for cash, to the highest bidder, at public outcry, at the court-house door, and between legal hours, on the first Tuesday of the month.

NOTE.—Chapter 50, acts of 1879, extra session, provides as follows:

"That prior to the sale of any real property for taxes, in any county in this state, the collector of taxes shall advertise the same by posting a list of the names of the delinquents for thirty days as follows: One copy at the court-house door of the county, and a copy at two other public places in the county where the lands or lots are situated."

It also repeals so much of the foregoing article 4752, as requires collectors to advertise any tax sales in newspapers, and further, repeals so much of chapter 70, acts of 1879, as requires sales of lands bid off to the state for taxes, to be advertised in newspapers, and "all laws requiring collectors of taxes to advertise in newspapers any tax sales."—L.

May be continued from day to day.  
*Ib.*

ART. 4753. As far as may be practicable all the lands and town lots levied upon for taxes shall be advertised in one notice, and be sold on the same day; and such sales may be continued from day to day until concluded, but at the close of each day's sale the collector of taxes shall make proclamation of such continuance on the following day. No sale shall be considered complete until payment of the purchase money, and if the same is not paid before the completion of tax sales, the collector shall re-sell the property, and continue such sale until the same is complete.

Homesteads liable only for their own taxes.  
*Ib.*

ART. 4754. No real estate set apart, used or designated as a homestead, shall be sold for taxes other than the taxes due on such homestead.

Sales of land, how made.  
*Ib.* p. 263, §17.

ART. 4755. The collector of taxes, in making sales for taxes due upon real estate, shall sell at auction, at the time and place appointed, so much of said real estate as may be necessary to pay the taxes and penalties due and all costs accruing thereon, and shall offer said real estate to the bidder who will pay the taxes and penalties due, and costs of sale and execution of deed, for the least amount of said real estate, who shall be deemed the highest bidder. Should a less amount of said real estate than

the whole tract or parcel of said real estate levied upon be sold for the taxes and penalties due and all costs of sale and execution and deed, the collector shall, in making his deed to the purchaser, begin at some corner of said tract or parcel of land or town lot and designate the same in a square, as near as practicable.

ART. 4756. The collector of taxes shall execute and deliver to the purchaser, upon the payment of the amount for which the estate was sold, and costs and penalties, a deed for the real estate sold, which deed shall vest a good and perfect title to said land in the purchaser, if not redeemed in two years, as hereinafter provided; which deed shall state the cause of sale, the amount sold, the price for which the real estate was sold, the name of the person, firm, company or corporation on whom the demand for the taxes was made; *provided*, the name is known, and if unknown, say "unknown;" the same description of the land as is given in the tax rolls, and such other description as may be practicable for better identification; and when real estate has been sold he shall convey, subject to the right of redemption provided for in article 4758, all the right and interest which the former owner had therein at the time when the assessment was made.

The tax deed and its requisites. (Const., art. 8, §13.)  
Ib. §18.

ART. 4757. When the collector of taxes shall have made sale of any real estate under this chapter, it shall be his duty to make immediate return of said sale to the commissioners' court, stating in said return the land sold, the name of the owner, if known, and if unknown, state the fact, the time of the sale, the amount for which said sale was made, together with the name of the purchaser, which return shall be entered of record on the minute books of said court.

Sales to be reported to commissioners' court.  
Ib.

ART. 4758. The owner of real estate sold for the payment of taxes, or his heirs or assigns or legal representatives, may, within two years from the date of sale, redeem the estate sold by paying or tendering to the purchaser, his heirs or legal representative, double the amount of money paid for the land.

Redemption of land sold for taxes.  
Ib. §19.

NOTE.—Chapter 31, acts of 1879, extra session, provides that land sold for taxes may be redeemed by payment to the collector of taxes of the county in which it was sold; the owner, first, to make affidavit before a proper officer that he has made diligent search for the purchaser and failed to find him, or that the purchaser is not a resident of the county, or that he and the purchaser can not agree on the amount of redemption money.

May pay to collector, when

The collector shall give a receipt, signed by him officially, in the presence of two witnesses, which, when duly recorded, shall be notice that the land has been redeemed. The collector is to pay over the money to the purchaser on demand.—L.

Collector's receipt notice, when recorded.

ART. 4759. Should the collector of taxes fail to make sale of any real estate for want of a purchaser, he shall bid the same off for the state for the taxes and penalties due, and all costs accruing thereon, and execute a deed to the state, and one deed shall include all tracts of land bid off to the state at such tax sale, and make due return thereof under such forms and directions as the comptroller may furnish and direct, and after sale and purchase by the state of any real estate, it shall not be lawful for said collector to levy upon or advertise or sell the same for any remaining or accrued taxes due thereon, until the same shall have been redeemed by the owner or is sold by the state. Said collector shall on final settlement of his accounts with the commissioners' court, and the comptroller of public accounts, be entitled to a credit for the amount of taxes due the state and county respectively, for which the land and lots were bid off to the state.

Lands to be bid in for state  
Ib. p. 264, §21.  
(Acts 1879, ch. 124, p. 132, and Ib., extra session, ch. 40.)

ART. 4759a. That the owner, or his agent, of any lands that may have been conveyed to the state under the provisions of the foregoing article, desiring to redeem the same, may do so by depositing with the collector of the county in which the lands were sold, double the amount of the purchase money and all accrued taxes thereon within two years from the date of the deed to the state, and it shall be the duty of such collector to

Owner may redeem, when and how. (Acts 1879, extra session, ch. 40.)

execute a receipt to such owner or agents, giving therein the amount of money received and a description of the lands so as to identify the same, and sign and seal the same officially, and upon presentation of such receipt to the comptroller of public accounts, he shall execute to the owner a relinquishment under his signature and seal of office, which may be admitted to record in like manner with other conveyances of land.

How sold, if not redeemed.  
*Ib.*

ART. 4759*b*. In case said land shall not have been redeemed, as provided in article 4759*a*, then the same may be sold as provided by an act entitled "an act to provide for the sale of all real estate bid off to the state by collectors of taxes at tax sales, the owners of which have not redeemed the same," approved April 7, 1879 (chapter seventy, page 79, acts of 1879, regular session).

Certain laws repealed.  
*Ib.*

ART. 4759*c*. All laws and parts of laws in conflict with the foregoing articles are hereby repealed, and particularly an act to amend section twenty-one, of an act regulating duties of tax collectors in reference to the seizure and sale of property of delinquent taxpayers, and to define the further duties, powers, qualifications and liabilities of collectors of taxes, and regulate their compensation, approved August 21, 1876, approved April 19, 1879, be, and the same are hereby repealed. (Chapter one hundred and ten, page 118, acts of 1879.)

Tax sales of towns and cities.  
*Ib.* §20.

ART. 4760. The provisions of this chapter in reference to the seizure and sale of real and personal property for taxes, penalties and costs due thereon, shall apply as well to collectors of taxes for towns and cities as for collectors of taxes for counties, and they shall be governed in selling real and personal property by the same rules and regulations in all respects as to time, place, manner and terms and making deeds as are provided for collectors of taxes for counties.

Payments into state treasury.  
*Ib.* §22.  
(Acts 1879, ch. 148, p. 164.)

ART. 4761. The collector of taxes, whenever he may receive as much as five hundred dollars (\$500), or more, belonging to the state, shall pay the same over to the state treasurer in such manner as may be directed by the comptroller of public accounts, or by law, reserving only his commissions on the same; and to enable him to do so he may, at his own risk, secure and send the same in post-office orders or solvent drafts on solvent banks, at not more than the usual rates of exchange, to be paid by the state, and it shall be the duty of the comptroller to enforce a strict observance of this act [article]; and the collector of taxes shall finally settle with the comptroller, and pay into the treasury all funds in his hands arising from taxes assessed for the previous year, and all occupation taxes collected to date, on or before the first day of July of each year; *provided*, that whenever the collector shall be authorized to pay any warrant, he shall be permitted to pay the same over to the treasurer as money.

Payments into county treasury.  
*Ib.* §23.

ART. 4762. The collector of taxes shall, whenever he may receive as much as five hundred dollars (\$500), or more, belonging to his county, pay the same over to the county treasurer of his county, reserving only his commissions on the same.

NOTE.—Section 14, chapter 133, acts of 1879, requires all county taxes assessed and collected on property situated in and owned by residents of unorganized counties, to be paid by the collector into the treasury of the organized county to which any such unorganized county is attached for judicial purposes. But by section 15 of the act, county taxes of unorganized counties collected by the comptroller of non-residents of such counties is to be kept by him to their credit until organized, when he is to pay it over to the treasurer of any such county. See appendix.—L.

Collection of occupation taxes.  
*Ib.* §24.

ART. 4763. The collector of taxes shall collect all occupation taxes due the state and county, and he shall make a quarterly report of the same, and one copy thereof, which shall state the amounts collected, from whom collected, and for what purpose and for what time the said taxes were paid. The original shall be filed with the clerk of the county court to be kept in his office for the inspection of the public. The county clerk shall certify to the correctness of the copy and that the original has been

filed in his office, and shall forward without delay to the comptroller of public accounts the copy so certified to, for which the county clerk shall be entitled to one dollar and fifty cents, to be paid by the collector of taxes.

ART. 4764. The quarterly reports provided for in the preceding article shall be as follows: The first report shall include the months of July, August and September, and shall be made out and reported as required above on the first Monday of October of each year. The second report shall include the months of October, November and December, and shall be made out and reported on the first Monday in January of each year. The third report shall include the months of January, February and March, and shall be made out and reported on the first Monday in April of each year. The fourth report shall include the months of April, May and June of each year, and shall be made out and reported on the first Monday in July in each and every year.

Quarterly reports of such collections.  
*Ib.* §26.

NOTE.—See note to article 4764, where will be found provisions similar in some respects to those contained in the two preceding articles that were enacted in chapter 134, acts of 1879, an act amending and supplementing chapter 1 of this title.

ART. 4765. All moneys due the state collected from occupations shall be paid over to the state treasurer by the collector of taxes in the same manner and under the same restrictions and regulations as is required for other state taxes.

Payment of occupation taxes into treasury.  
*Ib.* p. 265, §28.

ART. 4766. All moneys due the county collected from occupations shall be paid over to the county treasurer by the collector of taxes in the same manner and under the same restrictions and regulations as is required for other county taxes.

Into county treasury.  
*Ib.* §29.

ART. 4767. The collector of taxes shall receive, as compensation for his services, five per cent. on the first twenty thousand dollars of taxes collected by him for the state, and two per cent. on all such taxes collected over that sum; for collecting the county tax, three per cent. on the first ten thousand dollars of such taxes so collected by him, and two per cent. on all such taxes collected over that sum; *provided*, that in counties owing subsidies to railroads, the collector shall receive only one per cent. for collecting such railroad tax, and in cases where property is levied on and sold for taxes, he shall receive the same compensation as is allowed by law to sheriffs or constables for making a levy and sale in similar cases, but in no case to include commissions on such sales.

Compensation of collectors.  
*Ib.* §30.  
(Acts 1879, ch. 122, p. 130.)

ART. 4768. In making levies upon different tracts of land belonging to the same individual, corporation or company, the collector shall be entitled to charge for only one levy; and in all cases of advertisement of lands for tax sales he shall be entitled to charge for any one tract the exact proportion of the amount paid for the whole advertisement which said tract bears to all other tracts advertised, and no more. And for any greater charge under this article the collector shall be deemed guilty of extortion and be punished as provided in the Penal Code.

Compensation for one levy only, etc.

ART. 4769. The taxes upon lands lying in and owned by non-residents of unorganized counties, and upon lands situated in the territory not laid off into counties, shall be paid and collected at the office of the comptroller of public accounts, under such regulations as he may adopt for that purpose.

Taxes upon lands of non-residents in unorganized counties.  
(Const., art. 8, §12.)

NOTE.—Chapter 133, acts of 1879, regulates the collection of the taxes named in article 4769 by the comptroller, and makes full provision for his levying upon, advertising and selling all such lands upon which the taxes are due and unpaid, for bidding them off to the state, redemption of the same, and for the disposing of them, if not redeemed in two years. See also appendix

“Section 1, chapter 43, acts of 1879, allows non-residents of organized counties owing state or county taxes, to pay the same to the comptroller on or before the first day of January next after the assessment of such taxes; and collectors of taxes shall have commissions on taxes, due their counties, collected by the comptroller”—L.

Non-residents of organized counties may pay taxes to comptroller.



SUPPLEMENT.

Tax collectors to pay money into treasury, when. (Acts 1879, extra session, ch. 8, §1.)

SECTION 1. 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.

To pay money into county, city or town treasury, when. *Ib.* §2.

SEC. 2. 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 their respective county or city treasurers, whenever and as often as they may be directed so to do by their respective county judges, county commissioners' courts, or mayors, or boards of aldermen; *provided*, that tax collectors shall have ten days, from the date of such direction, within which to comply with the same.

What is a good notification to pay over. *Ib.* §3. (Acts 1879, extra session, ch. 8, §§4, 7.)

SEC. 3. The notification and direction, provided for in the preceding sections, may be verbal, written or by telegram; and if written or by telegram, proof of the deposit in the post-office or telegraph office of such notification and direction, with postage or charges duly prepaid, and correctly addressed, shall be *prima facie* evidence of the fact of such notification and direction having been given, and of the time when the same was given.

Violations, how punished.

SEC. 4. The provisions of the above three sections shall be cumulative to the provisions of the foregoing chapter, except where the latter are in conflict therewith; and any provisions of said chapter, in conflict with the provisions of said sections, are hereby repealed. And any one failing, willfully and negligently, to comply with the provisions of said sections shall be punished as prescribed in supplement to chapter three, title iv of the Penal Code.

CHAPTER FIVE.

OF THE ASSESSMENT AND COLLECTION OF BACK TAXES ON UNRENDERED LANDS.

NOTE.—Chapter 147, acts of 1879, makes full and detailed provisions for the assessment and collection of taxes on lands that have not been rendered for assessment and taxation from the year 1871 to 1876. Without referring in terms to this chapter, it modifies some of its provisions. See appendix for the act in full.

And as to the enforcement of the collection of delinquent taxes assessed since 1870, see chapter 17, acts of 1879, extra session. See, also, appendix for the act in full.—L.

	Article		Article
Back taxes on unrendered lands.....	4770	And cause three rolls to be made. . . . .	4774
Comptroller to prepare lists each year. . . . .	4771	Collector to give notice. . . . .	4775
And forward same to boards of equalization	4772	And enforce collections after sixty days. . . . .	4776
The board to value such lands. . . . .	4773	Payment of taxes since January 1, 1873 . . . . .	4777

Back taxes on unrendered lands. (Act Aug. 19, 1876, p. 214, §1.)

ARTICLE 4770. In all cases where lands or real estate have not been assessed for taxaton for any year since the year one thousand eight hundred and seventy, the same shall be assessed and the taxes thereon collected in the mode prescribed in this chapter.

Comptroller to prepare list each year. *Ib.* §2.

ART. 4771. On the first day of July of each year the comptroller of public accounts shall cause to be prepared a list of all unrendered lands in each county, subject to taxation and not assessed, in which shall be specified the name of the original grantee, the abstract number, the number of acres, the year for which such lands were unrendered, and the rate of state and county taxes for such year.

And forward same to boards of equalization. *Ib.*

ART. 4772. Upon completion of such lists the comptroller shall forward the same to the board of equalization of the respective counties, with the verification that the said list is a true and correct statement of

all the unrendered land and real estate in ..... county for the year ....., as shown by the records of his office.

ART. 4773. Upon receipt of such list or lists by the board of equalization of such county, it shall be their duty to value each and every tract of land or parcel of real estate so mentioned and described in the said lists, at their true and full value, as near as can be ascertained, for the year it was omitted to have been rendered.

The board to value such lands.  
Ib. §3.

ART. 4774. When the board of equalization shall have completed the valuation, they shall cause to be made out three separate rolls, in such manner as may be prescribed by the comptroller; they shall place one in the hands of the collector of taxes, forward one to the comptroller of the state, and file one in the office of the county clerk for the inspection of the public.

And cause three rolls to be made.  
Ib. §4.

ART. 4775. Upon receipt of the rolls by the collector of taxes he shall advertise in some weekly newspaper published in his county, and if no paper is published in his county, by posting printed circulars in not less than eight public places in his county, for four consecutive weeks, that the rolls for the collection of taxes on unrendered land and real estate have been placed in his hands, and that unless the taxes are paid within sixty days after the date of said notice, he will proceed to collect the same as provided by law for the collection of delinquent taxes.

Collector to give notice.  
Ib. p. 215, §5.

ART. 4776. After the expiration of said sixty days, if the taxes on any such lands are not paid, the collector of taxes shall proceed to enforce the collection of said taxes, in the mode provided in the preceding chapter for the enforced collection of delinquent taxes, and he shall be entitled to the same fees and penalties as are allowed him for the collection of other delinquent taxes.

And enforce collections after sixty days.  
Ib. §6.

ART. 4777. The owner of such unrendered land and real estate shall, upon the payment of all taxes due upon the same since the first day of January, A. D. 1873, prior to the commencement of proceedings for the collection of the same by the collector of taxes under this chapter, receive a full and complete acquittance for all demands from the state for such delinquent taxes.

Payment of taxes since Jan. 1, 1873.  
Ib. §6.

## CHAPTER SIX.

### OF MUNICIPAL TAXES TO PAY SUBSIDIES IN AID OF RAILROADS AND OTHER INTERNAL IMPROVEMENTS.

Article	Article
Such taxes, how applied ..... 4778	Governor to appoint collector of cer- tain taxes, when ..... 4780—Note
To be collected by city officer ..... 4779	Taxes may be paid in what ..... 4781
Bond of the officer ..... 4780	To be paid over every month ..... 4782
Liability for refusing to collect cer- tain taxes. .... 4780—Note	If insufficient, additional levy to be made. 4783

ARTICLE 4778. All taxes levied, assessed and collected for the purpose of paying the interest and principal of bonds heretofore issued by cities or towns to aid in the construction of railroads and other works of internal improvement, shall be applied solely to the objects for which they were levied, under the direction of the comptroller, as follows: First, to the payment of expenses of assessing and collecting the same; second, to the payment of the annual interest of such bonds, and not less than two per cent. of the principal; and if there be any excess on hand after making the above payments for the current year, it shall be used in the purchase and cancellation of said bonds.

Such taxes, how applied.  
(Act Aug. 18, 1876, p. 174, §1.)

ART. 4779. All such taxes shall be assessed and collected by the same officers whose duty it is to assess and collect the other municipal taxes, who shall receive the same rates of commission allowed for assessing and collecting the *ad valorem* tax of such city. The same remedies shall be

To be collected by city officers.  
Ib. §2.

used to enforce the assessment, collection and paying over of such taxes as are or may hereafter be provided by law to enforce the assessment, collection and paying over of other municipal taxes.

Bond of the  
officer.  
*Id.* §3.

ART. 4780. The officer whose duty it is to collect the aforesaid taxes shall give bond, with two or more sufficient sureties, to be approved by the mayor and board of aldermen of such city, in a sum fifty per cent. greater than the estimated annual amount of said taxes, which bond shall be payable to the state, and shall be conditioned for the faithful assessing, collecting and paying over of said tax into the state treasury, as provided by law, and said collector shall be amenable and subject to all laws enacted to secure the honest and faithful performance of the duties of collectors of taxes.

Liability for  
refusing to  
collect certain  
taxes.

NOTE.—Chapter 105, section 8, acts of 1879, makes collectors liable for damages on their official bonds, at the suit of any person holding bonds or coupons, for neglecting or refusing to collect the taxes levied for the payment of the interest and sinking fund of "compromise" bonds provided for in that chapter; and if any one elected or appointed collector fails, neglects or refuses to give bond for the collection of such taxes, and the board of aldermen neglect or refuse to appoint some person who will give said bond and collect said taxes, it is made the duty of the governor to appoint some suitable person to collect it.—L.

Governor to  
appoint col-  
lector of  
certain taxes,  
when.

Taxes may be  
paid in what.  
*Id.* §4.

ART. 4781. It shall be lawful for the collector to receive in payment of the taxes herein specified, current money or the matured coupons of the bonds for the payment of which such tax may have been levied.

To be paid  
over every  
month  
*Id.* §5.

ART. 4782. The collector of taxes, levied under the provisions of this chapter, shall pay over to the state treasurer, at the beginning of each and every month, all moneys or coupons he may have collected during the preceding month, deducting his legal commissions on the amount so paid, and shall make a report of his collections to the mayor and city council at its first regular meeting in each month.

If insufficient,  
additional levy  
to be made.  
*Id.* §6.

ART. 4783. If it shall be ascertained, at any time, that the tax which has been levied for the payment of the city bonds issued under the provisions of law is insufficient to pay the annual interest and two per cent. annually of the principal of such bonds, besides the expenses of assessing, collecting and paying over such tax, it shall be the duty of the comptroller to inform the mayor of said city of the fact; and it shall be the duty of the city council, and they shall, upon such information, levy such additional tax, and cause the same to be collected, as will be sufficient to make such payments; which levy shall be continued in force until the whole amount of principal and interest of said bonds shall have been fully paid.

TITLE XCVI.

Trespass to Try Title.

CHAPTER ONE.

THE PLEADINGS AND PRACTICE.

Article	Article
Method of trying titles to land, etc. .... 4784	Amended abstract. .... 4799
Rules in other cases observed, how far. .... 4785	Surveyor appointed, etc. .... 4800
The petition shall state what. .... 4786	Surveyor unnecessary, when. .... 4801
Indorsement on petition. .... 4787	Common source of title, proof of. .... 4802
Warrantor, etc., may be made a party. .... 4788	Judgment by default. .... 4803
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The possessor shall be defendant. .... 4790	When defendant claims part only. .... 4805
May join as defendants, whom. .... 4791	Where plaintiff proves part. .... 4806
May file plea of not guilty only. .... 4792	May recover a part, etc., when. .... 4807
What proof may be made under such plea. .... 4793	The judgment, etc. .... 4808
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What is sufficient title, etc. .... 4795	Considered with claim for improvements, when. .... 4810
Either party may demand abstract of title. .... 4796	Final judgment conclusive. .... 4811
Abstract must be filed in twenty days. .... 4797	Former laws shall govern, when. .... 4812
Abstract shall state, what. .... 4798	

ARTICLE 4784. All fictitious proceedings in the action of ejectment are abolished, and the method of trying titles to lands, tenements or other real property shall be by action of trespass to try title.

ART. 4785. The trial shall be conducted according to the rules of pleading, practice and evidence in other cases in the district court, and conformably to the principles of trial by ejectment, except as herein otherwise expressly provided.

ART. 4786. The petition shall state—

1. The real names of the plaintiff and defendant and their residence, if known.

2. It shall describe the premises by metes and bounds, or with sufficient certainty to identify the same, so that from such description possession thereof may be delivered, and shall also state the county or counties in which the same are situated.

3. The interest which the plaintiff claims in the premises, whether it be a fee simple or other estate; and if he claims an undivided interest he shall state the same and the amount thereof.

4 That he was in possession of the premises or entitled to such possession.

5. That the defendant afterward unlawfully entered upon and dispossessed him of such premises [*stating the date*], and withholds from him the possession thereof.

6. If rents and profits or damages are claimed, such facts as show the plaintiff to be entitled thereto and the amount thereof.

7. It shall conclude with a prayer for the relief sought.

ART. 4787. The plaintiff shall indorse on his petition that the action is brought as well to try the title as for damages.

ART 4788. When a party is sued for lands the real owner or warrantor may make himself, or may be made a party defendant in the suit, and shall be entitled to make such defense as if he had been the original defendant in the action.

ART. 4789. When such action shall be commenced against a tenant in possession the landlord may enter himself as the defendant, or he may be made a party on motion of such tenant, and he shall be entitled to make

Method of trying titles to land, etc (Act Feb 5, 1840, §1.)  
P. D. 5292.

Rules in other cases observed, how far.  
Ib. §2.  
P. D. 5293.

The petition shall state, what.  
Ib. §1.  
P. D. 5292.

Indorsement on petition.  
Ib. §2.  
P. D. 5293.

Warrantor, etc., may be made a party.

Landlord may become defendant.  
Ib. §5.  
P. D. 5292

the same defense as if the suit had been originally commenced against him.

The possessor shall be defendant.

ART. 4790. The defendant in the action shall be the person in possession if the premises are occupied, or some person claiming title thereto in case they are unoccupied.

May join as defendants, whom.

ART. 4791. The plaintiff may join as a defendant with the person in possession, any other person who, as landlord, remainderman, reversioner or otherwise, may claim title to the premises or any part thereof adversely to the plaintiff.

May file plea of "not guilty" only. (Act Feb. 2, 1844.)

ART. 4792. The defendant in such action may file only the plea of "not guilty," which shall state in substance that he is not guilty of the injury complained of in the petition filed by the plaintiff against him, except that if he claims an allowance for improvements he shall state the facts entitling him to the same as provided in the succeeding chapter.

*Id.* §5. P.D. 5307.

What proof may be made under such plea.

ART. 4793. Under such plea of "not guilty" the defendant may give in evidence any lawful defense to the action, except the defense of limitation, which shall be specially pleaded.

*Id.*  
Answer taken as admitting possession. (Act Feb. 5, 1840, §6.) P.D. 5397.

ART. 4794. Such plea or any other answer to the merits shall be an admission by the defendant, for the purpose of that action, that he was in possession of the premises sued for, or that he claimed title thereto at the time of commencing the action, unless he states distinctly in his answer the extent of his possession or claim, in which case it shall be an admission to such extent only.

What is sufficient title, etc. (Act Feb. 5, 1841, §23.) P.D. 5303.

ART. 4795. All certificates for headrights, land scrip, bounty warrant or any other evidence of right to land recognized by the laws of this state which have been located and surveyed, shall be deemed and held as sufficient title to authorize the maintenance of the action of trespass to try title.

Either party may demand abstract of title.

ART. 4796. After answer filed, either party may, by notice in writing, duly served on the opposite party or his attorney of record, not less than ten days before the trial of the cause, demand an abstract in writing of the claim or title to the premises in question upon which he relies.

Abstract must be filed in twenty days, etc.

ART. 4797. Such abstract of title shall be filed with the papers of the cause within twenty days after the service of the notice, or within such further time as the court on good cause shown may grant; and in default thereof no evidence of the claim or title of such opposite party shall be given on the trial.

Abstract shall state what.

ART. 4798. The abstract mentioned in the two preceding articles shall state—

1. The nature of each document or written instrument intended to be used as evidence and its date; or,

2. If a contract or conveyance, its date, the parties thereto and the date of the proof or acknowledgment, and before what officer the same was made; and,

3. Where recorded, stating the book and page of the record.

4. If not recorded in the county when the trial is had, copies of such instrument, with the names of the subscribing witnesses, shall be included.

If such unrecorded instrument be lost or destroyed, it shall be sufficient to state the nature of such instrument and the loss or destruction.

Amended abstract.

ART. 4799. The court may allow either party to file an amended abstract of titles, under the same rules which authorizes the amendment of pleadings so far as they are applicable; but in all cases the documentary evidence of title shall at the trial be confined to the matters contained in the abstract of titles.

Surveyor appointed, etc. (Act Feb. 5, 1840, §3.) P.D. 5394.

ART. 4800. The presiding judge of the court may, either in term time or in vacation, at his own discretion, or on motion of either party to the action, appoint a surveyor, who shall survey the premises in controversy pursuant to the order of the court, and report his action under oath to

such court; and if said report be not rejected for good cause shown, the same shall be admitted as evidence on the trial.

ART. 4801. Where there is no dispute as to the lines or boundaries of the land in controversy, or where the defendant admits that he is in possession of the lands or tenements included in the plaintiff's claim or title, an order of survey shall be unnecessary.

Survey unnecessary, when.  
*Ib.* §6.  
P.D. 5308.

ART. 4802. It shall not be necessary for the plaintiff to deraign title beyond a common source, and proof of a common source may be made by the plaintiff by certified copies of the deeds showing a chain of title to the defendant emanating from and under such common source; but before any such certified copies shall be read in evidence they shall be filed with the papers of the suit three days before the trial, and the adverse party served with notice of such filing as in other cases; *provided*, that such certified copies shall not be evidence of title in the defendant unless offered in evidence by him, and the plaintiff shall not be precluded from making any legal objection to such certified copies or the originals thereof when introduced by the defendant.

Common source of title, proof of.  
(Act Sept. 23, 1871, p. 3, §1.)  
P.D. 6323.

ART. 4803. If the defendant, who has been personally served with citation according to law, fails to appear and answer by himself or attorney within the time prescribed by law for other actions in the district court, the proper judgment by default may be entered against him and in favor of the plaintiff for the title to the premises or the possession thereof, or for both according to the petition, and for all costs, without any proof of title by the plaintiff.

Judgment by default.

ART. 4804. If the defendant has been cited only by publication, and fails to appear and answer by himself, or by attorney of his own selection, or if any defendant, having answered, fails to appear by himself or attorney when the case is called for trial on the merits, the plaintiff shall make such proof as will entitle him *prima facie* to recover, whereupon the proper judgment shall be entered.

Proof *ex parte*, when made.

ART. 4805. Where the defendant claims part of the premises only, the answer shall be equivalent to a disclaimer of the balance.

When defendant claims part only.

ART. 4806. Where the defendant claims the whole premises, and the plaintiff shows himself entitled to recover part, the plaintiff shall recover such part and costs.

When plaintiff proves part.

ART. 4807. When there are two or more plaintiffs or defendants, any one or more of the plaintiffs may recover against one or more of the defendants the premises or any part thereof, or any interest therein, or damages, according to the rights of the parties.

May recover a part, etc., when.

ART. 4808. Upon the finding of the jury, or of the court where the case is tried by the court, in favor of the plaintiff for the whole or any part of the premises in controversy, the judgment shall be that the plaintiff recover of the defendant the title, or possession, or both, as the case may be, of such premises, describing them, and, where he recovers the possession, that he have his writ of possession.

The judgment, etc.

ART. 4809. Where it is alleged and proved that one of the parties is in possession of the premises, the court or jury, if they find for the adverse party, shall assess the damages for the use and occupation of the premises; and if special injury to the property be alleged and proved, the damages for such injury shall be also assessed, and the proper judgment shall be entered therefor, on which execution may issue; but damages shall not be assessed under this article for use and occupation, or for injuries done over two years prior to the commencement of the suit.

Damages, etc., when recovered.  
*Ib.* §1.

ART. 4810. When the defendant or person in possession has claimed an allowance for improvements in accordance with the provisions of the succeeding chapter, the claim for use and occupation and damages mentioned in the preceding article shall be considered and acted on in connection with such claim by the defendant or person in possession.

Considered with claim for improvements, when.

Final judgment  
conclusive.

ART. 4811. Any final judgment rendered in any action for the recovery of real estate hereafter commenced shall be conclusive as to the title or right of possession established in such action upon the party against whom it is recovered, and upon all persons claiming from, through or under such party, by title arising after the commencement of such action.

Former laws  
shall govern,  
when.  
*Ib.* §6.  
P.D. 5297.

ART. 4812. Nothing under this title shall be so construed as to alter, impair or take away the rights of parties, as arising under the laws in force before the introduction of the common law; but the same shall be decided by the principles of the law or laws under which the same accrued, or by which the same were regulated or in any manner affected.

## CHAPTER TWO.

### CLAIM FOR IMPROVEMENTS.

	Article		Article
Suggestion of improvements in good faith.	4813	On failure of plaintiff, defendant may pay	4818
Issue as to, . . . . .	4814	etc., and keep premises. . . . .	4818
Rents and profits to be offset against. . . . .	4815	Defendant failing to pay, etc., within six	4819
Judgment for excess, etc. . . . .	4816	months, writ to issue. . . . .	4820
Writ of possession not to issue for a year,	4817	Judgment. . . . .	4820
unless, etc. . . . .	4817	Duty of clerk receiving payment, etc. . . . .	4821

Suggestion of  
improvements  
in good faith.  
(Act Feb. 5,  
1840.)  
P.D. 5300.

ARTICLE 4813. The defendant, in any action of trespass to try title, may allege in his pleadings that he and those under whom he claims have had adverse possession in good faith of the premises in controversy, for at least one year next before the commencement of such suit; and that he and those under whom he claims have made permanent and valuable improvements on the lands sued for during the time they have had such possession, stating the improvements and their value respectively; and stating also the grounds of such claim.

Issue as to.  
*Ib.*

ART. 4814. Where the defendant has filed his claim for an allowance for improvements in accordance with the preceding article, if the court or jury find that he is not the rightful owner of the premises sued for, but that he and those under whom he claims have made permanent and valuable improvements thereon, being possessors thereof in good faith, the court or jury shall at the same time estimate from the testimony—

1. The value at the time of trial of such improvements as were so made before the filing of the suit, not exceeding the amount to which the value of the premises is actually increased thereby.

2. The value of the use and occupation of the premises during the time the defendant was in possession thereof (exclusive of the improvements thereon made by himself or those under whom he claims), and also, if authorized by the pleadings, the damages for waste or other injury to the premises committed by him, not computing such annual value for a longer time than two years before suit, nor damages for waste or injury done before said two years.

3. The value of the premises recovered, without the improvements made as aforesaid.

Rents and  
profits to be  
offset against.

ART. 4815. If the sum estimated for the improvements exceed the damages estimated against the defendant and the value of the use and occupation as aforesaid, there shall then be estimated against him, if authorized by the testimony, the value of the use and occupation and the damages for injury done by him, or those under whom he claims, for any time before the said two years, so far as may be necessary to balance the claim for improvements, but no further; and he shall not be liable for the excess, if any, beyond the value of the improvements.

Judgment for  
excess, etc.

ART. 4816. If it shall appear from the finding of the court or jury, under the two preceding articles, that the estimated value of the use and occupation and damages exceed the estimated value of the improvements,

judgment shall be entered for the plaintiff for the excess and costs in addition to a judgment for the premises; but should the estimated value of the improvements exceed the estimated value of the use and occupation and damages, judgment shall be entered for the defendant for the excess.

ART. 4817. In any action of trespass to try title when the lands or tenements have been adjudged to the plaintiff, and the estimated value of the improvements in excess of the value of the use and occupation and damages has been adjudged to the defendant, no writ of possession shall be issued for the term of one year after the date of the judgment, unless the plaintiff shall pay to the clerk of the court for the defendant the amount of such judgment in favor of the defendant, with the interest thereon.

Writ of possession not to issue, unless, etc.  
(Act Feb. 5, 1840, §9.)  
P.D. 5301.

ART. 4818. If the plaintiff shall neglect for the term of one year to pay over the amount of said judgment in favor of the defendant, with the interest thereon, as directed in the preceding article, and the defendant shall, within six months after the expiration of said year, pay to the clerk of the court for the plaintiff the value of the lands or tenements without regard to the improvements, as estimated by the court or jury, then the plaintiff shall be forever barred of his writ of possession, and from ever having or maintaining any action whatever against the defendant, his heirs or assigns, for the lands or tenements recovered by such suit.

On failure of plaintiff, defendant may pay, etc., and keep premises.

ART. 4819. If the defendant or his legal representatives shall not, within the six months aforesaid, pay over to the clerk for the plaintiff the estimated value of the lands or tenements, as directed in the preceding article, then the plaintiff may sue out his writ of possession as in ordinary cases.

Defendant failing to pay, etc., within six months, writ may issue, etc.

ART. 4820. The judgment or decree of the court shall recite the estimated value of the premises without the improvements, and shall also include the conditions, stipulations and directions contained in the three preceding articles, so far as they may be applicable to the case before the court.

Judgment.

ART. 4821. Whenever payment shall be made to the clerk of the court by the plaintiff or defendant, as provided in the preceding articles, it shall be the duty of such clerk to enter a memorandum of such payment, with the date thereof, on the page of the record on which the judgment was entered; and he shall, on demand, pay over the money to the party entitled, taking his receipt therefor, dated and signed on the page of the record aforesaid.

Duty of clerk on receiving payment, etc.



TITLE XC VII.

Trial of Right of Property.

	Article		Article
Claimant must make affidavit.....	4822	Judgment by default against defendant,	
And give bond.....	4823	when.....	4836
Bond, condition of.....	4824	Judgment of non-suit against plaintiff, when	4836
Property to be delivered to claimant.....	4825	Proceedings, how conducted.....	4837
Return of oath and bond.....	4826	Burden of proof on plaintiff, when.....	4838
Form of bond.....	4827	Burden of proof on defendant, when.....	4839
Form immaterial.....	4828	Damages.....	4840
Return of oath, bond, and copy of writ		Where value of property exceeds judgment	4841
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where writ issued.....	4829	Judgment.....	4843
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Cause, how docketed.....	4832	days.....	4845
Issue to be made, etc.....	4833	Claim operates as release of damages.....	4846
Requisites of issue.....	4834	Levy may be made on other property.....	4847

Claimant must make affidavit. (Act March 18, 1846, p. 140, §1.) P.D. 5310.

ARTICLE 4822. Whenever any sheriff or other lawful officer shall levy a writ of execution, sequestration, attachment or other like writ, upon any personal property, and such property, or any part thereof, shall be claimed by any person who is not a party to such writ, such person or his agent or attorney may make oath in writing before any officer authorized to administer oaths, that such claim is made in good faith, and present such oath in writing to the officer who made such levy.

And give bond. *Id.*

ART. 4823. He shall also execute and deliver to the officer who made such levy his bond, with two or more good and sufficient sureties, to be approved by such officer, payable to the plaintiff in such writ, for an amount equal to double the value of the property so claimed, to be assessed by such officer.

Condition of bond.

ART. 4824. The bond shall be conditioned that the party making such claim, in case he fails to establish his right to such property, shall return the same to the officer making the levy, or his successor, in as good condition as he received it, and shall also pay the reasonable value of the use, hire, increase and fruits thereof from the date of said bond, or in case he fails so to return said property and pay for the use of the same, he shall pay the plaintiff the value of said property, with legal interest thereon from the date of the bond, and shall also pay all damages and costs that may be awarded against him.

Property to be delivered to claimant. *Id.*

ART. 4825. It shall be the duty of the officer receiving such oath and bond to deliver the property so claimed to the person so claiming it.

Return of oath and bond. *Id.* P.D. 5311.

ART. 4826. Whenever any person shall claim property and shall make the oath and give the bond, as provided for in this chapter, if the writ under which such levy was made was issued by any justice of the peace or court of the county where such levy was made, the sheriff or other officer receiving such oath and bond shall indorse on the writ that such claim has been made and oath and bond given, stating by whom, and shall also indorse on such bond the value of the property as assessed by himself, and shall forthwith return such bond and oath to the proper justice or court having jurisdiction to try such claim, as hereinafter provided.

Form of bond.

ART. 4827. The form of such bond shall be substantially as follows:  
 "Whereas, by virtue of a writ of.....[here describe the writ] issued out of the.....court (or by....., justice of the peace for precinct No. ...., ..... county) in favor of.....[here insert name of plain-

*tiff*] versus ..... [here insert name of defendant], and tested on the ..... day of ....., A. D. 18...., ..... [here insert name and title of officer seizing], has seized and taken the following described personal property, viz: ..... [here describe the property], the value of which property has been assessed by said officer at ..... dollars. And, whereas ..... [here insert name of claimant] has claimed said property and presented to said officer his oath in writing that such claim is made in good faith; Now, therefore, we ..... [here insert name of claimant], as principal and ..... and ..... as sureties, acknowledge ourselves bound to pay to the said ..... [insert name of plaintiff] the sum of ..... dollars, being double the value of said property, conditioned that the said ..... [here insert name of claimant], in case he fails to establish his right to said property, will return the same to the said ..... [insert the name of the officer] or his successor, in as good condition as he received it, and shall also pay the reasonable value of the use, hire, increase or fruits of the same from the date of this bond and costs, or in case he fails to return said property and pay for the use, hire, increase of fruits thereof, that he will pay the plaintiff the value of the same, with legal interest thereon from date, and shall also pay all damages and costs that may be awarded against him.

“Witness our hands this the ..... day of ....., A. D. 18....

“.....  
“.....

“Approved: ..... sheriff (or constable) of ..... county.”

ART. 4828. Any other form of bond which shall be a substantial compliance with the requirements of article 4824 shall be a sufficient bond. Form immaterial.

ART. 4829. Whenever any person shall claim property and shall make the oath and give the bond as provided for herein, if the writ under which such levy was made was issued by any justice of the peace or court of another county than that in which such levy was made, then the officer receiving such oath and bond shall indorse on such bond the value of the property as assessed by himself, and shall forthwith return such bond and oath, with a copy of the writ, to the justice or court of the county in which such levy was made, having jurisdiction according to the value of the property as assessed by said officer. Return of oath, bond and copy of writ when levy made in county other than that where writ issued.

ART. 4830. The sheriff or other officer taking said bond shall also indorse on the original writ that such claim has been made and oath and bond given, stating by whom, the names of the sureties and to what justice or court the bond has been returned; and he shall forthwith return such original writ to the justice or court from which it is issued. Return of original writ.

ART. 4831. Cases arising under this chapter shall be tried as follows: Jurisdiction. (Const., art. 5, §§8, 16, 19.)

1. Where the assessed value of the property does not exceed two hundred dollars, the writ shall be returned to a justice of the peace, as before provided.

2. Where the value assessed is more than two hundred dollars and does not exceed five hundred dollars, the writ shall be returned to the proper county court.

3. When the assessed value is more than five hundred dollars the writ shall be returned to the proper district court.

ART. 4832. Whenever any oath and bond, for the trial of the right of property, shall be returned as provided for in this chapter, it shall be the duty of the clerk of the court, or of such justice of the peace, to docket the same in the name of the plaintiff in the writ, as the plaintiff, and the claimant of the property as defendant. Cause, how docketed. (Act March 18, 1848, p. 140, §3.) P. D. 5312.

ART. 4833. At the first term of the court thereafter, if both parties appear, the court or justice shall direct an issue to be made up in writing between the parties and tried as in other cases. Issue to be made up, etc. 76.

- Requisites of issue.** ART. 4834. Said issue shall consist of a brief statement of the authority and right by which the plaintiff seeks to subject the property levied on to his execution, and of the nature of the claim of the defendant thereto.
- Judgment by default against defendant, when.** *Ib.* ART. 4835. If the plaintiff appears and the defendant fails to appear or neglects or refuses to join issue under the direction of the court or justice, within the time prescribed for pleading, the plaintiff shall have judgment by default, as in other cases.
- Judgment of non-suit against plaintiff, when.** *Pb.* ART. 4836. If the plaintiff does not appear at the said first term the case shall be continued to the next term, when, if he appears, the like proceedings may be had as at the said first term; but if he does not then appear on or before the appearance day of said term, he shall be non-sued.
- Proceedings, how conducted.** ART. 4837. The proceedings and practice on the trial shall be as nearly as practicable the same as in other cases before such court or justice.
- Burden of proof on plaintiff, when.** *Ib.* ART. 4838. In all cases arising under this title, if the property was taken from the possession of the claimant, the burden of proof shall be on the plaintiff.
- Burden of proof on defendant, when.** *Ib.* ART. 4839. If it was taken from the possession of the defendant in such writ, or any other person than the claimant, the burden of proof shall be on the claimant.
- Damages.** P.D. 5314. ART. 4840. In all trials of the right of property under the provisions of this title, if the claimant shall fail to establish his right to the property, the court or justice trying the same shall give judgment against all the obligors in the claimant's bond for ten per cent. damages on the value of the property.
- Where value of property exceeds judgment.** *Ib.* ART. 4841. When such value is greater than the amount claimed under the writ, by virtue of which such property was levied upon, the damages shall be on the amount claimed under said writ.
- Copy of writ evidence, when.** P.D. 5315. ART. 4842. In all trials of the right of property, under the provisions of this title, in any county other than that in which the writ issued under which the levy was made, the copy of the writ herein required to be returned by the officer making the levy, shall be received in evidence, in like manner as the original could be.
- Judgment.** P.D. 5316. ART. 4843. In all cases where any claimant of property, under the provisions of this title, shall fail to establish his right thereto, judgment shall be rendered against him and his sureties for the value of the property, with legal interest thereon from the date of such bond.
- Execution not to issue within ten days.** ART. 4844. On such judgment no execution shall issue for ten days.
- Return of property by claimant within ten days.** ART. 4845. If, within ten days from the rendition of said judgment, the claimant shall return such property in as good condition as he received it, and pay for the use of the same, together with the damages and costs, such delivery and payment shall operate as a satisfaction of such judgment.
- Claim operates as release of damages.** P.D. 5317. ART. 4846. A claim made to property, under the provisions of this chapter, shall operate as a release of all damages by the claimant against the officer who levied upon said property.
- Levy may be made on other property.** P.D. 5318. ART. 4847. Proceedings for the trial of the right of property, under the provisions of this title, shall in no case prevent the plaintiff in the writ from having a levy made upon any other property of the defendant.

TITLE XCVIII.

Weights and Measures.

	Article		Article
Legal standard.....	4848	Testing and stamping.....	4853
Governor to procure standards.....	4849	False weights and measures.....	4854
And furnish copies to counties.....	4850	Private informer may recover, when.....	4855
Counties to pay for same.....	4851	Forfeitures merely cumulative.....	4856
Licenses to make and vend.....	4852		

ARTICLE 4848. The standard of weights and measures adopted and used by the government of the United States is hereby declared the only legal standard of weights and measures in this state.

Legal standard.  
(Act May 7, 1846, p. 180, §4.  
P.D. 5352.

ART. 4849. The governor shall procure, if necessary, at the expense of the state, a set of weights and measures in conformity with the standard used by the government of the United States, and cause the same to be deposited with the treasurer of the state, by him to be safely kept.

Governor to procure standards.  
(Act Feb. 13, 1858, p. 200, §1.)  
P.D. 5353.

ART. 4850. The governor is authorized to cause correct copies of such weights and measures to be made under such appropriate seal as he may adopt, and to deliver or cause to be delivered, after the inspection and approval of some competent person by him appointed for that purpose, a full set of such weights and measures to the county judges of the several counties, on their application, and at the cost and expense of their respective counties.

And furnish copies to counties.  
Ib. §2.  
P.D. 5354.

ART. 4851. When such copies have been made, it shall be the duty of the several commissioners' courts to appropriate a sufficient amount of money to enable the county judges of the respective counties to pay for and procure a full set thereof for the use of their counties, and said county judges shall take charge of and keep the same.

Counties to pay for same  
Ib. §4.  
P.D. 5356.

ART. 4852. The commissioners' courts of the several counties are authorized and directed to grant a license to such suitable person or persons as they may think proper to make and vend weights and measures agreeing with the standard furnished by the governor, under such rules and regulations as they may think proper to prescribe; *provided, however*, that no such weights and measures shall be sold or distributed unless the same have been first examined and approved by the commissioners' court, or some competent person under their direction and approval.

Licenses to make and vend.  
(Act May 7, 1846, p. 180, §3.)  
P.D. 5351.

ART. 4853. Any person desirous of having his weights and measures tested may have the same done by applying to the county judge, who, if he finds them correct, shall seal them with a seal to be provided by the commissioners' court for that purpose, on which shall be the capital letter "T" and also the letter with which the name of the county begins.

Testing and stamping.  
(Act Feb. 13, 1858, p. 200, §5.)  
P.D. 5357.

ART. 4854. Any person who shall sell by any weight, balance or measure that does not correspond to and agree with such copies, or who shall keep the same for the purpose of buying or selling thereby, shall forfeit and pay the sum of ten dollars for every month he may continue to keep the same, one-half of which shall go to the county in which such offense shall have been committed, and the other to the county judge, and it shall be his duty to sue for the penalty incurred by the commission of every such offense before some court of competent jurisdiction.

False weights and measures.  
Ib. §7.  
P.D. 5359.

ART. 4855. If the county judge shall fail to sue for any such penalty within three months after the same shall have been incurred, any other person may sue therefor and recover one-half thereof for his own use and the other half for the use of the county.

Private informer may recover, when.  
Ib. §8.  
P.D. 5360.

ART. 4856. Nothing in the two preceding articles contained shall be construed to affect any provision of the Penal Code relating to the use of false weights and measures, nor shall a recovery of any forfeiture by civil action relieve an offender from criminal prosecution or an action for damages resulting therefrom.

Forfeitures merely cumulative.

TITLE XCIX.

Wills.

	Article		Article
Persons competent to make a will.....	4857	Children born after making of will.....	4868
What may be devised, etc., by will.....	4858	The same.....	4869
Requisites of a will.....	4859	Term "children" includes descendants.....	4870
Will wholly written by testator.....	4860	Bequests to children, etc., not to lapse.....	4871
Revocation of written will.....	4861	Bequest to subscribing witness.....	4872
Nuncupative will.....	4862	Will in such cases may be proved, how.....	4873
Requisites of.....	4863	Husband or wife may authorize survivor to manage separate estate.....	4874
Notice and proof.....	4864	Original wills, etc., to be deposited with county clerk, etc.....	4875
Testimony to be committed to writing, etc	4865	To be recorded, etc.....	4876
Wills of soldiers, etc., disposing of chattels	4866		
Posthumous children.....	4867		

Persons com-  
petent to make  
a will.  
(Acts Jan. 28,  
1840; July 24,  
1856.)  
P.D. 5361, 3868.  
What may be  
devised, etc.,  
by will.  
P.D. 5361-2.

ARTICLE 4857. Every person aged twenty-one years or upward, or who may be or may have been lawfully married, being of sound mind, shall have power to make a last will and testament, under the rules and limitations prescribed by law.

ART. 4858. Every person competent to make a last will and testament may thereby devise and bequeath all the estate, right, title and interest in possession, reversion or remainder, which he has, or at the time of his death shall have, of, in or to any lands, tenements, hereditaments or rents charged upon or issuing out of them, or shall have of, in or to any personal property, or any other property whatever, subject to the limitations prescribed by law.

ART. 4859. Every last will and testament, except where otherwise provided by law, shall be in writing and signed by the testator or by some other person by his direction and in his presence, and shall, if not wholly written by himself, be attested by two or more credible witnesses above the age of fourteen years, subscribing their names thereto in the presence of the testator.

ART. 4860. Where the will is wholly written by the testator the attestation of the subscribing witnesses, as required in the preceding article, may be dispensed with.

ART. 4861. No will in writing, made in conformity with the preceding articles, nor any clause thereof or devise therein, shall be revoked, except by a subsequent will, codicil or declaration in writing, executed with like formalities, or by the testator destroying, cancelling or obliterating the same, or causing it to be done in his presence.

ART. 4862. Any person who is competent to make a last will and testament, under article 4857, may dispose of his property by a nuncupative will made under the conditions and limitations hereinafter prescribed.

ART. 4863. No nuncupative will shall be established unless it be made in the time of the last sickness of the deceased, at his habitation or where he has resided for ten days next preceding, except when the deceased is taken sick from home and dies before he returns to such habitation; nor, when the value exceeds thirty dollars, unless it be proved by three credible witnesses that the testator called on some person to take notice or bear testimony that such is his will, or words of like import.

ART. 4864. No nuncupative will shall be proved within fourteen days after the death of the testator, nor until those who would have been entitled by inheritance, had there been no will, have been summoned to contest the same, if they desire to do so.

Requisites  
of a will.  
(Act Jan. 28,  
1840.)  
P.D. 5361.

Will wholly  
written by  
testator.  
*Ib.*

Revocation of  
written will.  
P.D. 5363.

Nuncupative  
will.  
P.D. 5366 *et seq.*

Requisites of.  
P.D. 5366.

Notice and  
proof.  
P.D. 5371.

ART. 4865. After six months have elapsed from the time of speaking the pretended testamentary words, no testimony shall be received to prove a nuncupative will, unless the testimony or the substance thereof shall have been committed to writing within six days after making the will.

Testimony to be committed to writing, etc.  
P.D. 5367.

ART. 4866. Any soldier in actual military service, or any mariner or seaman being at sea, may dispose of his chattels without regard to the provisions of this title.

Wills of soldiers, etc., disposing of chattels.  
P.D. 5369.

ART. 4867. When a testator shall have children born and his wife *enceinte*, the posthumous child, if unprovided for by settlement and pretermitted by his last will and testament, shall succeed to the same portion of the father's estate as such child would have been entitled to if the father had died intestate, toward which portion the devisees and legatees shall contribute proportionably out of the parts devised and bequeathed to them by such last will and testament.

Posthumous children.  
P.D. 5368.

ART. 4868. If a testator having a child or children born at the time of making his last will and testament shall, at his death, leave a child or children born after the making of such last will and testament, the child or children so after-born and pretermitted shall, unless provided for by settlement, succeed to the same portion of the father's estate as they would have been entitled to if the father had died intestate, toward raising which portion the devisees and legatees shall contribute proportionably out of the parts devised and bequeathed to them by such last will and testament, in the same manner as is provided in article 4867.

Children born after making a will.  
P.D. 5364.

ART. 4869. Every last will and testament made when the testator had no child living, wherein any child he might have is not provided for or mentioned, if at the time of his death he shall leave a child, or leave his wife *enceinte* of a child which shall be born, shall have no effect during the life of such after-born child, and shall be void unless the child die without having been married and before he shall have attained the age of twenty-one years.

The same.  
P.D. 5363.

ART. 4870. Under the name of "children," as used in this title, are included descendants of whatever degree they may be, it being understood they are only counted for the child they represent.

Term "children" includes descendants.  
P.D. 5373.

ART. 4871. Where a testator shall devise or bequeath an estate or interest of any kind, by will, to a child or other descendant of such testator, should such devisee or legatee, during the lifetime of the testator, die leaving children or descendants who shall survive such testator, such devise or legacy shall not lapse by reason of such death, but the estate so devised or bequeathed shall vest in the children or descendants of such legatee or devisee, in the same manner as if he had survived the testator and had died intestate.

Requests to children, etc., not to lapse.  
P.D. 5365.

ART. 4872. Should any person be a subscribing witness to a will, and be also a legatee or devisee therein, if the will can not be otherwise established, such bequest shall be void, and such witness shall be allowed and compelled to appear and give his testimony in like manner as if no such bequest had been made. But if in such case the witness would have been entitled to a share of the estate of the testator had there been no will, he shall be entitled to so much of such share as shall not exceed the value of the bequest to him in the will.

Bequest to subscribing witness.  
(Act March 15, 1875, p. 179.)

ART. 4873. In the case provided for in the preceding article, such will may be proved by the evidence of the subscribing witnesses, corroborated by the testimony of one or more other disinterested and credible persons, to the effect that the testimony of such subscribing witnesses necessary to sustain the will, is substantially true, in which event the bequest to such subscribing witnesses shall not be void.

Will in such cases may be proved, how.  
*Ib.*

ART. 4874. The husband or wife may, by last will and testament, give to the survivor of the marriage the power to keep his or her separate property together, until each of the several heirs shall become of lawful age, and

Husband or wife may authorize survivor or to manage

separate estate  
(Act Aug. 26  
1886, p. 51, §8.)  
P.D. 4653.

to manage and control the same under the provisions of law relating to community property, and such other restrictions as may be imposed by such will; *provided*, the surviving husband or wife is the father or mother, as the case may be, of the minor heirs; *and provided further*, that any child or heir entitled to any part of said property shall, at any time upon becoming of age, be entitled to receive his distributive portion of said estate.

Original wills,  
etc., to be de-  
posited with  
county clerk,  
etc.  
P.D. 5372.

ART. 4875. All original wills, together with the probate thereof, shall be deposited in the office of the clerk of the county court of the county wherein the same shall have been probated, and shall there remain, except during such time as they may be removed to some other court by proper process, for inspection.

To be re-  
corded, etc.  
Id.

ART. 4876. Every such will, together with the probate thereof, shall be recorded by the clerk of the county court in a book to be kept for that purpose, and certified copies of such will and the probate of the same, or of the record thereof, may be recorded in other counties, and may be used in evidence, as the original might be.

TITLE C.

Wrecks.

CHAPTER ONE.

OF WRECK-MASTERS.

	Article		Article
Appointment of wreck-master.....	4877	To keep a record, etc.....	4882
Bond and oath.....	4878	Additional record and reports.....	4883
His duties.....	4879	Fees and perquisites.....	4884
To be controlled by pilot commissioners.....	4880	Special duty to prosecute.....	4885
To take possession of wrecked property and sell.....	4881		

ARTICLE 4877. The governor shall appoint not less than one and not more than three persons of good character in each maritime county of the state as wreck-masters for such county.

Appointment  
of wreck-  
masters.  
(Act April 30,  
1846, p. 158, §1.)  
P.D. 5375.

ART. 4878. Each person so appointed shall, before entering upon the duties of his office, give bond, with two or more good and sufficient sureties, in the sum of five thousand dollars, payable to the county judge of the county for which he is appointed, and to be approved by such officer, conditioned that the person so appointed shall faithfully discharge the duties of his office; which bond shall be deposited with the clerk of the county court of such county. The appointee shall also take the oath prescribed by the constitution for all officers, which oath shall be indorsed on said bond before the same is filed.

Bond and oath.  
Ib.

ART. 4879. It shall be the duty of each wreck-master so appointed, as soon as he may be apprised of any wreck in his county, or the portion of such county allotted to him, to repair at once to the place where such wreck has occurred, and if the property so wrecked be found abandoned, to attend to the salving thereof, to use his best endeavors for the preservation of the same, and to attend generally to the interests of the owners of such property or whom it may concern; and the wreck-master shall have the command and direction of all persons engaged in saving and preserving such property.

His duties.  
Ib. §2.  
P.D. 5376.

ART. 4880. Wreck-masters shall be subject to the control and direction of the commissioners of pilots for the principal ports of their counties, if such there be; but in case there are no such officers in such county, then wreck-masters shall be under the control of the county judge of their county.

To be con-  
trolled by  
pilot com-  
missioners.  
Ib. §3.  
P.D. 5377.

ART. 4881. Each wreck-master shall take into his custody and safely keep all wrecked property salved by him, or under his direction, or found wrecked and abandoned in his county, or that portion of the county under his supervision and jurisdiction; and, after the notice required by law, he shall sell the same at public auction for the benefit of the owners or underwriters and the salvors, to all of whom he shall faithfully account.

To take  
possession of  
wrecked prop-  
erty and sell.  
Ib. §5.  
P.D. 5379.

ART. 4882. Each wreck-master shall keep a true account of all property salved by him or under his direction, with the circumstances under which it was salved, and the names of the persons engaged in salving, the time that each was so employed, and other circumstances needful for the proper apportionment of salvage.

To keep a  
record, etc.  
Ib. §4.  
P.D. 5378.



Additional record and reports. *Ib.* §4. P.D. 5378.

ART. 4883. He shall also keep a true account, in a book to be kept for the purpose, of all sales made by him and the proceeds thereof, commissions, expenses, salvage, balance left, and the condition and disposition of the same; and within one month after each sale, and at other times when required, he shall make an abstract report in writing, signed by him, of the matters and things provided for in this and the preceding article, to the commissioner of pilots, or the county judge, as the case may be; and he shall also, when required, report the same, together with all needful information in his possession, to the court or other tribunal before which cases of salvage may be pending.

Fees and perquisites. *Ib.* §5. P.D. 5379.

ART. 4884. Wreck-masters shall receive a commission of five per cent. upon the amount of all sales made by them, after deducting all expenses, not including salvage, with such reasonable expenses as may be allowed by the authority which may control them, or the court before which the case may come; which expenses may include the wages and mileage of a crier, at a rate to be fixed by such controlling authority.

Special duty to prosecute. *Ib.* §6. P.D. 5380.

ART. 4885. It shall be the special duty of each wreck-master to prosecute before the proper tribunal any person who may be guilty of wasting, stealing or embezzling any property coming within the description of wrecked property.

CHAPTER TWO.  
OF COTTON SALVAGE.

Wrecked cotton to be advertised.....	Article 4886	And proceeds paid into state treasury.....	Article 4889
And delivered to owner, when.....	4887	If no wreck-master, county clerk to act....	4890
If no owner appear, to be sold.....	4888	Warrant to issue for suspected cotton....	4891

Wrecked cotton to be advertised. (Act Aug. 30, 1858, p. 76, §1.) *Ib.* P.D. 1030.

ARTICLE 4886. It shall be the duty of persons taking up cotton afloat abandoned in rivers, or in the waters of the gulf of Mexico on the coast of this state, or in the bays or bayous thereof, to place to same in a secure place out of the weather, and give early notice by advertisement, or by other means at the port to which said cotton was destined, if within this state, and if without the limits of the state, or its destination be unknown to the finder, then at the nearest port of entry in this state to the locality where it may be taken up, of the finding of the same, giving a description of the marks or brands on said cotton, together with the place of finding and the name of the finder.

And delivered to owner, when. *Ib.* §2. P.D. 1031.

ART. 4887. It shall be the duty of the person finding, or other person having said cotton in his possession, to deliver the same to the owner, insurer or consignee thereof, on demand, upon being paid the expenses of advertisement, and five dollars upon each bale so saved and delivered.

If no owner appear, to be sold. *Ib.* §3. P.D. 1032.

ART. 4888. If no owner, insurer or consignee of the cotton appear within three months after such advertisement, the person finding shall cause the same to be sold at auction by a legal wreck-master of the county in which said cotton is deposited, at public outcry to the highest bidder; and the wreck-master shall, from the proceeds of such sale, pay the necessary expenses attending the storage, advertising and sale of said cotton, and to the finder the salvage of five dollars for each bale as aforesaid. The remainder, less his commissions and other necessary expenses, he shall hold in trust for the benefit of the owner or others concerned.

And proceeds paid into state treasury. *Ib.*

ART. 4889. If, at the expiration of one year thereafter, no legal claimant appears therefor, said proceeds shall be paid over by said wreck-master to the treasurer of the county in which the sale took place, and said county treasurer shall immediately pay the same over to the treasurer of the state, who shall pay the same over to the person entitled thereto, on proof being made of the right of the claimant, in the manner provided for the

recovery of money paid into the treasury of the state by executors or administrators of estates where no heirs, devisees or legatees of the estate appear to claim the fund of the estate on the final settlement thereof.

ART. 4890. In case there shall be no wreck-master in the county in which the cotton is deposited, then it shall be the duty of the clerk of the county court to perform all the duties required of wreck-masters by the two preceding articles, and such clerk shall be entitled to receive the same compensation for his services as is allowed to wreck-masters under this chapter.

If no wreck-master, county clerk to act.  
*Ib.* §4.  
P.D. 1033.

ART. 4891. Upon affidavit being made before any justice of the peace that the affiant has good reason to believe, and does believe, that certain cotton within his county has been so found, or having been found without such county has been brought therein, and that a reasonable time has elapsed, and that the finder has neglected to comply with the requirements of the foregoing articles, it shall be the duty of such justice of the peace to issue his warrant and cause said cotton or its proceeds to be seized by a legal officer and delivered to the wreck-master of said county, to be disposed of according to the provisions of this chapter.

Warrant to issue for suspected cotton.  
*Ib.* §6.  
P.D. 1035.

# FINAL TITLE.

## General Provisions.

	Section		Section
Revised Civil Statutes, how known and cited.	2	Laws as to reservations for actual settlers	
To be liberally construed.....	3	and public buildings not repealed.....	18
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trict courts.....		Not to be printed in pamphlet laws.....	21
No person, etc., released from any duty, etc.	12	Take effect, when.....	22

Revised Civil Statutes, how known and cited.

SECTION 2. *Be it further enacted,* That these Revised Civil Statutes of the State of Texas shall be known, and may be cited as the "Revised Statutes."

To be liberally construed.

SEC. 3. That the rule of the common law that statutes in derogation thereof shall be strictly construed shall have no application to the Revised Statutes, but the said statutes shall constitute the law of this state respecting the subjects to which they relate, and the provisions thereof shall be liberally construed with a view to effect their objects and to promote justice.

Repealing clause.

SEC. 4. That all civil statutes, of a general nature, in force when the Revised Statutes take effect, and which are not included herein, or which are not hereby expressly continued in force, are hereby repealed.

Repeal does not affect what.

SEC. 5. That the repeal of any statute, or any portion thereof by the preceding section, shall not affect or impair any act done or right vested or accrued, or any proceeding, suit or prosecution had or commenced in any cause before such repeal shall take effect; but every such act done or right vested or accrued, or proceeding, suit or prosecution had or commenced shall remain in full force and effect to all intents or purposes as if such statute or part thereof so repealed had remained in force, except that where the course of practice or procedure for the enforcement of such right or the conducting of such proceeding, suit or prosecution, shall be changed, the same shall be conducted as near as may be in accordance with the Revised Statutes.

Same subject.

SEC. 6. That no offense committed and no liability, penalty, or forfeiture, either civil or criminal, incurred prior to the time when any statute or part thereof shall be repealed or altered by the Revised Statutes, shall be discharged or affected by such repeal or alternation; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted and proceeded with in all respects as if such prior statute or part thereof had not been repealed or altered, except that where the mode of procedure or matters of practice have been changed by the Revised Statutes, the procedure had after the Revised Statutes shall have taken effect, in such prosecution or suit shall be, as far as practicable, in accordance with the Revised Statutes.

SEC. 7. That no general or special law heretofore enacted validating or legalizing the acts or omissions of any officer, or any act or proceeding whatever, shall be affected by the repealing clause of this title; but all such validating or legalizing statutes whatsoever now in force in this state are hereby continued in force, and the same shall be as effectual for all purposes after as before the Revised Statutes go into effect.

Validating and legalizing statutes not repealed.

SEC. 8. That no law relating to the public debt or the public credit shall be affected by the repealing clause of this title.

Laws relating to public debt, etc., not repealed.

SEC. 9. That no law relating to the university or public school fund, or in relation to the Agricultural and Mechanical College fund, or the investment of any such funds, or making any reservation in favor of the same, shall be affected or impaired by the repealing clause of this title, except where altered or amended by the Revised Statutes.

Laws relating to university and school funds, etc., not repealed.

SEC. 10. That no statute, or part of a statute, creating, adding to or organizing any county, or establishing any county seat, in this state, shall be affected or impaired by the repealing clause of this title, or by any law relating to the establishment of county boundaries contained in this act.

Laws creating, etc., counties and county seats not repealed. (Acts 1879, ch. 157.)

SEC. 11. That the laws now in force organizing the several judicial districts, and prescribing the times for holding the district courts therein, are continued in force.

Judicial districts, and times of holding district courts.

SEC. 12. That nothing in the repealing clause of this title shall be construed as releasing any person or corporation from any duty enjoined or limitation or condition imposed by any law that may be repealed by the repealing clause of this title.

No person, etc., released from any duty, etc.

SEC. 13. That no law in reference to land reservations, or setting apart portions of such reservations for the benefit of actual settlers, or for the construction or repairing of the public buildings of the state shall be affected or impaired by the repealing clause of this title, unless expressly altered or repealed in some of the preceding articles of the Revised Statutes.

Laws as to reservations for actual settlers and public buildings not repealed.

SEC. 14. That no law providing for the payment of unpaid school teachers in the public schools, or giving authority to cities or towns to establish public libraries, or for like purposes, shall be affected or impaired by the repealing clause herein.

Laws for the payment of unpaid school teachers, etc., and as to public libraries, not repealed.

SEC. 15. That all laws in relation to the penitentiary or the convicts therein, except as altered or amended in the Revised Statutes, shall not be affected or impaired by the repealing clause herein.

Certain acts to the penitentiary not repealed.

SEC. 16. That all laws of a local nature operating in particular counties, cities or towns, and all laws of a private nature, operating on particular persons, are not affected by the said repealing clause.

Certain local laws not repealed.

SEC. 17. That the repealing clause of this title shall not affect any law concerning preëmption settlers further than such law may be amended or changed by the Revised Statutes.

Certain preëmption laws not repealed.

SEC. 18. That all laws now providing for the defense of the inhabitants of this state on its Indian or Mexican frontier, and all acts giving the exclusive authority to suppress lawlessness and crime in certain localities, shall not be affected by the repealing clause of this title.

Laws concerning the Indian and Mexican frontiers, etc., not repealed.

SEC. 19. That the provisions of the Revised Statutes so far as they are substantially the same as the statutes of this state in force at the time when the Revised Statutes shall go into effect, or of the common law in force in this state at said time, shall be construed as continuations thereof, and not as new enactments of the same.

Shall be construed as continuation of former law, etc.

SEC. 20. That no laws, general or special, enacted at the present session of the legislature, shall be in any way affected by the repealing clause of this title; *provided*, that any law passed by the sixteenth legislature,

Laws of present session not affected. (Act to adopt and establish R.C.S., passed Feb. 21, 1879.)

in conflict with any provision of this act, shall be the law of the state, this act to the contrary notwithstanding.

Revised Statutes not to be printed in pamphlet laws

SEC. 21. That the Revised Statutes shall not be printed in the pamphlet laws of the present session of the legislature, but shall be printed, published and distributed at such time and in such manner as may be provided by law.

When to take effect. (Act to adopt and establish R.C.S., passed Feb. 21, 1879.)

SEC. 22. That the Revised Statutes shall take effect and be in force at twelve o'clock meridian, on the first day of September, Anno Domini one thousand eight hundred and seventy-nine.

(Act to adopt and establish R.C.S., passed Feb. 21, 1879.)

SEC. 23. Because this bill can not be read in one day, or on three several days, an imperative public necessity exists requiring that the constitutional rule that the same be read on three several days should be suspended, and it is therefore suspended.

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*The foregoing act was presented to the governor of Texas for his approval, on the twenty-eighth day of February, 1879, at eleven o'clock and forty minutes A. M., and was not signed by him nor returned to the house in which it originated, with his objections thereto, within the time prescribed by the constitution, and thereupon became a law without his signature.*

*March 17, 1879.*

*JOHN D. TEMPLETON,  
Secretary of State.*

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